



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 1.2(a) and (e), 1.4, and 1.5(e). 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. 92-07
January 22, 1993

Topic: Responsibility of a law firm hiring temporary attorneys to handle individual matters

Digest: 1. A law firm may hire or retain individual attorneys to cover court call motions and depositions.
2. An attorney hired by a law firm on an hourly basis to handle motions and depositions, should procure the client's informed consent (Rules 1.1(c) and 1.4) not necessarily in writing (1.5(f)).
3. An attorney hired on an hourly basis is considered an associate attorney to a law firm.

Ref.: Illinois Rules of Professional Conduct, Rules 1.1(c), 1.2(a), 1.4 and 1.5(f)
ABA Formal Opinion 88-356 (1988) and 90-357 (1990)
ISBA Advisory Opinion Nos. 817 and 776
In re Marriage of Ziemann, 214 Ill.App. 3d 988, 574 N.E.2d, 158 Ill.Dec. 654.

FACTS

An Illinois law firm engaged in personal injury litigation on behalf of the plaintiffs and, occasionally, defendants, wishes to hire sole practitioners on an hourly basis and occasionally to cover court calls and depositions for the firm. There is no other affiliation with the law firm indicated, either as associate partners or employees.

QUESTIONS

1. Does a law firm have a duty to advise its clients that it is retaining independent attorneys to answer motions or handle depositions in that client's particular matter?
2. Is the hiring by a law firm of individual attorneys not otherwise affiliated with the firm a creation

of the status of "of counsel" to the law firm?

3. May the law firm hire outside counsel for occasional court hearings or depositions pursuant to the governing rules and codes of professional conduct?

OPINION

A law firm may hire individual outside counsel, who are generally unaffiliated or unconnected with the law firm in any way, to handle matters involving client's cases. Rule 1.1(c) requires that the attorney procure the client's consent to the delegation of work to another attorney not in the law firm and Rule 1.2(a) requires an attorney to consult with a client as to the means of obtaining the client's objectives. Rule 1.4 demands that an attorney keep the client reasonably informed and, in this instance, such can be accomplished by indicating at the outset of the representation, either by written retainer or direct communication, that some matters in the representation may be delegated to other attorneys outside the firm and an explanation of the extent and scope of such delegation.

There is no requirement that a written consent be procured, except that contained in Rule 1.5(f), which governs a division of fees or fee splitting arrangements. If the attorney retained or to whom delegated duties are given receives a portion of the fee, then Rule 1.5(f) comes into play, in which case a specific written consent by the client would be required. It has been held that specific hourly payments to an attorney by another law firm for the covering of a motion call or handling of a deposition or other routine matters under the supervision of the original attorney, does not fall within the fee splitting provisions of Rule 1.5(f). See In re Marriage of Ziemann, 214 Ill.App.3d 988, 574 N.E.2d, 158 Ill.Dec. 654.

Both the retained attorney and the attorney to whom matters were delegated are equally bound by the Rules of Professional Conduct and must perform to the standards set forth in those rules. For an extensive discussion of the ethical obligations arising from the use of temporary attorneys, see ABA Formal Opinion 88-356.

The question of creating an "of counsel" relationship is more a question of nomenclature than of the Rules of Professional Conduct. ISBA Opinion Nos. 817 and 776 and ABA Formal Opinion No. 90-357 all discuss the use of the phrase. None of these opinions discuss the exact situation described herein, but, generally require a greater relationship than simply the occasional hiring of sole practitioners on an hourly basis.

An essential fact which is not mentioned in the request for opinion is that of the cost of second attorney's service to the client. If the delegation of work to another attorney increases the fees to the client and is not absorbed in the retained attorney's fees, then the provision of Rule 1.5(f) might very well come into play and a written consent could be required. Further facts would be required to express a formal opinion.