



**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, 1.10, and 1.13. See also ISBA Ethics Advisory Opinion 91-26. 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. 829
April 9, 1983**

Topic: Conflicts

Digest: A law firm which represents the sole shareholder of a corporation may not represent an individual against whom the corporation has a damage suit pending.

Ref: Rule 5-105

QUESTION

A partner in a law firm represents Mrs. Jones in a workers' compensation claim against a corporation for the on-the-job death of her husband. Mrs. Jones and her late husband were the owners of the corporation and Mrs. Jones is now the sole owner. In the workers' compensation suit, the corporation is the nominal defendant, its insurance carrier being the real party in interest. The corporation now sues an unrelated individual, Mr. Smith, on an unrelated matter and another partner in the same law firm undertakes to represent Mr. Smith. Neither of the partners represents the corporation, either generally or in either of the two suits. The question is whether there is a conflict prohibited by Canon 5.

OPINION

Rule 5-105 prohibits the acceptance or continuance of employment if the interests of one client would impair the independent professional judgment of the lawyer with respect to another client.

The rule further provides that if a single lawyer could not represent the two clients, two partners may not. In light of this provision, confusion can be avoided by thinking of the law firm of the two partners rather than thinking of the two individually.

The Committee does not believe that the law firm's independent professional judgment in behalf of Mrs. Jones would be adversely affected by the firm's representation of Mr. Smith. In prosecuting the claim of Mrs. Jones against the corporation and the insurance carrier, it is a matter of indifference to the law firm that the corporation is suing Mr. Smith, since the outcome of the latter suit can have no effect on the first suit. To put it another way, the representation of Mr. Smith does not furnish a motive for the firm to do a poor job for Mrs. Jones. If the firm does a good job for Mrs. Jones, the insurance carrier (the real party in interest) is the loser; if some damage is suffered also by the corporation (such as higher insurance premiums), Mr. Smith's case can only be helped, not hurt. The firm may continue, therefore, to represent Mrs. Jones.

Does the firm have the requisite independent judgment to represent Mr. Smith? The Committee believes that the firm cannot exercise independent judgment on behalf of Mr. Smith because its other client, Mrs. Jones, has a financial interest in the outcome of the suit, since she is the owner of the corporation which is Mr. Smith's adversary. If Mr. Smith prevails in the suit, Mrs. Jones is damaged; if Mr. Smith loses, Mrs. Jones benefits. The fact that Mrs. Jones' financial interest in the suit is indirect, and that she is not technically a party to the suit, is of no consequence. Nor does it matter that the corporation, which is the party to the suit against Mr. Smith, is not the client; the conflict exists because the interests of Mrs. Jones are the same as those of the corporation.

The fact that Mrs. Jones herself has a suit against the corporation serves to confuse the issue but does not change the result. As it happens, the insurance carrier and not the corporation is the real party in interest, but even were this not so, why should it make a difference? It does not follow that, because it is in Mrs. Jones' interest to assert a claim against a corporation which she owns, she is not damaged by another's assertion of a claim against the corporation.

The Committee concludes that the firm's exercise of independent professional judgment in behalf of Mr. Smith is likely to be impaired by its representation of Mrs. Jones. The conflict can be resolved if the firm withdraws from the representation of Mr. Smith. It can also be resolved if the firm withdraws from the representation of Mrs. Jones in the workers' compensation suit and in all other matters in which it may be acting for Mrs. Jones.

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