



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 Rules of Professional Conduct 1.7 and 1.10. 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 748
January 12, 1982

**Topic: City Attorneys and
Criminal Defense**

Digest: It is professionally improper for a salaried City Attorney, or the members of his firm, to accept employment for criminal defense in cases where the alleged crime occurred within the city.

Ref: Rule 5-105(a); Rule 5-105(d)
ISBA Opinions 186, 323, 477, 291, 364, 455 and 522

ISSUE

Inquiry is made as to whether a part-time, salaried City Attorney, whose duties include prosecuting city ordinance violations and providing legal advice to the city's police department, may ethically represent persons charged by the State's Attorney for violations occurring within the city limits, and as to whether members of his firm may accept such cases.

OPINION

Those issues have been presented to the Committee on several past occasions, and the answers to the questions have always been "no."

Rule 5-105(a) provides that a lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of an existing client will be, or is likely to be, adversely affected by the acceptance of the proffered employment, except in those cases where "it is obvious" that he can adequately represent the interests of both clients. In Professional Ethics Opinion No. 186, the Committee determined that a City Attorney should refrain from the defense of persons accused of crimes where the alleged crimes were committed within the territorial limits of the municipality; a similar result was reached in Opinions 323, 543, 477, and 291.

These Opinions are based on the rationale that an actual or apparent conflict of interest would result where a City Attorney represents a client charged with the commission of a crime within the city limits.

Many criminal charges which are prosecuted by the State's Attorney also constitute city ordinance violations; in Opinion No. 291, the committee stated that the citizens of a village, whom the lawyer represents, are members of the public which has an interest in the prosecution of the criminal charges against the defendant.

Rule 5-105(d) states that if a lawyer is required to decline employment under Rule 5-105, no member of his firm may accept such employment. In Opinion No. 364, the Committee stated that if an attorney is the corporation counsel for a village, he and all members of his firm should refrain from defending traffic and criminal cases based on alleged offenses occurring within the village. See also Opinion Nos. 455 and 522.

Based on these considerations, the Committee is of the opinion that a part-time, salaried City Attorney, whose duties include prosecuting city ordinance violations and providing legal advice to the city's police department, is precluded by Rule 5-105(a) from representing persons charged by the State's Attorney for violations alleged occurring within the city limits, and the other members of that attorney's firm are precluded from accepting similar employment by Rule 5-105(d).