



**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, 1.9, 5.4, 7.1, and 7.2. 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. 94-11  
November, 1994**

Topic: Communications concerning a lawyer's services; confidentiality of mobile communications; conflicts of interest.

Digest: It is professionally improper for a law firm to participate in a cellular telephone service offering legal advice where, based on the facts presented: the promotional materials are misleading; the promotional materials fail to include the name of a lawyer responsible for the contents; the firm may be participating in improper fee splitting and a partnership with a nonlawyer; there is no apparent avoidance of conflicts of interest; and client confidences may not be preserved.

Ref: Illinois Rules of Professional Conduct, Rules 1.7, 1.9, 5.4, 7.1 and 7.2.  
ISBA Opinion Nos. 90-7, 92-23 and 93-4.  
Association of the Bar of the City of New York, Formal Opinion No. 1994-11.

## **Facts**

A company engaged in cellular telephone communications provides a variety of services for its subscribers, including weather information, traffic conditions, winning lottery numbers, sports scores and "legal advice." The latter service offers "live legal counsel via your car phone." A press release distributed by the company's public relations firm indicates that mobile telephone

users can dial the designated number "to reach a veteran attorney for answers to any consumer or business legal questions." An Illinois law firm provides the legal services to the program. Callers are transferred "to a veteran lawyer with expertise in the area of law covered by their question" who allegedly uses an "extremely sophisticated database" developed by a California tele-lawyer service in responding to questions. The callers "avoid the usual hourly legal rate for just a few questions" and are instead charged twenty-five dollars (\$25.00) per call by the law firm plus the regular airtime charges by the cellular telephone company. There is no indication of whether the law firm bills the subscribers for its services directly or such charges are included in the subscribers' regular telephone bill.

### **Question**

Inquiry is made concerning the professional propriety of an Illinois law firm's participation in the "legal advice" service described.

### **Opinion**

The Committee believes that the law firm's participation in the service described in the inquiry violates several provisions of the Illinois Rules of Professional Conduct, including those regarding communications concerning a lawyer's services and the avoidance of conflicts of interest. The Committee is also concerned that the arrangement may violate the prohibitions against sharing fees and forming a partnership with a non-lawyer and paying another for recommending the lawyers' services. Finally, the nature of the communications compromises the confidentiality of the attorney-client relationship.

In our Opinion No. 92-23, we concluded that participation by a law firm in a computerized for-profit telephone referral system violated the Rules of Professional Conduct. We stated there that the rules are designed not only to regulate the practice of law but to "insure that legal referral services will provide information in a responsible and unbiased manner and at a reasonable cost to the public." We considered that particular program to be a form of impermissible advertising on the part of the firm.

In the Committee's view, the press release describing the cellular telephone "legal service" is inherently misleading in violation of Rule 7.1. In particular, the statement concerning the availability of a "veteran lawyer with expertise in the area of law" covered by the callers' questions is likely to create an unjustified expectation about results that the lawyer can achieve contrary to Rule 7.1(b). In addition, the focus upon the "fee" of twenty-five dollars (\$25.00) per call and the avoidance of the "usual hourly rate for just a few questions" constitutes a comparison of the services offered with other lawyers' services without factual substantiation contrary to Rule 7.1(c).

The Committee also notes that the promotional materials provided with the inquiry do not include the name of any individual lawyer responsible for the content of the materials. This omission is contrary to Rule 7.2 (a) (2), which requires that lawyer advertising must include the name of at least one lawyer responsible for its content.

There is no indication in the facts submitted concerning any consideration paid by the law firm for participation in the "legal advice" program, or how the per call charge of twenty-five dollars

(\$25.00) is billed and collected. If consideration is in fact paid to cellular telephone company, then Rule 7.2(b), which prohibits the giving of value to anyone for recommending a lawyer's services, may be applicable. Similarly, depending upon the billing and collection arrangement, the firm may be in violation of Rule 5.4(a), prohibiting the sharing of legal fees with a nonlawyer, as well as Rule 5.4(b), prohibiting the formation of a partnership with a nonlawyer where any of the partnership's activities consist of the practice of law.

The Committee believes that callers to the legal advice service are clients of the law firm who are entitled to the protection of clients afforded by the Rules of Professional Conduct. However, it does not appear that either the law firm or the cellular telephone service makes any effort to determine the identity of the callers and check for potential conflicts of interest prior to the time that the callers' questions are asked and the legal advice is given. (Presumably the callers' identities are revealed after the advice is rendered through the billing process. If the cellular telephone company handles the billing for the law firm, this procedure may also violate client confidences. See ISBA Opinion No. 93-4.) Under these circumstances, it would be possible for the law firm to give legal advice to callers whose interests are directly adverse to other firm clients, including other callers, in violation of Rule 1.7(a), or whose interests are materially adverse to the firm's former clients, including other callers, concerning the same or a substantially related matter, in violation of Rule 1.9.

Finally, as we cautioned in our Opinion No. 90-7, there is no reasonable expectation of privacy in a cellular telephone conversation because mobile communications use a mode of transmission in which the signal is broadcast over airwaves rather than telephone lines. Accordingly, use of such a mode of communication may result in a loss of the attorney-client privilege with respect to such communications. See also, Formal Opinion No. 1994-11 of the Association of the Bar of the City of New York (October 21, 1994).

For these reasons, the Committee believes that the participation of an Illinois law firm in the service described in this inquiry is professionally improper.

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