

**ETHCIS OPINION NUMBER 99
OF THE MISSISSIPPI BAR
RENDERED OCTOBER 5, 1984
AMENDED APRIL 6, 2013**

CONFLICT OF INTEREST – ENTITY AS A CLIENT - An attorney may serve as a member of the Board of Trustees of a non-profit religious corporation and as Attorney for the Board.

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

An Attorney serves as an elected member of the Board of Trustees of a non-profit religious corporation and from time to time is called upon to render legal assistance and offer legal opinions, which services in the past have been considered and received by the Attorney as donated services to the Board. It has now been proposed that the Attorney receive a retainer fee for services rendered, and the question is posed as to the propriety of the Attorney's serving as both a member of the Board of Trustees and as Attorney for the Board.

Rules 6.3 and 6.4 of the Mississippi Rules of Professional Conduct (MRPC) urge lawyers to serve as directors, officers, or members of legal services organizations and organizations involved in reform of the law or its administration. The Committee certainly feels that decision-making Boards of Trustees of non-profit corporations could require the services of lawyers with integrity and competence.

Justice James L. Robertson of the Mississippi Supreme Court has recently reminded the Bar that members of the legal profession have a responsibility and obligation to serve the public:

Accepting of the title "lawyer" carries with it a substantial obligation to render public service. Opportunity to play a leadership role in one's community, state, and nation regularly devolve upon the lawyer . . . Leadership roles in charity, civic, religious, and other non- profit organizations are very much in need of the ability and services most lawyers have to offer. Robertson, "The Lawyer as Hero," 53 Mississippi Law Journal 431 at 442 (September, 1983).

The Committee further notes that Ethics Opinion E-60 of the Kentucky Bar Association, rendered in July 1972, states that when a lawyer's firm represents the Board of Trustees of a College, there is no prohibition per se against the lawyer's accepting an appointment as a Trustee of the College, though individual situations could conceivably arise creating a conflict of interest or impropriety. The Kentucky Opinion stated in part:

This question arose because a member of an auditing firm was in a similar fact situation and felt compelled to resign. There is no parallel between attorneys and CPA's in these situations in that the respective fields involve different duties and obligations with regard to clients. Lawyers have a responsibility demanding undivided loyalty and fidelity to their clients. CPA's have no such fiduciary obligation. Indeed, an auditor is frequently required by the very nature of his duties to be at "opposite poles" from his employer, and to view the employer's fiscal activities with a certain amount of aloofness, possibly even suspicion. Thus, since the respective natures of the service rendered can and must be distinguished, this distinction is the basis for finding no conflict of interest per se for an attorney's serving on a college board of trustees.

The Committee is of the opinion that the obligation of the legal profession to render public service and legal counsel where needed, suffices to indicate that a lawyer may serve as a director or board member of a non-profit organization and as the attorney for such organization without any conflict of interest per se.

Rules 1.13 and 1.7, MRPC, provide further guidance should conflicts arise in the course of the attorney's service on the board and his simultaneous legal representation of the board.