



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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.

This Opinion was AFFIRMED by the Board of Governors in May 2010. Please see the 2010 Illinois Rule of Professional Conduct 1.7. 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. 89-18
May 25, 1990**

Topic: Conflict of Interest, Independent Professional Judgment

Digest: It is professionally proper for an attorney employed as a part-time instructor by a university to represent, in criminal proceedings, a client terminated by that same university after disclosure and consent by the client.

Ref.: Code of Professional Responsibility Rule 5-101
Rules of Professional Conduct Rule 1.7(b)
ISBA Opinion No. 87-4

FACTS

One attorney member of a general practice law firm is employed as a part-time instructor of a university under an individual employment contract which incorporates regulations of the university which prohibit any employee from acting in a capacity adverse to the university. Another attorney firm member is occasionally employed as a faculty member under a similar contract.

As part of its general practice, the firm has represented students in disciplinary matters and employees of the university in civil service matters, apparently with the consent or without objection by the university.

The firm has now undertaken the representation of a terminated university civil service employee in a criminal proceeding. The Director of the University's civil service unit has informed the law firm that the contractual provision creates a conflict of interest rendering the representation of the terminated employee improper, irrespective of whether such representation is undertaken by a current university employee firm member or any other firm member.

QUESTION

Does the contractual provision create a conflict of interest and if so, does the conflict extend to all members of the firm?

OPINION

Rule 5-101 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.

The parties to the criminal proceeding are the State and the terminated employee. It does not appear from the facts presented that any attorney-client relationship exists between the attorney or the firm and the university. Under those circumstances, there is no conflict of interest which would preclude representation in the criminal proceeding.

Rule 5-101 prohibits an attorney from accepting employment if his independent professional judgment is or may be affected by his financial or personal interest, except with client consent after full disclosure. Applying this Rule to similar facts in ISBA Advisory Opinion No. 87-4, the Committee expressed the view that Public Defenders employed by the county are not precluded from representing private clients in litigation against that county provided the client consented after full disclosure.

If the independent professional judgment of the lawyer, whether a part-time instructor or other firm member, is not adversely affected by the employment of firm members by the university, and the client consents to the representation after full disclosure, it is professionally proper for the lawyer to represent the terminated employee in the criminal proceeding.

It is beyond the scope of this Committee to express any opinion concerning the construction of the contractual provisions of the lawyers' contracts of employment with the university.

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