



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 5.4 and 5.5(a). 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 88-8 (March 15, 1989)

Topic: Unauthorized Practice of Law, Legal Assistants, Use of Between Law Firm and Collection Agency.

Digest: It is improper for a law firm's client to provide space within its own business office for the regular use of a firm's paralegal to take phone calls and discuss matters in the law firm's name; it is improper for a law firm to allow a "paraprofessional" employed by one of the firm's clients to accept phone calls at the client's place of business in the law firm's name.

Ref: Rule 3-101
Ill. Rev. Stat., Ch. 13 §1

FACTS

A law firm represents a collection agency. The law firm desires to allow a "paraprofessional" employee of the collection agency to accept phone calls at the client's place of business on behalf of the law firm concerning collection matters. Alternatively, the law firm desires to place a legal assistant employed by the law firm at the client's business office to take phone calls concerning collection matters.

QUESTION

Is it improper for a law firm's client to provide space within its own business office for the regular use of a firm's legal assistant to take phone calls and discuss collection matters in the law firm's name?

Is it improper for a law firm to allow a "paraprofessional" employed by one of the firm's clients to accept phone calls at the client's place of business in the law firm's name?

First, Rule 3-101 states in pertinent part:

- (a) A lawyer shall not aid a nonlawyer in the unauthorized practice of law.
- (b) A lawyer may delegate work to a nonlawyer employed by him if the lawyer in fact supervises the nonlawyer and assumes complete responsibility for the work of the nonlawyer.

Further, Illinois Revised Statutes, Chapter 13, section 1, states in pertinent part:

No person shall be permitted to practice as an attorney or counselor at law within this State without having previously obtained a license for that purpose from the Supreme Court of this State.

No person shall receive any compensation directly or indirectly for any legal services other than a regularly licensed attorney...

Further, Illinois Revised Statutes, Chapter 13, section 1, states in pertinent part:

No person shall be permitted to practice as an attorney or counselor at law within this state without having previously obtained a license for that purpose from the Supreme Court of this State.

No person shall receive any compensation directly or indirectly for any legal services other than a regularly licensed attorney...

In the first instance, it is suggested that an employee of the collection agency, whom they have coined a "paraprofessional," at a separate telephone within the collection company's business received telephone calls on behalf of the law firm, and supposedly negotiated with the debtor. The collection agency's "paraprofessional" is not "employed" by the attorney nor is the attorney responsible for the "paraprofessional's" work. Such a procedure creates the impression of impropriety, and could very well constitute aiding the unauthorized practice of law inasmuch as the client's employee is neither a lawyer nor a legal assistant employed by the law firm representing the collection business. The suggestion would, therefore, appear to be in violation of Rule 3-101 and Illinois Revised Statutes, Chapter 13, section 1.

As an alternative, it is suggested that the law firm's legal assistant would be at the collection agency's place of business and would be taking phone calls and discussing collection matters without any supervision by a lawyer. As such, this would, at the very least, be in violation of Rule 3-101 which requires the lawyer supervise the nonlawyer employed by the lawyer and take complete responsibility for the work of the nonlawyer.