



**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 1.7 and 1.8(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. 97-07
January 23, 1998**

Topic: Dual Profession; Business transactions with clients; lawyer conducting service business preparing and arranging publication of legal notices.

Digest: Lawyers may form a company to provide legal publication notice services as long as legal services are conducted in accordance with the Illinois Rules of Professional Conduct.

Ref.: Illinois Rules of Professional Conduct, Rules 1.7(b) and 1.8(a)
ISBA Advisory Opinions on Professional Conduct, Nos. 84-01, 85-03, 89-14, 90-16, 90-32, 93-01 and 97-04
ABA Model Rule 5.7
Monco v. Janus, 222 Ill.App.3d 280, 583 N.E.2d 575 (1991)

FACTS

A group of lawyers propose to form a company to perform services concerning legal notice publications now being performed by local newspapers. The service offered by the company would be the creation/composition of public notice advertisements and placing them with newspapers for printing and distribution and would be available to clients of the lawyer/owners as well as non-clients.

The company's profits would be divided among the lawyer-owners in proportion to their ownership interest. The capital investments of the lawyer-owners would be at risk if the company was not successful.

The lawyer-owners will provide their clients with a disclosure letter advising the client of the lawyer's financial interest in the company and obtain the consent of the client.

QUESTION

Is it a violation of the Illinois Rules of Professional Conduct for lawyers to transact business with their clients in the circumstances described above?

OPINION

Rule 1.7(b) states in pertinent part:

- (b) A lawyer shall not represent a client if the representation of that client may be materially limited by the...lawyer's own interests unless:
 - (1) the lawyer reasonably believes the representation will not be adversely affected; and
 - (2) the client consents after disclosure.

Rule 1.8(a) states:

- (a) Unless the client has consented after disclosure, a lawyer shall not enter into a business transaction with the client if:
 - (1) The lawyer knows or reasonably should know that the lawyer and the client have or may have conflicting interests therein; or
 - (2) The client expects the lawyer to exercise the lawyer's professional judgment therein for the protection of the client.

In somewhat similar circumstance, ISBA Advisory Opinion No. 93-01 concluded that a lawyer may provide legal services and conduct title insurance business as an agent without violating Rules 1.7 and 1.8, as long as the legal services were conducted in compliance with other relevant rules. That opinion traced the history of ISBA Advisory Opinions concerning the practice of dual professions since the repeal of former Code provisions prohibiting or restricting the practice of dual professions. Opinion No. 85-03 approved the practice of law and provision of accountant's services from the same office; Opinion 89-14 approved an attorney's performance of legal services and life insurance services and collecting lawyer fees and a portion of the life insurance premiums (separate office locations); Opinion 90-16 approved the operation of a law office and the business of providing economic analyses from the same office; and Opinion 90-32 approved conducting insurance business with current, consenting clients but condemned an advance agreement prospectively limiting the lawyer's liability by characterizing all advice given the client as non-legal advice.

However, Opinion No. 84-01 condemned as improper solicitation of an arrangement between a

bank and a lawyer with offices in the bank, whereby the bank's employees scheduled appointments for its customers who assumed that the bank provided legal services.

Also see Monco v. Janus, 222 Ill.App.3d 280, 583 N.E.2d 575 (1991), holding that lawyer/client business transactions are presumptively fraudulent, based on the public policy against lawyers using their position of trust and dominant power to take unfair advantage of their client during a lawyer/client transaction (citing cases). The court also relies on former Rule 5-104(a) limiting business relations with a client in this case involving a 50% interest in a business.

The inquiring lawyer recognized the need to make full disclosure and receive client informed consent before entering the business transaction with the company in which the lawyer has a financial interest in compliance with Rule 1.8(a). If the lawyer reasonably believes the representation will not be adversely affected, the Rules do not prohibit the proposed arrangement.

While the Rules permit lawyers to conduct business with their legal clients and accept compensation for non-legal services in addition to their lawyer fees for legal services, the cited ISBA Opinions stress that those lawyers are required to conduct business with legal clients in compliance with Rules 1.7(b), 1.8(a); and provide legal services in compliance with the rules concerning confidentiality, conflicts, professional independence, advertising and direct solicitation. The lawyer must also rebut the presumption of undue influence as discussed in this Committee's Opinion No. 97-04.

This opinion assumes that the company fully complies with all statutory requirements, does not perform functions constituting the practice of law and the lawyers using company services keep the fees for publication notice services separate and distinct from legal fees. If not, other questions are raised about the application of Rule 1.5(f) (dividing lawyer fees with non-lawyers); Rule 5.5 (assisting non-lawyer in unauthorized practice of law); or Rule 5.4 (prohibiting non-lawyer law practice partners or non-lawyer owners of interest in professional corporation authorized to practice law). Also see ABA Model Rule 5.7 requiring that when law-related services are provided by a separate entity controlled by a lawyer, the Rules of Professional Conduct apply to the services if the lawyer fails to take reasonable measures to assure that persons obtaining law-related services know that the services are not legal services and the protections of the client-lawyer relationship do not exist.

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