

## Lawyers Can Make Charitable Donations and Lawyers Can Advertise, Just Not Together

By: Anna M. Outzen

Lawyers and law firms often make charitable donations. Said donations often involve a listing of the lawyer's name or the fact of the donation. Similarly, law firms and lawyers advertise their services. The Ethics Committee of the Mississippi Bar ("Committee") determined that it was unethical for a lawyer to advertise that a portion of the fees a lawyer received would be shared with a charitable organization.<sup>1</sup> As the Mississippi Rules of Professional Conduct on which the Committee relied are nearly identical to the respective ABA Model Rules of Professional Conduct, other states that have adopted similar ethical rules would likely come to the same conclusion.

According to Mississippi Rule of Professional Conduct 7.1, in attracting new clients, lawyers cannot make statements that are "false, misleading, deceptive or unfair communication about the lawyer or lawyer's services."<sup>2</sup> Comment 2 to Model Rule 7.1 clarifies that "a truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation."<sup>3</sup> The Committee determined that an advertisement which promised that proceeds would be charitably donated violated Rule 7.1 by implying the lawyer is more charitable or honest than others.

Furthermore, the Committee found that such a promise contradicts Rule 5.4, which prohibits lawyers from sharing legal fees with non-lawyers.<sup>4</sup> Similarly, the Comment to Rule 7.2 prohibits lawyers from paying benefits to another person or organization for procuring professional work.<sup>5</sup> The Committee determined that if a charitable organization received donations as result of the lawyer's professional services, that organization would exclusively refer potential clients to that lawyer.

Although lawyers are always encouraged to make charitable donations and can advise the public of this practice, a promise to do so in connection with questing for a new client violates ethical standards.

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<sup>1</sup> Miss. Bar Ass'n, Ethics Op. 256 (rendered 2008; amended 2013), available at <http://msbar.org/ethics-discipline/ethics-opinions/formal-opinions/256.aspx>.

<sup>2</sup> Miss. Rule Prof. Conduct 7.1 (2016).

<sup>3</sup> Model Rules of Prof'l Conduct R. 7.1, cmt [2] (2015).

<sup>4</sup> Miss. Rule Prof. Conduct 5.4 (2016); see also Model Rules of Prof'l Conduct 5.4 (2015).

<sup>5</sup> Model Rules of Prof'l Conduct R. 7.2, cmt [5] (2015).