



**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 Rule of Professional Conduct 1.7. See also ISBA Ethics Advisory Opinion 91-1. 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. 86-2  
July 7, 1986

Topic: Conflict of Interest

Digest: A part-time assistant state's attorney primarily responsible for civil matters may represent defendants charged with criminal violations where the violations occurred in counties other than the county where the attorney is an assistant state's attorney.

Ref.: Rules 5-105, (d)  
ISBA Opinions 892, 852, 823, 737, 729 and 291

## FACTS

An attorney is an assistant state's attorney in County A, primarily responsible for civil matters. The attorney is also a member of a six member law firm which does no criminal work in County A. The attorney and his partners are asked from time to time to represent defendants charged with criminal violations in counties other than A.

## QUESTION

May an assistant state's attorney and his partners represent criminal defendants in counties other than the one where the attorney is an assistant state's attorney?

## OPINION

The question of private practice by those who hold public office has been before this Committee frequently. Rule 5-105(a) provides that a lawyer shall not undertake representation of a client if the interest of another client might impair his professional judgment. Rule 5-105(d) further provides that if a lawyer is disqualified because of Rule 5-105(a), then his partners and associates are also disqualified.

Opinion 729 held that a partner of a law firm could represent a defendant in a criminal prosecution even though another partner in the same firm was a special assistant state's attorney responsible for civil matters only. The Committee felt that the fact that the special assistant state's attorney limited his duties to civil matters only did not give rise to a situation when his partners could not represent clients charged with criminal violations in the same jurisdiction.

The Committee further held in Opinion 852 that part time municipal attorneys who prosecuted state traffic charges for violations which allegedly occurred within the municipality were not barred from representing defendants charged with violations of state traffic and criminal code violations where the violations did not occur within the municipality that the part time municipal attorneys were employed.

Opinion 737 prohibits an attorney who served on the County Board of Supervisors from private practice before county officials and agencies. Likewise, we have held that a village trustee may not represent a defendant charged with criminal violations occurring in the village. ISBA Opinion No. 291.

The present inquiry, in our opinion, presents facts which are controlled by our holdings in ISBA Opinions 729 and 852. The inquiring attorney and his partners do not handle any criminal work in the county where the attorney is an assistant state's attorney, the post being primarily confined to civil matters.

The acceptance of criminal representation by the attorney or his partners or associates in other counties does not present a per se conflict barred by the Code of Professional Responsibility.