



ILLINOIS STATE
BAR ASSOCIATION

ISBA Advisory Opinion on Professional Conduct

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This Opinion was **AFFIRMED** as to Part 1 by the Board of Governors in July 2010. Part 2 was **OVERRULED** by the Board of Governors in January 1991. Please see the 2010 Illinois Rules of Professional Conduct 1.5, 7.1, and 7.2. 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 684
November 4, 1980

Topic: Lay Assistant/ Unauthorized Practice of Law

Digest: It is not per se improper for a law firm to employ a layman to render collective bargaining services for firm clients. It would be professionally improper for a lawyer to render legal advice to the clients of his lay employer.

Ref: Canon 3; EC 3-6; R 3-101(a); ISBA Opinions 286, 505, and 568;
ABA Formal Opinions 48, 292, 297, and 316;
ABA Informal Opinions 523 and 909.

QUESTIONS

(1) May a law firm employ a layman to render collective bargaining services to the firm's public and private sector clients? The layman would not render, in form or in substance, any legal advice.

~~(2) May an organization which uses laymen to perform collective bargaining negotiating services for its clients, use an attorney on its staff to render legal advice to its clients? —~~

OPINION

(1) It is not per se unethical for a law firm to employ a layman to render collective bargaining services to the firm's public and private sector clients. EC 3-6 recognizes that a law firm may hire laymen to perform certain tasks:

"A lawyer often delegates tasks to clerks, secretaries, and other lay persons. Such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product. This delegation enables a lawyer to render legal service more economically and efficiently."

A number of opinions have held that a law firm may employ a layman at a stated salary to perform certain non-legal tasks: an investigator to negotiate settlements of claims subject to final approval by the lawyer (ISBA 286, I 523); a layman to handle patent searches (F 48); and a certified public accountant to assist the firm in connection with accounting problems which may arise in the firm's law practice (F 297; F 292). The layman must be employed on a salaried basis and must not engage in the rendering of legal advice.

The Code of Professional Responsibility is concerned with lawyers not aiding in the unauthorized practice of law. Canon 3. It has long been recognized, however, that a non-lawyer may represent a client in collective bargaining and general labor relations work. As long as the layman performing the collective bargaining services is not rendering legal advice and the law firm maintains responsibility for and supervises his work, a law firm may employ a layman on a salaried basis for such purposes. See ISBA 505; ABA F 316. The law firm, however, would assume full responsibility for any act or conduct by the layman which would be unethical if done by a lawyer. ABA I 909.

~~(2) An attorney employed by a lay organization which performs collective bargaining negotiating services may not render legal advice to clients of the organization. A lawyer who provides legal advice to the clients of his lay employer would be aiding or making possible the practice of law by his employer. ISBA 568; ABA F 297; and ABA F 272. A lawyer may not aid in the unauthorized practice of law. Canon 3; R 3-101(a).~~

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