



**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 1.7, 1.16(b)(6) and 8.4(g). 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. 90-30
May 15, 1991**

Topic: Conflict of Interest

Digest: A lawyer may continue to represent a client where their interests are potentially in conflict when the lawyer reasonably believes the representation will not be adversely affected and the client consents after disclosure.

Ref: 1990 Illinois Rules of Professional Conduct, Rules 1.7(b), 1.16(b)(1)(D);
1980 Code of Professional Responsibility Rule 2-110(c)(1)(D);
ISBA Opinion No. 89-11

FACTS

The inquiring attorney has filed a lawsuit on behalf of a client seeking collection of a debt owed to the client. The defendant's attorney has responded by sending a letter to the inquiring attorney claiming that the inquiring attorney violated provisions of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. 1692, et seq. in certain pre-litigation communications directed to the defendant. Defendant offers to release the inquiring attorney from any claims for violation of the FDCPA in exchange for the dismissal of the collection case with prejudice.

QUESTION

Is the inquiring attorney under an obligation to withdraw from representing his client?

OPINION

Rule 1.7(b) of the Rules of Professional Conduct provides as follows:

A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

- (1) the lawyer reasonably believes the representation will not be adversely affected; and
- (2) the client consents after disclosure.

Clearly, the interests of the inquiring lawyer in the present situation are such that they may place him in a position of conflict with his client. However, under Rule 1.7(b), this does not preclude his continuing representation of his client if he reasonably believes that, under the circumstances, his representation of his client will not be adversely affected, and if the client consents to such continuing representation after disclosure of the potential conflict. We are not in a position to say, based on the circumstances presented by the inquiring attorney, that a belief by the attorney that he can continue to adequately represent his client would be unreasonable.

We are buttressed in our view by our recent Opinion No. 89-11. There we recognized that, with the consent of the client after disclosure, an attorney may continue in the representation of a client even where the client has a disciplinary complaint pending against the attorney with regard to the very proceeding involved in the continuing representation. While the Committee recognized that such circumstances would permit the attorney to withdraw under then Rule 2-110(c)(1)(D) of the Code of Professional Responsibility (now Rule 1.16(b)(1)(D)), we did not believe withdrawal was mandated where both the attorney and the client, after the disclosure of potential conflicts, desired to have the relationship continue. We believe that the same rationale applies, even more clearly, in the present instance.

Accordingly, we are of the view that the present representation may continue if the dictates of Rule 1.7(b) are satisfied.

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