



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in May 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.6 and 1.7 with its Comment [6]. 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. 88-5
February 9, 1989**

Topic: Conflict of Interest, Representation of Two Businesses in the Same Industry.

Digest:

A. It is professionally proper for a lawyer to represent two competing institutions where matters related thereto are substantially unrelated.

B. It is professionally proper for a lawyer to represent two competing lending institutions, one of whom he also serves as a member of the Board of Directors, as long as he secures consent to such representation from both institutions.

Ref: Rules 4-101, 5-101(a), 5-105(a),(b), and (c), Rule 5-107

FACTS

A lawyer represents a lending institution and also serves as a member of its Board of Directors. At the same time, the lawyer represents another lending institution in the same community.

QUESTION

May a lawyer for and a Board member of a lending institution also represent a competing lending institution?

OPINION

The issues raised by the question presented are two-fold: first whether the lawyer may represent two clients, both in the same business and competing with each other, and second, whether serving on the Board of Directors of one institution would prohibit representation of a competing institution.

Rule 5-105 (a) provides that:

A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under Rule 5-105(c).

The fact that both lending institutions are in the same business does not in and of itself result in a prohibition of representation of both institutions so long as the matters of each representation are not substantially related. If the matters in question do become substantially related the lawyer must secure consent to such representation by both institutions after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each. Rule 5-105(c)

Rule 4-101 provides that the lawyer shall not disclose any confidence or secret gained during employment. Should the lawyer who represents the competing institution obtain information which would be confidential and beyond the scope of any consent granted under Rule 5-105(c), the lawyer would be required to withdraw from representation from both institutions, pursuant to the provisions of Rule 5-105(b).

A lawyer serving as a member of the Board of Directors of a lending institution has a fiduciary duty to that institution and may also have a personal interest in such institution. Thus, pursuant to the provisions of both Rules 5-101(a) and 5-107(a), the lawyer should not accept employment by a second lending institution without the consent of both institutions, after full disclosure.

Being a member of the Board of Directors of the one institution would create substantially greater risk of the lawyer, as a Board member, securing confidential information, and thus increase the risk of required withdrawal as lawyer for both institutions.