



ILLINOIS STATE
BAR ASSOCIATION

ISBA Advisory Opinion on Professional Conduct

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This Opinion was **AFFIRMED** in part by the Board of Governors in July 2010, and **OVERRULED** in part by the Board of Governors in January 1991. Please see the 2010 Illinois Rules of Professional Conduct 7.1, 7.2, and 7.3. 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 Number 749
August 25, 1981

Topic: Advertising; Solicitation

Digest: (A) A lawyer may (1) include in "Yellow Pages" and newspaper advertising, on his stationery, business cards, announcements and office sign information as to special degrees earned and concentration of practice in a particular field; and (2) circulate letters and resumes to other attorneys both in Illinois and other states indicating availability for referrals in field of concentration; provided such material is accurate and informative and is not misleading and does not imply specialization or expertise.

~~(B) A lawyer may not circulate a letter and resume to a select targeted group of non-attorneys.~~

Ref: Bates & O'Steen v. State Bar of Arizona (1977), 433 U.S. 350; 97 S.Ct. 2691; Supreme Court Rules 2-101(a) and 2-103(a); ABA DR 2-102(F); ISBA Opinions 473, 160 and 700; ISBA EC 2-7, EC 2-8, EC 2-8A and EC 2-10

FACTS AND QUESTIONS

A lawyer admitted to the Illinois Bar in 1979, after practicing for one year, has now completed his requirements for and expects to receive a Master of Laws Degree (L.L.M.) in Taxation. He inquires:

1. An I state in the Yellow Pages, newspaper advertisement, business cards, announcements, letterhead, and the sign in front of my office, that I have a Masters of Laws Degree in Taxation and that I am engaged in general practice concentrating in business, estate and tax planning?
2. Can I send letters and resumes to other attorneys stating that I am available for referrals, project work and consulting on tax and tax-related matters?
3. Can a letter and resume be sent to attorneys in other states (Missouri, Kentucky and Indiana) stating that I am available for referrals on tax and Illinois matters?
4. Can a letter and resume be sent to non-attorneys in Illinois who are involved in tax matters, such as Certified Public Accountants, trust officers, life insurance agencies and business management or tax services for the purpose of having the attorney recommended to their clients?

OPINION

The answer to the first three questions is a qualified "Yes." The answer to the fourth question is "No."

The Illinois Code of Professional Responsibility (effective July 1, 1980) does not prohibit the types of advertising contemplated by the first three questions.

The advertising mentioned in the first question is directed to lay persons and in keeping with the mandates of Bates & O'Steen v. State Bar of Arizona (1977), 433 U.S. 350; 97 S.Ct. 2691, Supreme Court Rule 2-101(a) specifies what types of information may be included in commercial publicity or public communications. We think "Yellow Pages," stationery, business card, announcements and office sign advertising which includes the educational and other background information is permissible.

Often the reputation and competence of lawyers (particularly young lawyers) are not sufficiently known to enable lay persons to make intelligent choices and they have difficulty in determining the competence of lawyers to render different types of legal services. The selection of legal counsel is particularly difficult for transients, persons moving into new areas, persons of limited education or means, and others who have little or no contact with lawyers (see ISBA EC 2-7). Selection of a lawyer by a lay person should be made on an informed basis. Advice and recommendation of third parties such as relative, friends, acquaintances, business associates, or other lawyers, and restrained publicity may be helpful. Advertisements and public

communications, whether in law lists, announcement cards, newspapers or other forms, should be formulated to convey only information that is necessary to make an appropriate selection. Self-laudation should be avoided (see ISBA EC 2-8). The proper motivation for commercial publicity by lawyers lies in the need to inform the public of availability of competent, independent legal counsel. The public benefit derived from advertising depends upon the usefulness of the information provided to the community or to the segment of the community to which it is directed. Advertising marked by excesses of content, volume, scope or frequency, or which unduly emphasizes unrepresentative biographical information, does not provide that public benefit (see ISBA EC 2-8A).

Thus, misleading and deceptive advertising should be and is prohibited. The Code of Professional Responsibility recognizes the values of giving assistance in the selection process, while avoiding such objections. The forms of advertising permitted by the Code should be direct, dignified and comprehensible (see ISBA EC 2-10).

These same comments apply to the direct mail letters to attorneys contemplated in questions 2 and 3.

With respect to the use of educational degrees in advertising, we note that the ABA Code, in DR 2-102(F) (and the ISBA Code prior to (1975) expressly permits the use of such information. The ISBA Code, however, was amended in 1975 to eliminate DR 2-102(F) and, thereafter, in ISBA Opinion 473 (May 20, 1975), this Committee condemned the use by lawyers of the title "Doctor" in notices, letterhead and signs. See also ISBA Opinion 160 (April 17, 1959).

~~We believe that the circularization of letters and resumes to a select, targeted group of non-attorneys, is a private communication under Rule 2-103(a) and (e) and is, therefore, improper. We have recently decided, in ISBA Opinion 700 (November 4, 1980), that it is professionally improper for an attorney to initiate private communications with coaches and athletic directors to inform them that he engages in the practice of "sports law" and is available to represent clients. There we decided, on the basis of Rule 2-103(a) and ABA EC 2-8 (now, also, ISBA EC 2-8) that such activity was designed improperly to encourage the coaches and directors to recommend the attorney to the athletes under their charge. We think that opinion applies with equal force here.~~

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