

**ETHIC OPINION NUMBER 248
OF THE MISSISSIPPI BAR
RENDERED April 12, 2001
AMENDED APRIL 6, 2013**

CONFLICT OF INTEREST - An attorney employed as in-house counsel by a mortgage broker who closes all real estate transactions brokered by his employer represents the mortgage broker in the transactions.

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

An attorney is an employee of a mortgage broker and handles all real estate closings and title insurance for all loans brokered by his employer.

The questions presented to the Ethics Committee are as follows:

Who does the attorney represent?

Is there a conflict of interest between the attorney, his employer, the buyer, seller, owner or title insurance company?

An attorney's client is one to whom the attorney renders counsel and advice. Retaining the attorney or paying the attorney does not, in and of itself, create an attorney-client relationship. Therefore, in the above situation where the attorney is, in effect, in-house counsel for the mortgage broker, the mortgage broker is the client in the real estate transactions. Since there is no reference in the factual scenario to a lender, it may be presumed that the mortgage broker is also the lender. Even if not, the mortgage broker is the attorney's client for purposes of closing real estate transactions procured by the mortgage broker as the mortgage broker has an interest in the transaction.

The attorney in a real estate closing should have a clear understanding of whom he represents, and should make sure that all parties involved in the transaction understand who is and is not the attorney's client, and give the unrepresented parties an opportunity to obtain counsel. Assuming that the attorney represents only one party, as he should, and that all other parties are made aware of that representation, there is no conflict with the other parties. If an attorney who closes a real estate transaction is merely a scrivener, he must not render legal counsel or advice during the course of the transaction to any party. *See* Rule 4.3, MRPC.

E.O. 147 held that there was no conflict for an attorney who represented a mortgage company in a loan closing to subsequently represent another party against the mortgage company's customer. The Committee held that since the mortgage company was the client of the attorney, and the mortgage company customer was not, there was no conflict. It is advisable, as stated in the Opinion, that the closing attorney state in writing who is his client so there is no misunderstanding as to whom he represents.