



**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 Rules of Professional Conduct 7.2(b) and its Comments [6] & [7] and Rule 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. 97-05
January 23, 1998**

Topic: Assistance in the Violation of the Rules of Professional Conduct

Digest: A lawyer may not participate or assist in any way in a business operating as a for-profit lawyer referral service.

Ref.: Illinois Rules of Professional Conduct, Rules 7.2(b) and 8.4(a)
ISBA Advisory Opinion No. 94-12

FACTS

A lawyer is approached by a non-lawyer who proposes setting up a marketing company which would solicit personal injury cases by methods which would violate the Rules of Professional Conduct if employed by a lawyer. The lawyers would receive referrals from the non-lawyer's company. The lawyers would pay a fee to the company for each referral.

QUESTIONS

1. May a lawyer accept referrals from such a company?
2. May the lawyer perform legal services for such a company?
3. May the lawyer serve as an officer of such a company?

OPINION

The first question has previously been answered in the negative even in the situation where the referral service did not act in a manner which would be prohibited if done by a lawyer. Opinion No. 94-12 held that it would be improper for a lawyer to participate in a lawyer referral program operated by a for-profit organization.

Illinois Rules of Professional Conduct, Rule 7.2(b) provides that: "A lawyer may not give anything of value to a person for recommending or having recommended the lawyer's services..." except for the reasonable cost of advertising or written communications as permitted by Rule 7.2 and the usual charges for a not-for-profit referral service.

Not only is the service referred to in this inquiry a for-profit service, but the terms of the inquiry make it clear that this service will be going beyond the Rules of Professional Conduct in securing referrals.

Serving on the Board of Directors of such a company or performing any legal services to enable such a business to operate would also be prohibited. Illinois Rule 8.4 not only mandates that lawyers may not violate the Rules of Professional Conduct, but 8.4(a) prohibits assisting another's conduct when the lawyer knows that conduct will violate the rules. Although the business is composed of non-lawyers, one cannot ignore the fact that it requires the active participation of lawyers who themselves would be in violation of the Rules of Professional Conduct for the business to operate. Thus, the lawyer would be assisting other lawyers in violating the Rules of Professional Conduct by performing any service in any capacity for the company.

All of the conduct in question would be violative of the Rules of Professional Conduct.

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