



**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 Rules of Professional Conduct 1.6, 1.7, 1.8(a) and (h), 1.9, 5.4, 7.1, .2, 7.3, 7.4, and 8.4(h). 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. 90-32  
May 15, 1991**

Topic: Dual Profession; Business Transactions with Clients

Digest: Lawyer who is also an insurance and investment professional: may advertise insurance and investment business, but if advertising discloses status as a lawyer it must comply with rules governing lawyer advertising and solicitation; may accept legal employment from insurance and investment customers; and may sell insurance and investment products to legal clients with disclosure and consent; but may not agree with legal clients who are also insurance and investment customers that insurance or investment advice cannot be considered legal advice.

Ref: 1990 Illinois Rules of Professional Conduct, Rules 1.6, 1.7, 1.8, 1.9, 5.4, 7.1, 7.2, 7.3, 7.4  
ISBA Opinions no. 85-3, 89-14, 90-16

## FACTS

The inquiring lawyer, whose principal areas of practice have been estate planning, probate and real estate, has been offered a sales position with an insurance and investment firm. Compensation from the insurance firm would be entirely from commissions on sales. Any legal documents would be prepared by the purchaser's own lawyer. The lawyer would not render legal services to any purchaser referred by the insurance firm, nor would the lawyer receive any compensation directly from the purchasers of insurance or investment products.

The inquiring lawyer plans to continue to practice law as before. Should the lawyer have an opportunity to sell a commission product to an existing legal client, the lawyer will do so only if the legal client's written consent is obtained. The lawyer contemplates that such written consent would include a "waiver of the inherent conflict of interest", a consent to the lawyer's receipt of a commission for the insurance product sale, and "an acknowledgement that advice given in connection with insurance or investment products is not intended to be and should not be considered legal advice." The inquiring lawyer plans to obtain referrals for the potential sale of insurance and investment products from other partners in the lawyer's firm. In such cases, the lawyer would seek a similar written consent from the firm's clients before concluding a sale.

The lawyer also contemplates a personal marketing and advertising program relating to the sale of insurance and investment products including direct solicitation of prospective purchasers, but does not plan to subsequently solicit or accept legal work from such prospective insurance purchasers. The investment firm also plans to identify the inquiring lawyer as a lawyer in its marketing and promotional materials.

#### QUESTIONS

The inquiring lawyer asks generally whether the plans described above may be implemented consistent with the Rules of Professional Conduct. Specifically, the lawyer asks:

1. Whether the lawyer may sell insurance and investment products to firm clients as long as a document is obtained from the clients in which the clients waive the inherent conflict of interest, consent to the receipt of a commission by the lawyer, and acknowledge that any advice given in connection with commission products is not intended to be and should not be considered legal advice;
2. Whether the lawyer may conduct a personal marketing or advertising campaign relating to the sale of insurance and investment products including direct solicitation of prospective purchasers as long as the lawyer does not subsequently solicit or accept legal work from such clients solicited in connection with the insurance or investment business; and
3. Whether the investment firm may identify the lawyer as a lawyer in its marketing and promotional materials as long as the lawyer does not render legal services for customers referred by the investment firm or accept legal fees from such persons.

#### OPINION

Prior to July 1984, Rule 2-102(c) of the former Illinois Code of Professional Responsibility prohibited a lawyer from practicing law and conducting another business or profession from the same office. Nor could a lawyer utilize stationery, office signs or professional cards indicating a dual profession. As noted in the Committee's

Opinion 85-3, however, the repeal of Rule 2-102(c) in July 1984 permitted the practice of dual professions from the same office. See also Opinion 89-14.

In Opinion 90-16 the Committee concluded that the same result applies under the 1990 Rules of Professional Conduct. In that opinion, the Committee also cautioned lawyers involved in dual

professions from the same office that the Rules of Professional Conduct govern the lawyer's legal practice. Among the relevant rules noted were Rule 1.6 concerning confidentiality of client information; Rules 1.7, 1.8, and 1.9 concerning conflicts of interest; Rule 5.4 concerning the professional independence of a lawyer; and Rules 7.1, 7.2, 7.3 and 7.4 governing advertising and communications with respect to a lawyer's services.

