

**ETHICS OPINION NUMBER 227
OF THE MISSISSIPPI BAR
RENDERED APRIL 10, 1995**

DECLINING OR TERMINATING REPRESENTATION--A lawyer should withdraw from representing a client where the lawyer's mental condition impairs the lawyer's ability to represent the client.

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

1. Where an attorney suffers from depression and post-traumatic stress symptoms (as diagnosed by his psychiatrist) that make it difficult to complete cases he took with him after leaving his former law firm, should the attorney continue with the cases or return them to his former law firm?
2. If the cases are returned to the former law firm, can the attorney be subjected to disciplinary proceedings if his former law firm objects to the cases being returned?

The Ethics Committee is of the opinion that the first question is the more important one, and the answer to it is provided by Rule 1.16 (a)(2) of the Mississippi Rules of Professional Conduct. That rule states (in pertinent part):

(a) *** ... a lawyer shall not represent a client or, where representation has commenced, shall withdraw from representation of a client if:

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client.

In the facts presented, the attorney states that he has been diagnosed as being depressed and suffering from post-traumatic stress symptoms. The attorney states that he is under the care of a psychiatrist and that he is having difficulty completing the cases he took from his former law firm in a "diligent or competent manner."

Clearly, the attorney must withdraw from the cases. It is a violation of the MRPC for him to continue to handle the cases given the facts he has presented.

Once the attorney withdraws from the case, the client is free to retain other counsel, whether it be the attorney's former law firm or someone else.

As for the second question, there is no way for the Ethics Committee to give an answer which will insulate the attorney from a bar complaint, either by his former law firm or one of his clients (if the former law firm or the client has a basis for a complaint).

The Committee does recommend, however, that the attorney take care to comply with Rule 1.16(d), which provides:

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.