

**ETHICS OPINION NUMBER 51
OF THE MISSISSIPPI BAR
RENDERED MAY 4, 1979
AMENDED APRIL 6, 2013**

SOLICITATION – INDEPENDENCE OF LAWYER - Improper for an Attorney to Permit a Lay Person to be an Intermediary Between Attorney and Client in Preparation of Will.

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

May an attorney allow an insurance agent, a lay intermediary, to solicit business for him, by making contact with persons who may desire a will, recommending the attorney, obtaining all necessary information to draw a will and transmitting the information to the attorney, who draws the will. The person would then sign the will in his home. It is not clear whether the attorney would even see and discuss the will with the testator, his client.

This question has previously been answered in Opinion No. 11, rendered by this Committee on November 20, 1962. It is improper for an attorney to allow a lay intermediary (engaged in estate planning) to regularly refer clients to the attorney for services involving wills and trusts, where such referral is obviously done largely because of the close relationship of the attorney and the lay intermediary.

Such action would also violate Rule 1.1 of the Mississippi Rules of Professional Conduct (MRPC) which requires an attorney to represent his client competently. It also violates Rule 5.4(c), MRPC, which provides that a lawyer shall not permit a person who recommends, employs or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

When an attorney accepts the employment of drafting a will, he should make a sufficient investigation of the factual situation to render complete service to the client. An attorney-client relationship is established. The attorney should not rely on a lay intermediary (outside the attorney's office) to ascertain the factual situation. The particular training of the attorney is used to determine and advise all consequences of various methods available in wills and trusts for testamentary transfers. The attorney is primarily responsible to be certain that the testator's true intentions are expressed in

the will. Relying on an independent lay intermediary completely to supply all necessary facts would be improper and insufficient.

Such action may well violate rules against solicitations where the attorney and lay person prearrange for the attorney to be recommended. *See* Rule 7.2(i), MRPC.

The attorney-client relationship is the sacred basis of our legal profession, and all attorneys should strive to maintain this relationship with dignity in a manner above reproach.