



**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 with its Comments [23] and [29-33]. 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. 90-3  
November 6, 1990**

Topic: Conflict of Interest; Multiple Representation

Digest: Multiple representation in "domino"-type transactions permitted only with full disclosure to and consent from all parties; disclosure must be continuing throughout the representation.

Ref: Rules 1.7(a) (b) and (c), 1990 Illinois Rules of Professional Conduct (effective August 1, 1990)  
Rules 5-105(b) and (c), 1980 Illinois Code of Professional Responsibility

## **FACTS**

A lawyer is retained in a real estate transaction by Able, a buyer of real estate. The seller is Baker. Later, the same lawyer is retained by Charlie, who is selling his real estate to Baker.

## **QUESTIONS**

1. Is it ethical for the lawyer to represent both Able and Charlie?
2. Is the lawyer under a duty to disclose the nature of the professional relationship to Able, Charlie, or both?
3. Must an informed consent to multiple representation be obtained from Able, Charlie, or both?

## **OPINION**

In rendering our opinion we are asked to "consider the inter-relationships between typical residential transactions particularly where mortgage financing contingencies and/or sale of prior residence contingencies are typically present."

Accordingly, we take cognizance of the following typical and common real estate sales contract contingencies: (1) Finance contingency clause whereby the deal is contingent upon the buyer obtaining mortgage financing within a certain time period and (2) where the deal is contingent upon the buyer first selling his real estate. Both, of course, relate directly to a buyer's financial ability to consummate the transaction. As an aside, the Committee notes that such arrangements are not merely related to real estate sales but can also encompass sales of companies, equipment, assets, etc.

Within the context of either contingency, it becomes apparent that, in all probability, Charlie will be able to sell to Baker only if Baker consummates his sale to Able. In short, we assume this to be the classic "domino" situation.

As such, the attorney is representing both ends of the spectrum with the attendant conflict-of-interest risk inherent in multiple representation.

Both the 1980 Code of Professional Responsibility and the 1990 Illinois Rules of Professional Conduct permit multiple representation provided there is full disclosure (to Able and Charlie) together with their consents.

The 1980 Code provisions applicable are as follows:

Rule 5-105(b) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under Rule 5-105(c).

(c) In the situations covered by Rules 5-105(a) and (b), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

The 1990 Illinois Rules contain the same thesis:

Rule 1.7(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

- (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
- (2) each client consents after disclosure.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

- (1) the lawyer reasonably believes the representation will not be adversely affected; and
- (2) the client consents after disclosure

The 1990 Rules, however, contain one further element, namely, that there must be "full" disclosure. The committee emphasizes that this element is far stronger than in the former 1980 Code language. The 1990 Rules state as follows (with emphasis added):

Rule 1.7(c) When representation of multiple clients in a single matter is undertaken, the disclosure shall include explanation of the implications of the common representation and the advantages and risks involved.

Additionally, the Terminology (definitions) section of the 1990 Rules recite as follows (emphasis added):

Disclosure denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

Further, the Committee construes Rule 1.7(c) to mean that the disclosure of relevant facts not protected under 4-101/1.6 as to potential conflicts that arise during the course of the representation should be ongoing over the course of representation as they arise, not merely only at the beginning. For instance, under the facts of this inquiry, the sales contracts could have interlocked time periods and an interruption in the timing sequence of the first sale could well cause a ripple effect on the other sales to the detriment of the lawyer's "second client," Charlie.

In conclusion, multiple representation in a "domino" type transaction is permitted only if there has been full disclosure to and consent by all the parties and that the disclosure continues throughout the period of the dual representation.

The obligation to withdraw if a conflict arises would be such that attorney can no longer adequately represent the interest of either client.

\* \* \*