



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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.

This Opinion was AFFIRMED by the Board of Governors in May 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.7, 1.8(a), and 5.4(c). 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. 89-14
April 9, 1990**

Topic: Dual professions; lawyer/insurance agent providing legal and insurance services to same client; receipt of insurance commissions

Digest:

1. A lawyer who is also an insurance agent may perform legal services and provide insurance services for same client.
2. A lawyer who is also an insurance agent may refer a client to another insurance agent and receive an insurance commission upon disclosure and consent.

Ref.: Rules 5-101(a), 5-104(a), 5-107(b)
ISBA Opinions 85-3, 799, 563 and 227

FACTS

A lawyer is both licensed to practice law in Illinois and is a licensed life insurance agent. He operates a law office and insurance office in separate locations. He uses separate business cards and letterhead.

QUESTIONS

1. May the lawyer perform legal services in his law office and life insurance services in his

insurance office for the same client?

2. May the lawyer perform legal services for a client and then refer that client to a life insurance agent in another office and receive an insurance commission from the agent who writes the policy for the client?

OPINION

1. ISBA Advisory Opinion No. 85-3 (October 4, 1985) concluded that the practice of dual professions is permissible within the parameters of Rule 2-102. Opinion No. 85-3 dealt with a lawyer/CPA engaged in both professions at the same location. Under the facts here, the lawyer's practice of law and transaction of life insurance business in separate offices with separate letterhead and business cards is permitted, subject to the same concerns expressed by the Committee in Opinion No. 85-3 with respect to preservation of client confidences, the potential improper division of fees and the exercise of independent professional judgment.

2. The second question is governed by the rules concerning the lawyer's independent professional judgment. The referral of a client to another insurance agent and the potential receipt of a referral commission creates a situation where the lawyer is doing business with the client and may receive something of value from a third party as a result of the attorney-client relationship.

Rule 5-101(a) places upon the lawyer an affirmative duty to seek "consent of his client after full disclosure" where his independent professional judgment "may be affected by his own financial, business, property, or personal interest." Because the potential insurance transaction appears to arise from the lawyer's professional relationship with the client, Rules 5-104(a) and 5-107(b) also require the lawyer to obtain "consent of the client after full disclosure" in such a situation. Therefore, the lawyer should disclose his interest in any life insurance commissions and obtain consent of the client to said arrangement. The Committee suggests that the "disclosure" and "consent" process be in writing.

The Committee notes that ISBA Opinion No. 227 required a lawyer to disclose the receipt of commissions for recommending or selling title insurance. Opinion No. 563 also required disclosure of commissions or fees received for placement of title insurance and further required that any such fees be reasonable under Rule 2-106. The Committee believes that Opinion No. 799, which stated that a fixed commission paid by a title insurance company for providing evidence of a prior title insurance policy could not be retained by a lawyer, is distinguishable. The basis for Opinion No. 799 was that the fixed commission was arbitrary and not related to any factors relevant under Rule 2-106 in determining a reasonable fee for legal services. In the present inquiry, the insurance commission is not a fee for legal services. However, because the commission is generated from a business transaction that ensued from an attorney-client relationship, it should be disclosed pursuant to Rules 5-104(a) and 5-107(b) as discussed above.

* * *