

**ETHICS OPINION NUMBER 151
OF THE MISSISSIPPI BAR
RENDERED JUNE 2, 1988
AMENDED APRIL 6, 2013**

CONFLICT OF INTEREST- It is permissible for an attorney who has represented a person in a divorce granted on the grounds of Irreconcilable Differences to represent that same person in subsequent proceedings against former spouse of the client.

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

Attorney X represented Mr. AB in his divorce action against Mrs. AB. Mrs. AB. was not represented by an attorney in the case. The case was settled and the divorce was granted on the grounds of Irreconcilable Differences. In the property settlement agreement or the pleadings it was clearly specified that Attorney X represented only Mr. AB and not Mrs. AB, that the attorney did not undertake to advise Mrs. AB of her rights or any aspect of the case, and that Mrs. AB had the right to obtain an attorney to represent her or to review the pleadings or proposed judgment. Several years later, Mr. AB consults Attorney X again and seeks his service in order to take Mrs. AB back to court to seek a modification of the original divorce or to cite her for contempt of court concerning the original judgment. Can Attorney X ethically accept such employment?

Such representation is permissible. Ethics Opinion No. 80 rendered on March 25, 1983, and the supplement to Opinion No. 80, rendered on March 25, 1983, make it clear that one attorney make it clear that one attorney cannot represent both parties to a divorce on the grounds of Irreconcilable Differences. That prohibition in no way interferes with the lawyer simply representing that same client in a subsequent proceeding against the same opponent. The result is the same whether the opponent (the other spouse) had counsel in the first proceeding or not. This view assumes that the lawyer followed the ethical guidelines as determined in Ethics Opinion No. 80 and the supplement thereto and that the lawyer revealed to both parties the fact he represented only one party in the divorce.

It should be noted that the Rules of Professional Conduct, under the view of the Ethics Committee, continue the prohibition of one lawyer representing both parties to a divorce on the grounds of Irreconcilable Differences. Rule 1.7(b) contains the following language:

A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless the lawyer reasonably believes:

- (1) the representation will not be adversely affected; and
- (2) the client has given knowing and informed consent after consultation. The consultation shall include explanation of the implications of the representation and the advantages and risks involved.

The common sense approach of Opinion No. 80 eliminates the lawyer's potential for ethical violations in this area. The Ethics Committee is of the opinion that a lawyer's loyalty and responsibility to his client would otherwise be compromised. There is no ethical way for an attorney to undertake such dual representation without adversely affecting one or both of the parties.

A conflict does not exist by merely representing the same client against the same opposition in subsequent legal matters