

**ETHICS OPINION NUMBER 241
OF THE MISSISSIPPI BAR
RENDERED NOVEMBER 20, 1997
AMENDED APRIL 6, 2013**

BUSINESS ACTIVITIES: Lawyers who provide arbitration and mediation services are subject to the Mississippi Rules of Professional Conduct when performing such services.

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

Certain lawyers within a single law firm want to create a separate, for profit entity to provide arbitration and mediation services to the public. The new entity would advertise its services using a trade name or corporate name which will not be similar to the law firm's name. The new entity will use lawyers as well as nonlawyers to provide the services.

Two questions have been asked. Taking them in reverse order, the first question is whether performing mediation or arbitration services is considered practicing law under the Mississippi Rules of Professional Conduct (MRPC).

At the present time mediation and arbitration are not considered the practice of law per se. This does not mean, however, that lawyers who provide mediation and arbitration services are not subject to the MRPC. They are. This is because arbitration and mediation are "law related" services. As noted by the Iowa Supreme Court of Board of Professional Ethics and Conduct in Opinion No. 96-08, rendered August 29, 1996:

Law related services which may be performed by nonlawyers, such as those performed by a CPA, become the practice of law when performed by lawyers. The Mississippi Bar has followed this principle in Opinions No. 15.

With reference to arbitration and mediation services, the Ethics Committee of the New York State Bar Association has analyzed the question of whether divorce mediation should be considered "lawyer's services" and, therefore, subject to the bar's disciplinary rules. (See Opinion No. 687, rendered January 10, 1996). The Committee noted that some businesses, such as providing piano lessons, would be completely unrelated to the practice of law and, therefore, the lawyer's conduct would not be

subject to the Bar's rules, while other businesses are related and are subject to the rules. The Committee in New York ultimately concluded that lawyers who serve as mediators are subject to the rules of professional conduct because the mediator may be called upon to offer legal opinions (which would be given greater weight than if they were given by a nonlawyer) and because the parties may give greater credence to a lawyer/mediator's advice than a nonlawyer/mediator's advice. The New York Committee thus concluded that, while the service may be performed by a nonlawyer, when the service is provided by a lawyer, the lawyer is subject to the rules of professional conduct.

The Ethics Committee is of the opinion that lawyers who engage in mediation and arbitration services are subject to the MRPC.

The second question asked is whether any advertising constraints or feeder business constraints of the MRPC apply to lawyers involved in the new entity. Since the lawyers who provide mediation and arbitration services are subject to the MRPC, it follows that they are subject to the advertising and feeder constraints of the MRPC.