



**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 1.7 with its Comment [13]. 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. 91-28  
May 26, 1992**

Topic: Conflict of Interest: Continuing Duty to Client

Digest: Where legal services are provided for a client, which services also benefit a third party, the third party cannot establish an attorney-client relationship with the attorney in conflict with the initial client merely by paying the bill for the services initially rendered.

Ref.: Illinois Rules of Professional Conduct, Rules 1.4(a), 1.7(a) and 1.9(a)(1)

## **FACTS**

Client X is a long time acquaintance and client of Attorney A. Client X has lived with his divorced father in the family household for several years.

Client X's father and mother have been divorced for over 25 years. The mother has remarried and divorced at least five times. Client X sought advise from Attorney A upon learning that his father and estranged mother were going to remarry. Client X feared that his mother would take financial advantage of the father as she had done in the past. He feared she would spend money or use credit unwisely and put the ownership of the house in jeopardy.

Title to the family residence prior to the marriage was in the father's name only. Client X planned

on living in the home with his parents after the marriage. Client X also wanted to protect his interest and make sure that his estranged mother would not in any way jeopardize Client X from receiving the house or a partial interest therein from his father's estate upon the father's death. Client X's father and mother would not consider signing a Quit Claim Deed which would put the residency in joint tenancy between the father and his son (Client X) or any of the other children. Client X's fears were founded on prior incidents in which the mother took advantage financially of the father during the time they were divorced.

Client X then asked Attorney A to prepare an Antenuptial Agreement whereby the mother would have no interest in the residence after the marriage, but it would pass to their three children who survive the father, per stirpes. Client X presented the Agreement to his mother and father. It was signed before a notary in triplicate. One copy was returned to Attorney A. At no time did Attorney A consult or meet with the parents regarding the drafting or signing of the Antenuptial Agreement.

Four months after the Agreement was signed, Attorney A received a letter from Attorney B who had been retained by the parents. Enclosed was a letter from the parents terminating, cancelling and revoking the Antenuptial Agreement. Attorney B asked that the signed copy of the Agreement be returned to Attorney B. Attorney B asked that the revocation of the Antenuptial Agreement be kept "confidential and should not be disseminated to any other party, and in particular, any other family member."

Upon reviewing the file, Attorney A noted that payment had not been received on the account. Client X and his siblings had agreed to pay the bill, but had not yet done so.

After talking to Attorney B and the parents on the phone, it was agreed that if the parents paid the bill, that the copy of the Agreement would be sent to Attorney B. In the meantime, Client X sent a check, paying for the attorney fees on the Agreement. The check has not been cashed and is in Attorney A's possession.

### **QUESTIONS**

1. What is the duty of Attorney A to disclose to Client X the fact that his parents have revoked the Antenuptial Agreement and have requested delivery of the signed copy of the Agreement to them?
2. Does Attorney A have a duty of confidentiality to Client X's parents?
3. If Attorney A accepts and cashes the check of Client X, is his position changed as to any of the parties?
4. Should the signed Antenuptial Agreement in Attorney A's possession be given to Client X's parents?

### **OPINION**

The initial question to be considered is: who is the client of Attorney A and to whom is the attorney-client privilege owed? There is a serious question as to whether an attorney-client relationship exists between A and the parents. Assuming not, in this case, Client X had a prior relationship with Attorney A and contacted Attorney A concerning the protection of his own interests and in addition agreed to pay for the services of drafting of the Antenuptial Agreement for his parents and was billed for those services. Thus, Attorney A and Client X established an attorney-client relationship

regarding this new matter and Attorney A's obligation extends to Client X.

The offer by the parents to pay the bill does not establish them as clients of Attorney A, nor does it create a confidential relationship between Attorney A and the parents. The request by Attorney B to keep in confidence the fact of the termination of the agreement by the parents cannot be complied with. Attorney A's representation of Client X is a continuing relationship and even if it were concluded upon the completion of the drafting of the Antenuptial Agreement, Attorney A would not be permitted to establish an attorney-client relationship with the parents as this would be the same matter in which the parents' interests would be materially adverse to Client X. Rule 1.7(a) and 1.9(a)(1). Even if the parents would pay the bill, they would be doing so for Client X and cannot place themselves in the position of Client X.

Due to the fact that the attorney-client relationship is only with Client X, Attorney A's acceptance of and cashing of the check would not alter the position or rights of Client X.

Since the only two parties to the Antenuptial Agreement are the parents of Client X, the parents should be entitled to the delivery to them of the signed Agreement. However, since the agreement was drafted by Attorney A and the executed copy was received by him as part of the attorney-client relationship, Attorney A should inform Client X of the request for delivering of the document to his parents.

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