



**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 1.8(e). 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. 94-17
March, 1995**

Topic: Advancing or guaranteeing expenses of litigation

Digest: An attorney's failure to advance payment for or collect payment from a client to satisfy a court reporter's fee is not a violation of the Rules of Professional Conduct.

Ref.: Illinois Rules of Professional Conduct, Rule 1.8(d)
McCorkle v. Weinstein, 50 Ill.App.3d 661, 365 N.E.2d 953 (1977).
In re Green, 104 Ill.2d 65, 83 Ill.Dec. 358, 470 N.E.2d 316 (1984).

FACTS

An attorney collects his fee in full but fails to collect and pay for court reporting fees incurred in connection with the representation of his client.

QUESTION

Is the attorney's conduct in failing to pay the court reporter's fees in violation of the Illinois Rules of Professional Conduct?

OPINION

The Illinois Rules of Professional Conduct and professional discipline are not established to serve as

a collection mechanism, except for Rule 8.4 on student loans. "The purpose of a disciplinary proceeding is to safeguard the public, protect the administration of justice from reproach and maintain the integrity of the profession. In re Green, 104 Ill.2d 65, 83 Ill.Dec. 358, 470 N.E.2d 316 (1984).

Under Illinois agency law, an attorney is not generally liable to third persons on contracts entered into on behalf of his client where the agency relationship is disclosed and the attorney was authorized to enter into the contract unless the attorney expressly assumes personal liability for same. McCorkle v. Weinstein, 50 Ill.App. 3d 661, 365 N.E.2d 953 (1977). In McCorkle, the court specifically held that the defendant attorney was not liable to the plaintiff court reporter for court reporter fees. The court found that (1) the attorney was acting as an agent for his client in requesting the plaintiff furnish court reporting services; (2) the name of the client and the agency relationship was known to the plaintiff; and (3) the defendant did not agree to become personally liable for plaintiff's services.

Although an attorney is not generally liable for a court reporter's fees, the attorney may agree to become personally liable for such, provided that such agreement complies with Rule 1.8 of the Illinois Rules of Professional Conduct. Rule 1.8(d) provides as follows:

RULE 1.8. Conflict of Interest: Prohibited Transactions

(d) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to the client, except that a lawyer may advance or guarantee the expenses of litigation, including, but not limited to, court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence if:

- (1) the client remains ultimately liable for such expenses; or
- (2) the repayment is contingent on the outcome of the matter; or
- (3) the client is indigent.

Under Rule 1.8, an attorney may pay a court reporter's fee and agree that the client will not be liable for such if the litigation is unsuccessful. Under Rule 1.8, an attorney may also assume responsibility for these fees if his client is indigent.

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