



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in January 2010. Please see the 2010 Illinois Rule of Professional Conduct 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.

**Opinion No. 99-01
September 1999**

Topic: Conflict of Interest; dual or multiple representation of parties with adverse interests

Digest: A lawyer should not undertake representation of one spouse in a marriage dissolution matter if the lawyer already represents the client's spouse in another family law matter.

Ref.: Illinois Rules of Professional Conduct, Rule 1.7
ISBA Advisory Opinion No. 95-15
ABA Model Rules of Professional Conduct, Rule 1.7, Comment 5
Geoffrey C. Hazard and W. William Hodes, The Law of Lawyering: A Handbook on the Model Rules of Professional Conduct, §1.7:207 (2d ed. Supp. 1996)

FACTS

A lawyer represents Client H in a dissolution action against his spouse, Client W. The lawyer simultaneously represents Client W in a custody proceeding against Client W's former husband. (Client H is a lawyer licensed to practice law in Illinois.)

QUESTION

Does the lawyer have a conflict of interest by simultaneously representing Client H and Client W?

OPINION

Illinois Rules of Professional Conduct, Rule 1.7 provides:

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:
 - (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
 - (2) each client consents after disclosure.

- (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:
 - (1) the lawyer reasonably believes the representation will not be adversely affected; and
 - (2) the client consents after disclosure.

- (c) When representation of multiple clients in a single matter is undertaken, the disclosure shall include explanation of the implications of the common representation and the advantages and risks involved.
Adopted February 8, 1990, effective August 1, 1990.

Rule 1.7 prohibits the simultaneous representation of clients whose interests are directly adverse, unless the lawyer reasonably believes the representation will not adversely affect either client and the clients' consent after full disclosure. In order to fall within the exception to the general rule regarding conflict of interest, the lawyer must first reasonably conclude that any potential limitation will not adversely affect the representation of either client. ISBA Opinion No. 95-15. Dual representation will be improper where a disinterested lawyer would conclude that the client should not agree to the representation. ABA Model Rules of Professional Conduct, Rule 1.7, Comment 5. A lawyer should address disclosure and consent issues only after this judgment is made. Then, both clients must consent after full disclosure. In obtaining such consent, the lawyer must explain the consequences of simultaneous representation, including the benefits and risks involved.

Rule 1.7 sets a stricter standard than Rule 1.9, which applies to representation of former clients. Unlike Rule 1.9, which prohibits representation of a person whose interests are materially adverse to a former client in a substantially related matter, Rule 1.7 does not limit the analysis of the conflict issue by using modifiers such as "materially" or "substantially" and implies that "any impairment of the client-lawyer relationship precludes concurrent representation in situations of direct client-to-client conflict." Geoffrey C. Hazard and W. William Hodes, "The Law of Lawyering: A Handbook on the Model Rules of Professional Conduct," §1.7:207 (2d ed. Supp. 1996).

In this situation, a lawyer must "reasonably" conclude that his simultaneous representation of Client H and Client W would not adversely affect the relationship with either client. Here, the lawyer is representing Client H in divorce litigation directly adverse to Client W, and, at the same time, is representing Client W in a custody proceeding. The matters the lawyer is handling are directly related, and the lawyer would be learning confidential information about both clients through his

simultaneous representation which could, and most probably would, prove damaging to either client.

This is a situation involving direct client-to-client conflict founded upon direct adversity in closely related matters. It is not a conflict that can be waived because of the lawyer's loyalty to both clients might be impaired and most likely will be impaired through the lawyer's dual representation. The lawyer may not be able to exercise independent professional judgment relative to either matter, since a particular course of action that would otherwise be appropriate may adversely affect one or both the lawyer's clients. Therefore, the lawyer's analysis of the situation based on Rule 1.7 never reaches the issue of disclosure and consent since this is an objective conflict which adversely affects the lawyer-client relationship.

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