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Fraudulent Transfer Analysis

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Introduction

Fraudulent transfer law in the United States stems from the English Statute of Elizabeth in the 16th century. This statute sought to prevent a debtor from transferring property if it was part of an attempt to defraud creditors. Under the English statute such a transfer was voidable - meaning that the transferee was liable to the creditor of the transferor in the amount of the transfer. Initially a creditor had a very high burden; he had to prove actual intent to defraud. Later, this standard was eased so that subjective intent could be proved by objective characteristics that existed at the time of the transfer.

The Uniform Fraudulent Transfer Act

In 1984 the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Fraudulent Transfer Act. Effective as of January 1, 1990 Illinois adopted the Uniform Fraudulent Transfer Act which can be found at 740 ILCS 160/1 to 160/12 (“UFTA”).

The Illinois statute lists various badges of fraud (discussed below) which are typically used by a creditor to show fraudulent intent. The trend of some states to protect debtors who create self-settled trusts raises questions about fraudulent conduct. In the UFTA context, one badge of fraud exists where a debtor has retained possession or control of the property after a transfer.¹

Interestingly, many of the asset protection plans recommended by attorneys have, as a specific goal, the transferor’s retention of rights in the transferred property. A transferor’s retention of control is discussed further in the context of asset protection trusts.

Under the UFTA, transfers of property may be set aside by a court if they constitute fraudulent conveyances. In general terms a transfer is considered fraudulent when it is made with the intent to defraud a present or future creditor. The *mens rea* requirement is often difficult or even impossible to prove. So Illinois law allows the trial court to presume intent based on the existence of one or more of the so-called “badges of fraud.” The primary badges of fraud include: (i) threatened litigation against the transferor, (ii) the transfer of substantially all property owned by the transferor, and (iii) a concealment of the transfer. Importantly, absent significant evidence of a legitimate supervening purpose, the presence of several badges of fraud can constitute a conclusive presumption of actual intent to defraud a present or future creditor.

Fraudulent Transfers In Detail

Under the UFTA a transfer made by a debtor is fraudulent where the creditor’s claim arose before or after the transfer if the debtor made the transfer:

- (1) with actual intent to hinder, delay or defraud any creditor of the debtor; or
- (2) without receiving a reasonably equivalent value in exchange for the transfer and the debtor (a) was engaged in a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction or (b) intended to incur debts beyond his ability to pay as they became due.²

According to the statute, in determining actual intent under paragraph (1) above, consideration may be given to the badges of fraud. Thus, the trier of fact will look to see whether:

- (1) the transfer was to an insider (such as a family member);
- (2) the debtor retained possession or control;

- (3) the transfer was disclosed or concealed;
- (4) before the transfer was made the debtor had been sued or threatened with being sued;
- (5) the transfer was of substantially all of the debtor's assets;
- (6) the debtor absconded;
- (7) the debtor removed or concealed assets;
- (8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred;
- (9) the debtor was insolvent or became insolvent shortly after the transfer;
- (10) the transfer occurred shortly before or shortly after a substantial debt was incurred; or
- (11) the debtor transferred the essential assets of the business to a lien holder who transferred the assets to an insider of the debtor.³

A separate section⁴ of the Uniform Fraudulent Transfer Act provides specifically that a transfer is fraudulent where a creditor's claim arose before the transfer if (i) the debtor made the transfer without receiving a reasonably equivalent value and (ii) the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer. Further, a transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer if (i) the transfer was made to an insider for a preexisting debt, (ii) the debtor was insolvent at that time, and (iii) the insider had reasonable cause to believe that the debtor was insolvent.⁵

Fraudulent transfer analysis can be simplified by dividing transfers between those that occurred before a claim arose and those that occurred afterward.

For claims that have **not yet arisen**, fraudulent transfer law provides that a transfer is voidable where:

- a) a debtor makes a transfer with an actual intent to hinder a future creditor;
- b) where a transferor does not receive reasonably equivalent value, and
 - a. the remaining assets of the transferor are unreasonably small in relation to the transaction; or
 - b. the debtor incurs debts beyond his ability to pay them as they become due.

