

**ETHICS OPINION NUMBER 52
OF THE MISSISSIPPI BAR
RENDERED FEBRUARY 2, 1980
AMENDED APRIL 6, 2013**

CONFLICT OF INTEREST - A law firm may not ethically represent a client on one matter and, while that matter is pending, represent another client in litigation against the first client unless there is informed consent by all parties and no confidences are betrayed.

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

A firm of attorneys has been asked to accept employment which would involve litigation against a corporation, which one of the members of the firm is presently representing on a completely unrelated matter involving the collection of a minor commercial account. May the firm or one of its members accept the proffered employment?

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

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 adverse representation and the advantages and risks involved.

The relationship between a lawyer and a client is of a fiduciary nature and the client's cause compels the undivided loyalty of the attorney. The comment Rule 1.7(a) explains the rule applies when the representation of one client would be directly adverse to the other. However, the considerations involved are applicable to the circumstances in the question presented.

Further, Rule 1.7(b), MRPC, provides:

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 interests, 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.

Just as a lawyer who is asked to represent multiple clients having possible differing interests in the same litigation "must weigh carefully the possibility that his judgment may be impaired or his loyalty divided," so must a lawyer consider the adverse effect upon his exercise of free judgment that may result if he were to fulfill his duty to one client by contending for that to which another client is opposed.

The fact that different attorneys in the same firm are handling the cases for the respective clients makes no difference. It is clear that if any member of a firm is disqualified so are all other partners and associates. *See* Rule 1.10(a), MRPC.

The Committee, therefore, answers the requests for an opinion in the negative in the belief that maintaining the professional independence of the attorney does not permit an attorney to represent a client on one matter and, while that matter is pending, represent another client in litigation against the first client, except in instances where there is an informed consent by all parties and no confidences are betrayed. *See* Rule 1.6, MRPC.