

**ETHICS OPINION NUMBER 116  
OF THE MISSISSIPPI BAR  
RENDERED JUNE 5, 1986  
AMENDED APRIL 6, 2013**

**CONFLICT OF INTEREST – GOVERNMENT ATTORNEYS** - City Attorney and his partners and associates may not represent criminal defendants in City Court. City Attorney and his partners and associates may represent criminal defendants before Grand Jury and in County or Circuit Court where no city police officers are involved, the crimes charged are solely for alleged violation of state law, and the municipality is not otherwise directly or indirectly involved or affected.

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

One of the members of a law firm is the city attorney for a city on all civil matters. This city attorney does not prosecute criminal matters in city court. Another attorney from another law firm is the city prosecuting attorney.

Some of the city attorney's partners occasionally practice criminal defense law and the following situations have arisen.

In Situation 1 the client of one of the city attorney's partners has a charge of aggravated assault filed against him for an assault that allegedly occurred within the city limits with the alleged victim signing the affidavit against the client. The client voluntarily surrendered himself to the city police. The city police department took no active part in the arrest and only interviewed a few witnesses. No city police officers are witnesses to the alleged crime; they merely performed minimum investigative functions.

In Situation 2 the city police arrested the client of one of the partners of the city attorney after an intensive investigation by the city police department and/or the police arrested the client who allegedly makes a voluntary statement to the police prior to hiring the city attorney's partner to represent him.

The questions presented are whether the partners of the city attorney may represent the client in either Situation 1 or Situation 2 in:

- (a) City Court;
- (b) Before a Grand Jury proceeding after being bound over by the City Court; and
- (c) In County or Circuit Court after indictment by the Grand Jury.

Rule 1.7(a) of the Mississippi Rules of Professional Conduct (MRPC) provides that:

A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless the lawyer reasonably believes:

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

Because Rule 1.10, MRPC, imputes disqualification to all partners and associates of a lawyer, the conflict of interest issues raised by this opinion request may be resolved by determining whether the city attorney himself could engage in the proposed representation.

The Committee is of the opinion that the city attorney himself could not engage in the proposed representation in either Situation 1 or Situation 2 in city court. If he were to engage in the proposed representation, he would be appearing adversely against the city itself whom he is retained to represent, albeit not in criminal matters. Thus, the proposed representation would constitute simultaneous representation of adverse interests in unrelated matters. This, the city attorney may not do. Mississippi State Bar, Ethics Opinion No. 103 (June 6, 1985) (attorney whose firm represents corporate client in pending litigation may not simultaneously accept employment to prosecute a claim against the corporation in an unrelated matter). Because the city attorney may not engage in such representation in city court, Rule 1.10, MRPC,

mandates that all of the city attorney's partners and associates are likewise prohibited from engaging in such representation in city court.

We recognize that it would be a rare instance in which an attorney would represent a client before a grand jury. Because the Committee sees no significant factual differences between representing the client before the grand jury or in the county or circuit court, the Committee will consider the two situations as identical. Subject to the following limitations, the Committee is of the opinion that a city attorney who is not the city prosecuting attorney (and therefore his partners and associates) may ethically represent a criminal defendant before a grand jury or in county or circuit court assuming that the city attorney has no involvement in the investigation by the city police department and that the city attorney has not given advice or received confidences and secrets of the city which are relevant to the criminal prosecution.

Initially, the Committee notes that our Ethics Opinion No. 87 (September 23, 1983) is distinguishable. There, this Committee held that the partner of a city prosecuting attorney could not defend a client on charges brought against him in municipal court even if the case were transferred to county court. Opinion No. 87 is distinguishable because there the city prosecuting attorney, although not involved in that particular prosecution, had duties concerning the prosecution of criminal matters in city court. Ethics Opinion No. 87 is not controlling on the facts presented by this request.

More on point is ABA Informal Opinion 1285 (January 21, 1974), where the ABA Committee on Ethics and Professional Responsibility declined to establish an arbitrary rule of general application concerning whether a municipal attorney (there a municipal prosecuting attorney) was disqualified from representing defendants in criminal cases. The Committee held that it was not improper for a municipal attorney to represent criminal defendants in situations in which no municipal police officers from the municipality are involved, the criminal charges are based solely on alleged violations of state law, and the municipality is not otherwise directly or indirectly involved or affected.

This Committee agrees with ABA Informal Opinion 1285 and holds that the city attorney may ethically represent criminal defendants before the grand jury and in county or circuit court if no municipal police officers from a municipality are involved, if the criminal charges are based solely on alleged violations of state law, and if the municipality is not otherwise directly or indirectly involved or affected. Thus, in Situation 2, where the municipal police officers are involved, the city attorney could not represent the criminal defendant. Pursuant to Rule 1.10, MRPC, the same conclusions apply to the partners and associates of the city attorney.