



**ILLINOIS STATE  
BAR ASSOCIATION**

# **ISBA Advisory Opinion on Professional Conduct**

---

**ISBA Advisory Opinions on Professional Conduct are prepared as an educational service to members of the ISBA. While the Opinions express the ISBA interpretation of the Illinois Rules of Professional Conduct and other relevant materials in response to a specific hypothesized fact situation, they do not have the weight of law and should not be relied upon as a substitute for individual legal advice.**

---

**This Opinion was AFFIRMED by the Board of Governors in May 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.11 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. 92-19  
March 26, 1993**

Topic: Conflict of Interest: Part-time Assistant State's Attorney acting as civil counsel on matters arising out of criminal prosecution.

Digest: It is improper for a part-time Assistant State's Attorney assigned to prosecute criminal matters to simultaneously or subsequently represent individual(s) in civil litigation arising out of a criminal matter he or she prosecuted.

Ref.: 1990 Illinois Rules of Professional Conduct, Rules 1.2(e) and 1.11(a), (b)  
ISBA Advisory Opinion Nos. 407 and 85-10  
55 ILCS 5/3-9009

## **FACTS**

A part-time assistant state's attorney is permitted by terms of employment to maintain a private law office. The assistant's duties include the prosecution of all types of criminal cases. During the course of carrying out these duties, the assistant comes in contact with victims and witnesses who desire legal representation regarding related civil matters. In many of these circumstances, the requested legal representation involves civil litigation arising out of the same facts as those of a criminal matter handled by the assistant.

## **QUESTION**

Whether a part-time assistant state's attorney can represent individuals in civil matters arising out of pending or past criminal prosecutions handled by the part-time assistant state's attorney?

## **OPINION**

The question of representation of the State in a criminal prosecution and a plaintiff in a civil action arising out of the same facts is addressed in Illinois Revised Statutes, chapter 34, section 3-9009, which provides:

The state's attorney shall not receive any fee or reward from or in behalf of any private person for any services within his official duties and shall not be retained or employed, except for the public, in a civil case depending upon the same state of facts on which a criminal prosecution shall depend.

This provision precludes a part-time assistant state's attorney from representing a civil litigant in a civil matter arising out of a pending criminal matter with which he or she is involved.

ISBA Advisory Opinions on Professional Conduct, Nos. 407 and 85-10, decided under the Illinois Code of Professional Responsibility, are extremely persuasive on this question. In both, it was determined that an assistant state's attorney could not properly represent civil litigants and the State or County in a criminal prosecution arising out of the same facts. This would be true for a pending criminal matter or one with a final disposition.

\* \* \*