

**ETHICS OPINION NUMBER 120
OF THE MISSISSIPPI BAR
RENDERED JUNE 5, 1986
AMENDED APRIL 6, 2013**

CONFLICT OF INTEREST – GOVERNMENT ATTORNEY - A member of the law firm of which the part-time county prosecuting attorney is also a member may not serve as either special master or appointive counsel in hearings on the question of need of mental treatment if the county attorney participates.

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

A member of this firm serves as county prosecuting attorney in this county. The Chancellor has appointed a member of the Bar to preside as a special master in hearings held pursuant to Mississippi Code sections 41-21-61 et seq. The special master has in the past appointed members of this firm to represent persons alleged to be in need of mental treatment.

In the opinion of the Ethics Committee does the acceptance of such appointment constitute a violation of the Mississippi Rules of Professional Conduct (MRPC)? Additionally, will the appointment of a member of this firm as special master constitute a violation of the Mississippi Rules of Professional Conduct?

The question turns on whether or not the county attorney participates in these hearings. Having discussed this matter with several chancellors, we find that often the county attorney does not participate and that the court believes it has no authority to require that participation. Even though we do not advise as to legal matters, there is no reference to any authority or mandate to the county attorney in these matters nor do we find any in the Mississippi Code. Therefore, it becomes a question of conflict of interest under the Rules 1.7 and 1.10, MRPC.

If the county attorney represents the public in commitment cases, then there would be a direct conflict of interest if his law partner represented the person alleged to be in need of mental treatment. It would be no different than Ethics Opinion 87 where a city prosecutor's partner is prohibited from defending a person charged in Municipal Court even though the case is transferred prior to any involvement by city prosecutor.

If the county attorney is involved in the proceedings, then no member of his firm would be eligible to serve either as appointed counsel for the defense or as special master in chancery to hear the case.