The badges of fraud described above are used to prove actual intent. However, no badges of fraud are required where actual intent is not an element of the offence.

For creditor claims that have arisen **before** the transfer, the following transfers are voidable:

- a) those transfers described in (a) and (b) immediately above. (Thus, it makes no difference when the creditors claim arose where actual intent is proved or legally inferred and where the debtor does not receive value in a large transaction or where he is thereafter unable to pay debts as they come due.)
- b) a transfer where the debtor does not receive equivalent value and becomes insolvent as a result of the transfer.
- c) a transfer to an insider for a debt if the debtor was insolvent, and the insider had reasonable cause to believe that the debtor was insolvent.

Statute of Limitations is Generally Four Years

A cause of action under the Uniform Fraudulent Transfer Act must be brought:

- (a) If actual intent to defraud a creditor is alleged (including by demonstrating sufficient ‘badges of fraud’ are present), within four years after the transfer was made or, if later, within one year after the transfer was discovered;
- (b) Otherwise, within four years after the transfer;
- (c) However, if the transfer is to an insider in payment of a debt, the debtor was insolvent and the insider had reasonable cause to believe this, within one year after the transfer was made.

Tenancy By the Entirety Provides a Safe Harbor

Prior to the 2000 Illinois Supreme Court decision in *Premier Property Management v. Chavez*⁶ Illinois Circuits were split on the standard to apply when an individual converted property to tenancy by the entirety and a creditor brought a claim under the Uniform Fraudulent Transfer Act. The *Chavez* case brought some finality to the turbulence surrounding the irreconcilable interplay between the Uniform Fraudulent Transfer Act and the Joint Tenancy Act.⁷

First, some background on tenancy by the entirety may be helpful. The tenancy by the entirety provision of the Joint Tenancy Act provides a safe haven for transfers to tenancy by the entirety. Generally, a debt of one spouse cannot be satisfied by a forced sale of real property held as tenants by the entirety. However, if the “sole intent” of the couple in titling their property as

tenancy by the entirety was to avoid the payment of debts, the legislative protection is lost. In short, if a creditor can demonstrate that the only reason for a transfer to tenancy by the entirety is to avoid a debt, a creditor of one spouse may be able to force a sale of the real property to satisfy the debt.

The tenancy by the entirety legislation reads as follows: “Any real property, or any beneficial interest in a land trust, held in tenancy by the entirety shall not be liable to be sold upon judgment enter on or after October 1, 1990 against only of the tenants, *except if the property was transferred into tenancy by the entirety with the sole intent to avoid the payment of debts existing at the time of the transfer beyond the transferor’s ability to pay those debts as they become due.*” (Emphasis supplied)⁸

Prior to 2000, courts were split as to whether the UFTA standards for fraudulent conveyances or the standard provided as to tenancy by the entirety should apply. The Supreme Court held in *Chavez* that the tenancy by the entirety clause takes precedence over the UFTA. Thus, property owned as tenancy by the entirety **cannot** be sold to satisfy the debt of one spouse unless the property was transferred into tenancy by the entirety “with the sole intent to avoid the payment of debts existing at the time of the transfer beyond the transferor’s ability to pay those debts as they become due.”⁹

As noted above, the “sole intent” standard of the tenancy by the entirety provision is in stark contrast to the actual intent standard of the Fraudulent Transfer Act. Under the Fraudulent

Transfer Act, a creditor may avoid a transfer if the debtor made the transfer with the *actual intent* to hinder delay or defraud any creditor of the debtor.¹⁰

Thus, a debtor may have an actual intent to defraud, but if it is not his “sole intent” in creating tenancy by the entirety property, the Joint Tenancy Act trumps the UFTA and a debtor can not lose such tenancy by the entirety real property to satisfy a judgment against one spouse.

