

**ETHICS OPINION NUMBER 236  
OF THE MISSISSIPPI BAR  
RENDERED SEPTEMBER 19, 1996**

**DUTY OF PUBLIC DEFENDER/APPOINTED COUNSEL TO PROVIDE INDIGENT CLIENT WITH FILE AND TRANSCRIPTS OF PROCEEDINGS:** A public defender/appointed counsel must, upon request, provide an indigent client with the original or a copy of the client's file but has not ethical duty to provide the client with transcripts of proceedings.

The Ethics Committee of The Mississippi Bar has been asked to render an opinion as to what duties a court appointed attorney or public defender has in providing the following items to an indigent criminal defendant:

1. Pleadings and any and all court documents.
2. Law enforcement reports and any and all documents relating to discovery.
3. Any and all other documents generated by the attorney or received by the attorney in preparation of the defendant's case.
4. Any and all transcripts of any and all court proceedings whether they are pretrial, trial, or post conviction.
5. Transcripts of proceedings which the attorney deems to be unnecessary in the preparation of defendant's case such as a bond reduction hearing, preliminary hearing, motion hearings, and/or other similar transcripts.

In a related query, if the attorney is required to provide transcripts, is the attorney charged with the responsibility of payment of any and all court reporter costs connected with providing said transcripts if the county refuses to pay these costs because of budgetary concerns or local judiciary guidelines?

The Committee considers the inquiry to be in two parts. First, what is the duty of the appointed attorney or public defender to the indigent criminal defendant client with respect to the client's file and, second, what, if any, duty does the attorney have to provide the client with transcripts of proceedings absent payment by or on behalf of the client for the transcripts?

The Mississippi Bar has previously recognized that a lawyer has an ethical duty to turn over the client's files when requested by the client and a discharged lawyer must

deliver the client file, even if he has not been paid. Opinions No. 105 and 144. It makes no difference that the client is an indigent criminal defendant and the attorney is a public defender or appointed counsel. The duty remains the same.

Generally, the client's file consists of the papers and property delivered him by or caused by the client to be delivered to the lawyer, the pleadings or other end product developed by the lawyer, correspondence engaged in by the lawyer for the benefit of the client, and investigative reports which have been paid for by the client. The lawyer's work product is generally not considered the property of the client, and the lawyer has no ethical obligation to deliver his work product. Opinion 144.

As far as transcripts of proceedings are concerned, the Committee assumes that the transcripts have yet to be transcribed and, thus, the opinion of the Committee relates to the duty of the lawyer to obtain and pay for the transcription. Rule 1.8(e)(2) provides that a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client, however, there is no affirmative duty to advance such costs and expenses of litigation. Therefore, the Committee finds no ethical duty on the part of the attorney to provide the client with a transcript of proceedings. Section 99-105 of the Mississippi Code of 1972, as Amended, makes provisions for preparing the record of the proceedings in a trial court for the purposes of appeal for an appellant who is unable to prepay the costs.

The Committee notes that if, during the course of proceedings copies of transcripts were obtained for use on behalf of the client and retained in the file, then such transcripts would be a part of the end product developed by the lawyer and thus constitute a part of the client's file which should be delivered to the client upon request.