



**ILLINOIS STATE  
BAR ASSOCIATION**

# **ISBA Advisory Opinion on Professional Conduct**

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**ISBA Advisory Opinions on Professional Conduct are prepared as an educational service to members of the ISBA. While the Opinions express the ISBA interpretation of the Illinois Rules of Professional Conduct and other relevant materials in response to a specific hypothesized fact situation, they do not have the weight of law and should not be relied upon as a substitute for individual legal advice.**

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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 1.7, 2.2, 7.1, 7.2, 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.**

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**Opinion No. 92-5  
October 23, 1992**

Topic: Lawyer as mediator; Lawyer engaged in divorce mediation with non-lawyer

Digest: There is no prohibition against lawyer engaging in divorce mediation business with a non-lawyer and operating the business from the law office where lawyer does not represent either party in the underlying divorce

Ref: ISBA Opinions 85-3, 89-14 and 90-16.  
Illinois Rules of Professional Conduct, Rules 1.7, 7.1, 7.2, 7.3  
ABA Model Rules, Rule 2.2

## **FACTS**

A lawyer who is a trained divorce mediator has engaged in a limited amount of divorce mediation in addition to his practice. He works with couples in pre and post divorce matters but does not represent either party in the underlying dissolution of marriage. When divorce mediation clients come to him, he always advises the couple that each should have separate legal representation.

## **QUESTIONS**

1. Can the lawyer affiliate with a non-lawyer mediator in his mediation business?
2. Can mediation sessions be held and mediation services be provided at the lawyer's office?
3. What rules of professional conduct must the lawyer follow with regard to printed advertising and promotional material for the mediation business?

### **OPINION**

There is no prohibition against a lawyer entering into a business relationship with a non-lawyer in a mediation business or any other business. There is further no prohibition against a lawyer conducting a non-legal business from a law office. ISBA Opinions 85-3, 89-14 and 90-16. Where a lawyer acts as a mediator in a dispute, the lawyer cannot represent any of the parties in the underlying dispute. Illinois Rules of Professional Conduct, Rule 1.7.

On the facts stated in this inquiry, there is no indication that the lawyer is using the mediation business as a "feeder" operation for the divorce practice or any other law practice. Under these circumstances, there is nothing improper in the lawyer engaging in the mediation business with a non-lawyer and conducting part of that business out of the law office.

With respect to advertising and promotional material for the mediation business, if the material meets the definition of advertising for the lawyer's law practice, the lawyer must comply with the rules governing legal advertising, Illinois Rules of Professional Conduct, 7.1, Communications Concerning a Lawyer's Services; 7.2, Advertising; and 7.3, Direct Contact with Prospective Clients. If the advertising and promotional material for the mediation business does not amount to advertising for the lawyer's law practice, it is not subject to the rules on lawyer advertising.

(ISBA Opinions 745 (1982), which reached a different result, was overruled in part by opinion 85-3 and was overruled in total by the 1990 review of opinions in light of the new Illinois Rules of Professional Conduct.

It should also be noted that ABA Model Rule of Professional Conduct 2.2 discussing the attorney as Intermediary was not adopted in Illinois, but may provide guidance).

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