



**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 4.1, 4.2, and 4.3. 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. 93-14
March, 1994**

Topic: Communications with Unrepresented Adverse Party

Digest: An attorney may communicate with an unrepresented party, provided that the attorney does not give advice or permit the assumption that the attorney is a "disinterested" party.

Ref.: Illinois Rules of Professional Conduct, Rules 4.1(a); 4.2 and 4.3
ISBA Opinions on Professional Conduct, Nos. 192, 86-11 and 88-3

FACTS

An Illinois attorney sent a letter to an insured of insurance company before the insured was represented by counsel but after the attorney had been dealing with the insurance adjuster for several months. In the letter, the attorney stated the opinion that the insurance company had been uncooperative and unconcerned with the insured's interest.

QUESTION

Do the Illinois Rules of Professional Conduct prohibit an attorney from contacting an individual the attorney knows is insured by insurance company once the attorney has begun dealing with an insurance adjuster?

OPINION

Rule 4.2 provides that a "lawyer shall not communicate or cause another to communicate on the subject of representation with a party the lawyer knows to be represented by another lawyer in that matter."

As stated in ISBA Opinion No. 192, it is a violation of the Rules of Professional Conduct for an attorney to correspond directly with a party who is represented by counsel employed by the party's liability insurer.

A relationship of attorney and client is created between an attorney retained by the insurance company to represent one of its insureds in litigation arising from an occurrence covered by its policy of insurance and the insured. ISBA Opinion No. 192. In this case, however, the insured was unrepresented by counsel at the time of communications and subsequently obtained counsel.

Even when communicating with an unrepresented party, an attorney is subject to certain restrictions. An attorney may communicate with an unrepresented party provided that the attorney does not give any advice to the party or foster the unwarranted assumption that the attorney is a "disinterested" party. Opinions 86-11 and 88-3. "In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested." Rule 4.3 In addition, "a lawyer shall not make a statement of material fact or law to a third person which statement the lawyer knows or reasonably should know is false." Rule 4.1(a). In the letter, the attorney indicated a personal belief as to the situation with the insurance adjuster. While the attorney's communication did not violate Rule 4.1(a), caution should be exercised so it does not appear that a statement of fact is being made.

* * *