

**ETHICS OPINION NUMBER 193  
OF THE MISSISSIPPI BAR  
RENDERED DECEMBER 6, 1991**

**RESTRICTIONS ON THE RIGHT TO PRACTICE:** A partnership agreement may not restrict the right of a lawyer to practice law after termination of the partnership.

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

Lawyer A disassociated himself as a partner in a law firm and continued to practice law in the same locality.

The partnership agreement provides substantial monetary penalty for the withdrawal of a partner. The agreement also provides that the penalty may be reduced..."if the withdrawing lawyer has been a partner for a period of ten years and assures the remaining partners in writing that he will not engage in the private practice of law in substantial competition with the law firm for a period of five years.

Rule 5.6 of the Mississippi Rules of Professional Conduct provides: A lawyer shall not participate in offering or making:

(a) a partnership or employment agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement.

This covenant requires a departing partner to restrict his practice in violation of Rule 5.6 in order to obtain funds from his capital account.

The American Bar Association addressed the question of the propriety of restrictive covenants of this sort and found them to be unethical. ABA Opinion 1301 (1975).

It is of the opinion of this Committee that restrictive covenants contained in the questioned paragraph is a violation of Rule 5.6 of the Mississippi Rules of Professional Conduct.