



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in May 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.7 and 1.9. 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.

**Opinion No. 91-5
October 25, 1991**

Topic: Conflict of Interest - Former Client
Lawyer for Executor, Duty to Legatee

Digest: Attorney representation of Executor when former client is judgment creditor of Legatee is restricted by Rules

Ref.: 1990 Illinois Rules of Professional Conduct, Rules 1.7(b) and 1.9

FACTS

An attorney represented a creditor and obtained a judgment against debtor. Subsequently, the attorney represented an estate of which the judgment debtor was a legatee. The executor of the estate was advised of the attorney's participation in the judgment against the debtor/legatee. Independent counsel then served the estate with a garnishment order to enforce the judgment. The executor of the estate then paid the judgment debtor's portion of the estate to the judgment creditor pursuant to the garnishment order.

QUESTION

Under the foregoing circumstances, may the attorney ethically represent both the creditor and the estate?

OPINION

Rule 1.9 states that an attorney who formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client or use information relating to the representation to the disadvantage of the former client, unless the former client consents after disclosure; or use information relating to the representation to the disadvantage of the former client unless the client consents after disclosure or the information has become generally known.

Rule 1.7 provides that 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 unless the attorney believes the representation will not be adversely affected and the client consents after disclosure.

The attorney in the facts presented represents the executor of the estate. The executor has a fiduciary relationship with the legatee/judgment debtor. The attorney for the executor has a duty to guard that fiduciary relationship and aid in the performance of the executor's duties. That requires a determination that the garnishment proceedings are in order and if defective, the attorney has a responsibility to inform the executor of that fact and advise the executor as to the proper course of action. Upon service of the garnishment, the attorney must disclose to the executor his representation of the judgment creditor and, if the attorney reasonably believes his representation of the executor will not be adversely affected, the attorney must not merely inform the executor of the representation of the judgment creditor, but secure his consent after disclosure as required by Rule 1.7(b).

The representation of the executor with respect to the garnishment is substantially related to the representation of the judgment creditor and may involve the use of information to the disadvantage of that former client. Rule 1.9 prohibits that representation unless the former client, in this case the judgment creditor, consents after disclosure.

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