



**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 Rules of Professional Conduct 1.8(e). 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. 767
January 12, 1982**

**Topic: Advancing Court Costs;
Aiding Unauthorized Practice;
Circumventing Disciplinary
Rule through Actions of Another.**

Digest: It would be professionally improper for a lawyer to participate in a program which involves the unauthorized practice of law and possible violation of the maintenance statute.

Ref.: Rules 5-103(b), 3-101 and 1-102;
Ill.Ref.Stat., Ch. 13, Sec. 22.

FACTS

A lawyer in a university student legal services office has inquired whether or not it would be improper to participate in a program whereby an independent organization known as the "Illinois Public Interest Research Group" would advance on behalf of students who meet minimum standards of need the necessary court costs in filing small claims suits to recover rental deposits from landlords. The advancements would also be subject to screening by the student legal services as to whether the claim is a valid one. In the event of recovery of court costs in the litigation, but not otherwise, the research group would be reimbursed so that the fund created for this purpose could be sustained on a revolving basis.

OPINION

We are concerned only with the professional ethics of the lawyer involved and with the prohibitions of the Illinois Code of Professional Responsibility. We are not concerned with and do not give advisory opinions as to statutory violations. Therefore, we express no opinion as to whether the "Research Group" here involved would violate the provisions of or fall within the exceptions to the Illinois maintenance statute (Ill. Rev. Stat., Ch. 13, Sec. 22) which provides as follows:

"If any person should officiously intermeddle in any action that in no way belongs to or concerns such person, by maintaining or assisting either party, with money or otherwise, to prosecute or defend such action, with a view to promote litigation, he shall be deemed guilty of maintenance, and upon conviction thereof, shall be fined and punished as in cases of common barratry: Provided, that it shall not be considered maintenance for a man to maintain the suit of his kinsman or servant, or any poor person out of charity."

A question has been raised with respect to Rule 5-103(b) of the Illinois Code of Professional Responsibility. That Rule provides as follows:

"While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to his client, except that a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses."

There would be no direct violation by the lawyer of this Rule because it is not the lawyer who is advancing the suit costs. It is an independent non-lawyer organization. We are not advised of the exact nature of the "Research Group", its organization or purpose, but assume it is an independently funded organization with altruistic or charitable motives designed to provide aid and financial assistance to needy students.

The outline of the Research Group proposal furnished us contains the following with respect to personnel:

"Staff Needed

To insure that the money is used for it's (sic) purpose a staff person can assist the student in placing the claim. This service could help the claimant cope with the red tape involved and leave a lasting impression of the concern we have for each individual."

The inquiring lawyer is an attorney in the student legal services program and would, presumably, be the lawyer aiding and assisting the Research Group in its court cost funding program. This brings into play Rule 3-101(a) of the Code:

"(a) A lawyer shall not aid a nonlawyer in the unauthorized practice of law."

We think the assistance "in placing the claim" and helping the claimant "cope with the red tape involved" would thrust the Research Group into the area of unauthorized practice of law which the lawyer is prohibited by Rule 3-101 from aiding.

That coupled with the potential violation of the maintenance statute referred to above would prohibit, in our opinion, the lawyer from participating or cooperating in the program outlined. Rule 1-102 provides that a lawyer shall not:

- "(2) circumvent a disciplinary rule through actions of another;
- "(5) engage in conduct that is prejudicial to the administration of justice"

Certainly the unauthorized practice of law is prejudicial to the administration of justice; likewise, the lawyer is prohibited from circumventing Rule 5-103(b) through the actions of the Research Group. We therefore conclude that it would be professionally improper for the Student Legal Services attorney to participate in the proposal.

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