



**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 No. 91-4
September 14, 1991**

Topic: Conflict of Interest

Digest: It is improper for a member of a county board to represent criminal defendants being prosecuted by the state's attorney of that county.

Ref.: Illinois Rules of Professional Conduct, Rule 1.7(b)
Illinois Code of Professional Responsibility, Former Rule 5-101(a)
In re Vrdolyak, 137 Ill.2d 407, 560 N.E.2d 840
ISBA Advisory Opinion Nos. 544, 699, 791, 84-11, 87-13, 90-17

FACTS

The inquiring attorney, who is a member of the county board, represents criminal defendants being prosecuted by the county state's attorney's office in the same county.

INQUIRY

Does such representation of criminal defendants in the county by the county board member violate the provisions of the Rules of Professional Conduct?

OPINION

The present inquiry is governed by the Illinois Supreme Court's recent decision in In re Vrdolyak, 137 Ill.2d 407, 560 N.E.2d 840 (1990), as well as several previous opinions issued by this Committee.

The issue before the Court in Vrdolyak, supra, was whether a city of Chicago alderman could represent private clients in proceedings adverse to the city before the Illinois Industrial Commission. The Court held that the defendant, by reason of the undivided duty of loyalty and fiduciary duty owed to the city as a public official thereof, was engaged in a conflict of interest when representing clients in workers' compensation claims against the city. Quoting favorably a case from New Jersey, the court noted "...a lawyer-legislator is,...`subject to the ethical standards of his profession, even though there is no attorney-client relationship involved in hte public office.'" 148 Ill.Dec. at 248. In so holding, the Court concluded that a defendant's conduct violated section 5-101(a) of the then Code of Professional Responsibility, the section which prohibited an attorney from accepting employment where the exercise of his professional judgment on behalf of the client may be affected by his own interests. Moreover, the Court held that even full disclosure, and presumably consent of the clients, could not avoid nor overcome the conflict presented by the alderman's representation of clients adverse to the city.

The same result appears mandated under the present Rules of Professional Conduct, and in the situation presented by the present inquiry. Rule 1.7(b) of the Rules provides:

A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibility 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.

While the language of the present Rules differs in some respects from that of Section 5-101(a) of the prior Code, such differences do not suggest a different conclusion from that reached by the Court in Vrdolyak. Similarly, while the present Rule, like the past Code, contains language foreseeing the possibility of a consent after disclosure, such consideration apparently cannot, in light of Vrdolyak, be relied upon to overcome the conflict inherent in a public official's representation of clients adverse to his public body (although we have recognized in Opinion No. 90-17 that there may be certain limited situations under Rule 1.7(b), depending on the circumstances, where disclosure and consent may permit representation of a private client with respect to the city with which the attorney is affiliated.)

It appears in the present instance that, as a general proposition, the inquiring county board member cannot, under the principles enunciated in Vrdolyak, represent defendants in actions being prosecuted by the state's attorney's office of the county in which he is an official.

This conclusion is consistent with previous opinions issued by this Committee, several of which were in fact cited with approval in the Vrdolyak opinion. Most to the point is Opinion No. 699, issued in 1981 and recently reaffirmed by the Committee, in which it was concluded that it is

improper for a lawyer county board member to represent persons charged with crimes by the state's attorney of the county in which he is a board member. See also Opinions 791 and 87-13. Additionally, see Opinion 90-17 for a general discussion of the considerations to be taken into account in light of In re Vrdolyak, and Opinion 91-1 for a discussion of conflicts of interest in situations involving public officials and/or employees.

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