



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 8.3 and 8.4(b) and (c). See also *In re Himmel*, 125 Ill.2d 531, 533 N.E.2d 790 (1988) and *Skolnick v. Altheimer and Gray*, 191 Ill.2d 214, 730 N.E.2d 4 (2000). 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 88-17

May 10, 1989

Topic: Duty to Report Ethics Violations

Digest: Lawyer has no duty to report to the ARDC conduct of a person who has been disbarred, which conduct might be an ethics violation if committed by a lawyer.

Ref: Code of Professional Responsibility, Rules 1-102, 1-103, 4-101

FACTS

A is a disbarred former attorney who was charged with criminal violations involving the unauthorized practice of law. He retained Attorneys B and C to represent him on those charges. Pursuant to a negotiated plea agreement, A pled guilty to a felony and was placed on probation. Subsequently, B was informed in a letter written to B by an Assistant State's Attorney of possible ethical violations of A, at least one of which would possibly be a criminal violation or could be used to revoke A's probation. This information was not included in the previously filed criminal charges, although the violations occurred prior to the guilty plea.

QUESTION

The question presented is whether B has a duty to report those "violations" to the Attorney Registration and Disciplinary Commission under the circumstances. It is also asked whether, if there is no duty to report, it would be an ethical violation by B to report to the ARDC.

OPINION

Rule 1-103(a) of the Illinois Code of Professional Responsibility requires that a lawyer "possessing unprivileged knowledge of a violation of Rule 1-102(a)(3) or (4) shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation." Rule 1-102(a) provides that "A lawyer shall not...(3) engage in illegal conduct involving moral turpitude; (4) engage in conduct involving dishonest, fraud, deceit, or misrepresentation..." The Committee believes the term "lawyer" as used in Rule 1-102(a) refers only to those persons who are duly authorized to practice law in Illinois.

Because A is no longer licensed to practice law in Illinois, the Committee believes that he is no longer a "lawyer" as that term is used in the Code of Professional Responsibility. Therefore, A is not subject to the Code. As a result, B would have no obligation under the Code of Professional Responsibility to report knowledge of conduct that would be a violation of Rule 1-102(a) by A if he were a lawyer.

Because the information concerning A's alleged improper conduct came to B in the course of his representation of A, the information might be protected by Rule 4-101, but the Committee does not have sufficient facts to reach an opinion on that issue. The Committee expresses no opinion with respect to the jurisdiction of the Attorney Registration and Disciplinary Commission over persons who have been disbarred. Nor does the Committee express an opinion on the appropriate treatment of the information, apparently in the knowledge of the Assistant State's Attorney, which may involve activities relating to the unauthorized practice of law.

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