



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in July 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.2 (c) and (d) with its Comments [6-8] and 1.16 with its Comments [9-10]. 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 849
(December 9, 1983)**

Topic: Limiting Scope of Representation

Digest: It is not improper for an attorney, pursuant to prior agreement with the client, to limit the scope of his representation in a proceeding for dissolution of marriage to the preparation of pleadings, without appearing or taking any part in the proceeding itself, provided the client is fully informed of the consequences of such agreement, and the attorney takes whatever steps may be necessary to avoid foreseeable prejudice to the client's rights.

Ref: Canons 2 and 7;
Rule 2-110(a)(2) and (c); Rule 7-101 (a)(1) and (2).

FACTS

An attorney prepares certain pleadings for use by the client in a pro se proceeding for dissolution of marriage, but pursuant to agreement with the client does not enter an appearance in the proceeding or take any part therein.

QUESTION

Whether an attorney may by agreement with the client limit his representation to the preparation of pleadings without appearing or taking part in the litigation.

OPINION

There appears to be no Rule, Ethical Consideration or prior opinion directly in point on the question. The Rules and other considerations which constitute the most pertinent indirect authority appear to be those dealing with an attorney's withdrawal from litigation in which he is currently engaged.

That is, if an attorney may under certain conditions withdraw from representation at a certain stage in the litigation, it would seem that he may in advance, and upon compliance with similar conditions, agree with his client that his representation will terminate at that stage.

Rules 7-101(a) and (2) provide that an attorney shall not fail to seek the client's objectives though reasonably available means permitted by law, and that he shall not fail to carry out his contract of employment for professional services. However, Rule 7-101(a) (2) also provides that an attorney may withdraw from that employment as permitted under Rule 2-110.

Subsection (c) of Rules 2-110 deals with permissive withdrawal from employment. It provides that an attorney may request permission to withdraw in matters pending before a tribunal if his client "knowingly and freely assents to termination of his employment." Rule 2-110(c)(5).

The same Rule, at Subsection (a)(2), provides that an attorney who is otherwise entitled to withdraw from employment shall not do so until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client. In the present instance, such steps would at least include being certain that the client fully understands: the merits of the client's position; the position which the other party to the litigation is likely to take; the procedures involved in a trial of the matter, including the requirements for a valid prove-up of the client's case; and, the consequences of the attorney's failure to appear or act in the proceeding on behalf of the client.

In summary, an attorney may agree in advance with his client to limit the attorney's employment to the drafting of pleadings, allowing the client to make other arrangements for the handling of the case through the pleading and trial stages, provided that the client gives his fully informed consent to such limitation of employment and the attorney takes whatever steps may be necessary under rule 2-110(a)(2), including those listed above, to avoid foreseeable prejudice to the client's rights.

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