



**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 1.9. 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 No. 790
April 9, 1983**

**Topic: Conflict of Interest-
Multiple Clients**

Digest: A firm may not sue one of several multiple clients in a dispute over a matter arising out of the former representation where the firm represented all parties unless there is a waiver from all parties.

Ref.: Rule 4-101; Rule 5-101; Rule 5-105; Rule 5-105(c); Rule 5-107;
ISBA Opinion 701

FACTS

A law firm acted as counsel for a trade association beginning in 1952. In 1977, the firm represented the trade association as cocounsel in court and also represented six individual members of the trade association. The matter was settled by agreement in 1981. The firm that represented the trade association and the six individual members did not consent or know of the settlement order. The firm remained as co-counsel of record up to the settlement order. Thereupon the firm and the trade association terminated their attorney-client relationship. Some dissatisfied members of the trade association have asked the firm to represent them in a lawsuit against the trade association (which has not waived representation by the original counsel) alleging improper disbursement of settlement proceeds and a violation of an agreement giving the members the right to participate in the settlement proceeds.

QUESTION

The inquiry asks whether it is a violation of the Code of Professional Responsibility for the firm to proceed against the trade association under these facts and further asks whether the representation would be proper if the individual members to be represented by the firm waive any conflicts involved in the firm's former representation of the trade association.

OPINION

It is the opinion of the Committee on Professional Responsibility that neither the attorney nor his firm may represent individual members of the trade association against the trade association when the firm has previously represented both the trade association and the individual members in disputes arising out of the same factual situation. The Committee believes that obvious problems may or could arise under Rule 4-101 mandating the preservation of confidences and secrets of a client, under Rule 5-101 requiring an attorney to refuse employment when the interests of a lawyer may impair his independent professional judgment or when it is obvious that he would be involved in the litigation as a witness, under Rule 5-105 requiring a lawyer to refuse to accept employment if the interests of another client may impair the independent professional judgment of the lawyer, and finally, under Rule 5-107(c) stating, "A lawyer shall represent his client with undivided fidelity."

In the facts set forth above, the firm represented the trade association as counsel on a long-standing basis, participated in a lawsuit wherein the firm represented some individual members of the association and the association itself and remained counsel of record in the suit until the case was settled.

The fact that some or all of the clients of the firm entered into the settlement through co-counsel without the knowledge or consent of the firm and thereupon discharged the firm as counsel for the trade association, does not terminate the ethical responsibilities of the firm toward the association in matters wherein the firm represented the association. It is insufficient to obtain a waiver from only some of the multiple clients represented by the firm in the litigation. Under Rule 5-105(c), a waiver would be effective only if each client consents after full disclosure of the possible effect of the representation on the exercise of the independent professional judgment on behalf of all clients involved.

This committee has rendered many opinions to this same effect and attention is directed to a recent discussion of this matter in ISBA Opinion 701 issued January 6, 1981.