



**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 January 2010. Please see the 2010 Illinois Rule of Professional Conduct 4.3. 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. 99-07  
November 1999**

**TOPIC:** Communication with Unrepresented Persons

**DIGEST:** A lawyer for a lender has an obligation to correct a home loan applicant's misunderstanding that the lawyer also represents the applicant in the home financing transaction if the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter.

**REF.:** Illinois Rules of Professional Conduct, Rule 4.3  
ISBA Opinions on Professional Conduct, Nos. 86-11, 88-03, and 93-14

## **FACTS**

A credit union offering home mortgages indicates that, in addition to other loan application costs, the home buyer must pay a fee of \$400 for the legal services of Lawyer D. Unless the home buyer agrees to this arrangement, the loan will not be processed. Lawyer D represents the credit union. Although the loan application documents indicate that the home buyer is paying for the lawyer's services, they do not indicate that Lawyer D does not represent the home buyer's interests. The home buyer is under the impression that Lawyer D will be representing his interests as well as those of the credit union for the home financing transaction.

## QUESTION

Does Lawyer D owe any obligation to the home buyer under the Illinois Rules of Professional Conduct?

## OPINION

Under the inquirer's hypothetical situation, Lawyer D has not been retained to represent the home buyer, although the home buyer is paying the credit union's legal costs. This arrangement is permissible and the lawyer does not owe the home buyer any of the responsibilities which a lawyer would ordinarily owe to a client.

When a home buyer is paying the costs of a lawyer, however, the home buyer might reasonably believe that the lawyer is representing the home buyer's interests. This might be the home buyer's impression even if he knows that the lawyer is representing the credit union. To address this situation, Rule 4.3 states as follows:

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

Rule 4.3 indicates that a lawyer must correct a person's misimpression about the lawyer's role either if a lawyer "reasonably should know" that a person has that misunderstanding, or if the lawyer actually knows of the misunderstanding. Therefore, if a lawyer can objectively conclude that a person might reasonably have a misimpression about the lawyer's role in a matter, the lawyer has an affirmative duty to correct that misimpression. Even if the person unreasonably has that misimpression, however, so long as the lawyer actually realizes that the misimpression exists, the lawyer must correct the misunderstanding.

We note that several prior Opinions have indicated that a lawyer may not communicate to an unrepresented party any advice, nor may he suggest that he is a "disinterested" participant in the matter. See ISBA Opinion Nos. 86-11, 88-03 and 93-14. Although these Opinions are not directly applicable here because there is no indication that Lawyer D's actions have caused the home buyer's misunderstanding about the lawyer's role, these Opinions demonstrate the caution that lawyers must exercise to correct a non-client's misimpression about the lawyer's function.

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