



**ILLINOIS STATE  
BAR ASSOCIATION**

# **ISBA Advisory Opinion on Professional Conduct**

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**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.**

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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) and 1.5(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.**

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**Opinion No. 98-02  
September, 1998**

Topic: Disclosure to client of compensation payable to independent or temporary lawyer for work on a specific case.

Digest: 1. Payment to an independent or temporary lawyer on an hourly basis does not require disclosure to a client if there is close supervision. If work is delegated without close supervision then disclosure to a client is necessary.

2. Rules of Professional Conduct allow division of fees between lawyers provided that disclosure is made to the client and client consents to the division of fees.

Ref.: Illinois Rules of Professional Conduct, Rules 1.1(c) and 1.5(f)(1), (2), (3) and (h)  
In re Marriage of Zeimann, 214 Ill.App.3d 988, 574 N.E.2d 767, 158 Ill.Dec. 654 (1991)  
ISBA Advisory Opinion No. 92-07 and 90-26  
American Bar Association Formal Opinion No. 88-356 (1988)

## **FACTS**

Lawyer Jones is a sole practitioner who hires Lawyer Brown to work with him on specific cases. Brown maintains a separate independent office and law practice. Brown does not refer cases to Jones. Jones has considered the following arrangements for payment to Brown:

- A. Jones pays Brown ten percent (10%) of the fee collected in each matter.
- B. Jones pays Brown \$100 an hour for his work on the case and bills the client for the hours worked. The billing would not show that Brown had worked on the case.
- C. Jones pays Brown \$100 an hour for his work on the case and bills the client for the hours worked at \$150 an hour. The billing would not show that Brown had worked on the file.

## QUESTIONS

- 1. Does lawyer Jones have an obligation to advise clients that another lawyer is being paid a percentage of the fees being paid by the client?
- 2. Does lawyer Jones have an obligation to advise client that another lawyer is being paid on an hourly basis for work on the case?

## OPINION

Whether or not disclosure to client of compensation payable to independent lawyer is required, depends on the following:

- (a) Whether or not there is direct supervision of the independent lawyer by the hiring lawyer;
- (b) Whether or not the independent lawyer is paid on some basis other than division of the actual fee.

Illinois Rules of Professional Conduct, Rule 1.2(c) states:

After accepting employment on behalf of a client, a lawyer shall not thereafter delegate to another lawyer not in the lawyer's firm the responsibility for performing or completing that employment without the client's consent.

Illinois Rules of Professional Conduct, Rule 1.5(f) and (h) state:

(f) ...a lawyer shall not divide a fee for legal services with another lawyer who is not in the same firm, unless the client consents to employment of the other lawyer by signing a writing which discloses:

- (1) that division of fees will be made;
- (2) the basis upon which the division will be made, including the economic benefit to be received by the other lawyer as a result of the division;
- (3) the responsibility to be assumed by the other lawyer for performance of the legal services in question.

(h) The total fee of the lawyer shall be reasonable.

In In re Marriage of Zeimann, 214 Ill.App.3d 988, 574 N.E.2d 767, 158 Ill.Dec. 654 (1991), attorney Regis told his divorce client that another lawyer would be primarily responsible for her case. The lawyer was not a formal member of the Regis Law Firm but shared an office suite, equipment and staff. Regis paid the other lawyer a flat hourly rate and the pay depended on how many hours were worked and not on whether he received payment from the client.

The Court in Zeimann held that where the law firm pays a temporary lawyer a reasonable compensation for the services performed for the firm and does not charge the payments thereafter to the client as a disbursement, the firm has no obligation to reveal to the client the compensation arrangement with the temporary lawyer. Rules of Professional Conduct relating to division of fees between lawyers does not apply because the gross fee the client pays the firm is not shared with the temporary lawyer. The Court further stated in referring to ABA Formal Opinion No. 88-356 (1988) that if the arrangement between the firm and the temporary lawyer involves a direct division of the actual fee paid by the client, then the consent of the client is required.

In ABA Opinion No. 88-356 (1988) the American Bar Association concluded that the client must be advised that a temporary lawyer will work on the client's matter and the consent of the client must be obtained, if the temporary lawyer is working without the close supervision of a lawyer associated with the law firm. However, if the temporary lawyer is working under the direct supervision of a lawyer associated with the firm then there would not have to be any disclosure to the client.

The ABA Opinion further stated that if a law firm "simply pays the temporary lawyer reasonable compensation for the services performed for the firm and does not charge the payment thereafter to the client as a disbursement, the firm has no obligation to reveal to the client the compensation arrangement with the temporary lawyer." The opinion further provided that if the arrangement between the firm and temporary lawyer involves a direct division of the actual fee paid by the client then consent of the client must be obtained.

ISBA Opinion 92-07 pertaining to a law firm hiring temporary lawyers to handle individual matters states that "if the attorney retained or to whom delegated duties are given receives a portion of the fee, then Rule 1.5(f) comes into play, in which case a specific written consent by the client would be required. It has been held that specific hourly payments to an attorney by another law firm, for the covering of a Motion Call or handling of a deposition or other routine matters under the supervision of the original attorney, does not fall within the fee splitting provisions of Rule 1.5(f)."

If Jones pays Brown on an hourly basis, the arrangement does not have to be disclosed to the client if: (a) Brown is working under the close supervision of Jones; (b) the payment to Brown is not shown as a disbursement on the billing statement to the client.

In the event that Jones delegates work to Brown, who is not under the close supervision of Jones, the payment on an hourly basis must be disclosed to the client and consent obtained. See ISBA Opinion No. 92-07.

If Jones pays Brown a percentage of the fee collected, then written consent would be required from the client.

Another question not covered by the scope of this inquiry is the question of conflicts of interest that may arise because of other clients represented by the independent lawyer and confidentiality of information where the independent lawyer is working for his own clients and clients of the firm. These matters should be considered when hiring the independent lawyer. Sufficient inquiry should

be made to determine that there will be no conflict of interest. See ISBA Advisory Opinion on Professional Conduct No. 90-26.

In addition, the lawyer should restrict access of the independent lawyer to other files in the office to avoid potential problems of confidentiality.

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