



**ILLINOIS STATE  
BAR ASSOCIATION**

# **ISBA Advisory Opinion on Professional Conduct**

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**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.**

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**This Opinion was AFFIRMED by the Board of Governors in May 2010. Please see the 2010 Illinois Rule of Professional Conduct 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.**

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**Opinion No. 93-15  
March, 1994**

Topic: Unauthorized practice of law, non-attorneys representing employers at Illinois Department of Employment Hearings

Digest: 1) Employer representation by non-attorney representatives to prepare and present evidence at termination hearings constitutes unauthorized practice of law.  
2) Participation in administrative hearings by attorneys where lay persons represent another party does not constitute aiding in the unauthorized practice of law.

Ref.: Illinois Rules of Professional Conduct, Rule 5.5(b)  
ISBA Opinions on Professional Conduct, Nos. 88-8, 91-15, 90-35, 705  
705 ILCS 205/1; 205 ILCS 220/1; 5 ILCS 315/5; 115 ILCS 5/3 and 5/5(g)  
People ex rel Chicago Bar Association v. Barasch, 406 Ill. 253, 94 N.E.2d 148 (1950)

## **FACTS**

At hearings held by the Illinois Department of Employment Security, Referees (hearing officers) conduct examinations, receive evidence and testimony, and either grant or deny unemployment benefits to the terminated employee.

Employers employ non-attorneys to prepare documentary evidence, examine witnesses, and

generally represent the employer at these hearings.

### **QUESTIONS**

1. Are the employers and their non-attorney representatives practicing law without a license (engaged in the unauthorized practice of law)?
2. Are attorneys who participate in the hearing process with non-attorneys, aiding in the unauthorized practice of law?

### **OPINION**

Illinois law provides that no person shall practice law without being authorized to do so. (Licensed) 705 ILCS 205/1. An exception in the statute relates to the right of employees/employer to engage in collective bargaining activities without using an attorney. The claim for unemployment benefits which is the subject of the hearings complained of herein, do not constitute collective bargaining activities and so do not come with the statutory exception to practicing law without a license. 5 ILCS 315/5, 115 ILCS 5/3 and 5/5(g).

It is unlawful for a corporation to practice law (705 ILCS 220/1) and corporations must employ an attorney to represent them.

The practice of law has been defined generally as giving of advice or rendering any sort of service by any person, firm or corporation when the giving of advice or rendering of such service requires the use of any degree of legal knowledge or skill. It has been defined as appearing in court or before tribunals representing one of the parties, counseling, advising such parties and preparing evidence, documents and pleadings to be presented. It has been defined as preparing documents the legal effect of which must be carefully determined according to law. It has been defined as referral to attorneys for service; advising or filling out of forms; negotiations with third parties and, in short, engaging in any activities which require the skill, knowledge, training and responsibility of an attorney. People ex rel Chicago Bar Association v. Barasch, 406 Ill. 253, 94 N.E.2d 148 (1950). The fact situation given herein, indicates that employers (maybe corporations) are employing lay individuals to give legal advice, prepare evidence for presentation to a tribunal, examine witnesses and documents and participate at administrative hearings. Such use of non-attorneys, not allowed by any statutory exception, constitutes the unauthorized practice of law.

The second question asks whether attorneys participating in the process (either as hearing officers or participants) are aiding in the unauthorized practice of law prohibited by Rule 5.5(b). Involvement in a matter where some other party violates the law or rules does not necessarily become an activity in aid of the unauthorized practice of law.

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