

**ETHICS OPINION NUMBER 143  
OF THE MISSISSIPPI BAR  
RENDERED MARCH 11, 1988**

**PROFESSIONAL MISCONDUCT** - An Attorney does not commit an ethical violation of the Mississippi Rules of Professional Conduct by presenting for payment a check drawn on his personal account for personal goods or services when such check is not honored by the Bank or lending institution due to insufficient funds.

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

1. Attorney A gives a personal check to B for personal goods or services for A's use and such check is ultimately dishonored by the financial institution for insufficient funds or other account deficiency reasons. Has Attorney A, through the presenting for payment a check drawn on his personal account that is not honored by the Bank or lending institution due to insufficient funds, committed an ethical violation of the Mississippi Rules of Professional Conduct?
2. Does it make any difference if Attorney A had "Attorney at Law" designated in some form or fashion on his personal check or the check Attorney A used to pay for the goods or services purchased for his personal use?

Since the questions asked are in a general nature, and not specific as mentioned in the bad check provisions of the Mississippi Code in Sections 97-19-55 through 97-19-69, this opinion must necessarily be all-encompassing and be broad in its application. This opinion does not address the question of "bouncing" an Attorney's business or trust account check and does not address the issue of whether criminal activity is involved. Please note, however, that a series of acts committed over an extended period of time and not an isolated incident, which result in criminal conviction, are a specific violation of Rule 6 and 6.1 of the Rules of Discipline for the Mississippi State Bar. *See Mississippi State Bar Association v. Cotter*, 512 So. 2d 1288 (Miss. 1987).

Mississippi Rules of Professional Conduct Rule 8.4 Misconduct states in part that:

It is professional misconduct for a lawyer to: ...(b) commit a criminal act that reflects adversely on the lawyer's

honesty, trustworthiness or fitness as a lawyer in other respects; (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation...

It is noted that the first question addressed refers strictly to a personal check given for personal goods or services and in no way is related to the legal practice of Attorney A. In the preamble to the Mississippi Rules of Professional Conduct the statement is made that the Rules "...should be interpreted with reference to the purposes of legal representation and of the law itself. ...The Rules simply provided a framework for the ethical practice of law." While the "bouncing" of a check is a violation of the criminal law under Section 97-19-55, et seq. of the Mississippi Code of 1972, the Committee feels that unless that act reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects or involves dishonest, fraud, deceit or misrepresentation, that the personal act of this Attorney is not, per se, an ethical violation of the Mississippi Rules of Professional Conduct.

In addressing question 2 as to whether or not the designation "Attorney at Law" on the check makes any difference, the Committee feels that the personal nature of the transaction mandates that this designation makes no difference.