



**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 8.4(k) with its Comment [5]. 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. 789
June 28, 1982**

Topic: Conflict of Interest.

Digest: A lawyer who is a part-time Assistant States Attorney assigned to civil cases cannot represent private clients on zoning matters before the County Board.

Ref.: Rule 5-105 and 5-107(a)
ISBA Opinions 298 and 729
Canon 9

FACTS

A part-time Assistant States Attorney is assigned civil matters on a case by case basis and maintains his own office from which he conducts a private practice. He occasionally has private clients who have zoning matters in the county.

QUESTION

Can a part-time Assistant States Attorney handling civil matters assigned to him by the States Attorney represent private clients on zoning matters before the county board.

OPINION

The issue of conflict of interest on the part of part-time city attorneys, Special Assistant Attorney Generals or part-time Assistant States Attorneys has come before this committee on many occasions, most recently in the inquiry that resulted in Opinion No. 729. That opinion reviewed a number of other committee opinions dealing with similar questions but most of those questions arise where the part-time assistant is asking if he or she or their partners can handle criminal matters.

In the fact situation posed to the committee we have an Assistant States Attorney who is assigned civil cases on a case by case basis and who now asks whether or not he can represent a private client on a civil matter, zoning, before the county board.

Rule 5-105 provides as follows:

- a. A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment...
- b. A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client...
- c. In the situations covered by Rules 5-105(a) and (b), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interests of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

Rule 5-107(a) states that a lawyer shall represent his client with undivided fidelity. In the situation before us the lawyer has a duty to the county in various civil matters, is answerable to the county board and the lawyer for his services as an assistant. While there may not be a conflict per se in the actual legal matters being handled, there is certainly the question of influences acting upon the attorney that may be detrimental to either client and the question of undivided fidelity is always present.

This situation is different from one where the duties are totally un-related as in a situation where the attorney is handling only civil matters for the public body and inquires whether or not he or she can handle criminal matters. The attorney in the situation before us takes his directions and control from the States Attorney whose office is responsible for advising the county board on matters of zoning that come before it and as a member of that public officials staff, the part-time assistant has a duty to that employer. The civil matters being handled by the assistant have a greater potential for impacting directly upon the county board than does a criminal case. In ISBA Opinion No. 298 this committee held that where an attorney holds township office, whether a paying position or not, it would be improper for the attorney to represent private clients in matters pending before township boards or committees. In ISBA Opinion No. 670 it was found to be professionally improper for a lawyer to accept employment as a part-time assistant public defender while his partner is a member of the county board which approves the budget for the public defender's office.

The impact or influence that may be present or the concern of offending a person who may take detrimental action against one's personal interest must be avoided and therefore the type of relationship in question cannot be maintained. As set forth in Canon 9, "A lawyer should avoid even the appearance of professional impropriety." The Committee feels that the relationship which is the subject of the inquiry could give rise to that appearance of professional impropriety which must be avoided.

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