



**ILLINOIS STATE  
BAR ASSOCIATION**

# **ISBA Advisory Opinion on Professional Conduct**

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**ISBA Advisory Opinions on Professional Conduct are prepared as an educational service to members of the ISBA. While the Opinions express the ISBA interpretation of the Illinois Rules of Professional Conduct and other relevant materials in response to a specific hypothesized fact situation, they do not have the weight of law and should not be relied upon as a substitute for individual legal advice.**

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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 1.9, 1.10, and 1.11. 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.**

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**Opinion No. 84-5  
December 13, 1984**

Topic: Conflict of Interest

Digest: It is professionally proper for a law firm to represent a claimant in a personal injury case where the defendant has criminal charges pending arising from the same factual situation and a member of the law firm representing the Plaintiff was a member of the State's Attorney's Office at the time the criminal charges were pending, but was not involved with prosecution or disposition.

Ref: Rules 5-105, 9-101

## FACTS

A law firm represents a plaintiff in a personal injury action arising out of a battery. The Defendant in the personal injury case was also a Defendant in a criminal case based upon the same set of facts. A member of the law firm representing the Plaintiff was an Assistant State's Attorney in the county where the criminal charge was filed, but had no direct involvement in the preparation or prosecution of the criminal case and had no direct involvement in the personal injury litigation. The criminal charge was resolved by the Defendant pleading guilty and being placed on supervision, now expired. During the time that the criminal charges were pending, the law firm representing the Plaintiff withdrew as attorneys of record for the Plaintiff in the personal injury action, but have now re-entered their appearance and are again representing the Plaintiff.

## QUESTIONS

1. Is it professionally proper for the law firm originally representing the Plaintiff to re-enter its appearance in the civil litigation after the disposition of the criminal charges?
2. If a conflict of interest exists on the part of the former Assistant State's Attorney, does it disqualify other members of the law firm representing the Plaintiff?

## OPINION

It appears that ISBA Opinion 811 would control the issues presented in the present inquiry. In that opinion, this Committee determined that a partner of an ex-public official is not vicariously disqualified on matters arising during the time that the partner was a public official.

In reaching our conclusion, this Committee considered the meaning and intent of Rule 5-105 and 9-101. The latter rule only prohibits a lawyer leaving public employment from future private employment on a matter in which the lawyer participated personally and substantially or which was under his official responsibility. In the factual situation presented to the Committee in the instant case, we are informed that the attorney who left public employment had no direct involvement in the preparation or prosecution of the criminal case. We further determined in Opinion 811 that Rule 5-105 only disqualified a partner of a lawyer if the lawyer were prevented from representing the client because of the provisions of Rule 5-105.

Under the factual situation presented, Rule 5-105 would not prevent the ex-State's Attorney from representing the Plaintiff in the personal injury case, that rule only requiring a lawyer to decline employment if the exercise of his independent professional judgment would be adversely affected or to discontinue multiple employment if the exercise of independent professional judgment would be adversely affected by representation of another client. Only in those limited situations would a partner of the effected lawyer be required to also decline employment. Therefore, it appears, on the basis of the factual situation presented to this Committee, that the lawyer who was in public employment would not be disqualified and his law firm would not be disqualified from representing the Plaintiff in the personal injury action. However, the Committee has an obligation to point out that there are many pitfalls that lie in wait for the unwary or imprudent. The facts of this situation present a very limited situation and any deviation from those facts could result in violations or possible violations of other provisions of the Code of Professional Responsibility. This opinion is founded upon the representation that the lawyer who was the public employee had no personal or substantial participation in the case as a public employee. If there is any deviation from that or if there is any information that he gained by reason of his public employment we then enter into the area of the preservation of confidences and secrets of a client (Rule 9-101) and the attorney must avoid the appearance of professional impropriety (Rule 9-101).

If any information was obtained in his capacity as a public employee there could be a conflict of interest with the public interest for which he was employed and that conflict cannot be waived on behalf of the public. The attorney must be very careful to insure that his past position as a public employee will not be interpreted as one which will confer any special benefit on his client.

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