

**ETHICS OPINION NUMBER 221
OF THE MISSISSIPPI BAR
RENDERED NOVEMBER 17, 1994**

ETHICAL OBLIGATION TO REPORT THE UNAUTHORIZED PRACTICE OF LAW -- A lawyer has an ethical duty to report professional misconduct and the unauthorized practice of law.

The Ethics Committee of the Mississippi Bar has been requested to issue an opinion as to the ethical considerations concerning the following situation:

A member of the Mississippi Bar is aware, and has personal knowledge, that an individual who is a member of the Bar of another State, but is not a member of the Mississippi Bar, is engaging in the practice of law in the State of Mississippi. Additionally, this same individual was recently employed by an agency of the Mississippi State Government and presently represents a client in connection with a matter in which this person participated personally and substantially as a public employee.

Specifically, the Committee has been requested to address the following question:

Do I, as a member of the Mississippi Bar, have an ethical duty to report this matter to the entity in the state [in which the non-Mississippi lawyer is licensed] which regulates its attorneys?

The Committee assumes that the Mississippi Bar member has personal knowledge of this non-Mississippi Bar member's actually practicing law in the State of Mississippi in a manner which violates Mississippi statutes which regulate the practice of law. Although the request is not clear, we also assume that the non-Mississippi Bar member, who was recently employed by an agency of the Mississippi State Government, is actually practicing law in the State of Mississippi and not simply acting as a public official in a non-legal capacity.

Assuming these facts, it appears clear that: "a lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority." (Rule 8.3, Mississippi Rules of Professional Conduct.)

The comment to Rule 8.3 clearly says that "self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct." Rule 8.3(c) provides: "this rule does not require disclosure of information otherwise protected by Rule 1.6." The comment states that: "a report about misconduct is not required when it would involve a violation of Rule 1.6." However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interest. This comment further states that "this rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of the rule."

Rule 5.5, MRPC provides that "a lawyer shall not: (a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction. . . ." The comment to Rule 5.5 provides that "the definition of the practice of law is established by law and varies from one jurisdiction to another." Thus, if the non-Mississippi Bar member is engaged in the practice of law in violation of the Mississippi statutes, the non-Mississippi Bar member would be violating the laws of the State of Mississippi and Rule 5.5, MRPC. Under Rule 8.3(a), a lawyer having actual knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate professional authority. In the State of Mississippi, this would be the Mississippi Bar. That body would then handle the investigation and subsequent issues involved in the fact situation stated. Accordingly, any ethical obligation to report such misconduct is satisfied by a report to the Mississippi Bar, which in turn will make any appropriate report to the Bar in the state in which the non-Mississippi lawyer is licensed. The Mississippi Bar member has no obligation to report such misconduct directly to the Bar in the state in which the other lawyer is licensed,(This assumes that the Mississippi lawyer is not a member of the Bar of the state in which the other lawyer is licensed.) but may do so.