



**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 Rule of Professional Conduct 8.4(g). 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. 93-5
September 17, 1993**

Topic: Participation in presentment of criminal charges to obtain advantage in civil matter.

Digest: An attorney may report the issuance of an NSF check to the State's Attorney's Office in circumstances where such reporting is not to obtain an advantage in a civil matter.

Ref.: Illinois Rules of Professional Conduct, Rule 1.2(e)
ISBA Advisory Opinions on Professional Conduct, Nos. 87-7, 91-29 and 86-9

FACTS

The inquiring attorney has obtained a money judgment for his client which, pursuant to stipulation entered by the Court, is to be paid in installments. The defendant's check in payment of an installment was returned by the bank for insufficient funds.

INQUIRY

Would the attorney violate Rule 1.2(e) by presenting the returned check to the State's Attorney for criminal action?

OPINION

We are of the view that Rule 1.2(e) would not be violated by the attorney's reporting the returned

check to the State's Attorney.

Such Rule provides:

A lawyer shall not present, participate in presenting, or threaten to present criminal charges or professional disciplinary actions to obtain an advantage in a civil matter.

The clearest and most common manner of violating such Rule is to threaten such prosecution to obtain a civil advantage. Thus, in Opinions 87-7 and 91-29, threats of criminal action during the pendency of settlement discussions in a civil action were deemed to be clear violations of the Rule (or its predecessor Rule 7-105).

In the present instance, however, no threat of criminal proceedings is involved. Judgment has already been obtained in the civil action, and upon dishonor of the installment payment, without further contact with the judgment debtor, the matter is to be reported to the State's Attorney. We do not, under such circumstances, view this as the attorney participating in the presentment of criminal charges in order to obtain an advantage in a civil matter.

The present circumstances are distinguishable from those in Opinion No. 86-9. There, upon a client receiving an NSF check, the attorney filed a civil action against the check's issuer. Upon learning that the sheriff was unable to serve the defendant, the attorney inquired as to whether he could request the State's Attorney to issue a criminal complaint. We determined that the attorney could not "participate in presenting" such charges, because to do so would constitute an attempt to obtain an advantage in the civil aspect of the NSF matter. (At the same time, we expressed the view that the attorney could send the check back to his client with advice that the client could press criminal charges on his own.)

Unlike the situation in Opinion No. 86-9, no civil action has been initiated in the present instance as a result of the NSF check, and judgment has already been obtained in the underlying civil action giving rise to the dishonored payment. Under these circumstances, we believe the attorney's reporting of the dishonored check to the State's Attorney's office to be wholly proper, regardless of whether further steps are then initiated to enforce the underlying judgment civilly through further court proceedings.

* * *