



**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 Rule of Professional Conduct 1.9. 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 86-6
August 29, 1986**

Topic: Conflict of Interest. Representation of spouse in dissolution proceedings against former client.

Digest: A law firm may not represent a spouse in dissolution proceedings against a former divorce client where outcome could adversely affect former client's property obtained in original divorce proceedings.

Ref.: Rule 5-105(a)
ISBA Opinion Nos. 110, 363, 569
Drinker, Legal Ethics

FACTS

A law firm that previously represented a woman in dissolution of marriage proceedings has been asked by the woman's second husband to represent him in dissolution proceedings against the woman. The inquirer states that the principal issue in the pending dissolution proceeding will be the ownership of real estate which had been awarded to the woman at the time of her first divorce.

QUESTIONS

May a law firm represent a spouse in dissolution proceedings involving a former divorce client

where the result could be injurious to property rights gained by the firm for the woman in her first divorce?

OPINION

As we noted in Opinion 569, there is no specific prohibition in the Illinois Code of Professional Responsibility barring a lawyer from representing a party in a divorce suit against a former client. This Committee has cautioned lawyers undertaking such representation, however, to do so only after careful analysis of the consequences such representation may have upon the property rights of the former client and, further, only when such representation would not result in the revelation of confidences or secrets which could be used to the advantage of the prospective client and the disadvantage of the former. Opinions 110, 363.

In the instant case, the inquirer states that the only issue in the dissolution proceeding in question concerns the ownership of certain land the former client conveyed to her second husband, the prospective client, which had originally been awarded to the former client in the dissolution proceedings in which she had been represented by the inquirer. As stated in Drinker, Legal Ethics, Opinion 105, "the test of inconsistency is whether his accepting the new retainer will require (the lawyer), in forwarding the interest of the new client, to do anything which will injuriously affect his former client in any matter in which he formerly represented" that client.

In the present case, as in the similar situation discussed in Opinion 363, it is the opinion of the Committee that since the stated goal of the prospective client would be to obtain a portion of the property which the law firm had originally obtained from his wife, her rights are obviously going to be injuriously affected.

Under the circumstances presented, therefore, the Committee feels that having represented the wife in her earlier divorce, the inquiring lawyer should decline to represent her second husband in his divorce for the reason that the exercise of the lawyer's independent professional judgment may be adversely affected by such representation resulting in a conflict of interest contrary to Rule 5-105(a).

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