



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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.

This Opinion was AFFIRMED by the Board of Governors in May 2010. Please see the 2010 Illinois Rules of Professional Conduct 5.5(a). 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. 92-20
March 26, 1993**

Topic: Aiding the unauthorized practice of law.

Digest: An attorney does not aid in the unauthorized practice of law when assuming representation of a client who has been provided previous services by a non-attorney, so long as the attorney merely accepts representation of the client, rather than actively participating with the non-attorney in continued settlement actions.

Ref.: Illinois Rules of Professional Conduct, Rule 5.5(b)
ISBA Opinions on Professional Conduct Nos. 261, 474, 90-19, 90-20, 91-10.
ISBA Opinion on Real Estate Taxation Practices, adopted April 3, 1992 Illinois Bar News,
Volume 32, No. 22, page 2 (June 1, 1992)
215 ILCS (Illinois Compiled Statutes) 5/512.51 et seq.

FACTS

Company X is an investigation firm which provides to its clients professional investigations involving personal injuries and property damage claims. Services include evaluating FELA claims, investigating FELA claims, investigating worker compensation claims, investigation structural work act claims, evaluating train/vehicle accidents, investigating train/vehicle accidents, consultation regarding railroad accidents, assisting in negotiations of settlements, and rendering opinions as to the value of the aforementioned claims based upon Company X's experience as claims adjustors.

Company X charges its customers various hourly fees and for expenses incurred in the investigations.

Company X does not directly negotiate with insurance claims adjusters, but does assist its customers in preparing letters to insurance companies regarding the settlement of various accident claims. In the event that the claim cannot be settled without the possibility of litigation, Company X then advises the customers that they need to seek the services of any attorney in resolving the claim. If the customers do not have an attorney and request Company X's help in finding one, Company X provides them with a list of attorneys believed to be qualified to handle the claim. Company X, if requested, continues to provide investigative services on behalf of the client in conjunction with the legal services provided by the attorney or law firm of choice at the rates outlined above. Company X also offers the same services mentioned above to any attorney who wants help in evaluating various accident claims and to give the attorney an idea of what to expect in settlement negotiations with claims adjusters based on Company X's past experience in the field of claims adjusting.

In summary, Company X tells its customers, and attorneys who want information, what various accident claims are worth after investigation. Company X charges for its investigations and consultations, assists in negotiations without directly contacting insurance companies, and, if the case cannot be settled, refers customers to a list of attorneys while continuing to provide investigative and consulting services for the client and chosen attorney/law firm.

QUESTIONS

1. Does an attorney who participates in the fact situation described above aid in the unauthorized practice of law or violate any other rules of professional conduct?
2. Do the actions of Company X constitute the unauthorized practice of law?

OPINION

1. The Committee concludes that the attorneys who participate in Company X's arrangement may facilitate Company X's unauthorized practice of law in violation of Rule 5.5(b). A "lawyer shall not assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law." According to the facts submitted, Company X gathers all the necessary information and evaluates the client's claim. Company X also advises customers in negotiation settlements with insurance companies. Although the client's attorney provides legal advice to the client, this legal consultation does not occur until after Company X has already advised the client about the strengths or weaknesses of the claim.

Similar arrangements primarily in the area of estate and financial planning have been considered by this Committee. In ISBA Opinion No. 91-10, an attorney aided a financial planning company's unauthorized practice of law where the planner gathered all the necessary information and drafted the appropriate estate planning documents such as revocable living trusts, durable health powers, durable powers of attorney, living wills, etc., then the attorney received the documents. In that Opinion, the Committee determined that an attorney aided a financial planner's unauthorized practice of law, where the planner explained the advantages of a revocable trust, obtained the necessary information from the client, and filled out the trust which was reviewed by an attorney prior to execution.

In Opinion No. 90-20, the committee stated that the "preparation of the trust by a banking institution for consumers is clearly the unauthorized practice of law and the attorney who reviewed these documents at the behest of the bank would be violating Rule 5.5(b) by assisting the institution in reviewing or preparing

those documents intended for individual consumers."

In Opinion No. 474, the attorney employed by an insurance agency aided the agency's unauthorized practice of law, when the attorney prepared estate planning and life insurance proposals for customers of the insurance agency.

ISBA Opinion No. 261 found an attorney's preparation of a will for a bank customer, at the bank's request and pursuant to the bank's gathering of unnecessary information transmitted to the attorney to be the unauthorized practice of law.

The ISBA Board of Governors adopted an opinion on Real Estate Taxation Practices which held that non-attorneys engage in the unauthorized practice of law by holding him or herself out as a property tax or valuation "consultant" or as an independent fee tax consultant where various services were rendered relative to real estate assessment objections and were filed on behalf of a client by a non-attorney.

As stated in Opinion 91-10, "The attorney's participation in the instant facts could facilitate Company A's [X's] providing of legal advice to its customers, and would thereby aid in Company A's [X's] unauthorized practice of law."

If, however, the attorney merely accepts representation of a client after referral by Company X and, after acceptance, pursues negotiation on behalf of the client and performs such other legal services as the attorney deems necessary, the attorney would not be aiding the unauthorized practice of law.

2. The Illinois Statutes provide for the registration of Public Insurance Adjusters in 215 ILCS 5/512.51 et seq., and thus, deals with the licensing of persons engaged in the business of adjusting insurance claims. However, such activity is still limited by the provisions of 5/512.51(g) as follows:

A public insurance adjuster may not provide legal advice or representation to the insured, or engage in the unauthorized practice of law.

Irrespective of whether Company X is in compliance with the statute requiring registration, Company X could, in fact, be providing legal services in explaining to the client the strengths and weaknesses of the client's claims and drafting letters on behalf of the client regarding settlement of accident claims with insurance companies. By so doing, the company and its representatives would be engaged in the unauthorized practice of law.

* * *