

**ETHICS OPINION NUMBER 202
OF THE MISSISSIPPI BAR
RENDERED SEPTEMBER 4, 1992**

CONFLICT OF INTEREST - A lawyer or law firm may acquire an economic interest in goods and services marketed by a client to others provided such interest is disclosed and the client gives knowing and informed consent to such representation.

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

A lawyer and his firm, is approached by a potential client with a new product. The client wishes to use the law firm to open doors to potential purchasers, and negotiate any deals and contracts regarding the sale of the new product. The law firm believes that the product is a winner, and would like to have an economic interest in the development of the product.

- a. Can the law firm accept the representation on a contingent fee, blended or pure, based on sales consummated arising out of lawyer's contacts?
- b. Is the law firm precluded from investing in the client's corporation or a separate corporate entity purchasing the product?
- c. Does the law firm (with a contingent fee or ownership interest have any disclosure requirements to the potential purchaser?
- d. Does the law firm have any disclosure requirements (either as to the contingent fee or conflict of interest) if the potential purchaser is a former or present client?
- e. Can the law firm who develops investors to purchase the product receive a fee or consideration from the investors?

MRPC Rule 1.7 states the general rule for conflicts of interest. MRPC Rule 1.7(b) provides: "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 has given knowing and informed consent after consultation. The consultation shall include explanation of the implications of the representation and the advantages and risks involved."

MRPC Rule 1.8 and 1.9 further expound on the question of conflict of interest, specifically, transactions which are prohibited and which involve former clients. MRPC Rule 1.8(a) provides in part: "A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or pecuniary interest adverse to a client unless:

- (1) the transaction and terms on which the lawyer acquires the interests are fair and reasonable to the client and are fully disclosed...;
- (3) the client consents in writing.

MRPC Rule 1.8(f) further provides that:

A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client consents after consultation;
- (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship.

The underlying rule to be considered in the above factual situation and in any other situation where potential conflicts of interest may arise during the attorney-client relationship is knowing and informed consent on the part of a client after disclosure. The restrictions of MRPC Rule 1.8(a) do not apply to standard commercial transaction between a lawyer and a client for products or services that the client usually markets. The reason being that the lawyer has no advantage in dealing with the client and the lawyer's own interests usually do not have an adverse effect on the representation of the client.

HOWEVER, THE ETHICS COMMITTEE VIEWS BUSINESS RELATIONSHIPS WITH CLIENTS SUCH AS PRESENTED IN THIS FACTUAL SITUATION AS DANGEROUS AND WOULD STRONGLY

ADVISE LAWYERS AND LAW FIRMS AGAINST PARTICIPATING IN SUCH ACTIVITIES.

As with all attorney-client relationships, there could possibly come a time when a conflict arises after representation has been undertaken that may require the attorney to withdraw from such representation. Loyalty to a client is essential and a lawyer may not continue to represent a client if the lawyer's business interests affect such representation. In addressing the specific questions propounded to the Ethics Committee in the above factual situation, the Committee is of the opinion that: (a) The law firm may accept the representation on a contingent fee, blended or pure, based on sales consummated which arise out of a lawyer's contacts; (b) A law firm is not precluded from investing in a client's corporation or a separate corporate entity purchasing the product; (c) & (d) The law firm has an ethical obligation to disclose the law firm's legal representation of its client to potential purchasers including present or former clients. The law firm further has the obligation to disclose its business interest to the extent necessary to avoid misrepresentation as required by MRPC Rule 4.1 and 4.3; and (e) The law firm may receive a fee or consideration from investors should the law firm develop investors to purchase the product.

The Ethics Committee has previously addressed conflicts of interest questions regarding lawyers obtaining economic or proprietary interests during the course of representation. I.A.O. #50 rendered April 11, 1992, by this Committee addressed the question of lawyers or a law firm representing an insurance company of which a lawyer in the law firm was a stockholder. That opinion, like the instant opinion, is founded on the principals of full and complete disclosure to clients of such relationship and informed consent being obtained from all concerned