



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in January 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.2(e), 1.4, 1.5, 1.16, 7.1, 7.3, and 8.4. 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. 96-11
May 16, 1997**

Topic: Duty of successor Lawyer to predecessor Lawyer and Clients

Digest: Lawyer, who represents clients transferred to him by another lawyer, owes no legal duty to the transferring lawyer or to the clients involved to inform the clients of the resumption of practice by the transferring lawyer who previously suspended his practice while temporarily physically incapacitated. Lawyer has an obligation to keep his clients reasonably informed about the status of their cases and must promptly comply with reasonable requests by the clients for such information, but this obligation does not create a legal or ethical duty on the part of lawyer to relay information regarding the referring attorney's practice.

Ref: Illinois Rules of Professional Conduct, Rules 1.1(c), 1.4, 1.5, 1.16, 7.1, 7.3, and 8.4.
Herbster v. North Am. Co. for Life & Health Ins., 150 Ill.App3d 21, 103 Ill.Dec. 322, 501 N.E.2d 343 (Ill.App.2d Dist. 1986).
SWS Financial Fund A v. Salomon Bros. Inc., 590 F.Supp. 1392 (N.D. Ill. 1992).
Tobias v. King, 84 Ill.App.3d 998, 40 Ill.Dec. 400, 406 N.E.2d 101 (Ill. App. 1st Dist. 1980).
Rhoades v. Norfolk & Western Ry. Co., 78 Ill.2d 217, 35 Ill.Dec. 680, 399 N.E.2d 969 (Ill. 1979).

Savich v. Savich, 12 Ill.2d 454, 147 N.E.2d 85 (Ill. 1957).
Corti v. Fleisher, 93 Ill.App.3d 517, 49 Ill.Dec. 74, 417 N.E.2d 764 (Ill. App. 1st Dist. 1981).

FACTS

Attorney A, while temporarily physically incapacitated, transfers clients to another attorney, Attorney B, to handle specific matters. Attorney A neither expects nor receives referral fees from Attorney B, because he does not contribute any services or time to the particular cases. Upon his recovery, Attorney A resumes his practice, albeit on a restricted basis. Attorney B knows that Attorney A has resumed his practice, but fails to inform the clients of this information. The clients thereafter continue to retain Attorney B on the specific matters.

QUESTION

Whether an attorney owes a legal duty to a referring attorney and/or to the clients referred by that attorney to inform these clients about the resumption of practice by the referring attorney?

OPINION

There appears to be no Rule, Supreme Court Case, or prior Advisory Opinion directly on point to address this particular question. The Rules and other considerations which constitute the most pertinent indirect authority appear to be those dealing with communication under Rule 1.4 and the general caselaw authority that a client can terminate the attorney-client relationship at will.

Rule 1.16(a) of the Illinois Rules of Professional Conduct provides in relevant part:

A lawyer representing a client before a tribunal shall withdraw from employment (with permission of the tribunal if such permission is required), and a lawyer representing a client in other matters shall withdraw from employment, if:

...

(3) the lawyer's mental or physical condition renders it unreasonably difficult for the lawyer to carry out the employment effectively . . .

Under Rule 1.16(d), a lawyer shall not withdraw from employment until the lawyer has taken reasonable steps to avoid foreseeable prejudice to the rights of the client, including giving due notice to the client and allowing time for employment of other counsel. Under Rule 1.1 (c) , a lawyer, after accepting employment on behalf of a client, shall not thereafter delegate to another lawyer not in the lawyer's firm the responsibility for performing or completing that employment without the consent of the client.

Based upon these principles, it was appropriate and necessary for the attorney to withdraw from representation and to transfer his

clients, with client consent, to another attorney in order to avoid prejudicing the clients because of his physical incapacity.

Under the fact of this inquiry, the transferring attorney made no arrangement for referral fees, nor

did he make an arrangement in which he had assumed responsibility for the performance of legal services by the successor attorney. Under Rule 1.5 (f)(g) he could properly receive a fee and have continuing responsibility if the client was made aware of this arrangement and approved in writing after full disclosure pursuant to Rule 1.5. For the purpose of this opinion we use the term “transferal” to describe an arrangement for substitution of attorneys only. In this situation the transferring attorney did not contemplate, expect or arrange to divide or share fees or responsibility with another attorney. The transferring attorney is merely substituting another attorney in place of himself to represent the clients, enabling him to withdraw from representation under Rule 1.6(a).

In general, the authority of an attorney terminates when the matter for which he has been retained itself ends. Herbster v. North Am. Co. for Life & Health Ins., 150 Ill.App.3d 21, 103 Ill.Dec. 322, 501 N.E.2d 343 (Ill. App. 2d Dist. 1986). Once established, the attorney-client relationship does not terminate, except by action evidencing an inconsistency with the continuation of the relationship. SWS Financial Fund A v. Salomon Bros. Inc., 790 F.Supp. 1392 (N.D. Ill. 1992). At the time of transferal, the authority of the transferring attorney terminates as it relates to the various clients and matters specifically referred.

Once the representation of the particular client by the transferring attorney terminates and the successor attorney begins the representation, under Rule 1.4(a), a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. Under Rule 1.4(b), a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. These rules obligate an attorney to keep clients reasonably informed, so as to allow them to make informed decisions regarding their cases. The status of the health and practice of a transferring attorney would not be of the type of information that a lawyer must give a client in order to keep that client reasonably informed about the status of his case, so long as the participation by the transferring attorney does not affect the representation and the agreement does not contemplate that this attorney will resume representation at a later date.

Furthermore, under Rule 7.1, a lawyer shall not knowingly make a false or misleading communication about the lawyer or the lawyer’s services. Rule 8.4(a) (4) provides that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Based upon these rules, an attorney is obligated to promptly comply with reasonable requests for information by a client regarding that client’s case. If the client specifically asks for information regarding the competence and practice of the prior referring attorney, then the present attorney is obligated to provide such information.

In summary, an attorney does not owe a legal or ethical duty to the transferring attorney or to the particular client transferred by that attorney to inform the client of the recovery and resumption of practice of the transferring attorney, absent the request by such client regarding this information. The decision by the client to continue the representation by the successor attorney is the client’s right.

Parenthetically, it should be noted that Rule 7.3(a)(1) would appear to allow the transferring

attorney, upon his return to the practice to solicit the former client or advise the former client of his return to the practice. Rule 7.3 (a)(1) provides that “a lawyer may initiate contact with a prospective client for the purpose of solicitation . . . if the prospective client is a . . . person with whom the lawyer or lawyer’s firm has had a prior professional relationship.” This solicitation is always subject to the prohibitions of Rule 7.3(b).

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