



**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 1.6, 1.9, and 1.10. 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. 90-5
November 6, 1990**

Topic: Conflict of Interest; Representing a Client Against a Former Client

Digest: (1) Lawyer is prohibited from representing husband in divorce action where lawyer had previously represented husband and wife in other joint matters;
(2) Prohibition extends to lawyer's partner and firm.

Ref: Rules 1.6, 1.9(a), 1.10(a), Illinois Rules of Professional Conduct

FACTS

Husband and Wife engaged in various and sundry business activities over the course of the twenty-seven years of their marriage. Through that twenty-seven year period, attorney "A" represented them on all of their business endeavors, including estate planning, purchase and refinancing of investment real estate, and incorporation of a business. Attorney "A" is, therefore, intimately acquainted with the finances of both Husband and Wife.

Wife has now filed a Petition for Dissolution of Marriage. During all of this time, attorney "A" has been a member of various firms and his new firm has now filed an Appearance on behalf of the Husband, and his new partner is ostensibly handling the divorce proceeding.

QUESTIONS

1. Does Attorney A's law firm have a conflict of interest because of A's prior representation of the Wife?
2. May Attorney "A"'s law firm properly represent the Husband in said divorce?

OPINION

The facts and questions presented in this inquiry reflect a common conflict-of-interest scenario inherent in many divorce situations.

Rule 1.9 of the Illinois Rules of Professional Conduct states as follows:

- (a) A lawyer who has formerly represented a client in a matter shall not thereafter:
 - (1) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client, unless the former client consents after disclosure; or
 - (2) use information relating to the representation to the disadvantage of the former client, unless:
 - (A) such use is permitted by Rule 1.6; or
 - (B) the information has become generally known.

Normally, the disposition of marital assets is a "materially adverse" situation, and it is difficult, at best, for the Committee to imagine that the "former client," i.e., the wife, would give consent under these circumstances.

Additionally, Attorney A is prohibited under Section (2) of the Rule from using information obtained in the prior joint representations of the parties. It is obvious that counseling and representing a married couple in acquiring investments, planning their estates, etc., of necessity involves a sharing of confidences.

Rule 1.6(a) allows a sharing of confidences with consent:

Except when required under Rule 1.6(b) or permitted under Rule 1.6(c), a lawyer shall not, during or after termination of the professional relationship with the client, use or reveal a confidence or secret of the client known to the lawyer unless the client consents after disclosure.

The applicable provisions of the 1980 Code of Professional Responsibility (Rule 5-105) have been similarly construed by the Committee on numerous occasions to reach the conclusion set forth herein.

Finally, we note that Attorney A's partners' representation of the Husband is governed by the same

standard:

Rule 1.10(a) Illinois Rules of Professional Conduct:

No lawyer associated with a firm shall represent a client when the lawyer knows or reasonably should know that another lawyer associated with that firm would be prohibited from doing so by Rules 1.7, 1.8(c) or 1.9, except as permitted by Rules 1.10(b), (c), or (d), or by Rule 1.11 or Rule 1.12.

In conclusion, the Committee feels that an attorney may not represent one spouse in a divorce action against the other spouse where the attorney had previously represented both spouses jointly in other matters which prohibition also extends to the attorney's partner and firm. The Committee recognizes that in rare instances, consent may be properly granted; however, the elimination of conflict, present potential, together with elimination of the appearance of impropriety, conform to the intent and spirit of the Preamble of the Illinois Rules of Professional Conduct.

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