



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 1.7 with its Comment [11]. 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. 801
May 11, 1983

Topic: Attorney taking referrals from real estate broker where broker is spouse of attorney.

Digest: It is not a *per se* conflict to represent a client where a blood or spousal relation may have an interest.

Ref: Canon 5; Rule 5-105(a) and Rule 5-101(a)

FACTS

An attorney's spouse is a real estate broker. During the course of handling a typical residential real estate transaction, she is asked to recommend an attorney for the buyer or seller. Under local Real Estate Board guidelines, brokers in such situations are required to supply the names of three attorneys, without indicating a preference for any one of the three so named. The broker includes the name of her husband-attorney as one of the three recommended attorneys.

QUESTION

If the broker includes the name of her spouse-attorney as one of the three suggested attorneys, and the spouse-attorney is asked to represent the seller or buyer in the transaction, may the spouse-attorney do so in compliance with the Rules of Professional Responsibility?

OPINION

While any blood or spousal relationship between parties, which may from time to time involve business relationships on behalf of third persons, may raise questions of propriety, it cannot be said that the relationship creates a *per se* conflict of interest.

However, because conflicts can arise out of this type of relationship, we must examine the Illinois Code of Professional Responsibility to determine what a lawyer should do when faced with a potential conflict.

In *every* case where an attorney/client relationship is established, Canon 5 admonished a lawyer to exercise professional judgment on behalf of a client. With more specificity, Rule 5-107(a) asserts that, "A lawyer shall represent his client with undivided fidelity."

In contemplating proffered employment in matters such as we have in the instant inquiry, the Code further provides in Rule 5-101(a) that,

Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be *or reasonably may* be affected by his own business, property or professional interests. (emphasis supplied)

Every client has the right to know whether his or her lawyer has a financial, business, property or personal interest involving any aspect of the representation which could affect the lawyer's ability to carry out his obligation free of material influences. There are a myriad number of situations that could affect the lawyer's ability to exercise independent judgment on behalf of his client, of which family relationships are only one. Equity toward the client, as well as the black letter language of the Code therefore dictates that, if there are no other impediments to the representation, the lawyer may accept the employment after fully disclosing the relationship and obtaining the consent of the client.