The law has historically subjected business transactions between lawyers and their clients to strict scrutiny. The relatively recent change in the disciplinary rules to permit "dual profession" lawyers to operate from a single office has not removed the need to protect clients who do business with their lawyers. The Committee believes that dual profession lawyers must take special care to insure that the interest of their legal clients are not compromised or the sake of the lawyers' other enterprises.

For purposes of this opinion, the Committee assumes that the lawyer will take adequate precautions to maintain the confidentiality of the affairs of the lawyer's legal clients and will handle the affairs of insurance customers and legal clients separately whenever appropriate.

With respect to the lawyer's first inquiry, the lawyer has correctly recognized the need to make full disclosure of the relevant facts involved in the proposed business transactions and to seek the informed consent of existing firm clients as required by Rule 1.8(a). However, the Committee does not believe that the Rules permit a lawyer to agree in advance with legal clients that advice given to such clients in connection with insurance or investment products is not intended to be and should not be considered legal advice. Even if it could be reliably determined in an estate planning context whether any particular advice relates only to insurance and investments rather than strictly "legal" matters, the Committee believes that such an agreement is essentially an agreement with a client prospectively limiting the lawyer's liability to the client. Such agreements are prohibited by Rule 1.8(f) unless the agreement is permitted by law and the client is independently represented in making the agreement. Such an agreement might also be contrary to Rule 1.8(h) which prohibits agreements which purport to limit the right of a client to file or pursue any complaint before the Attorney Registration and Disciplinary Commission.

With respect to the lawyer's second question, the Rules place no restrictions on the lawyers' solicitation of insurance business. If the lawyer wishes, the lawyer may also advertise or solicit for legal business. Rule 7.2 permits lawyers to advertise for legal employment, subject to the requirements of Rule 7.1. Rule 7.3(a) also permits the direct solicitation of legal employment in various circumstances, including letters and advertising circulars. The lawyer may therefore accept legal employment resulting directly from advertising and solicitation if the lawyer's advertising and solicitation for legal employment meet the requirements of Rule 7.1, Rule 7.2 and Rule 7.3. With respect to legal employment by insurance or investment customers, the Committee notes that the prohibition of Rule 2-104 of the former Code of Professional Responsibility (which prevented a lawyer who had given unsolicited advice to a lay person to obtain counsel or to take legal action from accepting legal employment resulting from that advice) was not included in the 1990 Rules of Professional Conduct. The Committee therefore believes that the lawyer may "accept" legal employment from insurance or investment customers developed through advertising and solicitation relating only to insurance and investment products, even though the lawyer could not "solicit" legal employment except as permitted by Rule 7.1, Rule 7.2 and Rule 7.3. However, once the lawyer

accepts legal employment from insurance and investment customers, such customers become legal clients, and any business transactions between the lawyer and the new clients would be subject to the requirements, including the requirements of disclosure and consent, discussed above with respect to existing clients.

With respect to the lawyer's third question, the Committee believes that the Rules would not prohibit the insurance and investment firm from identifying the inquiring lawyer as a lawyer in that firm's marketing materials, provided that such marketing materials meet the requirements of Rules 7.1, 7.2, 7.3 and 7.4. If the lawyer chooses to be identified as a lawyer in soliciting business, then the rules regulating lawyer advertising and solicitation should apply. As noted above, however, the lawyer may discuss the legal needs of insurance and investment customers and "accept" legal employment from such customers. Once an actual or prospective insurance or investment customer becomes a legal client, regardless of the source of referral, then the relationship will be governed by the rules applicable to the lawyer-client relationship, including the requirements of disclosure and consent with respect to business transactions between lawyers and clients. Should the lawyer choose not to accept legal employment from prospective insurance and investment customers referred by the insurance and investment firm, then the rules governing the lawyer-client relationship would not apply.

In sum, the Committee believes that the Rules of Professional Conduct permit "dual profession" lawyers to do business relating to their other professions with their legal clients and accept legal employment from persons referred in connection with their other professions, but such lawyers must conduct any business transactions with all legal clients in full compliance with the Rules.

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