



**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 1.9. 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.**

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**Opinion No. 93-18  
May, 1994**

Topic: Conflict of Interest: Former Client

Digest: Representing a client in the same or a related matter as that involving a former client is not improper unless the clients' interests are materially adverse.

Ref.: Illinois Rules of Professional Conduct, Rules 1.6 and 1.9

## **FACTS**

A law firm formerly represented a therapeutic day school in a dispute with a public school district over the educational program conducted by the day school for special education students placed with the school by the district. The dispute centered on requests by several parents, joined in by the day school and its counsel, that the school day be extended beyond the regular five hours mandated by state law. The district questioned both the adequacy of the program offered by the day school and whether the extended school day would benefit the pupils. The controversy was eventually settled with respect to some of the day school's concerns.

Later, after the firm had severed its attorney-client relationship with the day school, several parents were referred by the day school to a partner in the firm which had formerly represented the day school. The attorney has undertaken to represent those parents against the school district in

administrative hearings regarding the extended school day issue.

**QUESTION**

The question is whether an actual or apparent conflict of interest exists and, if so, the reporting obligations of counsel for the school district.

**OPINION**

Rule 1.9 of the Rules of Professional Conduct deals with conflicts of interest with regard to a former client.

- (a) A lawyer who has formerly represented a client in a matter shall not thereafter:
  - (1) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client, unless the former client consents after disclosure; or
  - (2) use information relating to the representation to the disadvantage of the former client, unless
    - (A) such use is permitted by Rule 1.6; or
    - (B) the information has become generally known.

Rule 1.6, referred to in subparagraph (2)(A), deals with confidentiality of information and, to the extent pertinent here, prohibits an attorney, during or after termination of the professional relationship, from using or revealing client confidences or secrets of the client, absent client consent.

The threshold question is whether a prohibited conflict of interest under Rule 1.9 is presented by these facts. The Committee does not discern any such conflict. By its terms, the Rule applies only where the interests of the current and former clients are "materially adverse" to each other. Here, the interests of the former client (the day school) and the current clients (the parents of day school children) are not adverse, but appear to coincide.

The children will presumably benefit from the extended school day, while the day school will receive an increased per diem from the district. The day school does not object to the representation of the parents by its former counsel; to the contrary, it referred the parents to the attorney, thus indicating in concept the requirement of consent, if such consent were required. Similarly, the possible use of information gained by the attorney in his earlier representation of the day school appears to be speculative and peripheral at best. It is difficult to see how any such information could be used "to the disadvantage" of the day school when the interests of the day school and the parents are virtually aligned.

Since no prohibited conflict exists, the issue of mandatory reporting is moot.

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