



MISSISSIPPI BANKRUPTCY CONFERENCE
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Mississippi Bankruptcy Conference

Hypotheticals

In this presentation, we'll explore a series of hypotheticals designed to illuminate how core ethical principles apply in real-world bankruptcy scenarios. For each situation, consider the attorney's professional responsibilities—both under Mississippi Rules of Professional Conduct. Our goal is to provoke thoughtful discussion, sharpen ethical judgment, and reinforce best practices in serving clients and the court.

Hypothetical 1: Dual Representation of Debtor and Insider

You represent a Chapter 11 corporate debtor. The company's president asks you to also represent him personally in connection with a potential fraudulent transfer action by the trustee. He says it will "save legal costs" if you handle both.

Can you represent both the debtor and its president?

Hypothetical 2: Filing a Bankruptcy Petition to Delay a Creditor

A small business owner admits to you that his Chapter 7 filing is solely to delay an impending state court judgment, and he has no intent to proceed in bankruptcy.

Can you file the petition anyway?

Hypothetical 3: Ghostwriting Pleadings

Attorney drafts a motion for a pro se debtor but does not sign or disclose involvement.

Has the attorney acted unethically?

Hypothetical 4: Attorney use of generative AI

Attorney has heard about generative AI and is excited about this "new search engine" that can draft legal documents. She inputs the basic facts and asks the program to draft a motion to avoid a lien under Section 522(f) of the Bankruptcy Code. The motion appears polished and she files the motion as written. At the hearing, the judge notes that two of the cases cited are fictitious and one misstates the holding of a real case.

Has attorney acted unethically? Could she ethically use generative AI?

Hypothetical 5: Disclosure of Client's Fraudulent Conduct

A Chapter 7 debtor confides in you that she failed to disclose a valuable antique collection in her schedules and does not intend to do so.

What action, if any, should you take?

Hypothetical 6: Representing multiple creditors

Two unsecured creditors of the same Chapter 7 debtor ask you to represent them both in objecting to discharge.

Is this permissible?

SOURCES

Rules

Rule 1.7 Conflict of Interest: General Rule

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless the lawyer reasonably believes:

- (1) the representation will not adversely affect the relationship with the other client; and
- (2) each client has given knowing and informed consent after consultation. The consultation shall include explanation of the implications of the adverse representation and the advantages and risks involved.

(b) 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 interests, 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.

Rule 3.1. Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and in fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Rule 3.3. Candor Toward the Tribunal

- (a) A lawyer shall not knowingly:
- (1) make a false statement of material fact or law to a tribunal;
 - (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
 - (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
 - (4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.
- (b) The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by [Rule 1.6](#).
- (c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.
- (d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

CASES

In re Mungo, 305 B.R. 762 (Bankr. D.S.C. 2003)

ETHICS OPINIONS

Miss. Ethics Op. No. 205 (October 30, 1992)

Miss. Ethics Op. No. 261 (June 21, 2018)

Miss. Ethics Op. No. 267 (Nov. 14, 2024)