

**ETHICS OPINION NUMBER 76
OF THE MISSISSIPPI BAR
RENDERED SEPTEMBER 17, 1982
AMENDED APRIL 6, 2013**

LAWYER AS A WITNESS – When one can act as both a lawyer and witness.

The following question has been proposed to the Committee for its consideration:

Attorney "A" has been employed to admit to probate and record a will that was executed many years ago. Both witnesses to the will are long since deceased. The attorney is unable to find anyone who can identify signatures of the Testator or the witnesses, except himself. He is unaware of any contest to be made to the will. May the attorney act as a witness to prove the genuineness of these signatures by his own testimony?

Rule 3.7(a)(1) of the Mississippi Rules of Professional Conduct (MRPC) provides that a lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness except where the testimony related to an uncontested issue.

In view of the fact that Attorney "A" does not expect a contest as to the genuineness of the signatures of the Testator and the witnesses, it is the opinion of Committee that he should be allowed to prove the genuineness of the signatures on the will, and his involvement in the probate of the will would not be questionable so long as the subject of his testimony is on the uncontested matters herein discussed.