



**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 1.7 and 5.5(a). 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. 93-2
September 17, 1993**

Topic: Conflict of interest. Collection agency attorney garnishing bank account. Both plaintiff-creditor and garnishee-bank are collection clients of the agency and the same attorney in unrelated cases.

Digest: 1. Attorney representing a collection agency actually represents the creditor.

2. An attorney filing a garnishment action for a collection client against another collection client bank (though unrelated to each other) may be in a conflict, requiring disclosure and consent.

Ref.: Illinois Rules of Professional Conduct, Rules 5.5(b) and 1.7 (a), (b) and (c)
ISBA Advisory Opinions on Professional Conduct, Nos. 123, 302 and 469
ABA/BNA Man. Prof. Conduct 51:101

FACTS

An attorney who represents a collection agency, to pursue collections for the agency's customers, files a garnishment action for an agency customer against a bank account of the customer's debtor. The customer's debtor has the bank account in a bank which is also a customer of the collection agency and is represented in other collection matters by the same attorney.

QUESTION

Does the above scenario create a conflict of interest for the attorney?

OPINION

The facts submitted do not indicate any conflict in the representation. Both customers of the collection agency are clients of the agency's attorney and both are due the attorney's professional responsibilities, loyalty and confidence. (ISBA Opinions 123, 302 and 469.)

Rule 1.7 provides as follows:

RULE 1.7. Conflict of Interest: General Rule

- (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.

- (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.

Under the facts given, we do not know if the bank in this case has any interest that will be adversely affected by the garnishment action. If the bank is a mere stakeholder of depositor's funds and has no set-off, counterclaim or defense to the garnishment, there would appear to be no conflicts. To ascertain the bank's position, therefore, full disclosure to both parties and consents should be obtained.

The conflict of interest in this situation is merely potential, since the collection agency attorney represents both parties in unrelated collection matters. If the bank is represented by someone other than the collection attorney in terms of answering the garnishment and does not object to the representation, there should be no problem with the attorney proceeding as outlined, but to do so, again, disclosure must be made and consent should be required.

The facts do not appear to require withdrawal if the attorney reasonably believes representation will not adversely affect the relationship with the other client (Rule 1.7(a) and (b)).

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