



**ILLINOIS STATE  
BAR ASSOCIATION**

# **ISBA Advisory Opinion on Professional Conduct**

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**ISBA Advisory Opinions on Professional Conduct are prepared as an educational service to members of the ISBA. While the Opinions express the ISBA interpretation of the Illinois Rules of Professional Conduct and other relevant materials in response to a specific hypothesized fact situation, they do not have the weight of law and should not be relied upon as a substitute for individual legal advice.**

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**This Opinion was AFFIRMED by the Board of Governors in July 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.6 and 1.7. 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. 86-12  
January 9, 1987**

Topic: Conflict of Interest

Digest: Representing a police officer in departmental disciplinary proceedings does not disqualify the attorney from defending criminal cases investigated by the same police department as long as the matters are not related.

Ref.: Rules 4-101 and 5-105  
ISBA Opinion Nos. 477 and 753

## FACTS

An attorney represented a police officer in disciplinary proceedings brought against that police officer before an administrative board charged with the duty of determining disciplinary matters involving police officers. The board proceedings are concluded, resulting in the continuation of employment by the police officer. The attorney is now asked to represent persons charged with criminal offenses in cases investigated by the same police department and possibly by the police officer that the attorney defended.

## QUESTIONS

May an attorney who has defended a police officer in disciplinary proceedings later represent

clients in criminal cases investigated by the employing police department?

May an attorney who has represented a police officer in disciplinary proceedings later represent defendants in criminal cases investigated by that same police officer?

### OPINION

In the situation presented to us, the attorney has represented a police officer in an administrative disciplinary proceeding thereby establishing an attorney/client relationship between the attorney and the police officer involving that one matter. That case has been concluded and there does not appear to be any ongoing or continuing relationship between the attorney and the police officer.

ISBA Opinion No. 477 (February 21, 1976), held that an attorney may not represent a police association and represent its members individually on a continuing basis and still represent defendants in criminal cases investigated by that police department. In reaching that opinion, the committee determined that it was not unreasonable that a criminal defense may well be colored, even without conscious recognition of the fact, by the attorney's personal knowledge of the individual policeman arising out of his employment to represent them at hearings before the local board of fire and police commissioners. It was felt that this may be an intrusion on the lawyer's duty to exercise independent professional judgment on behalf of a client and that it in some manner violated the provisions of Canon 9, that "a lawyer should avoid even the appearance of professional impropriety."

We do not overrule ISBA Opinion No. 477, but find that the present factual situation is distinguishable on the basis that in the prior opinion, there was an ongoing relationship between an association, the attorney and the police officers and continued employment representing the individual officers before the administrative board. In the present situation, we have what appears to be a one time or at best occasional employment.

Rule 5-105 sets forth the conditions or circumstances under which a lawyer should refuse to accept or continue employment if the interests of another client may impair the independent professional judgment of the lawyer. Rule 5-105 (a) and (b) delineate the prohibited conduct, i.e., if the exercise of the lawyer's independent professional judgment on behalf of a client will be or is likely to be adversely affected by the acceptance of employment or if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client. In the committee commentary, it is pointed out that the Rule applies when the interest of the client in one matter may be partially adverse to the interest of another or present client and that extreme care must be exercised in enforcing the disqualification of lawyers under the Rule.

We are not faced with a situation where the disciplinary proceedings brought against the police officer arise out of the same facts or circumstances giving rise to the criminal charges nor is the defendant in the criminal case stated to be a party or witness to the disciplinary proceedings.

Unless during the course of representing the police officer in the disciplinary proceedings,

information was revealed to the attorney that could be used to affect the outcome of the criminal case, we do not see how the two matters are related or why the attorney should be disqualified from representing the defendant in the criminal action. See Rule 4-101.

There is no prohibition in the Code of Professional Responsibility prohibiting a lawyer from handling a matter that is contrary to the interest of a former client unless the lawyer has some special knowledge or information about the former client gained through the attorney/client relationship or the two matters arise out of the same factual background or the facts in one case could be used to the disadvantage of the former client in the other case. See Opinion No. 753 (November 2, 1981).

We therefore conclude that in the absence of a factual relationship between the disciplinary proceedings and the pending criminal matter, there is no conflict that would prohibit the attorney from representing the defendant in the criminal case.

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