



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 1.8. 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 Number 84-14**  
**May 21, 1985**

**Topic: Conflicts**

Digest: A lawyer who is a real estate broker may not, nor may an associate lawyer, act as lawyer for a customer or for the other party to the transaction without consent after full disclosure. Such representation may also violate the Illinois Real Estate License Act of 1983.

Ref: Rule 5-101(a); ISBA Opinion 640; Illinois Real Estate License Act of 1983 (Ill.Rev. Stat. ch. 111, sec. 5815(e)(25)).

## QUESTIONS

Two lawyers are associated together in the practice of law. Lawyer A also operates as a real estate broker in a separate location. A real estate customer of lawyer A (acting in his real estate broker capacity) proposes to enter into a transaction of purchase and sale with a third party. Four questions are asked:

1. May lawyer A act both as real estate broker and as lawyer for his customer-client?
2. May lawyer A act as real estate broker for his customer and as lawyer for the other party to the real estate transaction?
3. May lawyer B, lawyer A's associate, act as lawyer for the customer of lawyer A?

4. May lawyer B act as lawyer for the other party to the transaction?

The answer to all four questions is governed by Rule 5-101(a), which provides 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 financial or business interest. In the situation presented by question 1, the Committee believes that lawyer A's financial interest in the transaction--the expectation of receiving a brokerage commission--could affect adversely his independent judgment as a lawyer,. See ISBA Opinion 640. With respect to question 2, the effect on lawyer A's independent judgment is likely to be even more pronounced since the client he is representing as a lawyer has an interest adverse to the customer he is representing as a broker.

With respect to questions 3 and 4, the Committee believes that lawyer B, by virtue of his association with lawyer A, also has a financial interest in the transaction which could affect his independent judgment.

It is the Committee's opinion, accordingly, that neither lawyer A nor lawyer B may represent either party to the real estate transaction without the informed consent of the client. Further, in the situations presented in questions 2 and 4, the consent of the customer (who is represented by lawyer A acting as broker) should also be obtained. Literally, the rule requires only the consent of the client, but where a lawyer acts for a party as a real estate broker and for the other party as a lawyer, he ought to obtain the consent of his customer as well as his client.

In the situations presented by both questions 1 and 2, the ethical question would appear to be academic because the conduct of lawyer A would seem to clearly violate section 18(e) (25) of the Illinois Real Estate License Act of 1983 (Ill. Rev. Stat. ch. 111, sec. 5818 (e)(25)), which states that a real estate licensee is subject to license revocation or civil penalty if he acts as the lawyer for either the seller or the buyer in a transaction in which he acted as a real estate broker. The Committee expresses no opinion on whether the relationship between lawyers A and B could be such that lawyer B's representation of either customer could constitute a violation of section 18(e)(25) of the statute referred to above.

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