



**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, 1.13(a), and 1.16(a)(1). 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. 95-1
July 14, 1995**

Topic: Conflict of Interest

Digest: The fact that a corporation's lawyer is related to its president and principal shareholder does not, standing alone, create a conflict of interest.

Ref.: Illinois Rules of Professional Conduct, Rules 1.13(a), 1.16(a)(2) and 1.7(b)
ISBA Opinions on Professional Conduct, Nos. 92-11, 92-4, 783 and 483
ABC Trans National Transport, Inc. v. Aeronautics Forwarders, Inc., 90 Ill.App.3d 817, 413 N.E.2d 1299, 1310 (1st Dist. 1980)

FACTS

Lawyer A is a member of a firm that represents Corporation B. C is a 50% shareholder of the corporation, its president and a director. C's wife is the assistant secretary of the corporation. Lawyer A is the brother of C.

The other directors are not officers or employees of Corporation B. The directors are almost always deadlocked.

QUESTIONS

1. Does Lawyer A have a conflict of interest in acting as lawyer to a corporation when he is the brother of an officer, director and shareholder of the corporation?

2. If the answer is no, then, assuming C's interests are actually favored by Lawyer A, does a conflict of interest exist?

OPINION

The mere fact that Lawyer A is related to Corporation B's president and principal shareholder does not, standing alone, create a conflict of interest. Rule 1.13(a) of the Illinois Rules of Professional Conduct makes it clear that a lawyer who is employed by a corporation, represents the corporation acting through its duly authorized constituents. The corporate lawyer's duties are to the corporation itself, not to any particular officer, director, or shareholder. ABC Trans National Transport, Inc. v. Aeronautics Forwarders, Inc., 90 Ill.App.3d 817, 831, 413 N.E.2d 1299, 1310 (1st Dist. 1980). It is clear that Lawyer A's loyalties must run to Corporation B rather than to any individual officer, director, or shareholder. However, the facts presented by this question raise an additional consideration: whether the mere existence of a familial relationship between the lawyer and a constituent raises a conflict of interest that is not present in the normal situation.

Rule 1.7(b) addresses situations where a lawyer's responsibilities to third parties may create a conflict of interest. Under Rule 1.7(b), it is not necessary for a lawyer to be acting as the counsel of another party for a conflict of interest to arise. A lawyer's personal relationships can cause a conflict. It appears that the only opinions addressing situations where a lawyer may be inclined to put a relative's interests above a client's interest involve cases where lawyers who were relatives represented opposing parties in the same case. Those opinions have generally found no violation of the Rules as long as the lawyers inform their clients of the situation and receive the necessary consent from the clients. The propriety of the situation will depend on whether the familial relationship adversely affects the lawyer's professional judgment. See, eg., ISBA Opinion Nos. 92-11 and 783. Lawyer A may have a conflict of interest in representing Corporation B if his ability to act on behalf of Corporation B is limited by his responsibilities to his brother. The other directors have a legitimate concern as to whether Lawyer A's relationship to C will impair his professional judgment in matters relating to the corporation.

Lawyer A must reasonably believe his relationship to C will not affect his advice to the corporation. Just because the two are related does not mean A will act for C rather than the corporation. However, if a situation arises where A's judgment is reasonably likely to be affected by the relationship, A should recommend obtaining an independent counsel to advise the corporation on the matter. ISBA Opinion No. 92-4. Lawyer A must judge the situation by an objective standard of reasonableness. If it is not reasonable to believe that Lawyer A's professional judgment regarding any particular matter will not be affected by his relationship with C, Lawyer A should decline to advise Corporation B on that matter.

In Opinion No. 483, the ISBA addressed the question of whether a lawyer may serve as a director of a corporation and also represent the corporation as its lawyer. That Opinion stated that it is not unethical for a lawyer to assume both roles, but the lawyer should take extra precautions to ensure that his actions as a director do not affect the advice and representation he gives to the corporation as his client. ISBA Opinion No. 483.

Similarly, ISBA Opinion No. 92-4 involved an attorney who acted as general counsel for a not-for-profit corporation, and also served as a board member of the corporation. The lawyer was also the personal friend of another board member. That Opinion found that because the relationships were fully disclosed under Rule 1.7(b), the corporation had consented, and the lawyer recused himself from board decisions that might benefit his friend and fellow board member, there was no violation of Rule 1.7. However, the

Opinion stated that the lawyer should continually weigh his responsibilities as a board member and as corporate counsel to test for conflicts between the two roles. ISBA Opinion No. 92-4. If it is possible for one person to act as both director and lawyer of a corporation without necessarily creating a conflict of interest, there should be no reason a relative of a director should automatically be precluded from acting as a lawyer for the corporation.

Nothing in the first question presents any facts revealing a situation or conduct by Lawyer A that is antithetical to the corporation's best interest. Lawyer A should disclose his relationship with C to the other directors of Corporation B and obtain the necessary consent. While no inherent conflict of interest exists because of the familial relationship between Lawyer A and C, Lawyer A should be continuously aware that conflicts may arise between his relationship with C and his duties to the corporation.

Finally, the mere fact that the board is almost always deadlocked or Lawyer A favors certain corporation positions taken by C does not necessarily mean a conflict of interest exists. It is possible that C's position on a matter is also the position that is best for the corporation. The proper question is not whether A and C agree on a particular matter, but why they agree. Lawyer A must make his own objective reasonable determination of what is best for the corporation. If, for some reason, Lawyer A feels compelled to place C's personal interests above the best interest of Corporation B, then A could not reasonably believe that his advice to the corporation will not be adversely affected by his relationship with C, and therefore Lawyer A's continued representation of Corporation B would be impermissible. In that situation, even if Lawyer A subjectively believed that continued representation was possible, that belief would not be objectively reasonable and the conflict would be irreconcilable. See Rule 1.16(a)(2) (mandating withdrawal where continued representation would violate any of the Rules, such as Rule 1.7(b)).

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