

**ETHICS OPINION NUMBER 138
OF THE MISSISSIPPI BAR
RENDERED DECEMBER 11, 1987**

DUTY OF REPRESENTATION - An attorney has no ethical duty to represent a criminal defendant in probation revocation proceedings even though the attorney represented the defendant during the original prosecution leading to the imposition of probation, absent an official appointment by the court.

The Ethics Committee of the Mississippi State Bar has been asked to render an opinion concerning the following factual situation:

An attorney has represented a client in a criminal matter. The defendant either pled or was found guilty and received a suspended jail sentence and was placed on probation for a period of years. Subsequent to the sentencing, a petition is filed in the case seeking to revoke the defendant's probation. The clerk of court sends a notice to the attorney advising him or her of the probation revocation proceedings since the attorney was the attorney of record at the time of the original sentence. Does the attorney have an ethical duty to represent the defendant in such circumstances?

The Rules of Professional Conduct which now govern the ethical practice of law speak to the duty of a lawyer to provide public interest service. Rule 6.1 Pro Bono Publico Service states:

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal service to persons of limited means.

Rule 6.2 Accepting Appointments states:

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

- (a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;
- (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- (c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Opinion No. 130 of the Mississippi State Bar rendered December 5, 1986, dealt with cases where the attorney represented a client in a criminal case and has prosecuted an appeal to the Supreme Court. Said attorney, pursuant to Supreme Court Rule 40, has a legal and ethical duty to prosecute the appeal unless relieved by order of the Supreme Court.

Once having represented a client in a criminal matter which results in probation, and assuming there is no appeal, the lawyer-client relationship has been effectively terminated. At this point there is nothing left for the attorney to perform for the client in such proceedings. The case is over. A like situation does not occur upon conviction and the prosecution of an appeal. There, special duties have been recognized on the part of a lawyer to continue with the appeal unless relieved by the appellate court.

In the instant situation, the mere notification by the clerk of court that a lawyer's former client is charged with a probation violation does not constitute an order of the court appointing the lawyer to represent the defendant. Defendants in such cases are free to retain their own counsel or apply to the court for free representation if they are indigent. Certainly, the lawyer, if requested by the client to represent him, may accept employment, if the lawyer so desires or he may decline same. There is no duty to accept employment by the defendant. In cases where the court affirmatively appoints the lawyer, the lawyer should give due consideration to the guidelines in Rule 6.02, and accept appointment for an indigent, if possible. Absent such official appointment by the court, the lawyer has no duty to represent the defendant.