

**ETHICS OPINION NUMBER 237  
OF THE MISSISSIPPI BAR  
RENDERED JANUARY 23, 1997**

**UNAUTHORIZED PRACTICE OF LAW:** Use of non-lawyer as interpreter through whom lawyer provides legal advice to Spanish-speaking clients does not violate ethical rules, but lawyer must supervise interpreter to assure that interpreter does not give legal advice.

**FEES:** Use of "1-900" telephone charges to potential clients does not, in and of itself, violate Rules of Professional Conduct

**ADVERTISING:** Attorneys using "1-900" arrangement for initial consultation must clearly delineate charged to caller in any advertisement.

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

Attorney to hire full time Spanish interpreter to answer phone requests for legal opinions and related advice, advice to be given over a 1-900 telephone number. Questions to be relayed to attorney by Spanish interpreter with possible call-back request.

The following specific issues were raised:

Is it o.k. to use the 1-900 number, billing performed by the phone company? Must fee schedule be listed in solicitation add? May attorney list general areas of practice, i.e. Bankruptcy, domestic, etc.? Is it necessary to keep records of caller to avoid conflict of interest? Is it o.k. to give legal advice through an interpreter?

Given the Requesting Attorney's abbreviated statement of the factual situation we are to address, we state first our assumptions upon which the remainder of this opinion rests:

The Requesting Attorney intends to offer legal services to the Spanish-speaking community, but will communicate with his Spanish-speaking clients and potential clients only through an interpreter whom the attorney will hire for that purpose. The initial contact and follow-up contact from the potential client will be by means of a "

1-900" telephone number. The interpreter, whom we assume to be a non-lawyer, will not give legal advice or render legal services, but will relay questions or issues raised by a potential client/client to the Attorney for purposes of the Attorney's giving legal advice or rendering legal services.

With that background, we address the Requesting Attorney's specific questions:

A lawyer who cannot communicate with a client in a mutually understood language must secure the services of an interpreter so that a free flowing dialogue can be maintained between the lawyer and the client. *See* Association of the Bar of the City of New York Op. 1995-12 (July 6, 1995). Accordingly, use of the interpreter's services is not only acceptable, but also mandated if the Requesting Attorney is to represent Spanish-Speaking clients.

Rule 7.1 of the Mississippi Rules of Professional Conduct provides the guiding principles for communications to the public concerning the arrangement proposed by the Requesting Attorney; The lawyer shall not make or permit to be made a false, misleading, deceptive or unfair communication about the lawyer or the lawyer's services.

While Rule 7.2(e)(3) presumes that communications concerning foreign language ability do not violate the provisions of Rule 7.1, we believe that certain precautions are in order when the lawyer relies upon a staff member with those abilities:

1. A lawyer with a limited ability to speak a foreign language who employs an individual(s) fluent in that foreign language and in English may advertise that the foreign language is spoken in the lawyer's office; however, the lawyer should make it clear that other employees will interpret for the lawyer. *See* Maryland State Bar Association Op. 95-41 (November 16, 1995);
2. The lawyer must supervise those employees providing interpretation services closely to insure that the interpreters are not giving legal advice on their own. *See* Philadelphia Bar Association Op. 92-21 (December 1992); *see also*, Rule 5.5(b), MRPC (a lawyer may not assist a person who is not a member of the Bar in the performance of an activity that constitutes the unauthorized practice of law).

The Requesting Attorney's proposed use of a "1-900" telephone number creates ethical issues not present when attorneys use more traditional means of communicating with potential clients and clients. Nonetheless, we cannot say that the use of a "1-900" telephone arrangement, in and of itself, violates the Mississippi Rules of Professional Conduct. We have long since held that the use of credit cards for

payment of legal services and expenses, where a bank or other institution charges the lawyer a designated percentage of the lawyers charges as its fee for collecting the account, is permissible. In Ethics Opinion 135 (September 11, 1987) we so held, citing ABA Formal Opinion 338 (November 16, 1974). A number of jurisdictions, following the logic we applied in FIO 135, have held that the use of "1-900" telephone arrangements do not per se violate ethical rules. See, e.g., Alabama State Bar Op. 91-24 (May 2, 1991) (lawyer may establish "900" number to provide information at a reasonable charge to non-client creditors who call lawyer's office concerning bankruptcy matters); Kansas Bar Association Op. 92-6 (August 19, 1992) (lawyer may provide legal services by use of a "900" number, but must take care to see that all aspects of this practice comport with the ethical rules).

