



ILLINOIS STATE
BAR ASSOCIATION

ISBA Advisory Opinion on Professional Conduct

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This Opinion was **AFFIRMED** by the Board of Governors in January 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.

Opinion Number 707
April 30, 1981

Topic: Solicitation of Employment Lay
Intermediaries Group Legal Services

Digest: The use of lay intermediaries between lawyers and those from whom they render particularized legal services constitutes the aiding of the unauthorized practice of law and is, therefore, professionally improper.

Ref: Rule 2-103

United Mine Workers of America v. Illinois State Bar Association, 389 U.S. 217, 200 (1967).

Smith v. Arkansas State Highway Employees, Local 1315, 441 U.S. 463 (1979).

FACTS

A Chicago Law firm ("CLF") is General Counsel to the National Public Employer Labor Relations Association ("NPELRA"), a private, not-for-profit, members-only, association incorporated under Illinois law.

CLF proposes to furnish legal services for an arbitrator evaluation and grievance research service ("Service") to be run jointly by the NPELRA and the Labor-Management Relations Service of the U.S. Conference of Mayors, Washington, D.C. ("LMRS"). CLF states that it has "no formal relationship with "LMRS". CLF has asked for an ethics opinion with respect to a proposal entitled "LMRS-NPELRA ARBITRATOR EVALUATION AND GRIEVANCE RESEARCH SERVICE."

The "service to be provided" by the contracting parties is stated as follows:

- "1. LMRS (and NPELRA, if involved) would, upon request, evaluate each arbitration panel as submitted by requesting jurisdiction.
- "2. LMRS (and NPELRA, if involved) would also, upon request, analyze an existing grievance in light of the contract language involved and then provide applicable legal principles, cases, quotes and precedent concerning the grievance.
- "3. LMRS (and NPELRA, if involved) would -- in turn -- be free to retain ...(CLF) or any other law firm on an 'as needed' basis to provide the basic research and work product concerning these two separate but related services."

The "logistics" of the contractual relationship between the parties are summarized in part as follows:

"As outlined above, LMRS and NPELRA would be the public interest organizations providing the service directly to the requesting jurisdiction. LMRS members would contact LMRS directly with their requests for aid and assistance; NPELRA members would contact LMRS or NPELRA, whichever was appropriate.

"LMRS (or NPELRA) could retain ...(CLF) or any other firm to provide assistance to LMRS in the evaluation of arbitrators and/or the provision of basic grievance research services..."

"(CLF's) client, if ...(CLF) was retained, would by LMRS (or NPELRA), not the requesting jurisdiction. If a requesting jurisdiction desired additional legal assistance it would of course, be free to retain...(CLF), or any other law firm, but this would be in a case-by-case basis and would have no direct relationship to the instant services offered by LMRS or NPELRA."

Upon the point of fees, CLF has stated that it would be willing to agree to evaluate a grievance arbitration "panel of up to seven names for \$150 per panel (\$50 for an individual arbitrator)." It then continues:

"Of course, LMRS could, in turn, charge \$200 or whatever amount was deemed appropriate by LMRS for this service."

CLF also states that it would be willing to provide "preliminary, basic research with case citations to LMRS for the basic research with case citations to LMRS for the basic fee of \$400 per request" even though "(n)ormally, \$1,000 to \$1,500 worth of attorney time would be necessary adequately to research the merits of a grievance arbitration case."

QUESTION

Whether the proposed creation by the Chicago Law Firm of an arbitrator evaluation and grievance research service to be run jointly by two lay agencies, NPELRA and LMRS, would be violative of the Illinois Code of Professional Responsibility ("Code"), as adopted by the Supreme Court of Illinois and made effective July 1, 1980. and hence would be professionally improper.

OPINION

The inquiring lawyer suggests that the only ethical problems raised by the proposal to create lay agencies to administer the proposed service are found at Rules 2-101 and 3-101, and 3-102 of the Code. We believe that this suggestion misconceives the nature of the ethical problem present, for it is clear that those associating in selling legal opinions and advice are engaging in the unauthorized practice of law, and thus, would be in violation of Rule 2-101. Since we find that the proposal constitutes a clear violation of Rule 2-103, we find it unnecessary to make any further inquiry as to other Code Rules which might be violated by the proposal, including 3-101. United Mine Workers of America v. Illinois State Bar Association, 389 U.S. 217 (1967), does not sanction the proposal that basic principles of legal procedures may be overridden under the banner of "free speech." Mr. Justice black writing for a majority of eight justices, was careful to point out that the union in that case did not constitute a lay intermediary between a lawyer and one for whose benefit the services were rendered (389 U.S. at 219-220):

"The undisputed facts concerning the operation of the Union's legal department are these. The Union employs one attorney on a salary basis to represent members and their dependents in connection with claims for personal injury and death under the Illinois Workmen's Compensation Act. The terms of the attorney's employment...include the following specific provision: 'You will receive no further instructions or directions and have no interference from the District, nor from any officer, and your obligations and relations will be to and with only the several persons you represent.' The record shows no departure from this agreement..."

The most recent expression on the point by the Supreme Court reversed, per curiam, lower

federal court holdings which had upheld the right of "employees to present their grievances with assistance by the union (without a lawyer) at a meaningful time and in a meaningful manner." See 459 F.Supp. 452 at 456. Smith v. Arkansas State Highway Employees, Local 1315, 441 U.S. 463 (1979), reversing 585 F.2d 876 (8th Cir. 1978) and 459 F.Supp. 452 (E.D. Ark. W.D. 1978).

The use of lay intermediaries between lawyers and those for whom they render particularized legal services constitutes the aiding of the unauthorized practice of law and is, therefore, professionally improper.

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