



**ILLINOIS STATE  
BAR ASSOCIATION**

# **ISBA Advisory Opinion on Professional Conduct**

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**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.**

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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 8.4(b), (c), and (g) as well as ISBA Ethics Advisory Opinion 90-29. 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. 91-29  
May 26, 1992**

Topic: Threat of criminal prosecution to gain advantage in civil action

Digest:

- a) Mention of inclination to pursue criminal charges against husband by wife's attorney during negotiations for settlement of divorce is improper conduct.
- b) Recipient of threat not involving misconduct described in Rule 8.4(a)(3) and (4) from opposing counsel creates no obligation of reporting to ARDC

Ref.: Illinois Rules of Professional Conduct, Rules 1.2(e), 8.3(a), 8.4(a)(3) and 8.4(a)(4)  
In re Himmel, 125 Ill.2d.531, 533 N.E.2d 790 (Ill. 1988)  
ISBA Opinion 90-36

## **FACTS**

Attorney A represents husband in an action for dissolution of marriage. In the course of settlement negotiations, attorney B, representing the wife, stated in a letter to A the following, "My client was inclined, and still is inclined, to unveil this sham to the bank and ask that (A's client) be prosecuted." (Reference was to allegation that husband forged wife's signature to mortgage.)

## **QUESTIONS**

1. Is the statement of inclination to take action resulting in criminal prosecution, made during settlement negotiations in a civil matter, pressure to gain an advantage which is violative of the Rules of Professional Conduct?
2. Does a violation of Rule 1.2(e) create an obligation to report the wrongdoing attorney pursuant to the dictates of In re Himmel, to the Attorney Registration and Disciplinary Commission?

### **OPINION**

Illinois Rules of Professional Conduct, Rule 1.2(e) clearly states: "A lawyer shall not present, participate in presenting, or threaten to present criminal charges or professional disciplinary actions to obtain an advantage in a civil matter."

The conduct of Attorney B in suggesting during settlement negotiations that Attorney A's client may be criminally prosecuted is clearly an attempt to gain an advantage and not a statement of objective fact. The statement does violate Rule 1.2(e).

Attorney A does not, however, have an obligation to report such a statement pursuant to In re Himmel, 125 Ill.2d 531. The mandatory reporting required (Rule 8.3(a)), is that of acts constituting illegal conduct or conduct involving dishonesty, fraud or misrepresentation (Rule 8.4(a)(3) and (4)).

The reporting of the attorney's comments relating to the conduct of the client is not conduct of the attorney which would require reporting. Attorney B's letter containing the violation of Rule 1.2(e) is misconduct under Rule 8.4(a)(1) which is not a mandatory report under Rule 8.3(a).

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