



**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 January 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.5, 1.7, 7.1, 7.2(b), 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. 92-8
January 22, 1993**

Topic: Solicitation

Digest: Under facts presented, proposal of corporation to recommend its law firm to employees at reduced rates conforms to requirements of Illinois Rules of Professional Conduct.

Ref.: Illinois Rules of Professional Conduct, Rules 1.5, 1.7, 7.1, 7.2(b), 7.3
ISBA Opinions 83-2, 84-1 and 90-21

FACTS

A law firm represents a corporation and, on occasion, does personal legal work for the officers and directors and, at least on occasion, one of its employees. The president of the corporation, a personal friend of the firm's two partners, suggested that he would make a broad recommendation to the employees of the corporation to use the law firm's services. Based upon that recommendation, the firm was asked to offer employees a guaranteed reduced hourly rate from the firm's normal and customary fees. This would create an additional benefit to the corporate employees in the form of legal fees at a discounted rate.

QUESTIONS

Does the proposed arrangement conform to the requirements of the Illinois Rules of Professional

Conduct?

OPINION

Rule 7.2(b), in pertinent part, states:

A lawyer shall not give anything of value to a person for recommending or having recommended the lawyer's services....

Rule 7.3 provides that a lawyer shall not, directly or through a representative, solicit professional employment when a significant motive for doing so is the lawyer's pecuniary gain, except a lawyer is permitted to initiate contact with a prospective client:

(a)(3) under the auspices of a public or charitable legal services organization as a bona fide political, social, civic, charitable, religious, fraternal, employee, or trade organization whose purposes include but are not limited to providing or recommending legal services...

and under other circumstances not relevant to the inquiry here.

Rule 1.7 prohibits the representation of clients having adverse interests except when the client consents after disclosure and the representation will not be adversely affected by the conflict.

ISBA Opinion No. 83-2 (1984) expressed the view that in-person contact by an attorney or by a representative of a local non-legal organization to solicit legal services from new residents in a specific area violated former Rule 2-103 with substantially the same language as current Rule 7.3.

In ISBA Opinion No. 84-1 (1984) referrals by a bank which scheduled appointments for its customers with an attorney in a bank office to draft wills as a perceived service of the bank was also found to violate former Rule 2-103.

In ISBA Opinion No. 90-21 (1991), the Committee discussed Rules 7.2(b) and 7.3 in response to an inquiry involving a not-for-profit organization of dues paying business and professional people to provide leads to be personally contacted and to raise the expenses of member individual advertising. The in-person contact with leads by the organization member attorney or another member on behalf of the attorney was condemned as violating Rule 7.3. To the extent that dues payments resulted in personal contacts by other organization members, as distinguished from public advertising, the Opinion found a violation of Rule 7.2(b).

The inquiry raises the question of whether the proposed arrangement, unlike the circumstances described in the foregoing Opinions, is similar to prepaid plans or other group legal service plans organized under the exception in Rule 7.3(a)(3) to the general prohibition on direct solicitation of prospective clients. Under the facts presented, the employer, not the attorney, initiates and communicates the recommendation that its employees utilize the attorney's services at reduced rates. Therefore, it is not necessary to determine whether the employer is an "organization" within the exception stated in Rule 7.3(a)(3) because no attorney solicitation, directly or indirectly, is

involved.

There is a substantial risk for conflicts of interest between the employer and employees and between employees seeking representation from the same firm, e.g., workers' compensation claims, EEOC claims, employer/employee disputes, claims between employees, etc. Great care should be exercised to assure compliance with Rule 1.7 to avoid conflicts of interest between the employee and any prospective employee-client as well as conflicts between employees.

Finally, under Rule 7.1, the law firm must exercise great care in setting and communicating its hourly rates and fees to assure that the "guaranteed reduced hourly rate" is real and not illusory. The facts recite that the hourly rate to be charged employees will be less than the firm's normal and customary fees. Unless the hourly rate charged employees is less than the fees charged in the locality for similar legal services, the "reduced" fee representation may be misleading.

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