

**ETHICS OPINION NUMBER 160
OF THE MISSISSIPPI BAR
ADOPTED MARCH 17, 1989
AMENDED APRIL 6, 2013**

INVESTIGATION OF PROSPECTIVE JURORS – An investigation of prospective jurors may not include a mass or public mailing, particularly one that disseminates information about the case which would be inadmissible at trial or which otherwise would increase the risk of prejudicing an impartial trial.

The Ethics Committee of The Mississippi Bar has been asked to render an opinion on the following matter:

In a jury trial in circuit court in County "X", Lawyer "A" represents an injured plaintiff. The defense has admitted liability. The only question remaining is the amount of damages due to the plaintiff.

Lawyer "A" prepares a form letter, stating his client's injury in a light most favorable to his case. He refers to liability insurance in the letter and states that the insurance company's attorneys have admitted liability. He attaches a list of the venire to the letter. He states in the letter that he wants the recipient to review the names of the veniremen on the list of veniremen and reply to Lawyer "A", informing Lawyer "A" of the identity of the people on the list who will return a verdict sufficient to compensate Lawyer "A"'s client for the injuries sustained, as favorably described by him.

Using a computerized list of addressees, lawyer "A" mails out over seventy of these letters, with the attached list of the veniremen, to people in county "X" where the trial will be held, a few weeks before the trial is set to begin.

We would appreciate the Ethics Committee's view about the propriety of such mailings which:

1) publish the facts of an upcoming civil trial in a light favorable to one party, or which,

2) publish evidence inadmissible at trial, such as the existence of liability insurance, or which,

3) solicit the identity of jurors who will be sympathetic to one party as opposed to the other, as opposed to being fair and impartial.

Would the Ethics Committee's view about the propriety of such mailings differ, if the letters were mailed to over seventy present or former clients of Lawyer "A"?

To address this inquiry we first turn to Rule 3.5 of the Mississippi Rules of Professional Conduct which states:

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person except as permitted by law; or

(c) engage in conduct intended to disrupt a tribunal.

The purpose of this rule is to prevent improper influence upon a tribunal and to assure the professional integrity of judicial proceedings.

Additionally, we note that Rule 3.6(a) on trial publicity prohibits a lawyer from making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Furthermore, paragraph (b)(5) of Rule 3.6 observes that such a statement is likely to have such an effect when it relates to information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial.

It is the opinion of the Ethics Committee that the proposed practice as described above is ethically prohibited. See Rule 8.4(d) which states it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. Such a mass mailing of a form letter, even if the recipients include clients or former clients, is a public communication that has a substantial likelihood of materially

prejudicing a trial. The lawyer has little or no control over the subsequent conduct of such a large group; thus, there is no assurance that the members of the group will know, or abide by, the restrictions imposed upon the lawyer. Furthermore, the risk of prejudicing an impartial trial is increased by the dissemination of inadmissible information. It is essential to the judicial process that jurors and prospective jurors be protected against extraneous influences. The proposed practice makes the attainment of that goal difficult.

This opinion does not preclude a lawyer from obtaining information regarding prospective jurors prior to trial, but the lawyer's efforts to obtain such information should not be in a mass or public manner, particularly one which involves the dissemination of inadmissible facts about the case. A lawyer or anyone on his behalf who conducts an investigation of prospective jurors should act with circumspection and restraint. See Rule 3.6(c).