In short, the Illinois Supreme Court explicitly held in *Chavez* that the Fraudulent Transfer Act’s actual intent standard is **not** to be used to avoid transfers of property made to tenancy by the entirety. Rather, spouses holding real property as tenancy by the entirety have a much greater degree of protection. For a creditor to succeed against one spouse where property is held as tenants by the entirety, the creditor must prove that the only reason for the transfer was to avoid debts that existed at the time of the transfer. That is because the sole intent standard under the tenancy by the entirety provision of the Joint Tenancy Act must be applied in order to void a transfer to tenancy by the entirety.¹¹

Asset Protection Cases

Those Courts that have looked at asset protection trusts have reacted with skepticism and hostility. The most well-known case is *Federal Trade Commission v. Affordable Media, LLC*.¹² In this case, the FTC brought suit against the Andersons, owners of the LLC. The Andersons were telemarketers who had created a Cook Islands Asset Protection Trust. Importantly, the Cook Islands Trust had been set up years prior to the telemarketing activity which was the subject of the FTC Complaint. The Andersons were co-trustees of the foreign trust along with a company in the Cook Islands. The trust contained a duress provision in which the corporate

trustee was obligated to refuse to repay trust assets to the United States for any event of “duress” which included any judicial order that might imperil the trust property. In such event, the Andersons would also be terminated as co-trustees. The Andersons were also “protectors” of the trust which allowed them to appoint new trustees and also determine whether an event of duress had occurred. As protectors, they had the right to order the corporate trustee to repatriate the trust assets by certifying that no event of duress had occurred.

The FTC obtained a temporary restraining order that required the Andersons to repatriate all foreign assets to the United States. The Anderson then faxed a letter to the corporate co-trustee instructing them to provide an accounting and repatriate the assets. The foreign trustee responded that the TRO was an event of duress and the Andersons had therefore been removed as co-trustees. The foreign trustee refused to provide an accounting or repatriate the trust assets.

The FTC argued that the co-trustees should have transferred the assets to the U.S. in their capacity as co-trustees and also, as protectors, should have exercised their power to determine that the court order was *not* an event of duress. The action of the Andersons – the fax – appeared instead to be an invitation to the foreign trustee to snub the U.S. court. Accordingly, the District Court found the Andersons in civil contempt notwithstanding their “impossibility” defense. After the FTC informed the court that the Andersons were also protectors of the trust, the Andersons attempted to resign as protectors. The judge incarcerated the Andersons.

The Ninth Circuit Court of Appeals rejected the impossibility defense on the grounds that the Andersons had not met their burden of proving that compliance with the order was impossible.

Instead the Court concluded that the Andersons inability to comply was the intended result of their own scheme. The Ninth Circuit determined that a “particularly high” or “especially high” burden of proof was required to sustain their impossibility defense. Thus, the Ninth Circuit upheld the lower court. In its opinion, the appellate court stated that “while it is possible that a rational person would send millions of dollars overseas and retain absolutely no control over the assets, we share the District Court’s skepticism.”¹³

The hostility and skepticism was so high that the Ninth Circuit opined that the Andersons probably could have controlled the trust even if they were not co-trustees and not trust protectors. However, the court felt that because the attempted resignation as trust protectors was not effective it need not resolve whether they would still remain in control of the trust notwithstanding their resignation. In summary, the Ninth Circuit seemed very willing to consider the totality of all of the facts and circumstances surrounding control of this foreign trust. They were prepared to reject and disregard explicit provisions of the trust which appeared to simply further the self-serving scheme.

Ultimately the case was settled and \$1,200,000 from the Andersons’ Trust was paid to the FTC.

The *Lawrence*¹⁴ case has similarities to *Affordable Media* and is also instructive. In 1991, a debtor established a family trust in the Jersey Channel Islands (“Jersey”) with virtually all of his assets.¹⁵ Later, the Court would observe that: “Candidly, it appears the Debtor would have set the trust up on Mars if he could have.”¹⁶

After an arbitration award against him, but before he filed for bankruptcy, the trustee purported to remove Lawrence as the primary beneficiary of the trust. The court however found it

impossible to believe that Lawrence simply walked away from virtually all his assets without any sort of struggle. The issue before the Bankruptcy Court was whether the trust property should be included in his bankruptcy estate. Because the court rejected Lawrence's asserted estate planning and retirement planning goals, and because the court thought these asserted goals irreconcilable, the court entered a default judgment against him, causing the property held in the trust to become property of the bankruptcy estate.

