



ILLINOIS STATE  
BAR ASSOCIATION

# ISBA Advisory Opinion on Professional Conduct

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This Opinion was **AFFIRMED** by the Board of Governors in May 2010. Please see the 2010 Illinois Rule of Professional Conduct 8.3. 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 Number 89-7**  
**November 28, 1989**

Topic: Requirement to report alleged lawyer misconduct to Attorney Registration and Disciplinary Commission (ARDC)

Digest: Public defender is not required to report every allegation of ineffective assistance of counsel to ARDC but may exercise discretion in making determination of what attorney misconduct is required to be reported.

Ref: Rule 1-103(a)  
Rule 1-102(a)  
In re Himmel, 125 Ill.2d 531, 533 N.E. 2d 790 (1988)

## FACTS

A Public Defender, in the course of preparing post-conviction petitions is frequently advised by his clients of allegations of ineffective assistance of counsel. These allegations may be unsubstantiated or uncorroborated.

## QUESTION

Does a duty arise requiring the Public Defender to report to the ARDC any alleged attorney

ineffective assistance misconduct communicated by clients represented in post conviction act proceedings? Is the Public Defender required to report to the ARDC every ineffective assistance of counsel allegation communicated to him by client represented in post conviction act proceedings or properly exercise some degree of discretion?

OPINION

Rule 1-103(a) provides:

A lawyer possessing unprivileged knowledge of a violation of Rule 1-102(a)(3) or (4) shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

Rule 1-102(a) provides:

A lawyer shall not:

- (3) engage in illegal conduct involving moral turpitude
- (4) engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

The facts presented are insufficient to express an opinion as to whether the information concerning alleged misconduct is privileged under Rule 4-101 and the ruling of the Court in the case of In re Himmel. If the allegations of misconduct are not privileged, the public defender may properly exercise some discretion to determine whether the alleged ineffective assistance of counsel rises to the level of the misconduct described in Rule 102(a)(3) and (4). If so and the knowledge is not privileged, the Rule requires reporting the misconduct to the Attorney Registration and Disciplinary Commission. The Committee is of the opinion that not every allegation of ineffective assistance of counsel is required to be reported to the ARDC.

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