



**ILLINOIS STATE
BAR ASSOCIATION**

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 1.6(a), 1.8, and 1.9. See also ISBA Ethics Advisory Opinion 90-25. 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. 85-11
January 17, 1986**

Topic: Confidentiality; Conflicts of Interest; Former Clients

Digest: A lawyer may accept employment in an unrelated matter against the spouse of a former client, provided that the representation will not require the use of confidential information gained in the former representation, and there is no interference with the lawyer's independent professional judgment.

Ref.: Rule 4-101(b), Rule 5-105(a)
ISBA Opinions 753, 644, 581 and 569
ABA Informal Opinion 1322

FACTS

The inquiring attorney represented A, the respondent in a dissolution proceeding. Several months later, the attorney was asked by B to represent him in a personal injury suit against A's wife, who was his girlfriend at the time of the former representation.

QUESTIONS

May a lawyer accept employment in an unrelated matter against the spouse of a former client?

OPINION

There is no provision of the Code of Professional Responsibility that would specifically prohibit a lawyer from representing a client in another matter against the spouse of a former client. There are numerous opinions that discuss the propriety of Opinion representation adverse to a former client, and many of the same considerations may be relevant to representation adverse to the spouse of a former client. See ISBA Opinions 753, 644, 581, 569; ABA Informal Opinion 1322. However, these considerations would be less likely to render the representation improper where the representation is not against the former client directly, but against a spouse or other relative of the former client.

First, the lawyer may not enter into the proposed representation if the lawyer might be tempted or required to use confidential information obtained from the former client. Rule 4-101(b) prohibits the use of a confidence or secret of a former client to the disadvantage of the former client, or for the advantage of the lawyer or a third person, unless the former client consents.

Second, the lawyer must have no doubt as to the lawyer's ability to exercise independent professional judgment on behalf of the client, as required by Rule 5-105(a). If the former representation would interfere in any way with the lawyer's exercise of independent professional judgment, the proposed representation would be improper.

Accordingly, the proposed representation would be proper so long as it is consistent with the foregoing considerations.

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