

**ETHICS OPINION NUMBER 46
OF THE MISSISSIPPI STATE BAR
RENDERED NOVEMBER 30, 1978
AMENDED APRIL 6, 2013**

CONFLICT OF INTEREST - The attorney for the executor of an estate, absent other factors, does not have a conflict of interest precluding him from representing the executor in an action by beneficiaries of the estate against the executor excepting in the final accounting.

The Ethics Committee of the Mississippi State Bar has been requested to render an opinion of the ethical propriety of an attorney for the executor of an estate representing the executor in a proceeding brought by beneficiaries of the estate excepting to the final accounting of the executor. The question presented is whether or not the acts of the attorney in advising and representing or other circumstance between the attorney and the beneficiaries of the estate which would give rise to a conflict of interest on the part of the attorney in an action between the beneficiaries and the executor.

Thus, the question arises: Does the attorney represent the executor or does the attorney represent the "estate"? In the event the attorney's duty is to advise and direct the executor in the performance of his duties including the preparation of necessary pleadings and the entry of proper decrees, then one can conclude that the attorney represents the executor personally and, therefore, has no conflict of interest in representing the executor in a proceeding brought by beneficiaries of the estate.

However, in the event it is determined that the attorney as a matter of law represents the "estate", it would then appear that Rule 1.7 of Mississippi Rules of Professional Conduct ("MRPC") is applicable. Thus, the lawyer may serve as attorney for the executor only if the executor's interests are not adverse to those of the estate.

Accepting the apparent representation, that the attorney represents the executor, it is the opinion of the Ethics Committee that there is no impropriety in the attorney for the executor of an estate representing the executor in proceedings brought by beneficiaries of the estate against the executor.