

**ETHICS OPINION NUMBER 148
OF THE MISSISSIPPI BAR
RENDERED JUNE 2, 1988.**

CONFLICT OF INTEREST - 1. An attorney who is associated by a legal services corporation under a private attorney involvement program and staff attorneys employed full time by the legal services corporation may represent clients with opposing interest in cases that are wholly unrelated to the case on which the private attorney has been retained.

2. An attorney may serve as a director of a legal services corporation notwithstanding the fact that the attorney represents clients having interests adverse to clients of the legal services corporation.

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

A division of the legal services corporation (LSC) is required by its parent to spend at least 12.5 percent of its annualized LSC Grant on private attorney involvement (PAI) in the delivery of legal services to indigents. As part of its efforts to comply with this rule, the program uses several private attorney involvement models, one of which is its compensated divorce plan. Under this plan, the program contracts with the private attorney to provide legal services to indigent clients seeking uncontested divorces. Under the contract, the private attorney is required to come to a program's office twice a month for initial interviews with clients. The program staff screens persons for eligibility purposes and, if qualified, assigns the cases to the private attorney. This assignment is made at the legal service office where the attorney is introduced to the client by the program staff and prior to the private attorney's initial interview with the client, which is done at the legal services offices. After this initial contact with the private attorney, all future contacts are made at the private attorney's office. Under the contract, the private attorney is paid a yearly fee for his services, which is made in monthly installments. The program is required to maintain supervision over the private attorney's work on the cases assigned to him. May the private attorney and a legal

service's staff attorney represent opposing parties in no way related to the divorce cases which are assigned to the private attorney?

Further, is it ethical for an attorney who serves on the board of directors of the legal services corporation and a staff attorney or executive director of the legal service corporation to represent opposite parties?

There are two rules that interplay in providing an answer to both questions posed by the requesting attorney. Mississippi Rules of Professional Conduct 6.3 states:

A lawyer may serve as director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in decision or action of the organization: (a) If participating in the decision would be incompatible with the lawyer's obligations to a client under Rule 1.7; or (b) where the decision could have material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

Reference is made in Rule 6.3 to Rule 1.7. Rule 1.7 states:

(a) 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 implication of the adverse representation in the advantages and risks involved.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interest, unless the lawyer reasonably believes:

- (1) The representation will not be adversely affected; and
- (2) The client is given knowing and informed consent after consultation. The consultation shall include explanation of the implications of the representation and the advantages and risks involved.

(Emphasis added.)

Rules 6.3 and 1.7 tell us that though an attorney associated in the PAI program of a legal services corporation may represent clients having interests adverse to clients of the legal services corporation, or vice versa, such representation must be taken on a case-by-case basis. In making the decision whether or not to accept representation, each attorney must examine the specific language of sub part (a) and (b) of Rule 6.3 as well as Rule 1.7. Obviously if an attorney believes that his representation will be adversely affected by his relationship with LSC, then he should refuse employment from the individual client. If, however, the attorney feels that his representation of the client will not be adversely affected by his affiliation with a legal service corporation, then he or she still must receive knowing and informed consent within the meaning of Rule 1.7(b)(2) from the client who will be opposed by a legal services attorney. We cannot stress enough the necessity for members of the Bar to keep careful and accurate documentation of this consultation to avoid any misunderstanding that may possibly arise.

Rule 6.3 also answers the second question posed in the affirmative. Public policy supports participation of lawyers in legal services organizations and a director does not have a lawyer/client relationship with persons served by the organization. The lawyer should, however, carefully examine potential conflicts in light of Rule 6.3(a) and (b) as well as Rule 1.7. We again commend to any attorney who is in such a situation documented, full disclosure of any potential conflict.