

**ETHICS OPINION NUMBER 147
OF THE MISSISSIPPI BAR
RENDERED JUNE 2, 1988
AMENDED APRIL 6, 2013**

CONFLICT OF INTEREST - An Attorney may defend a client Homebuilder in a suit brought by a client Mortgage Company's customer when that Attorney merely closed the customer's real estate loan, rendered his Certificate of Title for the Mortgage Company and gave no legal advice to the client Mortgage Company's customer.

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

Attorney A represents Homebuilder B in XYZ County. Attorney A also acts as closing agent for Mortgage Company C in XYZ County to close real estate loans for Mortgage Company C's customers. Attorney A gives no legal advice to Mortgage Company C's customers, but is asked only to render his Certificate of Title to Mortgage Company C.

Customer B is threatening legal action against Homebuilder B resulting from the sale of a home Homebuilder B constructed. Attorney A closed the real estate loan for Mortgage Customer B.

Is it ethical for Attorney A to represent Homebuilder B in the action?

The scenario represented to the Committee presents a question of just who is the client. The facts show the Homebuilder and the Mortgage Company were and still are the clients of the Attorney in question. Nothing in the facts would indicate that the Mortgage Company's customer (the party threatening legal action against the Homebuilder) either is a client of the Attorney or later stated he thought an attorney-client relationship existed. In this situation, it is desirable that the Attorney advise the Borrower, in writing, that he represents the Homebuilder and Mortgage Company but not the Borrower.

It is elementary that an Attorney may represent his client in an action brought by a party who is not the client of that Attorney. The Committee infers that the requester of this Opinion has some problem with the fact that the Attorney closed the client Mortgage Company's customer's real estate loan. ABA Informal Opinion 837 (1965) appears to address that issue and indicates that the customer is not the client of the Attorney:

...The Bank believes that it needs to be represented when it makes loans. It has the right to choose an Attorney. It is an economic matter as to how he is paid. The cost of such a lawyer obviously is passed, in whole or in part, on to the borrower either directly or indirectly. No ethical problem arises as to how this is passed along. The lawyer...is the Bank's lawyer no matter how he is paid...The borrower may have his lawyer any time he chooses. He may be a better lawyer or poorer lawyer than the Bank's lawyer. He advises the borrower while the Bank's attorney protects the interests of the Bank.

See also ABA Informal Opinion 643 (1963):

A lending association may properly employ an attorney to perform services for it and to pay that attorney for such services and, if it desires, charge the person obtaining the loan the cost of the loan including the attorney fee. In such case the attorney is the attorney for the company and not for the person obtaining the loan.

The Committee concludes that the Attorney may defend and represent the Homebuilder in a suit brought by the Mortgage Company's customer since the Attorney in question never represented the customer. The Attorney's clients were, and have been, the Homebuilder and the Mortgage Company.