



**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 Rule of Professional Conduct 5.5(a). 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. 97-03
September 19, 1997**

Topic: Unauthorized Practice of Law

Digest: A corporation doing business as a “management services organization” is engaged in the unauthorized practice of law when, among the services provided, it includes legal services, whether in-court or otherwise; it would be professionally improper for any lawyer to counsel or advise the corporation in rendering such services.

Ref.; Illinois Rules of Professional Conduct, Rule 5.5
705 ILCS 220/1; 725 ILCS 220/4
ISBA Advisory Opinion on Professional Conduct No. 95-07
People ex rel. Chicago Bar Association v. Motorists Association of Illinois (1934), 354 Ill. 595
People ex rel. Chicago Bar Association v. Chicago Motor Club (1936), 367 Ill. 50
People ex rel. Courtney v. Association of Real Estate Taxpayers (1933), 354 Ill. 102, 187 N.E. 823
Chicago Bar Association v. Quinlan & Tyson, Inc., (1966) 34 Ill.2d 116, 214 N.E.2d 771
In re Yamaguchi, (1987) 118 Ill.2d 417, 515 N.E.2d 1235
In re Discipio, (1994) 163 Ill.2d 515, 645 N.E.2d 906
People ex rel. Illinois State Bar Association v. Schafer, (1949) 404 Ill. 45, 87 N.E.2d 773

FACTS

A corporation described as a “management services organization” provides, by contract with unaffiliated, unrelated entities, various management services for its clients. The corporation’s contract stipulates that it will provide certain legal services through its in-house legal staff as part of its overall management services. These services will consist principally of drafting and reviewing contracts, conducting legal research, and handling filings for maintenance of state licensing requirements. The services would not

include courtroom appearances or taking or attending depositions.

QUESTIONS

Are the contemplated services by the corporation, through its in-house legal staff, as part of its contractual managerial services, in violation of the Illinois Rules of Professional Conduct?

OPINION

Rule 5.5 of the Illinois Rules of Professional Conduct provides:

A lawyer shall not:

- (a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or
- (b) assist a person who is not a member of the bar in the performance of an activity that constitutes the unauthorized practice of law.

In determining whether certain conduct constitutes the practice of law, the courts look to the character of the acts themselves. Chicago Bar Association v. Quinlan & Tyson, Inc., 34 Ill.2d 116, 214 N.E.2d 771 (1966). If those acts require legal skills or knowledge or more than ordinary business intelligence, they constitute the practice of law. *Id.*, In re Discipio, 163 Ill.2d 515, 645 N.E.2d 906 (1994); In re Yamaguchi, 118 Ill.2d 417, 515 N.E.2d 1235 (1987); People ex rel. Illinois State Bar Association v. Schafer, 404 Ill. 45, 87 N.E.2d 773 (1949).

In Opinion No. 95-07, the Committee determined that, although a lay person might complete and file corporate documents obtained from the office of the Secretary of State, anyone assisting or advising such a person with respect to the completion and filing of the forms so furnished, would be assisting in the unauthorized practice of law.

The description of the services to be performed as a part of the management services to the corporation's clients leaves no doubt that they involve the practice of law.

With certain exceptions, it is unlawful for a corporation to practice law in Illinois, or to hold itself out as being entitled to practice law or to render or furnish legal services or advice (705 ILCS 220/1). Moreover, the fact that the legal services are provided with the assistance of employees who are duly licensed lawyers is no defense. (725 ILCS 220/4)

Thus, the Illinois Supreme Court has held that a not-for-profit motorists' club which, through its legal department, defended its members in legal proceedings arising out of arrests for motor vehicle offenses, was engaged in the unauthorized practice of law. People ex rel. Chicago Bar Association v. Motorists Association of Illinois, 354 Ill. 595 (1934); People ex rel. Chicago Bar Association v. Chicago Motor Club, 367 Ill. 50 (1936). Earlier, the Court applied the same rationale to a not-for-profit corporation consisting of an association of real estate taxpayers which had organized for their mutual protection in matters of taxation and assessments. People ex rel. Courtney v. Association of Real Estate Taxpayers, 354 Ill. 102, 187 N.E. 823 (1933).

Whether a separate identifiable fee is charged for the legal services rendered is immaterial. Conduct constituting the unauthorized practice of law does not become authorized simply because a separate fee is

charged.

The Committee is therefore of the opinion that providing legal services in the manner described constitutes the unauthorized practice of law and that a lawyer who assists in such endeavor violates Rule 5.5 of the Rules of Professional Conduct.