

**ETHICS OPINION NUMBER 43
OF THE MISSISSIPPI BAR
RENDERED JUNE 2, 1977
AMENDED APRIL 6, 2013**

CONFLICT OF INTEREST - A lawyer who is employed by a Claimant against a third party may simultaneously prosecute the interest of the insurance carrier (or Self-Insurer) against said third party if the lawyer is retained and compensated directly by each party.

The Ethics Committee of the Mississippi Bar has been requested to render an opinion on the propriety of a lawyer who is representing a Claimant against a third party defendant to also represent the interest of the Workmen's Compensation Insurance Carrier (or Self-Insurer) against the same third party defendant in a personal injury case.

The Committee on Professional Ethics of the American Bar Association, in a Formal Opinion written May 27, 1950, stated:

An attorney who is employed by an insurance company to prosecute the company's subrogation claim against a third party may simultaneously prosecute the insured's claim for the amount not recoverable under his insurance if the attorney is retained and compensated directly by the insured.

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

a lawyers 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 adverse representation and the advantages and risks involved.

The lawyer is charged with the duty of weighing carefully the possibility that his judgment may be impaired or his loyalty divided if he accepts or continues employment of multiple clients having potentially differing interests. He should

resolve all doubts against the propriety of the representation. If a lawyer accepted such employment and the interests did become actually differing, he would have to withdraw from employment of both clients.

A lawyer who represents two or more clients must not make or participate in the making of an aggregate settlement of the claims of or against his clients, unless each client has consented to the settlement after being advised of the existence and nature of all the claims involved in the proposed settlement, of the total amount of the settlement as of the participation of each person in the settlement."

It is the opinion of this committee that a lawyer may represent both a Claimant and an insurance carrier (or Self-Insurer) who has a right of action by way of subrogation through Claimant, against a third party defendant provided the attorney does so on a fee arrangement separately with each client and provided that it is disclosed to both the Claimant and the insurance carrier that the lawyer is representing both parties. If a conflict develops during the representation, the lawyer must withdraw from representation of both clients.