



**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 1.7 with its Comment [35]. 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. 86-14
May 13, 1987**

Topic: Conflict of Interest

Digest: A lawyer who is a member on the Board of Directors of an incorporated not-for-profit association may render legal services, provided he does not vote on the issue of his employment. The lawyer, with the consent of the client, may represent the corporation in any litigation concerning the collection of dues from fellow members of the association.

Ref.: Rules 4-101 and 5-101(a)
ISBA Advisory Opinion No. 483

FACTS

A lawyer owns a lot in a private subdivision. He was recently elected to the Board of Directors of a lake association, which is a not-for-profit corporation that governs the private subdivision. The Association gets money from collecting dues from its members. Each member owns property in the subdivision. It has been brought to the attention of the Board that there are a large number of delinquencies owed the Association by certain members.

QUESTION

Can the lawyer who is a member of the board of directors for an incorporated not-for-profit association undertake the legal representation of the corporation in attempting to collect delinquencies owed by other lot owners.

OPINION

A lawyer who is on the board of directors of a not-for-profit corporation may serve as the lawyer for such corporation assuming the attorney refrains from any vote taken by the board of directors as to his employment. The lawyer is cautioned, however, pursuant to Rule 4-101(a) to maintain all confidences of the client.

ISBA Advisory Opinion No. 483 holds that "[a]lthough it is not professionally improper for a lawyer to serve as director of a business corporation and also to represent that corporation as its attorney, he (1) must advise his corporate client of a possible loss of the usual attorney-client privilege, and (2) must be unusually vigilant to assure that he never allows his business function as a director to infringe upon the legal advice given to, and the representation of, his corporate client." This is equally applicable where the client corporation is not-for-profit.

However, in the undertaking of any action to collect past due delinquencies from other members of the Association, the lawyer will be placed into a situation in which his professional independent judgment might be impaired. Rule 5-101(a) provides: "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, business, property or personal interest." On the facts presented, we believe the lawyer's exercise of independent judgment as to the compromise or settlement of the various actions for delinquency may be affected for the reason that any compromise or settlement of those actions would necessarily either enhance or diminish financial or property interests that he has by virtue of being a lot owner.

In sum, therefore, we believe with the consent of the client, the lawyer may accept representation of the not-for-profit corporation to collect delinquencies even though the lawyer will be financially affected.

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