

**ETHICS OPINION NUMBER 170
OF THE MISSISSIPPI BAR
RENDERED DECEMBER 15, 1989**

CONFLICT OF INTEREST: A former judge may not represent a party in a subsequent petition for a Governor's pardon where the former judge has been the trial judge wherein the party was convicted of a major felony.

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

While serving as a Circuit Judge a now-practicing attorney was the presiding Judge in a criminal prosecution of a Defendant where the jury convicted the Defendant of Aggravated Assault against a police officer and the former judge sentenced the Defendant to life imprisonment without parole as a habitual offender. After nine years confinement with the Mississippi Department of Corrections, Defendant and his family have contacted the former judge concerning representation of the Defendant for the limited purpose of preparing the necessary Petition and actively pursuing Defendant's case before the Governor in requesting a pardon. Although the sentence was mandatory under state law and no discretion was given the presiding judge in sentencing, the attorney wishes to know if he may represent Defendant in attempting to obtain a pardon.

The Committee is of the opinion that this request is governed by Rule.1 12 of the Mississippi Rules of Professional Conduct. This rule states in pertinent part:

A lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, arbitrator or law clerk to such a person.

As explained in the Comment to this Rule, the exercise of "administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits." Indeed, the rule prevents representation only when the participation has been personal and substantial.

In a previously unpublished Opinion, this Committee found that a former Circuit Judge who executed three orders in a cause pending in his Court, being an agreed order allowing amended pleadings, an agreed order extending discovery, and an uncontested order of continuance, could ethically represent parties in litigation after the judge had left the Bench. However, the factual situation presented by the scenario in question clearly reflects that the lawyer acting as a judge in the criminal case has more than "remote and incidental administrative responsibilities" in the matter. As with any criminal case, the judge would have ruled on objections of counsel, instructions to jury, and ruled upon the Motion for New Trial before an appeal could be taken. Suffice it to say, the trial judge in a felony matter, without a doubt, participates substantially in a criminal case and would be precluded under the Mississippi Rules of Professional Conduct in representing Defendant in an attempt to obtain a pardon from the Governor.