



ILLINOIS STATE  
BAR ASSOCIATION

# ISBA Advisory Opinion on Professional Conduct

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This Opinion was **AFFIRMED** as to Part I by the Board of Governors in July 2010. Part II of the opinion was **WITHDRAWN** by the Board of Governors in January 1991. Please see the 2010 Illinois Rules of Professional Conduct 1.10, 1.11, and 1.12. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

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**Opinion No. 800**  
**July 15, 1983**

**Topic: Appearance of Professional  
Impropriety; Former Judge  
as Partner in Law Firm**

Digest:

(1) A former presiding judge is disqualified from any participation in matters in which he acted upon the merits in a judicial capacity.

~~(2) The judge's firm is disqualified from any participation in matters which may involve advocacy against his prior rulings or other judicial work product.~~

Ref: Canon 9; Rules 5-101(a); 9-101(a), (b) and (c);  
EC 9-3;  
Commentary to Rules 5-105 and 9-101  
ISBA Opinions 762 and 182.

## FACTS

The former presiding judge ("Judge X") of a circuit court division is now a partner in a law firm which handles the type of litigation with which Judge X was involved while on the bench.

As presiding judge, X acted in an administrative capacity, including the assignment of all cases in his division. He also acted on individual cases in both non-contested and contested matters, including trials.

## QUESTIONS

(1) To what extent is X disqualified from involvement in matters pending before the circuit court during his term as presiding judge?

(2) To what extent is his firm disqualified from involvement in matters as to which X is disqualified?

## OPINION

I. To the extent that X participated judicially in the merits of a particular matter, including the hearing of prove-ups on default judgments, routine matters and non-contested motions, he is disqualified from all further involvement in that matter. Rule 9-101(a) states: "A lawyer shall not accept private employment in a matter upon the merits of which he has acted in a judicial capacity". EC 9-3 provides similarly, although it uses the test of "substantial responsibility" rather than involvement with the merits of a case. However, judicial involvement in the merits presumably constitutes sufficient responsibility to disqualify X under the EC as well as the Rule.

In other matters pending during his term as presiding judge, X acted only in an administrative capacity in assigning them for handling. Rule 9-101(b) provides that: "\*\*\*\*a lawyer who leaves public employment shall not appear in the capacity of a lawyer before the public body by which he was employed on a matter in which during the public employment the lawyer participated personally and substantially or which was under his official responsibility". EC 9-3 indicates that for purposes of Canon 9, judicial office is a type of public employment.

However, the assigning of cases for handling does not appear to constitute substantial personal participation therein, or amount to official responsibility therefore, for purposes of Rule 9-101(b).

Accordingly, X is not disqualified from involvement in such matters if he did not participate judicially in them as precluded by Rule 9-101(a).

It should be noted that Rule 9-101(b) is subject in its application to any stricter standard imposed by the court itself, and that X is also precluded from any type of employment in any matter which might involve his advocacy against any of his own rulings or work product while in office. ISBA Opinions 762 and 182.

It should also be noted that Judge X may be disqualified under Rule 5-101(a) where the exercise of his independent professional judgment may be affected by a matter in which he was involved while acting as a judge.

## ~~II.~~

~~X's firm is not automatically disqualified in every instance in which X is himself disqualified under the aforesaid Rule. Unlike the ABA Code, the Illinois Code of Professional Responsibility requires disqualification of the lawyer's firm only in the event of his personal disqualification under Rule 5-105. "Thus, if the lawyer's personal disqualification were mandated by some other disciplinary rule, e.g. Rule 9-101, it would not automatically result in disqualification of his firm." Committee Commentary to Rule 5-105, and see Commentary to Rule 9-101.~~

~~This Committee is of the opinion that X's firm, as well as X, will be disqualified in any matter which might involve advocacy against any of X's rulings or against his other judicial work product (ISBA Opinions 762 and 182), or in any matter where the exercise of independent professional judgment may be affected by a matter in which X was involved while acting as judge. Rule 5-101(a).~~

~~Subject to the foregoing, the other members of X's firm are not automatically disqualified from involvement in matters as to which X is himself disqualified under Rule 9-101, and may become involved in any phase of such matters to the extent the professional propriety standards of Canon 9 are not violated.~~

~~However, neither X nor any other attorney in X's firm may make use of any knowledge, confidences or secrets obtained by X while in office (ISBA Opinion 762 and Committee Commentary to Canon 9), nor state or imply that the firm may be able to influence any tribunal or other public official or body for any reason including X's membership in the firm. Rule 9-101(c). See LaSalle National Bank, et al v. County of Lake, et al, 703 F.2d 252 (7th Circuit, 1983).~~