



**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 5.4, 5.5(a), 7.1, 7.2(b), and 7.5 with its Comment [1]. 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. 96-04
October, 1996**

Topic: Professional Independence of a Lawyer

Digest: The Rules of Professional Conduct are violated in numerous particulars by the creation of a network of independent licensee lawyers to be held out as practicing in the name of a corporation wholly owned by a non-lawyer.

Ref.: Illinois Rules of Professional Conduct, Rules 5.4(d)(1), 5.5(b), 7.1, 7.2(b), 7.5(c) and (d).
ISBA Advisory Opinion Nos. 90-19, 90-21, 94-08

FACTS

A non-lawyer real estate broker desires to form an Illinois corporation for the purpose of working with lawyers to handle real estate closings for sellers and purchasers. The broker would be the sole share holder, director and officer of the corporation under a name such as "Real Estate Attorneys of America, Inc." "Real Estate Attorneys of Illinois, Inc.," or "Real Estate Attorneys, Ltd." Such corporation would then enter into contracts with licensed lawyers whereby the lawyer would pay the corporation an annual fee to use the corporate name. The corporation would market the lawyers' services to the public, with the lawyers being contractually entitled to hold themselves out in their letterheads, advertisements and business cards as doing business in the corporate name. The corporation may provide office space for the lawyers at the real estate office with or without rent

and may charge the lawyer an additional fee for advertising and marketing expense.

QUESTION

Would participation by a lawyer in the above venture violate any of the Rules of Professional Conduct?

OPINION

A lawyer's participation in the contemplated venture would violate numerous provisions of the Rules of Professional Conduct.

Initially, the use by a multitude of independent, unrelated lawyers under a corporate name, thereby conveying to the public the impression that they practice with each other, would violate Rule 7.5(d), which provides:

Lawyers may state or imply that they practice in partnership or other organization only when that is the fact.

In this regard, see Opinion No. 85-2, in which we concluded that lawyers (who in that instance were in fact affiliated with each other) could not hold themselves out as practicing in the name of a non-existent firm.

Independent lawyers holding themselves out as practicing under the same corporate name would also constitute false or misleading communications about the lawyers in violation of Rule 7.1. Similarly, Rule 7.1 would be violated by the lawyers' participation in a corporation which, through the use of the contemplated names (i.e., Real Estate Attorneys, etc.), would misleadingly indicate to the public that it is comprised of lawyers, when in fact it is wholly owned by a non-lawyer.

To the same effect, a lawyer holding himself out as practicing through a corporation, the stock of which is owned solely by a non-lawyer would violate Rule 5.4(d)(1), which provides in relevant part, that "[a] lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for profit, if (1) a nonlawyer owns any interest therein..."

A lawyer practicing law in the name of a corporation owned by a non-lawyer would also result in the lawyer having improperly aided in the unauthorized practice of law by the corporation in violation of Rule 5.5(b), which provides:

A lawyer shall not:

(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law. (In this regard, the definition of "person" as contained in the Terminology section of the Rules includes natural persons, partnerships, business corporations, etc.)

The promotional material to be generated by the corporation would likely violate Rule 7.5(c), which provides that while a trade name may be used by a lawyer if it is not misleading, any advertising

using the trade name must include the name of at least one lawyer responsible for its contents. It is difficult to foresee, in the present instance, that any of the individual lawyer/licensees' names would be included in any advertisement placed by the corporation.

Moreover, it would appear that the use of the intended trade name for a corporation owned solely by a non-lawyer is itself so inherently misleading as to preclude the use of any such trade name under Rule 7.5(c).

Finally, Rule 7.2(b) prohibits a lawyer from giving anything of value for recommending or having recommended the lawyer's services. It is contemplated in the present instance that the corporation would market the lawyers' services to the public and charge the lawyers a fee for such services. This would appear to be squarely in conflict with Rule 7.2(b). See Opinion Nos. 90-19, 90-21 and 94-08.

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