Further proceedings landed Lawrence in jail for contempt on October 5, 1999. As in *Affordable Media*, the court rejected Lawrence's impossibility defense because it was self-induced. The Eleventh Circuit affirmed, stating that the sole purpose of the duress provision of the trust instrument "appears to be an aid to the settlor to evade contempt while merely feigning compliance with the court's order."¹⁷ Respecting this provision would contravene public policy that proscribes a debtor from shielding money placed in a trust for his own benefit and to the prejudice of legitimate creditors.¹⁸ The appellate court also rejected Lawrence's claim of impossibility because it was self-created. At the time of the appellate court opinion in 2002, Lawrence was still incarcerated.

Rules of Professional Conduct

The preamble to the Illinois Rules of Professional Conduct implores Illinois lawyers to act competently and "zealously pursue[s] the client's interests within the bounds of the law." The Rules continue: "Zealously does not mean mindlessly or unfairly or oppressively. Rather, it is

the duty of all lawyers to seek resolution of disputes at the least cost in time, expense and trauma to all parties and to the courts.”¹⁹

While on the one hand lawyers must diligently pursue their clients’ interests within the bounds of law, on the other hand they are constrained by their ethical obligations.

There is no rule included within the Illinois Rules of Professional Conduct which addresses asset protection planning and the duties of an attorney in that context. Also, to the author’s knowledge, there is no Illinois case -nor any disciplinary proceeding - which involves a lawyer’s alleged breach of the ethical rules for engaging in asset protection planning. Accordingly, to properly represent our clients, live up to our professional responsibilities and to adhere to the ethical standards expected of lawyers in Illinois, we must draw from the existing rules and, by analogy, from those reported cases of professional misconduct which have been published in other jurisdictions.

The relevant Illinois Rules of Professional Conduct which might circumscribe an attorney’s course of conduct in asset protection planning include the following:

Rule 1.2(d)

A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent,”²⁰

Rule 4.4

“In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.”²¹

Rule 8.4(c)(4)

“A lawyer shall not ... (4) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;”²²

These rules will likely come into play when a client establishes an asset protection plan but at some point does not satisfy all creditors. Plaintiffs’ attorneys tend to attack all deep pockets in their recovery effort and a law firm or an attorney involved in creating an asset protection plan will not be immune from such litigation.

Clearly, one of the allegations against an attorney may be that the attorney violated his responsibilities under the Illinois Rules of Professional Conduct. This allegation can be used to establish the standard of care, or as evidence to support an underlying claim such as civil conspiracy or aiding and abetting.

It should be noted that an attorney practicing in a state such as Delaware, Alaska, Nevada, Rhode Island or Utah would likely be immune from such litigation. These states, in enacting legislation specifically allowing self-settled trusts for the purpose of asset protection planning have given an explicit green light to asset protection planning for attorneys practicing in those states.²³ An

attorney in a state with no asset protection planning legislation, such as Illinois on the other hand, could be subject to liability and to allegations with respect to violations of the Rules of Professional Conduct.

The Illinois Rules of Professional Conduct appear to have a scienter requirement. For example, the definition of fraud in the preamble notes that fraud is “conduct having a *purpose* to deceive and not merely a negligent misrepresentation or failure to apprise another of relevant information.”²⁴

An additional definition may be helpful. The words knowingly, known, or knows “denotes *actual* knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.”²⁵

Rule 1.2(d) provides that a lawyer shall not counsel a client to engage in conduct that the lawyer knows is fraudulent. At first blush, the creation of an asset protection plan does not appear to be fraudulent. There is, on the surface, no effort to deceive anyone. However, one purpose of an asset protection plan is clearly an effort to block creditors. More specifically, the primary purpose of a self-settled trust in which the grantor retains an interest is to prevent such assets from being paid to creditors while the grantor retains a substantial interest. The retention of control following a transfer is a badge of fraud which is an objective characteristic that can (along with other badges of fraud) indicate subjective intent.

In one reported case, the Supreme Court of South Carolina found that while a law firm's clients may have ended up in a better financial position, those clients' creditors might have been paid had the lawyers not engaged in asset protection misconduct.²⁶ According to the Court, an attorney can violate Rule 1.2(d) (conduct the lawyer knows is fraudulent) without the underlying transfer being a fraudulent conveyance under state law.²⁷ This is a crucial predicate. The ARDC may take an interest in an attorney's conduct where the underlying action is **not** fraudulent. The facts of this case help shed light on this issue.

