

**ETHICS OPINION NUMBER 87
OF THE MISSISSIPPI BAR
RENDERED SEPTEMBER 23, 1983
AMENDED APRIL 6, 2013**

CONFLICT OF INTEREST – GOVERNMENT ATTORNEYS - A partner of the City Prosecuting Attorney may not defend a client on charges brought against him in Municipal Court even if the case is transferred to County Court.

The Ethics Committee has been asked to render an opinion of the following facts:

Attorney X, of the firm of X, Y & Z, is the City Prosecuting Attorney, having been appointed by the mayor and Board of Aldermen. As such, attorney X is charged with responsibility of prosecuting misdemeanors and holding felony preliminary hearing on all criminal matters prosecuted before the Municipal Court.

Attorney Z has a general civil and criminal trial practice and is retained by a criminal defendant upon charges brought against him in the Municipal Court.

Lawyer X, the City Prosecuting Attorney, does not have any involvement with the case, has not prepared or helped to prepare any warrants, etc., and has no knowledge of the facts of the case.

If the case is transferred to County Court (Justice Court) prior to any involvement by lawyer X, may lawyer Z represent the client?

The Committee is of the opinion that a partner of the municipal prosecuting attorney may not defend a client against criminal charges brought against him in the municipal court even if the case is transferred to the county court. The pertinent issue is whether or not the city prosecuting attorney could defend criminal charges under such circumstances, because Rule 1.7(a) of the Mississippi Rules of Professional Conduct (MRPC) advises that:

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 the adverse representation and the advantages and risks involved.

The municipal prosecuting attorney's client is the municipality. *See* Rule 1.13, MRCP. Therefore, the prosecuting attorney could not defend a client against the criminal charges brought against him in municipal court because the municipality's interests are directly adverse to the defendant's. Rule 1.10(a), MRPC, provides that "[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), or 2.4." Attorney Z is ethically bound not to accept employment in the case because his law partner cannot accept employment.