



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in July 2010. Please see the 2010 Illinois Rules of Professional Conduct 4.2 and 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.

**Opinion No. 85-5
December 6, 1985**

Topic: Communication with one of adverse interest

Digest: A lawyer representing a purchaser under a real estate contract that requires notice to "the seller" may send the required notice directly to the seller although the seller may be represented by counsel.

Ref.: Rule 7-104
ISBA Opinion No. 837

FACTS

A lawyer represents a prospective purchaser of real estate under a contract which provides that if the purchaser is unable to obtain a mortgage commitment within a specified time, the purchaser must notify "the seller" within a certain time or forfeit the earnest money. The lawyer has "hearsay" information that the seller is represented by counsel.

QUESTION

The purchaser's lawyer has asked whether it is proper to send the notice required by the contract directly to the seller if the seller may be represented by counsel.

OPINION

It is professionally proper for the lawyer to send the required notice directly to the seller as authorized by the contract. Rule 7-104 of the Illinois Code of Professional Responsibility provides that: "During the course of his representation of a client a lawyer shall not...communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so..." The Committee believes that the terms of the contract would authorize the lawyer acting for the purchaser to communicate such notice as is required by the contract directly to the seller.

The Committee also believes, however, that it would be improper for the lawyer in question to expand the communication with the seller beyond such notice as is specifically required by the contract (to include a counter-offer or to seek an extension of the time for obtaining a mortgage commitment, for example) until the lawyer knows whether the seller is actually represented by counsel. The inquiry states only that the information that the opposing party was represented by counsel was obtained by hearsay, without further explanation. If the purchaser's lawyer has reliable information that the seller is represented by counsel, any communication beyond that specifically required by the contract to be made to the seller should be directed to counsel.

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