In the matter of *Kenyon*²⁸ an attorney was suspended from the practice of law for misconduct associated with asset protection planning. The attorney's deceased client had trouble with governmental authorities and had a \$500,000 claim against his estate. Less than 6 months after the client's death, his attorney conveyed a house to a corporation owned by the law firm and obtained a mortgage on the property in the amount of \$250,000. Although the house was eventually re-conveyed to the decedent's two children and the mortgage was satisfied, the surviving spouse was never told of the potential conflicts of interests or that she should retain independent counsel. The attorney testified that he felt the conveyance to his law firm's corporation was necessary to avoid creditors and he re-conveyed it to the proper beneficiary only when he became convinced that the governmental creditors would not be pursuing that property. The lawyer argued that the transfer was not fraudulent because creditors were not actually injured.

The Supreme Court of South Carolina ruled that "...acts sufficient to constitute the civil definition of fraudulent conveyances do[es] not have to be found for us to find misconduct. We do not have to find fraudulent conveyances, only fraudulent or dishonest conduct." (The Court

cited to *Hockett*, 734 P 2d 877 (1987)).²⁹ The attorney was suspended indefinitely from the practice of law.

The Supreme Court of Oregon has determined that assisting a client to cheat a creditor is considered “dishonest” for purposes of the Code of Professional Responsibility. Further, assisting a client in a fraudulent transfer is dishonest when it is done with the intent to cheat creditors of their lawful debt.³⁰

In the case of *Hockett*,³¹ two attorneys were pivotal in two marital dissolution proceedings where property was transferred from husbands to their wives. The divorces, including the transfers, were part of a course of conduct designed to hinder the creditors of the husbands. The court found that the conduct of the lawyers violated the model code provision which provides that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation. This is parallel to Illinois Rule 8.4 prohibiting attorney conduct involving “dishonesty, fraud, deceit, or misrepresentation.”

The fact pattern in *Hockett* is instructive. One of the attorneys had represented two individuals who formed a corporation which later became indebted to a bank. Later, the attorney accompanied his clients to confer with a bankruptcy attorney. The next day the attorney consulted one client’s spouse about a divorce and the following day the attorney filed a Petition for Divorce and, within days, using consents, had obtained a divorce for both clients. The divorces provided that virtually all of the assets of the husbands were awarded to their spouses, except for the stock in the corporation. Days later the attorney met with representatives of the

bank regarding the indebtedness at which time the bank notified counsel that action would be taken to collect the delinquent loan.

In summary, the attorney was simultaneously representing two individuals on their corporate matters as well as the individuals' spouses on the divorce matters.

The attorney was charged with, *inter alia*, engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, as well as assisting his clients in conduct that the lawyer knew to be fraudulent. The lower court found that the attorney assisted the two couples in a course of conduct designed to hinder creditors of the corporation. The Supreme Court of Oregon specifically found that assisting clients to cheat creditors is dishonesty under the Rules of Professional Conduct. The attorney's act of assisting his clients in "fraudulent" transfers was done with the intent to cheat creditors of their lawful debts. Therefore, the court ruled, such conduct is dishonest and a violation of the rules.

The Court stated: "Specifically, the Oregon rule admonishes that a lawyer shall not counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent."³² This rule is parallel to Illinois Rules 1.2(d). As noted, the Illinois rule provides that a lawyer shall not counsel a client to engage or assist a client in conduct that the lawyer knows is criminal or fraudulent."³³

Accordingly, in this instance where the transfer was forbidden as a fraudulent conveyance, and the lawyers knowingly assisted their clients in that course of conduct, the attorneys conduct was,

therefore, a violation of the Professional Rules. The attorney was suspended from the practice of law for a period of 63 days.

Civil Conspiracy

While beyond the scope of this presentation, attorneys should know that in the past lawyers have been sued for civil conspiracy to commit fraud. The elements of conspiracy in this context include malicious intent and, without legal justification, an act is performed with the intent of injuring another or if the necessary and natural consequence of the act is the oppression of an individual.³⁴

Once conspiracy is proved, each co-conspirator is responsible for the act done by any of the conspirators.

