



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in July 2010. Please see the 2010 Illinois Rule of Professional Conduct 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 Number 704
November 24, 1980**

**Topic: Conflict/Exercise of
Independent Professional Judgment**

Digest: It is professionally improper for a lawyer to represent a client in the defense of a traffic charge and subsequently for a member of the same law firm to oppose the former client's claim for personal injuries arising out of the same accident as the traffic violation.

Ref: Canon 4
Rule 4-101(a) (b), and 5-105
ABA Formal No. 33
EC 4-5
ISBA Opinion 701

QUESTION

May Law Firm A accept employment in opposing the personal injury claim of a former client after representing him on a traffic ticket issued and arising out of the same accident?

If Law Firm A enters its appearance for the defendant before realizing that it had represented plaintiff in the traffic matter, is Law Firm A required to withdraw upon becoming aware of this

fact?

OPINION

Canon 4 provides that "a lawyer should preserve the confidences and secrets of a client."

R 4-101(a) provides that "confidence" refers to information protected by the attorney-client privilege..."secret" refers to other information gained in the professional relationship...the disclosure of which would be embarrassing to or would likely be detrimental to the client. R 4-101(b) provides that ...a lawyer shall not knowingly, during or after termination of the professional relationship to his client,

- 1) Reveal a confidence or secret of his client;
- 2) Use a confidence or secret of his client to the disadvantage of the client; or
- 3) Use a confidence or secret of his client for the advantage of himself or of a third person, unless the client consents after full disclosure.

American Bar Association's Formal Opinion No. 33 provides that "an attorney may not accept litigation against a past client if such requires that the attorney contest the same issue for which he previously was an advocate in the prior litigation. Nor may a partner of such attorney accept such litigation even though he was not a partner at the time of the prior litigation."

ISBA EC 4-5 states "a lawyer should not use information acquired in the course of the representation of a client to the disadvantage of the client and a lawyer should not use, except with the consent of his client after full disclosure, such information for his own purposes. Likewise, a lawyer should be diligent in his efforts to prevent the misuse of such information by his employees and associates. Care should be exercised by a lawyer to prevent the disclosure of the confidences and secrets of one client to another, and no employment should be accepted that might require such disclosure."

Based on the fact situation presented and the quoted references, it appears obvious that information gained in the course of representing client in a traffic citation and in negotiating a disposition of the traffic case would involve the same incident and same factual events upon which the subsequent lawsuit was based. To allow Law Firm A to defend the civil claim against the former client would result in a break in the preservation of confidences and secrets of the former client thus being a direct violation of Rule 4-101.

An attorney has the obligation to preserve the confidences and secrets of a client and that obligation extends to employees, associates and partners of the law firm.

Once Law Firm A obtains knowledge of the conflict it should withdraw from representing the defendant in the civil suit so as not to violate Rule 5-105. As to a very obvious conflict situation under Rule 5-105, see ISBA Opinion 701.

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