

IN THE SUPREME COURT OF MISSISSIPPI

NO. 89-R -99018 SCT

IN RE: RULES OF PROFESSIONAL CONDUCT

ORDER

This matter has come before the Court, en banc, on Petition for Adoption of Rule 1.17, MRPC, and Related Rule Amendments filed by the Mississippi Bar. Such amendments are represented as facilitating the sale of law practice by firms and the estates of attorneys. Having considered the petition, the Court finds that such amendments are appropriate and will serve the interest of the fair and efficient administration of justice.

IT IS THEREFORE ORDERED that the Mississippi Rules of Professional Conduct be and the same are hereby amended by the addition of Rule 1.17 as set forth in Exhibit "A" hereto, and

IT IS FURTHER ORDERED that Rule 5.4 thereof is amended to read as set forth in Exhibit "B" hereto, and

IT IS FURTHER ORDERED that Rule 5.6 thereof is amended to read as set forth in Exhibit "C" hereto, and

IT IS FURTHER ORDERED that Rules 7.2(k) thereof is amended to read as set forth in Exhibit "D" hereto, and

IT IS FURTHER ORDERED that Rule 7.7 thereof is amended to read as set forth in Exhibit "E" hereto.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this Order on the minutes of the Court and forward a true certified copy of this Order to West Publishing Company for publication in the *Southern Reporter*, *Mississippi Cases* and the *Mississippi Rules of Court*.

SO ORDERED, this the day of August, 1998.

EDWIN LLOYD PITTMAN, PRESIDING
JUSTICE, FOR THE COURT

EXHIBIT "A" TO ORDER AMENDING MISSISSIPPI RULES OF PROFESSIONAL CONDUCT

(Rule 1.17 is an entirely new section added to the Rules of Professional Conduct.)

RULE 1.17 SALE OF LAW PRACTICE

A lawyer or law firm may sell or purchase a law practice including good will. if the conditions set forth in Rule 1.17 are satisfied. The estate of a deceased, disabled or disappeared lawyer may be a seller.

(a) The selling lawyer or law firm ceases to engage in the private practice of law in the geographic area wherein the practice has been conducted;

(b) The practice is sold as an entirety to another lawyer or law firm;

(c) Actual written notice is given to each of the seller's clients regarding:

(1) the proposed sale;

(2) the terms of any proposed change in the fee arrangement authorized by paragraph (d);

(3) the client's right to retain other counsel or take possession of the file. and

(4) the fact that the client's consent to the sale will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by any court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of the file.

(d) The fees charged clients shall not be increased by reason of the sale. The purchaser may however refuse to undertake the representation unless the client consents to pay the purchaser's fees at a rate not exceeding the fee charged by the purchaser for rendering substantially similar services before the initiation of the purchase negotiations.

(e) For purposes of this rule, good will, as used herein, is defined as reputation, including use of the lawyer or law firm's name that will probably generate future business. However, any use of the lawyer or law firms name, after the sale or purchase of the subject law practice has been completed, must be accompanied with a notice that the selling lawyer or law firm is no longer engaged in the active practice of law.

(f) Notwithstanding the provisions of this rule, if the selling lawyer or law firm returns to the practice of law, then. use of the selling lawyer or law firm's name must be discontinued by the purchasing lawyer or law firm.

EXHIBIT "B" TO ORDER AMENDING MISSISSIPPI RULES OF PROFESSIONAL CONDUCT

(Rule 5.4 is amended by the addition of the underscored text.)

**RULE 5.4 PROFESSIONAL
INDEPENDENCE OF A LAWYER**

(a) A lawyer or law firm shall not share legal fees with a non-lawyer, except that:

(1) an agreement by a lawyer with a lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of law of a deceased, disabled or disappeared lawyer may pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price; and

(3) a lawyer or law firm may include non-lawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) 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.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit , if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration ;

(2) a nonlawyer is a corporate director or officer thereof; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer

EXHIBIT "C" TO ORDER AMENDING MISSISSIPPI RULES OF PROFESSIONAL CONDUCT

(Rule 5.6 is amended by the addition of the underscored text.)

RULE 5.6

RESTRICTIONS ON RIGHT TO PRACTICE

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; or
- (b) an agreement to which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.

This Rule does not prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.

EXHIBIT "D" TO ORDER AMENDING MISSISSIPPI RULES OF PROFESSIONAL CONDUCT

(Rule 7.2(k) is amended by the addition of the underscored text. The remainder of Rule 7.2 shall remained unchanged.)

RULE 7.2 ADVERTISING

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(k) A lawyer shall not advertise services under a name that violates the provisions of Rule 7.7 except as is provided in Rule 1.17.

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EXHIBIT "E" TO ORDER AMENDING MISSISSIPPI RULES OF PROFESSIONAL CONDUCT

(Rule 7.7 is amended by the addition of the underscored text.)

RULE 7.7 FIRM NAMES AND LETTERHEADS

(a) A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule

7.1, except as is authorized by Rule 1.17.

(b) A lawyer shall not practice under a trade or fictitious name or a name that is misleading to the identity of the lawyer or law firm practicing under such name except as permitted by Rule 1.17. A lawyer in private practice may use the term "legal clinic" or "legal services" in connection with the lawyer's own name if the practice is devoted to providing routine legal services for fees that are lower than the prevailing rate in the legal community for those services.

(c) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(d) The name of a lawyer holding public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm except as permitted by Rule 1.17

(e) Lawyers may state or imply that they practice in a partnership or to other organization only when that is the fact except as permitted by Rule 1.17.