



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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.

This Opinion was AFFIRMED by the Board of Governors in May 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.7, 1.10, and 8.4. 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. 94-20
March, 1995**

Topic: Conflict of Interest; Lawyer in public office

Digest: Partner of lawyer who is also a municipal police officer should not represent a client in a claim against the municipality.

Ref: Illinois Rules of Professional Conduct, Rules 1.7, 1.10 and 8.4.
ISBA Opinion No. 84-11 (1985) and No. 90-17 (1991).
In re Vrdolyak, 137 Ill.2d 407, 560 N.E.2d 840 (1990).
72 ILCS 5/2-18 (1992)

FACTS

The inquiring lawyer is a partner in a law firm in which another partner is also a full-time municipal police officer. The lawyer has been asked to represent a client with respect to a claim against the same municipality.

QUESTION

May the lawyer or the firm represent a client in a claim against the municipality that employs a partner of the firm.

OPINION

Several recent ISBA advisory opinions have involved actual or potential conflict of interest issues arising out of the practice of law by lawyers who also hold elective or appointive public offices. In Opinion No. 84-11 (1985), the Committee observed that in such matters, it was not possible to suggest a comprehensive rule applicable in all situations faced by the lawyer in "public office" because each situation typically depends on its specific facts. There are, however, applicable provisions of the Rules of Professional Conduct which guide the conduct of the lawyer and the law firm with which the lawyer is affiliated. As indicated in Opinion No. 90-17, these provisions are found in Rule 1.7, Rule 1.10(a) and Rule 8.4(b).

Rule 1.7(a) provides that a lawyer shall not represent a client if the representation will be directly adverse to another client unless the lawyer reasonably believes the new representation will not adversely affect the relationship with the other client and each client consents after disclosure. Rule 1.7(b) provides that a lawyer shall not represent a client if the representation may be materially limited by the lawyer's responsibility to another client or to a third person or by the lawyer's own interests, unless the lawyer reasonably believes the representation will not be adversely affected and the client consents after disclosure. Rule 1.10(a) provides that no lawyer associated with a firm shall represent a client that another lawyer associated with that firm would be prohibited from doing so by Rule 1.7, with exceptions not relevant here. Rule 8.4(b)(2) provides that a lawyer who holds "public office" shall not use that office to influence, or attempt to influence, a tribunal to act in favor of a client.

Also potentially relevant is the Illinois Supreme Court opinion *In re Vrdolyak*, 137 Ill.2d 407, 560 N.E.2d 840 (1990). In that case, the Court held that the respondent, an alderman, engaged in a conflict of interest contrary to Rule 5-101(a) of the former Code of Professional Responsibility when he represented city employees in their workers' compensation cases against the city, even though respondent had abstained from any council votes relating to claims against the city. In this situation, the Court found that the respondent alderman owed undivided loyalty and a fiduciary duty to the city. "By representing clients against the City, the competing fiduciary duties collided, and respondent became embroiled in a conflict of 'diverging interests' and divided loyalties, which even full disclosure could not avoid." 137 Ill.2d at 422. This holding treats the public entity as if it were another client for purposes of the conflicts rules.

The term "public office" is not defined in the Rules of Professional Conduct. Nor has the Committee found a definition of "public office" in the Illinois Compiled Statutes. The Criminal Code, at Section 2-18, defines a "public officer" as a person "who is elected to office pursuant to statute, or who is appointed to an office which is established, and the qualifications and duties of the State or any of its political subdivision." 720 ILCS 5/2-18 (formerly Ill. Rev. Stat. Ch. 38, ¶2-18). Under this definition, it would appear that the police officer partner holds "public office" within the meaning of both Rule 8.4(b) and *Vrdolyak*.

As noted above, under Rule 1.10(a) relating to vicarious disqualification, any lawyer affiliated with the police officer lawyer would be precluded from accepting any representation when the police officer lawyer would be prohibited from doing so by Rule 1.7. Under these circumstances, the Committee believes that the firm should not accept representation adverse to the municipality.

First, if the police officer lawyer is a "public officer" within the meaning of *Vrdolyak*, then treating the municipality as if it were another firm client would result in a direct conflict of interest between the representation of a claimant against the municipality and the police officer lawyer's duty to the municipality, contrary to Rule 1.7(a). In the Court's opinion in *Vrdolyak*, this conflict of interest could not be cured by disclosure and the consent of the parties.

Second, even if *Vrdolyak* does not apply to this situation, Rule 1.7(b) would preclude the representation of a client against the police officer partner's full-time employer. The employment relationship would obviously constitute a material limitation on the representation of a claimant against the municipality. Nor would it be appropriate to seek the client's consent in this situation because the police officer lawyer could not reasonably believe that the representation would not be adversely affected by the full-time employment relationship. Although the condition creating the conflict of interest in this situation is arguably "personal" to the police officer partner, the Committee finds no "personal" exception to the operation of Rule 1.7(b) and Rule 1.10(a).

Finally, the Committee is concerned that the representation of this client by a lawyer, or the partner of a lawyer, holding an office in the criminal justice system could be viewed as an attempt to obtain more favorable treatment for the claimant. If this concern were factually correct, such an attempt would constitute a violation of Rule 8.4(b)(2).

* * *