



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 1.10 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 Number 88-2
August 1, 1988

Topic: Conflict of Interest; Vicarious Disqualification

Digest: Vicarious disqualification does not occur if an attorney possessing a conflict is, upon joining a new office, appropriately "screened" from contact.

Ref: ISBA Opinion No. 762
In re Marriage of Thornton, 138 Ill.App.3d 906, 486 N.E.2d 1288 (1985);
LaSalle National Bank v. Lake Co., 703 F.2d 252 (7th Cir. 1983);
Analytica, Inc. v. N.P.D. Research, Inc., 708 F.2d 1263 (7th Cir. 1983);
Kovacevic v. Fair Automotive Repair, Inc., 641 F.Supp. 237 (N.D.Ill. 1986);
Weglarz v. Bruck, 128 Ill.App. 3d 1, 470 N.E.2d 21 (1984).

FACTS

A former part-time Assistant Public Defender has been hired as an Assistant State's Attorney in the same county. The attorney was also previously involved in private practice in a firm with his father and brother, which firm shared office space with another firm comprised of his uncle and cousin. All of such professional relationships were completely severed upon his becoming an Assistant State's Attorney. A number of cases in which the Assistant State's Attorney formerly

represented defendants are now awaiting sentencing.

The State's Attorney by whom the individual is now employed promulgated a policy whereby the Assistant State's Attorney has no contact with any case in which he had involvement as an Assistant Public Defender, has no communication with Assistant State's Attorneys handling such matters, and is required to avoid contact with matters previously or currently being handled by any member of his former firm. The attorney is also required to avoid contact with matters being handled by the firm with which he shared office space, as well as matters being handled by his cousin in the capacity of an Assistant Public Defender.

QUESTION

The inquirer asks whether the steps taken to insulate the Assistant State's Attorney from contact are sufficient to permit other members of the State's Attorneys office to be involved in matters in which the attorney himself may not appear, or whether special prosecutors must instead be appointed to handle the matters which the new Assistant is required to avoid.

OPINION

It is our belief that the steps taken are sufficient to permit the matters to be handled by other attorneys in the State's Attorney's office.

The question of "screening" as is here involved, has been the subject of substantial case law in recent years. Among the cases decided on the subject are In re Marriage of Thornton, 138 Ill.App.3d 906, 486 N.E.2d 1288 (1985); LaSalle National Bank v. Lake Co., 703 F.2d 252 (7th Cir. 1983); Analytica, Inc. v. N.P.D. Research, Inc. 708 F.2d 1263 (7th Cir. 1983); Kovacevic v. Fair Automotive Repair, Inc. 641 F. Supp. 237 (N.D.Ill. 1986). See also ISBA Advisory Professional Ethics Opinion No. 762 (1982). Without going into extensive discussion of each of the cases, suffice it to say that they are to the effect that the taking of appropriate steps to screen or insulate an attorney from contact with matters with which he previously had a substantial relationship will permit his current firm or employer to continue involvement in such matters. (But, see Weglarz v. Bruck, 128 Ill.App. 3d 1, 470 N.E.2d 21 (1984), where the Appellate Court held, we believe incorrectly, that screening can only be utilized to prevent disqualification of a firm where the attorney can show that he had no knowledge of confidences and secrets of the former client.) Among the factors typically viewed as relevant in determining the sufficiency of screening procedures are whether they prohibit the attorney from consulting with or discussing the case with other attorneys in his office; whether they prohibit discussion of the case in the attorney's presence; whether the attorney is denied access to files and documents relating to the case; and generally, whether the procedures established insure that the attorney does not work on matters with which he previously had a substantial relationship, or in any way use any knowledge gained in his previous employment for the benefit of his new employer or client. It should additionally be noted that such screening procedures should be the result of "specific institutional mechanisms" established for such purpose, and that they should be in place immediately upon the attorney's arrival.

It appears to us from the information provided that steps consistent with the above have been

taken to insulate the new Assistant State's Attorney from cases with which he personally has or may have some conflict. Accordingly, we are of the belief that other attorneys in the State's Attorney's office may ethically be involved in such matters.
