

**ETHICS OPINION NUMBER 15
OF THE MISSISSIPPI BAR
RENDERED MARCH 16, 1968
AMENDED APRIL 6, 2013**

BUSINESS ACTIVITIES- It is not improper per se for a lawyer to engage in law-related services (also known as “ancillary business”) or another profession so long as all aspects of the lawyer’s work conform to the requirements of the Mississippi Rules of Professional Conduct.

An opinion from the Ethics Committee of the Mississippi Bar has been requested on the following question:

Can an attorney actively practice law and actively engage in another profession or a business such as real estate or insurance? If an attorney can do so, may the location of his other professional office or his real estate or insurance office be the same or adjacent to his law office and, if so, what are the ground rules concerning advertising by an attorney in his other active occupation?

Nothing in the Mississippi Rules of Professional Conduct prevents a lawyer from engaging in an independent business or profession entirely distinct from and unrelated to his law practice. Likewise, nothing in the Mississippi Rules of Professional Conduct prevents a lawyer from engaging in an independent business or profession related to his law practice, however, care must be taken to ensure that the lawyer’s engagement in such non-law business activities does not result in violation of applicable Rules of Professional Conduct. Notwithstanding the absence of a per-se prohibition, a lawyer that practices dual occupations raises multiple ethics issues, and that lawyer must ensure that he complies with the rules of professional responsibility even while performing the non-legal occupation. This obligation to comply with professionalism rules can be especially challenging when a lawyer engages in business activities that might reasonably be performed in conjunction with and which in substance are related to the provision of legal services, otherwise known as “law related business.”

Previous prohibitions against lawyers engaging in law related business activities were based on professionalism rules strictly prohibiting lawyer advertising. These ethics rules no longer prohibit lawyer advertising, and as such past concerns over a law related business serving as a “feeder” to the owner’s law practice in circumvention of an advertising ban no longer have merit, except to the extent that they violate Rule 7.2

and 7.3. However, while not prohibited, the lawyer's conduct in a law related business is limited by other rules of professional responsibility.

A lawyer who elects to engage in a law related business while providing legal advice to customers of that business will, as a practical matter, have the substantial burden of establishing that any legal advice given has been free of the taint of any bias created by the dual capacities in which the lawyer acted.

ABA Informal Op. 1482. Specifically, a lawyer engaged in a dual occupation must not violate Rules 1.6, 1.7, and 1.8 of Mississippi's Rules of Professional Conduct.

For example, a lawyer selling insurance must comply with his obligation to protect client confidences under Rule 1.6. If a dispute between the insurer and the insured arises, the lawyer may not disclose any confidential information belonging to the client/insured. Similarly, the lawyer must keep the two businesses sufficiently separate in order to ensure the client's confidential information is kept confidential. This may require special training for the lawyer's non-law-office staff members.

Further, if a dispute between the insurer and the insured arises, the lawyer's personal interest in his business relationship with the insurer could limit his ability to represent his client/insured. Rule 1.7(b), states:

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless the lawyer reasonably believes:

(1) the representation will not be adversely affected;
and

(2) the client has given knowing and informed consent after consultation. The consultation shall include explanation of the implications of the representation and the advantages and risks involved.

MRPC 1.7(b). Similarly, a lawyer's sale of an insurance product to a client will result in the lawyer receiving a commission on the sale, placing the lawyer's independent

advice regarding the insurance product in conflict with the lawyer's self interest in earning commission on the sale. Likewise, the lawyer acting as "attorney" owes a duty of loyalty to his client, but a lawyer acting as agent of the insurance firm owes a fiduciary duty to the insurer. Accordingly, the lawyer operating a law-related business must ensure he does not enter into or recommend any business transaction with a client without knowing that his professional judgment on behalf of the client will not be adversely affected by the transaction, and further must obtain a knowing waiver from the client of any known present conflicts with the client, such as the right to collect a commission, as well as any future conflicts which are reasonably anticipated to arise.

Additionally a lawyer selling insurance products to a law client is engaging in a business transaction under Rule 1.8(a), which requires:

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interests are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

MRPC 1.8(a). The client in every such circumstances must be allowed to seek independent counsel, and the lawyer must fully disclose his pecuniary interest in the transaction. Further, the terms of the transaction, as well as any recommendations to the client regarding the necessary amount and cost, must be fair and reasonable to the client. Finally, the lawyer must acquire the client's written consent to such transactions.

The lawyer's disclosure obligations only arise where a transaction is entered into with a law client. The lawyer has no such disclosure duties where the lawyer is acting exclusively as a law related business vendor with a non-law client, although other professional responsibilities continue to apply.

No such client/non-client distinction exists with respect to the lawyer's representations and conduct in the law-related business. Regardless of the source of a client or nature of the non-law business, a lawyer may not "engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." MRPC 8.4. The lawyer must further ensure that an attorney-client relationship is not formed during the non-legal transaction. If the potential purchaser asks for legal advice the purchaser must be reminded that the lawyer is not acting in a lawyer capacity and that such legal judgment is not being exercised.

Likewise, a lawyer may not engage in live or in-person solicitation of legal employment from non-law customers that were not previously law clients in accordance with Mississippi Rule of Professional Conduct 7.3(a) which states:

(a) A lawyer shall not by in-person live telephone or real-time electronic contact solicit professional employment from a particular prospective client with whom the lawyer has no family, close personal, or prior professional relationship when a significant motive of the lawyer's doing so is the lawyer's pecuniary gain.

MRPC 7.3(a). However, the lawyer is free to engage in other forms of non-live advertising to his non-law clients, such as direct mail, in promoting legal services. Likewise, while the live solicitation of a non-law client is prohibited, the Mississippi Rules of Professional Conduct do not recognize the right of lawyers to enter into reciprocal referral agreements with other professionals who agree to refer clients to each other. Accordingly, such an arrangement between the lawyer's law and non-law business could be in violation of the prohibition against giving anything of value to recommend the lawyer's service. MRPC 7.2(i).

Many state bars have adopted ABA Model Rule 5.7, which specifically provides for the operation of non-law and law-related businesses by lawyers, but Mississippi has not. However, even in the absence of this Model rule, nothing in Mississippi's rules of professional responsibility prohibit a lawyer from operating other non-law and law-related business ventures in a manner that is consistent with other rules of professional responsibility.

In conclusion, a lawyer may practice law and engage in other professions such as real estate or insurance provided that Mississippi's Rules of Professional Conduct are followed. A lawyer may share office space with the non-law business, so long as the separate business operations are segregated such that the client's confidential

information is protected, and non-law client's are informed of the relationship that exists between the law and non-law business. Solicitation rules must also be followed and the separate non-law business may not be used to circumvent rules the lawyer must follow regarding in-person solicitation and other lawyer advertising limitations. The application of this opinion is not limited to engaging in the professions of real estate and insurance. Rather it applies to any other non-law business in which a lawyer may choose to engage.