



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 1.6(a) 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 Number 753
November 2, 1981

Topic: Conflicting Interests;
Confidences and Secrets of Clients

Digest: It is not per se a conflict of interest for a lawyer to represent a client adverse to a former ad hoc client in a totally unrelated matter which does not involve confidences or secrets of the former client.

Ref: Canon 4; Rules 4-101(b) (2)and (3);
Canon 5; Rule 5-105;
ISBA Opinions 603, 581, and 569;
ABA Informal Opinion 1233.

FACTS

A lawyer was employed by defendants in a suit brought by a former client of the lawyer. The lawyer had represented the plaintiff general contractor in a suit on a public construction contract. The previous suit had been settled by the parties on terms not completely satisfactory to the former client.

The contractor brought a different suit within one year after the settlement and dismissal against parties to a different construction contract who retained plaintiff's former lawyer and the lawyer has asserted the same type of defenses which were asserted in the first suit.

QUESTION

Does a conflict of interest exist sufficient to disqualify the lawyer from accepting employment in the second suit?

OPINION

In order to answer this inquiry it is necessary to make assumptions; first, that the lawyer was not engaged as a general attorney by the contractor during the period of negotiation of the contract and performance out of which the second suit arose; second, that the facts involved in the second suit are completely unrelated to the facts in the first suit in which the lawyer represented the plaintiff. This being the case, no conflict under Canon 5 and Rule 5-105 of the Code of Professional Responsibility would exist. Employment of a lawyer for the purpose of handling an isolated matter on an ad hoc basis for a client does not, after completion of the employment, absolutely foreclose the acceptance of subsequent employment for another client whose interests are adverse to the first client. See ISBA Opinions 603, 581, and 569 and ABA Informal Opinion 1233.

The assumptions we have made, of course, would rule out the prohibitions of Canon 4 dealing with the preservation of confidences and secrets of a client. Rules 4-101(b) (2) and (3) provide that a lawyer shall not knowingly, during or after termination of the professional relationship either use a confidence or secret of his client to the disadvantage of the client, or 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.

The fact that the lawyer is advocating and supporting opposite viewpoints on the same or similar issues does not create a conflict of interest under Canon 5.