Aiding and Abetting

An additional count against an attorney may be for aiding and abetting. In the case of *Whitney v. Citibank, N.A.*³⁵ Citibank was found liable for participating in a breach of fiduciary duty. The court set out the elements for such a claim:

- (1) An actual breach of a fiduciary duty to the defendant must have knowingly induced or participated in the breach; or
- (2) The breach must have caused injury to the plaintiff.

In this case, two partners in a three person partnership received cash for consenting to granting a deed in lieu of foreclosure on a partnership asset. Citibank benefited. The third partner was not informed nor allowed to share in the proceeds. The second element was proved by showing that

the lender agreed to pay the money to the individuals rather than the partnership itself and the attorney misled the third partner when that third partner attempted to assert his rights.

Conclusion

In many transactions, without the advice of an attorney, a debtor may be unable to complete a fraudulent transfer. However, if attorneys are subject to litigation at the whim of creative plaintiffs' counsel, it would likely become more difficult for debtors to obtain permissible advice and assistance. There are no clear lines currently and it is unlikely bright lines may develop. However, on a going forward basis, it is likely that attorneys, as the engineers and often times architects of transfers, may be held civilly liable for questionable transactions on one or more theories.

The primary purpose of an asset protection plan is to frustrate creditors while allowing the grantor to continue to enjoy an interest in or control over the transferred property. In the context of foreign asset protection trusts courts have identified such a purpose as illegitimate and have reacted with extreme hostility towards these plans. There is no direct authority on how a non-asset protection planning state, such as Illinois, will deal with a Delaware asset protection plan.

However, attorneys should remain cognizant of the requirements under the Illinois Rules of Professional Conduct and the legitimate rights of creditors toward property that may be the subject of a transfer.

¹ 740 ILCS 160/5(b)(2)

² 740 ILCS 160/5

³ Id

⁴ 740 ILCS 160/6

⁵ Id

⁶ 728 NE 2d 476 (2000)

⁷ 765 ILCS 1005\0.01 *et seq.*

⁸ 735 ILCS 5/12-112

⁹ 728 NE 2d 481

¹⁰ 740 ILCS 160/5(a)(1)(emphasis supplied)

¹¹ 728 NE 2d 482

¹² 179 F 3d 1228

¹³ EN 179 F.3d at 1240

¹⁴ In re Lawrence, 2271 B.R. 907 (1998)

¹⁵ Id

¹⁶ Id at 912 n. 11.

¹⁷ In re Lawrence, 279 F.3d 1294, 1299 (2002)

¹⁸ Id

¹⁹ Illinois Rules of Professional Conduct Preamble

²⁰ Illinois Rules of Professional Conduct Rule 1.2(d)

²¹ Illinois Rules of Professional Conduct Rule 4.4

²² Illinois Rules of Professional Conduct Rule 8.4(a)(iv)

²³ The Qualified Dispositions in Trust Act, 12 DEL. CODE ANN. tit. 12, §§ 3570–3576 (2004); The Alaska Trust Act, ALASKA STAT. §§ 13.12.205(2), 13.36.035, 13.36.310, 13.36.390, 34.40.010, 34.40.110 (2004); NEV. REV. STAT. § 166.040 (2004); The Qualified Dispositions in Trust Act, R.I. GEN. LAWS § 18-9.2 *et seq.*; UTAH CODE ANN. § 25-6-14(1)(a).

²⁴ Illinois Rules of Professional Conduct Terminology (emphasis supplied)

²⁵ Id

²⁶ In the matter of Kenyon, 491 SE 2d 252, 256 (1997)

²⁷ Id

²⁸ In the Matter of Kenyon, 491 SE 2d 252 (1997)

²⁹ Id at 254

³⁰ Conduct of Hockett, 734 P 2d 877 (1987)

³¹ Id

³² DR1-102(A)(7)

³³ Illinois Rules of Professional Conduct Rule 1.2(d)

³⁴ 7J.Bankr L. & PRAC. 495, 496

³⁵ 782 F 2d 1117

