

**ETHICS OPINION NUMBER 161
OF THE MISSISSIPPI BAR
RENDERED MARCH 17, 1989**

MARY CARTER AGREEMENT - The existence of a Mary Carter Agreement should be disclosed to the court and opposing counsel.

The Ethics Committee of the Mississippi State Bar has been asked to render an opinion on facts which may be summarized as follows:

One of two defendants proposes to enter into a so-called "Mary Carter Agreement" with the plaintiff. This agreement would provide that the defendant would pay the plaintiff a fixed sum and would cooperate with the plaintiff in proving the plaintiff's case. In exchange, the plaintiff would agree not to execute upon any judgment rendered against the defendant. The defendant would remain a party in the case.

There are many legal issues concerning the validity and propriety of Mary Carter Agreements which this Committee is precluded from addressing, and we do not express an opinion on the legality of these agreements. However, there are also several rules of professional conduct which affect an attorney's participation in consummating agreements of this nature. Rules 3.3 and 4.1 of the Mississippi Rules of Professional Conduct prohibit attorneys from making statements that are false or failing to disclose material facts, when disclosure is necessary to avoid assisting a fraudulent act by a client. The failure to disclose the existence and terms of a Mary Carter Agreement could be misleading and deceptive to opposing counsel and to the Court. See ABA Informal Opinion 1386. Therefore, it is our opinion that to comply with the intent of the ethical rules an attorney has a duty to disclose the existence and terms of a Mary Carter Agreement to opposing counsel and the court, regardless of whether or not it has been requested in discovery. If this is done, participation in consummating a Mary Carter Agreement would generally not be prohibited by the Mississippi Rules of Professional Conduct.