



**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 1.7, 5.4, 5.5(a), and 7.3. 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. 91-18
January, 1992**

Topic: Solicitation; Unauthorized Practice of Law; Agents of Clients

Digest: An attorney may represent property manager/agent members of real estate agents' association for client/owners provided that the agents are authorized to employ counsel, there is no fee splitting with the association or the member agents, and the association does not engage in improper solicitation or the unauthorized practice of law.

Ref.: Illinois Rules of Professional Conduct, Rule 1.7, Rule 5.4(a)(c), Rule 5.5(b), Rule 7.3
ISBA Advisory Opinion No. 91-3

FACTS

The "property management committee" of an area association of real estate agents sent a letter to various law firms in the community requesting proposals to represent its members in such legal matters as forcible entry and detainer actions, small claims, etc. The committee was composed of brokers and managers representing local real estate firms. The letter requested replies by a date certain "including a schedule of fees."

QUESTIONS

1. If the property owners organize a unit for the purpose of eviction and other landlord/tenant matters, would an attorney be in violation of the Rules of Professional Conduct in reference to employment on behalf of a class unit?
2. Does the letter from the committee constitute the practice of law?

OPINION

The inquiry is unclear as to whether the attorney will be representing association members as agents of the property owners or the property owners themselves.

Assuming that the attorney will represent the property owners referred to that attorney by the association and that there is no fee splitting between the attorney and the association or its members, the proposed arrangement does not contravene the Rules of Professional Conduct. The attorney must exercise care to avoid conflicts of interest by complying with Rule 1.7.

If, on the other hand, the attorney will be representing the real estate brokers as agents of the property owners, the Rules of Professional Conduct circumscribe the conduct of the attorney.

Rule 5.4(a) prohibits fee sharing with a non-attorney and subparagraph (b) prohibits permitting a person who recommends, employs or pays the attorney to render services for another to direct or regulate the attorney's professional judgment.

Rule 5.5(b) provides that an attorney shall not assist a non-attorney in the performance of activities that constitute the unauthorized practice of law.

Rule 7.3 forbids an attorney's solicitation of professional employment for pecuniary gain subject to certain exceptions including "under the auspices of...a fraternal, employee or trade organization whose purposes include but are not limited to providing or recommending legal services."

ISBA Opinion No. 91-3 applied the Rules of Professional Conduct to facts analogous to those presented in this inquiry. Opinion No. 91-3 involved an attorney representing creditor/clients when a collection agency as agent for the creditors retains the attorney and acts for the creditor/clients concerning the representation by the attorney. The Committee found that representation permissible provided that no fees were divided with the collection agency in violation of Rule 5.4(a); the attorney took all appropriate steps necessary to determine that the collection agency had the authority to employ counsel and act on the client's behalf consistent with Rule 5.4(b). That opinion also cautioned that the attorney must ensure that there was no improper solicitation of clients contrary to Rule 7.3 and that the collection agency did not engage in any activities constituting the unauthorized practice of law which would involve the attorney in assisting a non-attorney in the unauthorized practice of law contrary to Rule 5.5(b).

Opinion No. 91-3 is applicable to the facts presented in this inquiry. If the attorney observes the aforementioned Rule discussed in that Opinion and conforms his conduct to the Rules of Professional Conduct, the proposed representation of the real estate managers as agents of the property owners is not prohibited by the Rules.

With respect to the second question, the Committee's opinion is that requesting replies from law firms quoting fees for legal services, standing alone, does not constitute the practice of law. It is similar to, if not the same as, requests for proposals to perform legal services issued by governmental agencies. The Rules do not apply to that activity which does not involve attorney activity or conduct.

In a different vein, consideration should also be given as to whether Supreme Court Rule 730 regarding legal service plans might be applicable.