

**ETHICS OPINION NUMBER 219
OF THE MISSISSIPPI BAR
RENDERED JUNE 3, 1994**

FEES -- Upon termination of the attorney-client relationship, a lawyer must account, upon demand, for all funds, including fees paid in advance, and state the basis of any refund or entitlement for fees paid or due.

The Ethics Committee of The Mississippi Bar has been requested to render an opinion upon the following question:

Attorney "A" accepts a fee of \$10,000.00 from a client at an initial interview for representation in a criminal matter. No contract is signed between the client and Attorney "A". Three (3) weeks later, client terminates Attorney "A"'s services and demands the return of fees not earned and demands an hourly bill of services rendered. Must Attorney "A" return any of the \$10,000.00 fee? Must Attorney "A" prepare an itemized bill? Must Attorney "A" return any amounts that were not earned on an hourly billing basis?

Rule 1.16(d) of Mississippi Rules of Professional Conduct provides as follows:

It is stated upon termination of representation, a lawyer shall take steps reasonably practical to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

Pursuant to the averment of Rule 1.16(d), a lawyer must account for any and all funds, which have come into his possession, upon termination of representation. Said lawyer shall be required to provide the basis of an agreement upon which the lawyer contends he is entitled to keep an advance payment. Moreover, said lawyer is required to refund any advance payment that has not been earned.

The committee interprets Rule 1.16(d) to require that counsel, upon termination, must account for such funds, and provide proper basis for any refund or for entitlement to such funds that have been paid or that the lawyer claims are due.

This committee is not a fee-dispute-resolution body. It is apparent that sufficient facts are not before the committee to resolve the putative dispute between client and attorney, which is the subject of this opinion. A full inquiry into the extent of these facts would be required to render final opinion pertaining to this matter. In the absence of such factual inquiry, the question presented is deemed a thicket we dare not enter. Nonetheless, we require any attorney act in accord with the requisites of Rule 1.16(d), as set forth above. The committee suggests that all contractual relations between lawyer and client be in writing, and that the parties consider, as part of their written agreement, provisions which anticipate the requisite requirements of Rule 1.16(d), upon termination of the attorney-client relationship.