



**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 Rules of Professional Conduct 7.1, 7.2, and 7.3. See also ISBA Ethics Advisory Opinion 84-4. 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.**

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**Opinion Number 832  
January 4, 1984**

**Topic: Solicitation; Advertising**

Digest: A lawyer may not solicit the business of a targeted group of individuals either personally or through a Welcome Wagon service.

A lawyer may place an advertisement containing generalized information in either a newspaper of general circulation or a publication distributed to a more limited audience.

Ref: Rules 2-103(a), (e), 2- 101.  
Committee Comments, Canon 2. DR 2-103.  
ISBA Opinions 623, 700, 702, 749.

## FACTS AND QUESTIONS

We have been asked our opinion as to the propriety of various means by which an attorney wishes to disseminate information about himself to newcomers in the area, recently married couples, or families with new babies. The information which the attorney wishes to provide includes his name, business address, telephone number, professional specialties, office hours, and a statement inviting those in need of professional services to call him. The means of communication as to which the attorney inquiries are: (1) by personal visits by the attorney or by

a "Welcome Wagon" service which would distribute the attorney's welcoming or congratulatory card containing the above information; (2) by direct mail by the attorney or the Welcome Wagon service; and (3) by placing an advertisement containing the above congratulatory message and information in a local newspaper of general distribution or a publication distributed only to the desired categories of individuals.

### OPINION

Rule 2-103(a) of the Code of Professional Responsibility prohibits private communications by or on behalf of an attorney which recommend or solicit his employment, or which initiate contract for that purpose. Private communications as defined by subsection (e) of the Rule include "personal contact between a lawyer and an individual lay person, directly or by telephone, and may include other in-person and written communications."

It is our opinion that the dissemination of the intended congratulatory message and information either in person or by mail, and by either the attorney himself or through the Welcome Wagon service, would be violative of this Rule. However, we do not feel that the intended advertisements in the specified publications would violate either this Rule or Rule 2-101 pertaining to publicity and advertising.

Initially, in-person contact for the purpose of solicitation or recommendation is clearly a private communication prohibited by Rule 2-103. (See Committee Commentary, Canon 2.) That the proposed contact is for the purpose of solicitation is made clear by the attorney's appeal to those in need of legal services to call him. Moreover, the private and solicitative nature of the intended in-person contact would not be altered by having a Welcome Wagon representative rather than the attorney himself make the visit since the Rule prohibits such conduct either directly by the attorney or by someone on his behalf. Similarly, the fact that the Welcome Wagon representative would only present the attorney's written message without making an independent overt recommendation would not serve to sanction the intended conduct because the message itself contains a prohibited solicitation and further because we feel that the mere giving of the message on behalf of the attorney carries with it a tacit recommendation of his services by the Welcome Wagon. In this regard, we note ISBA Opinion No. 700, where we determined it professionally improper for an attorney to initiate contact with coaches and athletic directors to inform them of his practice of "sports law" because we viewed such activity to be designed to encourage the recommendation of the attorney's services to the athletes under their charge. We view the recommendation inherent in the giving of the attorney's message by the Welcome Wagon in the present instance to be of a far more direct nature than that which we viewed as prescribed in Opinion No. 700.

We are similarly of the view that Rule 2-103 prohibits the dissemination of the intended information on a direct mail basis from either the attorney or through the Welcome Wagon service.

In ISBA Opinion No. 623, we determined direct mail communication with non-clients to be violative of Disciplinary Rule 2-103. However, the Rule as it then existed specifically forbade

such direct mail communications. The present Rule, as effective on July 1, 1980, does not contain a similar specific prohibition of direct mail communications in all instances. To this effect, we determined in ISBA Opinion No. 702 that a law firm's letter to all postal patrons in a community merely informing them of the opening of a branch office and other specifics regarding the firm was a permissible "public communication." In contrast, however, the intended communication in the present instance is directed, both in substance and in terms of its intended recipients, to a specific group of individuals. It additionally contains a direct solicitation of those individuals. Such communication is thus more akin to that involved in ISBA Opinion No. 749, where we determined that the circularization of letters and resumes to a select targeted group of non-attorneys was a private communication prohibited by Rule 2-103. Moreover, for the same reasons as given with regard to in-person visits, the proposed mailing would be prohibited whether made by the attorney himself or by a Welcome Wagon representative on his behalf.

We do not believe, however, that the intended advertisements in publications of general or limited distribution would violate the Code of Professional Responsibility. Clearly, the placing of an advertisement in a newspaper of general circulation is a proper means of advertising under Rule 2-101. See also ISBA Opinion No. 749. Additionally, we have previously determined in ISBA Opinion No. 623 that an attorney may properly advertise in magazines directed to specialized audiences such as brochures published by real estate brokers. We are given some pause by the fact that the message to be contained in the advertisements would be directed to a targeted group of individuals, and we can foresee instances where an otherwise public communication could be rendered private and impermissible because of the specificity or personalized nature of the message involved. However, we believe the present communication to be sufficiently generalized as to be permitted in the specified publications.

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