



**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 Rule of Professional Conduct 5.4(c). See also ISBA Ethics Advisory Opinion 90-35. 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. 87-2
November 17, 1987**

Topic: Clients and their Agents; Real Estate Brokers

Digest: Lawyer must be satisfied that an agent has authority to retain lawyer to perform legal services on behalf of another.

Ref.: Rules 5-107(c), 6-101(a)(2)
ISBA Opinion 302

FACTS

Real estate broker contacts lawyer to prepare a Warranty Deed and Real Estate Transfer Declaration. Broker requests lawyer to send a statement for fees to the seller in care of the broker so that the attorney's fee may be deducted from the seller's proceeds at closing. Attorney does not interview seller or have any communication with seller regarding the preparation of the Deed and Real Estate Transfer Declaration. All communication regarding the transaction is between the lawyer and real estate broker.

QUESTIONS

Is it ethical for a lawyer to prepare a Deed and Real Estate Transfer Declaration at the request of a

real estate broker and not the actual grantors?

OPINION

The facts and question presented in this inquiry denote that the real estate broker is retaining the lawyer on behalf of the seller as opposed to the more conventional practice of the seller retaining an attorney directly. The threshold question is whether the seller has granted this authority to the real estate broker inasmuch as the lawyer's preparation of the documents creates a professional responsibility on the lawyer's part.

Accordingly, the lawyer must first satisfy himself that the real estate broker has the requisite authority to create a professional relationship between the lawyer and the seller. The requisite documentation for this assurance may not be the same in every case. Indeed, the breadth and scope will differ from transaction to transaction and by geography and custom. Nevertheless, the lawyer must initially take whatever steps he feels to be necessary under the circumstances to assure himself of the existence of the authority before entering into the professional relationship. This view is in accordance with our prior opinion 302.

Absent the requisite authority as verified by the lawyer, the Committee feels it would be improper for the lawyer to proceed with the performance of any legal service.

The lawyer should be wary of allowing himself to be under the sole direction and control of the real estate broker under the facts presented and thereby could be in violation of Rule 5-107(c) which states: "A lawyer shall not permit a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services."

In conclusion, a lawyer retained by a broker on behalf of a seller may perform legal services for the seller if the lawyer has verified that the broker has the authority to retain the lawyer. Even when the authority exists, the lawyer should be mindful of exercising his own independent professional judgment to adequately perform the services required.

The principle stated herein would also apply in other situations where the lawyer is asked to represent a client by an agent.

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