



# ISBA Advisory Opinion on Professional Conduct

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This Opinion was **AFFIRMED** by the Board of Governors in July 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.7 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 Number 724**  
**April 30, 1981**

**Topic: Conflict; appearance of  
impropriety.**

Digest: There is no conflict involved in Lawyer A representing a client in a matter against the client of Lawyer B where Lawyer A has previously represented Lawyer B.

Ref: Supreme Court Canon 5; Rule 5-101(a); Rule 5-105 (a) and (b);  
Illinois Supreme Court Canon 9

## QUESTION

Lawyer A has represented Lawyer B in the past in a matter now concluded and asks:

1. Whether it is proper for him and Lawyer B to represent respective opposing clients and, if so, is informed consent of the clients necessary?
2. Whether the answer would be the same if Lawyer A's representation of Lawyer B has not been concluded?

## OPINION

The answer to the first question is yes. The answer to the second question is no.

Canon 5 and its Rules as adopted by the Illinois Supreme Court effective July 1, 1980, admonished that a lawyer should exercise independent professional judgment on behalf of a client.

Rule 5-101(a) provides:

"(a) Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial business, property, or personal interests."

and Rules 5-105(a) and (b) provide:

"(a) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under Rule 5-105(c)."

(b) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under Rule 5-105(c)."

Canon 9 provides that a lawyer should avoid even the appearance of professional impropriety, but there are no Rules under Canon 9 relating to the questions here presented.

The lawyer's professional function is by necessity one of an adversarial nature. He must deal with other lawyers at arm's length on behalf of his clients. He must also work with other lawyers whose client's interests are not adverse to those of his clients. In addition, because they are thrown together in the work of their profession, the natural tendency is for lawyers to develop deep social relationships with other lawyers. None of these factors, however, should have any bearing on the exercise of independent professional judgment by a lawyer on behalf of his client. In the isolated instances where a lawyer may have such a close relationship with another lawyer who represents a party whose interest is adverse to that of his client that he sincerely feels his independent professional judgment would or might be affected, then he should, of course, divorce himself from the matter. Otherwise, he is not fulfilling his professional obligation as a lawyer. This, however, is a matter of personal judgment and no rules can be written to adequately cover the situation.

We feel that the fact that Lawyer A has represented Lawyer B in the past in a matter now concluded does not per se require either refusal of or withdrawal from employment, nor does it require disclosure. If the situation is dictated by personal conscience or discretion, it will not be changed by disclosure.

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