



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 8.3(a), 8.4(b), (c), and (g). See also *In re Himmel*, 125 Ill.2d 531, 533 N.E.2d 790, 127 Ill.Dec. 708 (1988), and *Skolnick v. Altheimer & Gray*, 191 Ill.2d 214, 246 Ill.Dec. 324, 730 N.E.2d 4 (2000). 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. 90-36
May 15, 1991

Topic: Duty to Report Professional Misconduct

Digest: A lawyer is not required to report knowledge of misconduct of another lawyer unless such misconduct is either a criminal act that reflects adversely on the other lawyer's honesty, trustworthiness or fitness as a lawyer or conduct involving dishonesty, fraud, deceit or misrepresentation.

Ref:
Illinois Rules of Professional Conduct 1.2(e), 8.3(a), 8.4(a)
ISBA Opinion No. 90-8

FACTS

The inquiring lawyer has received a letter from another lawyer advising that the other lawyer's clients "have authorized me to proceed with filing criminal charges as well as a civil suit regarding the NSF check accepted in good faith by my clients regarding the final settlement at the above-cited closing. Please contact me to discuss this matter." The inquiring lawyer advises that payment had been stopped on the check in question because of a dispute over the value of some personal property

included in a real estate transaction.

The inquiring lawyer states that the other lawyer may have violated Rule 1.2(e) of the Illinois Rules of Professional Conduct by threatening to present criminal charges to obtain an advantage in a civil matter. The inquiring lawyer also suggests that the letter may be a violation of Ill. Rev. Stat. Ch. 38, 12-6, relating to the offense of intimidation.

QUESTIONS

The inquiring lawyer asks (1) whether there is an obligation to report the stated facts pursuant to Rule 8.3(a) of the Rules; and (2) whether there is an obligation to report to the appropriate prosecutorial authorities what the inquiring lawyer believes may be a violation of the criminal law.

OPINION

(1) With respect to the duty to report professional misconduct, Rule 8.3(a) of the Rules requires a lawyer "Possessing knowledge...that another lawyer has committed a violation of Rule 8.4(a)(3) or (a)(4) shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation." Rule 8.4(a)(4) refers to "conduct involving dishonesty, fraud, deceit or misrepresentation." Rule 8.4(a)(3) applies only to a "criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." It is important to note that only violations of Rules 8.4(a)(3) and 8.4(a)(4) are subject to mandatory reporting. See ISBA Opinion no. 90-8. Rule 1.2(e) provides that a "lawyer shall not...threaten to present criminal charges...to obtain an advantage in a civil matter."

From the facts presented, even if the other lawyer's conduct were a violation of Rule 1.2(e), it does not appear to involve dishonesty, fraud, deceit or misrepresentation and would not therefore violate Rule 8.4(a)(4). With regard to Rule 8.4(a)(3), even if the conduct is deemed to violate the Criminal Code (about which the Committee expresses no opinion) it would not appear to be the type of criminal act contemplated by Rule 8.4(a)(3). Therefore, the Committee does not believe that transmitting the letter in question constitutes conduct subject to mandatory reporting under Rule 8.3(a).

(2) With respect to the second question, even if the conduct involved in transmitting the letter in question constitutes a violation of the Criminal Code, the Committee is unaware of any obligation of private citizens, lawyers or non-lawyers, to report suspected violations of the Criminal Code to the prosecutorial authorities.

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