

**ETICS OPINION NUMBER 90  
OF THE MISSISSIPPI BAR  
RENDERED JANUARY 19, 1984  
AMENDED APRIL 6, 2013**

**CONFLICT OF INTEREST** - A lawyer need not disqualify himself in a matter concerning a former client unless the terminated employment had some substantial relationship to the new matter or unless he received privileged information that might be used in the new matter against the former client.

The Ethics Committee of The Mississippi Bar has been requested to render an opinion on facts which we summarize.

The adult ward of a conservator contacted lawyer X concerning dissatisfaction with the conservator and dissatisfaction with the manner in which executrix was handling the estate of the ward's deceased mother. The conservator is himself a lawyer and is acting as attorney for the conservatorship.

X informed the conservator of the ward's dissatisfaction and the conservator expressed a desire to resign. The conservator invited X to be present and represent the ward at a hearing on a petition for the sale of real property which was pending in the mother's estate. Thereafter, X reviewed the court file in the conservatorship and concluded that the conservator had mishandled the ward's funds and was, therefore, personally liable to the ward.

The conservator filed a final accounting and tendered his resignation to the court. X prepared and filed a petition for the appointment of a substitute conservator, in which the conservator joined. However, the Chancellor refused to accept the resignation of the conservator at that time, preferring instead to require the present conservator to serve until the mother's estate was finally settled.

When the petition for the sale of real property was called up for hearing in the mother's estate, the conservator informed the court that he had no objection to X appearing as attorney for the ward. The Chancellor inquired as to

whether X had filed a written answer objecting to the sale. X responded that he had prepared an answer on behalf of a proposed replacement conservator but, inasmuch as the original conservator had not been discharged and the replacement conservator had not been appointed, the answer had not been filed.

The court took a recess in order for the conservator to determine whether he wished to file the pleading. The conservator signed the answer, striking all references to the proposed replacement conservator and substituting his name therefor. X signed the answer as attorney for the conservator and the same was filed in the mother's estate.

The hearing was not resumed that day, but various negotiations were conducted in chambers. X never gave any advice to the conservator or had any confidential attorney/client discussions with him. During the course of the negotiations in chambers, the conservator withdrew portions of the answer that had just been filed.

At a later date, X informed the conservator that in his opinion the conservator had not properly handled the ward's funds and X asked the conservator to resign. The conservator then refused to resign.

Lawyer X has asked the Ethics Committee to respond to four questions.

The first question is: At the hearing on the petition for the sale of real property, did X serve as attorney for the ward, as attorney for the conservator, or as attorney for both the ward and conservator?

The answer to this question is a matter of law, not ethics, and the Ethics Committee is not authorized to express an opinion on a matter of law. However it is to be noted that X has stated that he signed the answer as attorney for the conservator; therefore, for the purpose of responding to the remaining questions the Committee will assume that a true attorney-client relationship existed between X and the conservator, and that the conservator would now be considered a former client of X.

The second question is: May X now file an action to have the conservator removed for his alleged wrongdoings?

Whether a lawyer is disqualified from representing an interest adverse to that of a former client is an ethical, not a legal, consideration. *Spragins v. Huber Farm Service, Inc.*, 542 F. Supp. 166, 171 (N.D. Miss., 1982). Therefore, the Committee will respond.

In determining whether a lawyer should handle a matter which is adverse to a former client, the facts must be reviewed in light of Rule 1.9 of the Mississippi Rules of Professional Conduct (MRPC).

Rule 1.9, MRPC, provides that:

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) represent another in the same or a substantially related matter in which that person's interest are materially adverse to the interests of the former client unless the former client consents after consultation; or

(b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 would permit with respect to a client of when the information has become generally known.

As indicated in ABA Formal Opinion 342 (1975), a lawyer should not represent a party in a matter adverse to a former client if such matter is substantially related to the former representation. However, a lawyer is not required to sterilize his affairs to avoid baseless charges and he need not disqualify himself in a matter concerning a former client unless the terminated employment had some substantial relationship to the anticipated litigation or unless he received some privileged information which might be used in such anticipated litigation to the embarrassment or detriment of the former client. *Church of Scientology of California v. McLean*, 615 F.2d 691, 692 (5th Cir. 1980). The facts presented in this request do not indicate any substantial relationship between the limited representation of the conservator in the decedent's estate and the proposed representation of the ward against the conservator and, as stated above, X did not receive any privileged information from the conservator. Therefore, under the facts presented, X is not disqualified by Rule 1.9, MRPC.

The third question is: If he is deemed to have represented the conservator to such an extent that he may not now represent the ward against the conservator, may X ethically refer the matter to another attorney and inform the new attorney of all pertinent facts in order that he may then take the necessary action to have the conservator removed?

We are of the opinion that no Ethical Consideration or Disciplinary Rule would prohibit X from referring the matter to another attorney and informing that attorney of the facts in order that he might, if he deemed it appropriate, bring an action on behalf of the ward against the conservator.

The fourth question is: Should X take any action to inform the Chancellor of the conservator's alleged wrongdoing?

The facts presented indicate that all of the information possessed by lawyer X came from a review of the court file. Rule 3.3(d), MRPC, requires a lawyer in an ex parte proceeding inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision. The Committee is of the opinion that X has a duty to inform the Chancellor of these matters even if they are apparent from reviewing the court file.