



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in July 2010. Please see the 2010 Illinois Rule of Professional Conduct 7.2. 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. 812
December 4, 1982**

**Topic: Advertising and Solicitation;
Pens imprinted with firm name**

Digest: A law firm may make available to its clients for retention by them, pens of nominal value imprinted with the firm's name, address, phone number and a designation of the areas of its legal practice.

Ref.: Canon 2
Rules 2-101(c); 2-103(d); 2-105(a)(3);
Opinions 612 and 265
Bates v. State Bar of Arizona, 433 U.S. 350 (1977).

FACTS AND QUESTION

An attorney inquires whether her firm may have pens of nominal value imprinted with the firm name, address, phone number and a designation of the areas of its legal practice, and make the pens available for client's use and retention.

OPINION

The information imprinted on the pens can be expected to be disseminated beyond the firm's clients to whom the pens are initially distributed. The distribution of the pens thus constitutes a form of attorney advertising.

The propriety of distributing similar objects to clients has been dealt with in two prior ISBA Opinions. Opinion 265, decided prior to Bates v. State Bar of Arizona, 433 U.S. 350 (1977), held distributions of imprinted pens to be improper as a form of advertising. Opinion 612, subsequent to the Bates decision, recognized that "advertising is no longer per se unprofessional", but pointed out that the decision allowed "reasonable restrictions on the time, place and manner of advertising". The Opinion further stated that Bates required advertising to be "restrained", and held that the distribution of match books imprinted with the attorney's name, address and telephone number constituted "hucksterism" and was prohibited by then Disciplinary Rule 2-101(B)(9).

Following the promulgation of the above Opinions, the present Illinois Code of Professional Responsibility was adopted in 1980.

Present Rule 2-101(a) provides that the content of attorney advertising may include the items of information suggested by the inquiring attorney, including the types of legal matters in which the attorney will accept employment.

(Rule 2-105(a)(3) also allows an attorney or firm to designate the areas of law in which the attorney or firm concentrates or limits practice.) However, Rule 2-101(a) requires that the information include the name of at least one lawyer responsible for its content when the firm name is used.

As regards the form of the communication, the prohibition against "hucksterism" in prior Disciplinary Rule 2-101(B)(9) does not appear in the 1980 Code. Rule 2-101(c) does require that public communications be "dignified" in manner, but the distribution of imprinted pens does not appear to be inherently undignified.

To some extent, the initial distribution of the imprinted pens to the firm's clients may constitute private communications subject to the restrictions of Rule 2-103. Subsection (d) of that Rule prohibits the giving of anything of value to another person to initiate contact with a prospective client on behalf of the lawyer.

The question of value must necessarily be determined on an ad hoc basis. Here, the pens in question appear to be of nominal value only and do not appear to constitute a substantial incentive to induce others to initiate such contacts.

Accordingly, the firm may distribute the imprinted pens if an individual attorney's name appears thereon. ISBA Opinions 265 and 612 are over-ruled to the extent inconsistent with this Opinion.

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