



**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 Rule of Professional Conduct 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. 96-2
July, 1996**

Topic: Solicitation--Third party offering thing of value to secure client for lawyer

Digest: A third party may not offer anything of value to secure legal business for a lawyer with the lawyer's knowledge and acquiescence.

Ref.: Illinois Rules of Professional Conduct, Rule 7.3

FACTS

A health care practitioner wrote a letter to his patient who was injured and had a potential tort claim resulting from that injury.

In the letter, the health care practitioner offered to defer collection for chiropractic services until the claim was resolved or, if the claim were lost, to waive payment completely provided the patient retained a specified lawyer to represent the patient in the claim.

QUESTION

Is the recommended lawyer in violation of the Rules of Professional Conduct?

OPINION

We must first assume that the lawyer referred to in the letter knows that the letter is being sent and knows its content. We make this assumption because it is logical to assume that the health care practitioner is not making this offer without the knowledge of the lawyer and out of charitable concern for the well-being of the lawyer. If the lawyer had no knowledge of such an offer, the lawyer could not be liable for an infraction, and the health care practitioner is not under the jurisdiction of the Attorney Registration and Disciplinary Commission.

Illinois Rules of Professional Conduct, Rule 7.3 provides that "...a lawyer shall not,...through a representative, solicit professional employment when a significant motive for doing so is the lawyer's pecuniary gain." Rule 8.4 provides that a lawyer shall not "...(2) induce another to engage in conduct, or give assistance to another's conduct, when the lawyer knows that conduct will violate these rules."

If the lawyer knows that the health care practitioner is sending such letter and allows it to continue, the lawyer is in violation of the Rules of Professional Conduct above cited. The conduct amounts to solicitation of legal business by an agent.

It should be pointed out, however, that there is nothing improper in any health care practitioner postponing collection of fees until the claim is resolved. There is also nothing improper in a health care practitioner agreeing to waive collection from a patient if the tort claim which was the cause of the need for medical care is lost. There is further nothing improper about a lawyer contacting a health care practitioner to request forbearance of this nature.

But where, as here, the forbearance is offered to secure a client for the lawyer, it would be improper for the lawyer to acquiesce in such a practice after gaining knowledge of it.

* * *