

**ETHICS OPINION NUMBER 131
OF THE MISSISSIPPI BAR
RENDERED DECEMBER 5, 1986
AMENDED APRIL 6, 2013**

CONFLICT OF INTEREST – There is no conflict of interest per se for a lawyer to accept employment to represent a former adverse party if the anticipated representation is not prejudicial to a former client of the prospective client.

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

In the past the lawyer represented Mr. A against Ms. B and obtained a judgment against Ms. B in a collection suit. Subsequently, the lawyer has been requested to represent Ms. B in a totally unrelated action against Company C. The lawyer advised Ms. B of the fact that he had represented Mr. A against her in the aforementioned suit on the Promissory Note, however Ms. B consented to the lawyer representing her. Additionally, the lawyer advised Mr. A of the fact that he had been approached by Ms. B to represent her in an unrelated matter and Mr. A consented to the representation by the lawyer of Ms. B in the unrelated cause of action.

The ethical question presented is can the lawyer represent Ms. B in an action against Company C notwithstanding the written consent of Mr. A and Ms. B.

Rule 1.9, of the Mississippi Rules of Professional Conduct (MRPC), provides that:

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) represent another in the same or a substantially related matter in which that person's interest are materially adverse to the interests of the former client unless the former client consents after consultation; or

(b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 would

permit with respect to a client of when the information has become generally known.

Opinion 90 of The Mississippi Bar states quite clearly that a lawyer need not disqualify himself in a matter concerning a former client unless the terminated employment has some substantial relationship to the new matter or unless he received privileged information that might be used in the new matter against the former client.

It must be stressed that the factual situation presented by the lawyer clearly reflects that his representation of the former adverse party would be in a matter totally unrelated to his representation of a former client. Further, the lawyer has obtained the informed consent of the former client and the prospective client concerning the anticipated representation.

Therefore, in view of all of the above, the lawyer is required to determine if he can adequately and competently represent the prospective client in view of the fact that this individual had previously been an adverse party in a matter in which the lawyer was involved.

If the lawyer and the prospective client determine that the lawyer will exercise his professional judgment within the bounds of the law, solely for the benefit of the prospective client and will be free of compromising influences and any possible prior prejudices against the prospective client, then this Committee determines that the lawyer will not be in conflict with Rule 1.9, MRPC.