

**ETHICS OPINION NUMBER 209
OF THE MISSISSIPPI BAR
RENDERED MAY 28, 1993
AMENDED APRIL 6, 2013**

FEES – INDEPENDENCE OF LAWYER - UNAUTHORIZED PRACTICE OF LAW - SOLICITATION - A law firm may not share legal fees with a non-lawyer client referral service which has previously entered into a contingency fee contract with the client regarding a potential claim.

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

A law firm has been approached by a non-lawyer client referral service to take on the legal representation of persons claiming industry related injuries. These persons have previously entered into contingency fee contracts with the referral service. The referral service would receive a percentage of any monetary recovery resulting from the law firm's representation of the client. The law firm inquires as to whether it would violate any rules of The Mississippi Bar by honoring these referral contracts when the proceeds of litigation are dispersed.

At first glance, the above client referral service appears to be no more than a thinly veiled corporation organized for the purpose of locating potential plaintiffs in the lucrative area of industry related personal injury. Potential clients are then signed to contingency fee contracts, and the contracts referred to law firms for prosecution. This type of activity is strictly prohibited by the Mississippi Rules of Professional Conduct.

The above factual situation is clearly covered in MRPC Rule 5.4 and 5.5. Rule 5.4, provides that: "(a) A lawyer or law firm shall not share legal fees with a non-lawyer except (1) an agreement by a lawyer with the lawyer's firm, partner or associate may provide for the payment of money, over a reasonable period of time after lawyer's death, through the lawyer's estate or to one or more specified persons; (2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer; and (3) a lawyer or law firm may include non-lawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement, and (b)

A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law." The Committee is of the opinion that steady referral of potential clients to the law firm would be tantamount to a business partnership. MRPC Rule 5.5 states that: "a lawyer shall not: (b) assist a person who is not a member of the bar in performance of activity that constitutes the unauthorized practice of law."

In a day and time when limited forms of advertising are available to attorneys, MRPC 7.2(i) remains intact. It provides that: "a lawyer shall not give anything of value to a person for recommending the lawyer's services. . . ."

Notwithstanding that the referral service has formed a corporation to give the appearance of providing professional services, the type services sought to be rendered are legal services which can only be provided by bona fide members of the bar. The end result is that a lawyer must eventually be obtained or associated in order to pursue the client's claim.

This committee has previously addressed the question of utilizing the services of consultants who are paid on a contingency fee basis in Opinion No. 91 of The Mississippi Bar rendered March 23, 1984. The factual situation presently before the committee differs from the factual situation set forth in Opinion No. 91. In Opinion No. 91, the client contacted the attorney first and entered into a contingency fee contract for the attorney's services. After representation was undertaken, the client agreed to retain a medical consultant to assist in the prosecution of the client's case. Due to the client's lack of funds, the medical consultant was likewise to be paid a contingent fee out of the client's funds received through settlement or judgment. In the factual situation before the committee at this time, the client entered into a contingency fee with the consultant and/or referral service prior to employing legal counsel. The distinctions between the two factual situations are clearly evident.

It is the opinion of the Committee that the law firm would violate Mississippi Rules of Professional Conduct if funds recovered on behalf of a client in a personal injury claim of a client were disbursed pursuant to the contingency fee contract entered into by the referral service which associated the law firm to handle the client's claim.