



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in May 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.2(a), 1.4(b), and 1.7. 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. 90-2
November 6, 1990**

Topic: Scope of Representation; Conflict of Interest

Digest: Under stated facts, it is professionally improper for lawyer to insist that client name lawyer's bank client as fiduciary.

Ref.: Rules 1.2(a), 1.4(b), 1.7(b)
ISBA Advisory Opinion Nos. 135, 346 and 830

FACTS

A lawyer is a director of a bank and represents the bank as its attorney. While advising his client on his estate plan, the lawyer insists that the client appoint that bank as fiduciary. The client has no current relationship with the bank and no intention of initiating a relationship. The client has consulted, on fiduciary matters, with another bank with which he does business, and has some interest in using that bank as a fiduciary. The lawyer persists in using the bank he represents as fiduciary. The lawyer disclosed his relationship with that bank to his client.

QUESTION

Under these circumstances, is it professionally proper for the lawyer who is director of and attorney for a bank to insist that his client use that bank as a fiduciary?

OPINION

Rule 1.2(a) of the Rules of Professional Conduct states, in pertinent part:

A lawyer shall abide by a client's decisions concerning the objectives of representation (subject to limitations not relevant to this inquiry) and shall consult with the client as to the means by which they are to be pursued.

Rule 1.4(b) states:

A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.7(b) states:

A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

- (1) the lawyer reasonably believes the representation will not be adversely affected; and
- (2) the client consents after disclosure.

In ISBA advisory opinion number 135 (1955), an arrangement whereby an attorney, employed as counsel to the bank's trust department in exchange for free office space, conducted his general law practice from a private office in the bank's trust department, was found unobjectionable provided that:

1. The bank recognizes that the attorney in question must be free to advise clients without obligation to the bank.
2. Trust department personnel insist that any customer is free to employ any attorney of the client's choice.
3. It be made clear to each client of the attorney, in connection with the preparation of wills or instruments in connection with trust business, that the attorney is also attorney for the bank.
4. It be understood that any client of the attorney shall be free to select some other trust company.
5. Great care should be taken by the attorney and the bank to avoid any impropriety in regard to turning business to each other.

ISBA advisory opinion 346 (1970) decided that it was not necessarily unethical for a practicing attorney to act as trust officer for a bank if, in acting as trust officer he did not hold himself out as a lawyer, did not do any legal business in any matters in which the bank was involved as trustee and refused to do legal business for anyone in matters in which he is acting in his capacity as trust officer.

In ISBA advisory opinion 830 (1983), the Committee stated, in discussing the propriety of court orders for supervision which required the defendant's participation in a local bar association driver education program stated:

Under Rule 5-107 (former Rule--Avoiding Influence by Others than the Client) a lawyer must represent his client with undivided fidelity and avoid influence by others than his client. The lawyer's professional judgment must be exercised solely for the benefit of his client and free of compromising influences and loyalties, and the interests or desires of third persons should not be permitted to dilute his loyalty to his client.

The facts in this inquiry reveal that the lawyer properly informed the client of his relationship with the bank he proposed as fiduciary. However, under the facts presented, the selection of the fiduciary was the client's prerogative. While a lawyer may, after fully disclosing his relationship with the fiduciary, recommend a specific fiduciary, lacking the client's consent, the lawyer should accede to the client's decision or withdraw. To persist in having his bank client named as fiduciary is, under the circumstances described in the inquiry, professionally improper.

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