We agree with the Philadelphia Bar Association's conclusion in its Opinion 9115 (June 1991) that a lawyer who establishes a "1-900" number to answer questions must institute certain safeguards:

1. All communications must be kept confidential;
2. A conflicts of interest check system must be in place;
3. Any lawyer staffing the services must avoid conflicts of interest and be competent to answer legal questions posed;  
and
4. Advertising regarding this service must clearly set forth the charges for the service.

Using a "1-900" telephone arrangement for an initial consultation, as proposed by the Requesting Attorney here, raises additional questions: What if the attorney is not competent to render the legal advice or services sought? What if the attorney has a conflict which precludes rendering the advice or services sought? Different jurisdictions take different views on these questions.

The New York State Bar Association in its Opinion 664 (June 3, 1994) held that a lawyer may give legal advice to a caller on a "1-900" number as long as the lawyer informs the caller:

1. That some legal issues may not be suitable for this type of consultation;

2. Whether the lawyer's advice will be general or specifically tailored to the caller's situation;
3. What arrangements will be made at the caller's inquiry requires further legal work; and
4. What limits are to be placed on the representation.

On the other hand, the Pennsylvania Bar Association in its Opinion 90-156 (February 12, 1991) held that a lawyer may render legal advice to clients through a "1-900" arrangement provided that the lawyer agrees to screen calls initially without charge to determine whether the lawyer has the requisite legal expertise to handle the client's matter. The rationale for that requirement is that some potential clients will incur an unreasonable charge for waiting on the line or consulting with a lawyer not competent to deal with their needs unless the lawyer pays for the initial screening and has the clients whom he is able to serve call back. Both the New York and Pennsylvania opinions raise valid concerns. They propose different means to address those concerns, and we cannot say that one approach is more acceptable than the other. We adopt the underlying logic of each, though: Unless a potential client knows in advance that he may be charged for an "initial consultation" which may result in the potential client's not receiving legal advice or services from the lawyer because the lawyer is not competent to provide them, because the lawyer has a conflict that precludes providing them, or for whatever other reason, the arrangement is unacceptable. The Requesting Attorney here does not give us details of the manner in which he plans to use the "1-900" arrangement, but it appears that he intends that it be used for both initial consultation and follow up. Accordingly, any advertisement or other communication from the Requesting Attorney must contain, in an easily understandable format, the charges the caller will be billed for use of the "1-900" arrangement and must inform the potential caller that those charges may not result in any legal advice or services being rendered.

If it is not already clear from the foregoing, we state it now - use of a "1-900" arrangement like that proposed here does not in any way obviate the lawyer's ethical obligations. Included among those is the obligation to recognize and address potential conflicts of interest. Accordingly, we answer in the affirmative the Requesting Attorney's inquiry whether it is necessary to keep records of callers to avoid conflicts of interest.

By saying all that we have, we do not adopt or approve any specific arrangement for the use of "1-900" telephone numbers in relation to the provision of legal services or advice. Rather, we provide the foregoing only as general guidelines to the Requesting

Attorney. The use of such arrangements is fraught with ethical issues, some of which we may not have addressed here. The Requesting Attorney and any others who choose to go down this path should do so only after having assured themselves that they can pick their way through the inherent ethical briar patch.

The facts and statement of issues appear here exactly as stated in the attorney's Request to the Ethics Committee.

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So long as any communication to the public complies with Rule 7.1, MRPC, the attorney may list general areas of practice. Rule 7.4, MRPC, governs lawyers and law firms that advertise their availability to provide legal services and states in some detail the obligations of the lawyer or law firm in those circumstances. If the Requesting Attorney chooses to include in advertisements areas of practice, the attorney must comply with each of the obligations set forth in Rule 7.4.

Rule 1.5 (b), MRPC, provides that when a lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation. Rule 1.5 (a) provides that the lawyer's fee shall be reasonable. Any lawyer using a "1-900" arrangement must insure that it complies with these requirements