



**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 Rule of Professional Conduct 1.7. 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 89-11
November 28, 1989**

Topic: Conflict of interests of lawyer and client

Digest: A lawyer may continue to represent a client in a proceeding after that client has filed a disciplinary complaint against the lawyer regarding that proceeding, providing that client consents after disclosure.

Ref: Rules 2-110, 5-107 and 7-101;
ISBA Opinion No. 822
In re Jerome, 31 Ill.2d 284, 201 N.E.2d 440 (1964).

FACTS

A lawyer filed a claim with the Illinois Industrial Commission for a client. A decision adverse to the client was rendered, and the lawyer appealed the decision on behalf of the client. The client then filed a complaint against the lawyer with the Illinois Attorney Registration and Disciplinary Commission with respect to the Industrial Commission proceeding. Notwithstanding the filing of the ARDC complaint, the client has advised the Industrial Commission that he has no objection to the lawyer continuing to handle the matter. The lawyer also states that he is willing to continue to represent the client if no ethical violations exist.

QUESTION

The lawyer asks whether it is permissible to continue his representation of the client in the Industrial Commission proceeding even though the client has filed a disciplinary complaint against him for his conduct in that proceeding.

OPINION

The Committee believes the inquiring lawyer may withdraw pursuant to Rule 2-110(c)(1)(D) of the Illinois Code of Professional Responsibility. By filing a disciplinary action against the lawyer, the client has arguably made it unreasonably difficult for the lawyer to carry out his employment effectively. Such overt discontent with the attorney's handling of the case may well have triggered an irreparable breakdown in the attorney-client relationship. The question then is whether the lawyer must withdraw from a case as a result of which his client has filed a disciplinary action against him.

The Committee believes the lawyer need not withdraw as long as the client is fully apprised of the resulting difficulties and the lawyer is confident he may continue representation without prejudice to his client. Rule 5-107(a) requires a lawyer to represent his clients with "undivided fidelity." While this rule usually applies to those cases in which third parties may have undue influence on an attorney's judgment, it provides guidance in this situation as well. If the lawyer's interest in the related ARDC matter will adversely affect his zealous representation of his client, he must withdraw pursuant to Rule 2-110(b)(2) and 7-101(a)(3).

The Committee has held that a lawyer need not withdraw in such situations posing the potential of divided loyalty if he reasonably believes his representation will not be adversely affected and if he makes full disclosure to his client. For example, in Opinion No. 822, the Committee considered whether it was proper for an attorney to represent another lawyer even though each frequently represented clients adverse to each other. In concluding that it would be ethical, the Committee took into consideration Canon 5 and advised that "the lawyer, professional that he is, must in the end be guided by his personal conscience in determining whether or not he should represent a client."

In this case, both the lawyer and the client appear willing to continue the attorney-client relationship. Therefore, the lawyer may continue representing the client in a proceeding for which that client filed a disciplinary action against the attorney, provided that the lawyer's professional judgment is not adversely affected and provided as well that the client consents after being fully apprised of the potential conflicting loyalties involved.

The Committee would further note that In re Jerome, 31 Ill.2d 284, 201 N.E.2d 440 (1964), indicates that it is professionally improper for a lawyer to condition settlement of civil litigation upon the withdrawal of a pending disciplinary matter; the same may also be true as to a lawyer conditioning further representation of a client upon withdrawal by the client of a charged filed with ARDC.