



**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 Rule of Professional Conduct 5.6. 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. 91-12
November 22, 1991**

Topic: Restrictions on right to practice in attorney's employment contract

Digest: Attorney's contract of employment with firm that precludes him for a period of three years from his termination date from calling upon, servicing or soliciting clients that dealt with the firm while he was employed violates Rule 5.6 prohibitions against restricting the right of an attorney to practice after terminating employment with a firm.

Ref.: Illinois Rules of Professional Conduct, Rule 5.6
Corti v. Fleisher, 93 Ill.App. 3d 517, 49 Ill.Dec. 74, 417 N.E.2d 764
(Ill.App.1st Dist. 1981)

FACTS

An attorney signed an employment contract with a firm requiring him, in case of termination of employment, among other things, to turn over to the firm any personal notes and reproductions relating to the business and to refrain for a period of three years following termination from calling upon, servicing, or soliciting clients that dealt with the firm during the term of his employment.

QUESTION

Does this agreement violate the provisions of Rule 5.6(a) restrictions on Right to Practice?

OPINION

Rule 5.6 provides:

A lawyer shall not participate in offering or making:

- a) a partnership or employment agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or
- b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.

The agreement does not appear to be an agreement concerning benefits upon retirement or to be part of a settlement of a controversy between private parties. The Committee is of the opinion therefore that the agreement violates Rule 5.6(a) in restricting the rights of a lawyer to practice after terminating his employment.

Moreover, to the extent that this agreement allows the firm to prevent the attorney from doing work for clients despite the clients' wishes that the attorney do such work, it would appear to be void as contrary to public policy in that it deprives clients of the right to be represented by counsel of their choice. Corti v. Fleisher, 93 Ill.App.3d 517, 49 Ill.Dec. 74, 417 N.E.2d 764 (Ill.App. 1st Dist. 1981).

* * *