

**ETHICS OPINION NUMBER 226
OF THE MISSISSIPPI BAR
RENDERED APRIL 6, 1995**

CONFLICT OF INTEREST - A former chancellor may not represent parties in proceedings for contempt, or modification of decrees and judgments rendered by the former chancellor where he personally and substantially participated as a chancellor.

An opinion of the Ethics Committee of The Mississippi Bar has been requested on the following question:

May a former chancellor now practicing law represent a party in subsequent proceedings in cases in which the judge sat as judge in: (1) contested cases; (2) non-contested divorces, no fault divorces, or other agreed matters wherein the former judge entered the decree.

Rule 1.12 (a), MRPC, is controlling. This rule states that "except as stated in paragraph (d), 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 person." The comment to Rule 1.12 further states: "the fact that a former judge exercised 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."

Incidental or administrative action by a judge in a case which does not affect the merits of the case will not disqualify the judge from representing a party after leaving the bench. Ethics Opinion No. 170 cites a previously unpublished opinion, 89 - 2, holding that a former circuit judge who had executed only an agreed order allowing amended pleadings, an agreed order extending discovery, and an uncontested order of continuance, in a case pending in his court, could ethically represent a party in the litigation after leaving the bench. And, in Ethics Opinion No. I.A.O. 48, the Committee found that the mere ex parte appointment of a fiduciary in an estate matter constituted an administrative responsibility not affecting the merits of the case, and the former chancellor who made the appointment was not precluded from representing that fiduciary in ongoing estate matters.

The issue in Ethics Opinion No. 170 was whether a former judge who presided throughout an entire criminal trial could represent the convicted defendant in a proceeding for a pardon after leaving the bench. The Committee found that the

former judge had participated substantially in the merits of the case and was precluded under The Mississippi Rules of Professional Conduct from representing the defendant in an effort to obtain a pardon from the Governor. See also the Mississippi Commission on Judicial Performance v. Atkinson, 645 So. 2d 1331 (Miss. 1994) where a part-time Municipal judge pro tem was publicly reprimanded for conducting a preliminary hearing on a felony armed robbery charge ordered the defendant bound over to the grand jury and ultimately set his bail at \$40,000. Subsequently, the municipal judge was hired in his capacity as a private attorney to try to get the accused's bond reduced. Toward that end, he filed and argued a petition for reduction of bond which was denied by the presiding judge. See also I.A.O. No. 52 for a similar situation.

Based upon the questions presented, the Committee is of the opinion that a former chancellor may not later represent parties in proceedings for contempt or modification of decrees and judgments which were rendered in the case by the former chancellor. In such cases, the participation of the former chancellor as a presiding judge is deemed substantial.

The entry of a judgment in a non-contested divorce and in a no-fault divorces each require findings by the presiding chancellor on ultimate legal and factual issues affecting the merits of the case. The Committee is of the opinion that a former chancellor may not later represent a party in subsequent litigation of such cases in which he participated as presiding judge.