



**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 Rule of Professional Conduct 1.7 with its Comments [23] and [29-33]. 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. 87-6
January 29, 1988**

Topic: Conflict of Interest - Multiple Representation

Digest: A law firm may, with consent, represent an insurance company in a declaratory judgment action seeking to have other insurers provide coverage for the insurance company's insured while defending that insured in the underlying action where the insurance company will not contest coverage.

Ref.: Rules 5-105(a),(c)
Bergmann v. Multi-State Inter-Insurance Exchange, 39 Ill. App.2d 468, 189 N.E.2d 49 (1963)

FACTS

A law firm has been retained by Insurer B to defend its insured, S Corporation, in personal injury litigation arising out of a construction project. S Corporation contracted with X Corporation and Z Corporation for X and Z to perform certain tasks on the project, with S to be named as an insured on X and Z's liability policies. X and Z's insurers now refuse to defend S, and are contesting their coverage. Insurer B has requested that the law firm bring a declaratory judgment action against Z, X and their insurers to provide coverage for S Corporation. Insurer B will not contest its coverage

to S Corporation.

QUESTIONS

May a law firm hired by an insurance company to defend its insured also seek to have other insurance companies provide coverage to the insured in a separate declaratory judgment action?

OPINION

Rule 5-105(a) mandates that a lawyer [law firm] decline proffered employment if the exercise of his [its] independent professional judgment on behalf of the client will likely be adversely effected by the proffered employment except to the extent permitted under Rule 5-105(c).

Rule 5-105(c) provides that a lawyer [law firm] may represent multiple clients if it is obvious that he [it] can adequately represent the interest of each and each consents to the representation after full disclosure of the possible effects of such representation on the exercise of his [its] independent professional judgment on behalf of each.

In the present situation, the law firm has been employed by an insurance company to defend its insured. The insurance company has requested a declaratory judgment action be brought by the law firm to seek to have other insurance companies provide coverage for its insured. The insurance company does not intend to limit its own liability to the insured. Thus, we have a situation in which the rights of the insured are protected regardless of the outcome of the declaratory judgment action.

We do not find any provision of the Code of Professional Responsibility which would preclude the law firm from both defending the named insured in the underlying personal injury suit while, at the same time, seeking by way of declaratory judgment to have other insurance companies provide coverage to the named insured. As long as the named insured is protected in the underlying action and consents to the declaratory judgment action, the law firm may participate in both cases. See Bergmann v. Multi-State Inter-Insurance Exchange, 39 Ill.App.2d 468, 189 N.E.2d 49 (1963).

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