

**ETHICS OPINION NUMBER 212  
OF THE MISSISSIPPI BAR  
RENDERED MARCH 4, 1994  
AMENDED APRIL 6, 2013**

**UNAUTHORIZED PRACTICE OF LAW - CONFLICT OF INTEREST** - A lawyer shall not represent a client who drafts and provides living trust documents to purchasers and further may not represent the purchaser of such documents.

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

An individual ("Seller") advertises on the radio and t.v. for the sale of Living Trusts. When a Purchaser is procured, the "Seller" of the Trust tailors the documents to the Purchaser. The "Seller" of the Trust documents requests a lawyer to look over and approve the documents, after the documents are prepared, but before they are signed. The lawyer ascertains that the documents are what the Purchaser wants.

It is assumed that the "Seller" of the documents is not a lawyer. Thus, the "Seller" would be engaged in the unauthorized practice of law in violation of Section 73-3-55, Mississippi Code of 1972 as amended.

This statute provides in part that:

It shall be unlawful for any person to engage in the practice of law in this State who has not been licensed according to law. Any person violating the provisions of this Section shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished in accordance with the provisions of Section 97-23-43. Any person who shall for fee or reward or promise, directly or indirectly, write or dictate any paper or instrument of writing, to be filed in any cause or proceeding pending, or to be instituted in any Court in this State, or give any counsel or advice therein, or who shall write or dictate any . . . contract, or Last Will and Testament . . . shall be held to be engaged in the practice of law. (Section 73-3-55, Mississippi Code of 1972, as amended.)

Thus, it is clear that the "Seller" of such Living Trust documents is not an attorney licensed according to law and thus is engaged in the unauthorized practice of law in this State.

A lawyer could not ethically assist the "Seller" in the unauthorized practice of law. Rule 5.5(b) of the Rules of Professional Conduct provides that, "A lawyer shall not assist a person who is not a member of the Bar in the performance of activity that constitutes the unauthorized practice of law." The comment to Rule 5.5 provides, "The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the Bar protects the public against rendition of legal services by unqualified persons."

Thus, any lawyer assisting such a "Seller" in the unauthorized practice of law would violate Rule 5.5 of the Rules of Professional Conduct. The basic reason for this rule, and for the statutes prohibiting the practice of law by unauthorized persons, is to protect the public against the rendition of legal services by unqualified persons.

The situation presented to the Ethics Committee in the fact scenario set out above is exactly the problem sought to be avoided by Section 73-3-55, Mississippi Code of 1972, and Rule 5.5 of the Rules of Professional Conduct.

In a somewhat similar factual situation, this Committee held in Ethics Opinion No. 33, rendered April 2, 1976, that it was improper for a lawyer to participate in a loan closing transaction in which the mortgage lender renders legal or quasi-legal services and receives a division of "attorney's fees", ostensibly the lawyers. The factual situation set out hereinabove is fraught with problems. It appears that the lawyer was hired and paid by the "Seller of the documents", without ever having any contact with the client prior to the documents being sent to the lawyer for approval. The needs of the Purchaser/Client would be determined by the "Seller" and then personnel of the Seller would tailor the documents to the needs of the Purchaser/Client. Only after the documents had been completed by the "Seller" would they be forwarded to the lawyer for review. The Purchaser/Client has no knowledge of the lawyer nor his involvement until the lawyer contacts the Purchaser/Client with the documents prepared by the "Seller". The lawyer ostensibly would be reviewing and approving the documents and would do so without consulting with the Purchaser/Client or determining the Purchaser/Client's need for the services involved or whether the services being rendered were in the best interest of the Purchaser/Client. Such a lawyer would owe duties to his original client, the "Seller", creating serious conflict of interest problems.

In this set of facts, the lawyer could violate Rules 1.1, 1.2 (a), 1.3, 1.4(a), 1.7(b), 1.8(f), and 5.5 of the Rules of Professional Conduct. A lawyer must refuse employment if the interest of another client would impair the professional judgment of the lawyer. Further, the lawyer would be subject to permitting a person, who recommends, employs, or pays him to render legal services for another, to direct or regulate his professional judgment in rendering such legal services. A serious conflict of interest would naturally arise between the "Seller" Client and the "Purchaser" client. For the myriad of reasons set out above, this situation should be avoided at all costs by members of the Bar.