



**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 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. 93-8
January 21, 1994**

Topic: Conflict of interest

Digest: State's Attorney may retain interest in land trust which leases office space to former law partners who may be adversaries in criminal cases, provided each attorney properly discloses the nature of his interest and the potential conflict and obtains client consent.

Ref.: Illinois Rules of Professional Conduct, Rule 1.7(b)
ISBA Opinion No. 90-30
ABA Model Rules of Professional Conduct, Rule 1.7(b), Comment 6.

FACTS

Three attorneys have been engaged in the general practice of law in a professional corporation since 1982. These attorneys formed a land trust which owns the land and building which houses the law practice. Each attorney has a one third (1/3) beneficial interest in the trust.

One of the three attorneys has just been elected as State's Attorney in the county in which the building and law practice are located. That attorney will leave the professional corporation and cease to be associated in the practice of law with the other two attorneys. It is anticipated that the State's Attorney will, from time to time, be in an adversarial relationship with the two attorneys

remaining in the professional corporation.

QUESTION

Does the State's Attorney's interest in the land trust represent a conflict of interest when he/she is in an adversarial relationship with the attorneys he has formerly associated with? Moreover, is there any kind of disclosure required by either the attorneys remaining in the professional corporation or the State's Attorney?

OPINION

Rule 1.7(b), Rules of Professional Conduct, provides as follows (emphasis added):

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 potential conflict in the case at hand is not a direct one between the attorneys and their clients, but one somewhat more attenuated. There is little question that Rule 1.7(b) applies in instances of more direct conflict (see Opinion No. 90-30, May 15, 1991), and would also apply here.

This Rule, patterned after ABA Model Rule 1.7(b) is based on the ethic that an attorney's "own interests should not be permitted to have an adverse effect on representation of a client [and that]...[a] lawyer may not allow related business interests to affect representation...." ABA MRPC, Comment 6.

The safest course, therefore, would be to require full disclosure and client consent. For the attorney's remaining in private practice this could be accomplished through the use of a waiver and consent form, but compliance by the State's Attorney is less simple. In order for the State's Attorney to fully disclose to his client, whether defined as the county or, more amorphously, "the people," he may be required to disclose the nature of his interest in the trust prior to his election (when possible), by including such disclosure in the Statement of Economic Interest required under the Election Code (10 ILCS 5/7-12(8)).

* * *