



**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 1.4, 1.5(c), 5.5(a), and 7.3. 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. 91-3
September 14, 1991**

Topic: Clients and their Agents; Solicitation; Unauthorized Practice of Law

Digest: A lawyer may represent creditor/client when a collection agency retains the lawyer acting as an agent for the creditor/client but must satisfy himself that the collection agency is authorized by the creditor/client to do so; may not divide fees with the collection agency; and must ensure that the collection agency does not engage in improper solicitation for legal services or engage in the unauthorized practice of law in the marketing or performance of its services.

Ref.: 1990 Illinois Rules of Professional Conduct, Rules 1.4, 1.5(c), 5.4(c), 5.5(b), and 7.3
ISBA Advisory Opinion Nos. 84-1, 85-7, 88-8
People ex rel. ISBA v. People's Stock Yards State Bank, 344 Ill. 462 (1931).

FACTS

A lawyer wishes to join a "law list" for collection matters. A collection agency with nationwide facilities enters into an agreement with a creditor to attempt collection of creditor's accounts. When normal credit agency collection techniques are exhausted, the credit collection company assigns a case to an attorney who files suit, usually on a contingent fee basis with the client or collection agency advancing the costs. The lawyer's contact will be almost exclusively with the collection agency. Attorneys are selected from the "law list" without input from the creditor.

QUESTION

Does the joining of the "law list" and representation of the creditor/client violate the Rules of Professional Conduct?

OPINION

At the outset, the Committee presumes from the facts presented that the collection agency is not the owner of the debt to be collected, but is acting as an agent for the creditor.

ISBA Opinion No. 87-2 holds that a lawyer must be satisfied that an agent has authority to retain the lawyer to perform legal service on behalf of another. In that opinion, a real estate broker had contacted the lawyer to prepare a Warranty Deed and Real Estate Transfer Declaration on behalf of the broker's customer, the seller. The broker requested the bill be sent in the seller's name to the broker. The lawyer does not have any communications directly with the seller/client; all communications are between the lawyer and the broker.

The Committee opined that "[t]he 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."

In order to satisfy himself as to the authority of the broker, "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. . . . 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."

Further, "the lawyer should be mindful of exercising his own independent professional judgment to adequately perform the services required."

Thus, in the first instance, presuming that the collection agency seeks to retain the lawyer while acting as an agent for the creditor/client, the lawyer must take whatever steps are necessary to satisfy himself that the collection agency has the authority to act on the creditor/client's behalf in retaining and communicating with the lawyer.

At the same time, the lawyer must be mindful of Rule 5.4(c):

- (c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

In sum, the lawyer must at all times act in the best interest of the creditor/client, which may include, depending on the circumstance of each individual case, the obligation under Rule 1.4 to communicate with the creditor/client directly.

In any such situation where an agent retains a lawyer on behalf of a principal/client, the lawyer must also act so as not to violate the prohibition of Rule 5.4(a): "A lawyer or law firm shall not share legal fees with a nonlawyer...."

Along those same lines, the lawyer must ensure that the collection agency is not marketing its services in such a way that would result in a violation of Rule 7.3 of the Rules of Professional Conduct which provides in pertinent part:

...a lawyer shall not, directly or through a representative, solicit professional employment when a significant motive for doing so is the lawyer's pecuniary gain. The term "solicit" means contact with a person other than a lawyer in person, by telephone or telegraph, by letter or other writing, or by other communication directed to a specific recipient.

Depending on how the collection agency markets its services, the agency may be considered a "representative" of the attorney members of the "law list".

This Committee previously found in Opinion No. 84-1 that it would be improper for an attorney to enter into a relationship with a bank whereby the bank scheduled appointments between bank customers and the attorney in an office provided by the bank for purposes of drafting wills and estate planning as a perceived service of the bank. Upon the facts presented in 84-1, "referrals" by a bank to a specific attorney was prohibited solicitation.

Depending on how the collection agency markets and operates the "law list", the lawyer should also consider Rule 5.5(b) which states:

A lawyer shall not:

(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

ISBA Opinion No. 85-7 held that it was aiding in the unauthorized practice of law for a law firm to provide its firm letterhead in blank to a client for the client to utilize for purposes of collection letters to debtors where the firm did not directly supervise or review the use of the letterhead.

ISBA Opinion No. 88-8 held that it was improperly aiding the unauthorized practice of law for a collection agency to either provide space within its business office for the regular use of a law firm's paralegal or to provide a "paraprofessional" employed by the collection agency where, in either situation, the individual would take telephone calls and discuss matters in the law firm's name.

See also People ex rel. ISBA v. People's Stock Yards State Bank, 344 Ill. 462 (1931).

In conclusion, a lawyer may represent a creditor/client when the lawyer is retained by a collection agency properly authorized to act for the creditor/client. The lawyer must satisfy himself that the agent is acting within the agent's authority; may be required to communicate directly with the client;

may not let the collection agency influence his independent professional judgment; may not divide legal fees with the collection agency; and must ensure that the collection agency is not engaged in improper solicitation or the unauthorized practice of law in marketing or performing its services.

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