



**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 3.6(a), (b), and (c). 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. 91-19
January, 1992**

Topic: ARDC; Trial publicity; Attorney comments to press on pending ARDC proceedings.

Digest: It is not improper for attorney to disclose to the news media details of his report to the ARDC on another attorney where such disclosure does not pose a serious and imminent threat to the fairness of the ARDC proceedings or any related civil or criminal proceedings.

Ref.: Illinois Rules of Professional Conduct, Rule 3.6(a), (b), (c)
Illinois Supreme Court Rules 766 and 775

FACTS

Attorney A reports Attorney B to the Attorney Registration and Disciplinary Commission (ARDC) for misconduct. Attorney A tells the press about his reporting Attorney B and describes Attorney B's alleged improper conduct. The press prints an account of Attorney A's report on Attorney B. Judge C reads the report on B's misconduct in the newspaper and he also reports B's alleged misconduct to the ARDC. Judge C then tells the news media he has also reported Attorney B to the ARDC.

QUESTIONS

1. Is it improper for Attorney A to tell to the news media that he has reported Attorney B to the

ARDC and to describe to the press what he believes to be the improper conduct of Attorney B?

2. Is it improper for the Judge to tell the news media that he has contacted the ARDC with regard to Attorney B?

3. Is it proper for Attorney B, the subject of all the press, to comment publicly concerning the conduct of Attorney A and Judge C in reporting him and to comment on any action taken or not taken by ARDC?

OPINION

It would be improper for Attorney A, Judge C and Attorney B, the target of the ARDC report, to talk to the news media about the ARDC matter only where what was said to the press "would pose a serious and imminent threat to the fairness of an adjudicative proceeding." Rule 3.6(a) - Trial Publicity. Under Rule 3.6(b), a report to the news media "ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration" and the statement relates to certain specific matters set out in Rule 3.6(b)(1)-(6). Notwithstanding the foregoing prohibition, an attorney "involved in the investigation or litigation of a matter may state without elaboration" certain specified details about the claim or offense enumerated in Rule 3.6(c)(1)-(7), including "(6) a warning of danger concerning the behavior of a person involved, when the lawyer reasonably believes that there exists the likelihood of substantial harm to an individual or to the public interest...."

Since an ARDC case is a civil matter and will not likely be considered "triable to a jury", or result in incarceration, it is unlikely that the comments to the press described above would be considered "likely" improper under Rule 3.6(b) unless the conduct would also subject the target to civil or criminal liability and the other requirements of Rule 3.6(b) and (c) are met. Thus, where the reports to the ARDC will not likely result in civil or criminal liability, they would have to be shown "to pose a serious and imminent threat to the fairness" of the ARDC proceedings to be considered improper. Given the limited facts of this inquiry, no assessment can be made of the likelihood of the reports to the media affecting the fairness of the ARDC proceeding or any related civil or criminal proceeding.

Supreme Court Rule 766, Confidentiality and Privacy, states that "proceedings under Rules 751 through 774 shall be public with the exception of" certain stated matters that are to be "private and confidential". The private matters generally included investigations conducted by the Administrator, proceedings before the Inquiry Board, proceedings before the Hearing Board prior to the service of a complaint on the respondent, information that has led to the issuance of a protective order, deliberations of the Hearing and Review Boards, proceedings before the Hearing and Review Boards under Rule 758 pertaining to mental disability or addiction to drugs or intoxicants, and proceedings under Rule 760 with regard to the appointment of medical experts.

Thus, there is no specific rule prohibiting attorneys who report misconduct, or are the subject of it, from making statements to the press about ARDC proceedings where the statements pose no serious and imminent threat to the fairness of that proceeding or any related civil or criminal proceeding.

It should be noted, however, that the immunity given by Supreme Court Rule 775 to "Any person who communicates a complaint concerning an attorney to" the ARDC applies only to communications made to that body, its administrators, staff, investigators and members of its

boards. Thus the comments by Attorney A and Judge C to the news media would not qualify for the absolute immunity from civil liability granted under Rule 775.

Finally, it should be further noted that the obligation to report misconduct under Rules 8.3 and 8.4 would not likely be triggered by reports read in a newspaper.

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