



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in January 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.7 and 1.11. 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. 96-07
January, 1997**

Topic: Successive Government and Private Employment

Digest: Lawyer who previously worked for DCFS as supervisor and not as lawyer may represent client in juvenile court provided (1) lawyer did not personally and substantially participate in same matter while at DCFS; and (2) lawyer did not acquire relevant confidential information about DCFS or about person adverse to his client that would be used against DCFS or against such person. Under appropriate circumstances DCFS or person adverse to client could waive objection to lawyer's representing client.

Ref.: Illinois Rules of Professional Conduct, Rules 1.11 and 1.7
Dugar v. Board of Education, No. 92 C 1621 (N.D. Ill. 1992) WL 142302
Porter v. Board of Education, No. 92 C 0533 (N.D. Ill. 1992) 1992 WL 166570
LaSalle National Bank v. County of Lake, 703 F.2d 252, 255 (7th Circ. 1983)
Cromley v. Board of Education of Lockport Township High School District 205, 17 F.3d 1059, 1064 (7th Circ. 1994)
SK Handtool Corporation v. Dresser Industries, Inc., 246 Ill.App.3d 979, 189 Ill.Dec. 233, 619 N.E.2d 1282 (Ill.App. 1st Dist. 1993)

FACTS

An individual licensed as a lawyer was employed for seven years by the Illinois Department of Children and Family Services (DCFS) as a child welfare supervisor, but not as a lawyer. The lawyer now wishes to work as a "conflicts" lawyer in juvenile court in County X. In this capacity the lawyer would act as an independent contractor and would represent children as a Guardian Ad Litem or would represent parents who have a conflict with the Public Defender's office. Many of the families currently in juvenile court were involved with DCFS while the lawyer was employed there as a supervisor.

QUESTIONS

1. Is it proper for the lawyer to represent a person in juvenile court where the person or the person's family was involved with DCFS at the time the lawyer was a non-lawyer supervisor for DCFS, even if the lawyer had no personal contact with the person or with family members?
2. Would it be proper for the lawyer to represent a person in juvenile court if the lawyer's staff at DCFS had personal contact with the person and the lawyer supervised or approved of the staff work?

OPINION

Since the lawyer did not represent DCFS as a lawyer, the pertinent authority is Rule 1.11 of the Illinois Rules of Professional Conduct, "Successive Government and Employment," which provides that:

- (a) Except as otherwise expressly permitted by law, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after disclosure....
- (b) Except as otherwise permitted by law, a lawyer having information that the lawyer knows is confidential government information about a person, acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person....

* * *

- (d) As used in Rule 1.11, the term "matter" denotes:
 - (1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, offset or other particular matter involving a specific party or parties; and
 - (2) any other matter covered by the conflict of interest rules of the appropriate government agency.
- (e) As used in Rule 1.11, the term "confidential government information" denotes information which has been obtained under governmental authority and which, at the time Rule 1.11 is applied, the government is prohibited by law from revealing to the public or has a legal privilege not to reveal, and which is not otherwise available to the public.

Under paragraph (a) of this Rule, the lawyer cannot represent a client in juvenile court in connection with a matter in which the lawyer participated personally and substantially as a public employee unless DCFS consents after disclosure. Before agreeing to represent a client in juvenile court the lawyer would have to determine that this requirement is met or properly waived.

The term "matter" is broadly defined in paragraph (d) of Rule 1.11. If the juvenile court matter is one the lawyer had some involvement in while at DCFS, the lawyer must determine that the involvement was not personal and substantial before agreeing to represent the client. Personal contact with the client or the client's family would be one factor to be weighed in determining the extent of the lawyer's involvement. If the involvement was personal and substantial, the DCFS still could consent to the current representation after appropriate disclosure. However, in the event the DCFS would consent to such representation, the lawyer, under Rule 1.7(b) should also disclose to the client his previous personal and substantial involvement with the matter while at DCFS and let the client decide whether to accept the representation of the lawyer.

In addition, even if the lawyer was not personally and substantially involved in the matter while at DCFS, under Rule 1.11(b), if the lawyer acquired confidential information while at DCFS about a person, the lawyer may not represent in juvenile court a client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. Thus, if while at DCFS the lawyer obtained confidential information about family members or others involved with the client, the lawyer may not use such information on behalf of the client if it would materially disadvantage such persons. Either the disadvantaged person or DCFS could move to have the lawyer disqualified. See generally, Porter v. Board of Education, No. 92 C 0533 (N.D. Ill. 1992) 1992 WL 166570.

Further, if the lawyer acquired confidential and privileged information about the department while at DCFS in a supervisory capacity, the lawyer would likely be barred from disclosing it or using it against DCFS. See generally, Porter v. Board of Education, No. 92 C 0533 (N.D. Ill. 1992) 1992 WL 166570; LaSalle National Bank v. County of Lake, 703 F.2d 252, 255 (7th Circ. 1983) (where former legal advisor and supervisor of lawyers for county had knowledge of discussions and strategic thinking about sewer agreements negotiated by county while he was employed there, and he then went to work for firm challenging sewer agreement with county, both former legal advisor to county and his new firm were properly disqualified from litigating sewer agreement that advisor had never worked on.)

The lawyer may rebut a claim that the lawyer possesses confidential information either by proof that the lawyer has no such information or confidences or secrets, or by proof that a timely screening procedure was employed. Cromley v. Board of Education of Lockport Township High School District 205, 17 F.3d 1059, 1064 (7th Circ. 1994) (lawyer changing from firm representing plaintiff to firm representing defendant did not cause firm to be disqualified where lawyer was properly screened.) See also, SK Handtool Corporation v. Dresser Industries, Inc., 246 Ill.App.3d 979, 189 Ill.Dec. 233, 619 N.E.2d 1282 (Ill.App. 1st Dist. 1993) (screening of new lawyer not instituted until five weeks after lawyer joined firm was too late; new lawyer's firm disqualified from continuing to litigate against new lawyer's former client).

If the lawyer has confidential information but cannot use it against particular persons involved in the

current juvenile court case, this could create a conflict that would restrict the lawyer's ability to fully represent the client. If, under Rule 1.7(b), the lawyer reasonably believes the representation will not be adversely affected by such a conflict, the lawyer should disclose such facts to the client and let the client decide whether to consent to such representation.

In Dugar v. Board of Education, No. 92 C 1621 (N.D. Ill. 1992) 1992 WL 142302, a case involving student suspensions and expulsions, the court refused to disqualify the lawyer for a plaintiff where the lawyer had previously worked as a lawyer for the Board. Applying the substantial relationship test for proceeding against a former client and Northern Federal District Court Rule 1.11, (identical in pertinent part to Illinois Rule 1.11), the court found that while the two matters were not substantially related, they did raise the issue of potential access to Board confidences. However, the court concluded that since the lawyer and represented the Board in matters outside the areas of student suspensions and expulsions, it was unlikely she had received confidential information about such matters. The lawyer also did not personally and substantially participate as a Board lawyer in any matter related to the plaintiff's suit.

Thus, with respect to questions 1 and 2, the lawyer can represent a client in juvenile court if the lawyer did not personally and substantially participate in the same matter while working for DCFS and if the lawyer does not have confidential information from DCFS that would be used against DCFS or to materially disadvantage a person adverse to the client. In appropriate circumstances a waiver by DCFS, the client, and the person adverse to the client could avoid disqualification.