

**ETHICS OPINION NUMBER 230
OF THE MISSISSIPPI BAR
RENDERED ON NOVEMBER 16, 1995**

CONFLICT OF INTEREST - A lawyer may receive stock in a corporation as a fee for incorporating the business and may provide legal advice to the corporation after it is formed.

The Ethics Committee of The Mississippi Bar has been requested to render an opinion about whether it is a conflict of interest for an attorney to accept stock in a corporation as a fee for incorporating the business and further whether the lawyer can provide advice to the corporation in which he owns stock after it is organized.

The Committee is of the opinion that, on the facts presented, the acceptance of stock in a corporation as a fee for incorporating the business does not create a conflict of interest per se. However, transactions between a lawyer and the lawyer's client are governed by Rule 1.8(a) of the Mississippi Rules of Professional Conduct, which provides:

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 and transmitted in writing to the client in a manner which can be reasonably understood by the client; (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and (3) the client consents in writing thereto.

The comment to Rule 1.8 explains the rationale in this way:

As a general principle, all transactions between client and lawyer should be fair and reasonable to the client. In such transactions a review by independent counsel on behalf of the clients is often advisable.

Since the lawyer's acquisition of stock in the client amounts to the entering into a business transaction with the client, the requirements of Rule 1.8(a) would apply in this situation.

In addition, there might be special circumstances under which a conflict could be presented, and the lawyer should, as always, be guided by Rule 1.7 and other related provisions of the Mississippi Rules of Professional Conduct.

Similarly, the Committee is of the opinion that there is no inherent conflict of interest in a lawyer providing legal advice to a corporation in which he owns stock, but the provisions of Rule 1.8(a) also, apply to such representation. Further, such representation is of course, subject to the general rule regarding conflicts of interest, Rule 1.7, which states:

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.

Because the interest of the corporation and the interest of its stockholders do not, in theory at least, diverge, the Committee is of the opinion that mere stock ownership does not in and of itself create a situation in which representation of the corporation may be materially limited by the lawyer's own interest. Again, however, situations might be presented in which a conflict of interest could arise, and attention to the Rules of Professional Conduct is always advisable especially Rule 1.13 in situations similar to those in this opinion. As this Committee pointed out in Ethics Opinion No. 202 rendered on September 4, 1992, a lawyer's business relationships with clients always present the risk of potential conflicts of interest and should be approached with care.