

**ETHICS OPINION NUMBER 128
OF THE MISSISSIPPI BAR
RENDERED DECEMBER 5, 1986
AMENDED APRIL 6, 2013**

CONFLICT OF INTEREST - Where there is no substantial relationship between present representation against former client and representation of former client and where the attorney does not have knowledge of confidences and secrets which could be used against former client in present representation, a lawyer may ethically represent husband sued for divorce by wife who was formerly represented by lawyer concerning unrelated personal injury claim.

The Ethics Committee of The Mississippi Bar has been asked to render its opinion on the following situation.

At least two years ago, Lawyer A represented a woman and settled her personal injury claim. Lawyer A has had no contact with the woman whatsoever since the date of the settlement. The woman, through another attorney, has now filed a complaint for divorce, and the woman's husband has contacted Lawyer A requesting that Lawyer A represent him in the action.

The attorney now representing the woman in the divorce action has advised Lawyer A that he did not believe that Lawyer A should represent the husband because Lawyer A had previously represented the wife in the personal injury case.

Thus, Lawyer A now asks the Committee whether he may ethically represent the husband under these circumstances.

The controlling ethical principles are reviewed in detail in two recent opinions by this Committee, Opinion Nos. 90 (Jan. 19, 1984) and 106 (Sept. 13, 1985), and need not be repeated at length here. The fact situation here presents the questions of whether an attorney may represent an adverse client against a former client in an unrelated matter. The controlling ethical principle is that where there is no substantial relationship between the former representation and the present representation and no confidences or secrets of the former client from the former representation are used against the present representation, the attorney may ethically represent a new client

against a former client in an unrelated matter. *See* Rule 1.9(b) of the Mississippi Rules of Professional Conduct.

Here, the Committee can discern no substantial relationship between representing the wife in a personal injury action and then representing the husband in a divorce action two years later. Likewise, based upon this request, the Committee can foresee no reasonable probability that the requesting attorney would possess confidences and secrets of the wife which could be utilized against her in the present action. Therefore, the Committee concludes that on these facts Lawyer A may ethically represent the husband in the subsequent divorce action filed by the wife.

The Committee cautions that this opinion does not deal with the question of simultaneously representing adverse interests. This is governed by a separate analysis. Likewise, this opinion does not address the situation of a lawyer's attempting to change sides in a representation to proceed in the same matter against the former client.