

**ETHICS OPINION NUMBER 188
OF THE MISSISSIPPI BAR
RENDERED JUNE 7, 1991**

CONFLICT OF INTEREST -- It is not a conflict of interest for a City Attorney to sue a municipality that the attorney does not represent, even though the attorney's client and the defendant municipality are members of the same liability pool which is funded by its members based on the experience of all of its members.

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

An Attorney represents a city which is a member of the Mississippi Municipal Liability Plan, which is a nonprofit corporation operated by certain Mississippi municipalities. The municipalities contribute to a fund to pay covered claims of the member municipalities for which there is liability. The question asked is whether it is a conflict of interest for an attorney who represents one city to sue another city, when there is a possibility that if he is successful, it might cause his city to have to pay more to the liability plan.

Rule 1.7 of the MISSISSIPPI RULES OF PROFESSIONAL CONDUCT provides in pertinent part:

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client. . .

(b) 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 interest, 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.

Rule 1.7 of the MRPC does not restrict representation which indirectly might adversely affect a client. If it did, then it would follow that attorneys could never argue different sides in different cases, since success in one case might be detrimental to another client in another case. The Rule is not that restrictive.

Since the facts submitted do not state otherwise, it is assumed that the attorney does not represent the municipality he is suing; that the attorney has no privileged information concerning the municipality he is suing; and that the attorney has no improper advantage against the municipality he is suing. The only objection suggested is that if the attorney wins his suit, then his municipality might have to pay a higher contribution to the pool. That possibility, however, exists regardless of whether the municipal attorney is disqualified. Since the attorney has never represented the municipality he is suing and since he has no unfair advantage against the municipality, he should not be disqualified.

Under the facts represented, there is no conflict of interest in a municipal attorney suing a municipality which he does not represent even though both municipalities are members of the same liability plan.