



**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 1.5. 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 725
April 30, 1981**

**Topic: Admission of a New
Partner**

Digest: It is professionally proper for an existing partnership to enter into an agreement for admission of a new partner under which the new partner is to pay a sum in excess of the fair market value of the physical assets of the existing partnership. It is further professionally proper for a newly admitted partner to share in fees received by the partnership after his admission for work performed prior to his admission.

Ref: Rule 2-107
ISBA Opinions 124, 231, 239 and 310;
ABA Formal Opinion 226

FACTS

A and B, who are partners in an existing partnership, entered into an agreement to admit new partner C for the payment of \$95,000.00 by C to A and B, with \$10,000.00 down and a note for the balance payable over a ten year period with interest. Under the agreement C was to receive twenty percent of the net profits of the new partnership. At the time of the admission of new partner C, the physical assets of the existing partnership had a fair

market value of \$45,000.00 and the remaining \$50,000.00 of the sum agreed to be paid by C was allocated to good will and the right to receive twenty percent of the profits, including fees to be received on existing files.

QUESTION

Is it professionally proper for A and B to receive payment from C of an amount greater than the fair market value of the physical assets of the existing partnership and to allocate said additional amount to good will and the right to receive twenty percent of the profits, including fees to be received in the future on existing files?

OPINION

This question has undoubtedly arisen because a number of opinions have held that a lawyer's practice and good will are not assets which may be sold or offered for sale. (See ISBA Opinions 124, 231, 239 and 310; ABA Formal Opinion 226).

It is the opinion of this committee, however, that the admission of a new partner to an existing partnership under an agreement that calls for a payment of money by the new partner to the existing partners does not constitute the sale of a law practice or any portion thereof. The committee draws the same conclusion regardless of whether the money to be paid by the new partner exceeds the fair market value of the physical assets of the partnership and regardless of whether the agreement allocates a portion of the amount to be paid to "good will" and "work in progress."

The question presented also requires a determination of whether it is professionally proper for the new partner to share in fees received by the partnership after his admission for work that was performed prior to his admission.

Rule 2-107 of the Illinois Code of Professional Responsibility regulates the division of fees among lawyers. It does not, however, apply to the division of legal fees with a partner or associate of the same law firm.

In view of the foregoing, the committee is of the opinion that it is professionally proper for a newly admitted partner to share in fees received by the partnership after his admission for work performed prior to his admission.

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