



ILLINOIS STATE
BAR ASSOCIATION

ISBA Advisory Opinion on Professional Conduct

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This Opinion was **AFFIRMED IN PART AND WITHDRAWN IN PART** by the Board of Governors in July 2010.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 832. 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 84-4
(December 7, 1984)**

Topic: Solicitation; Advertising

Digest: A lawyer may initiate contact with non-clients by mailing written communications to persons not known in a specific matter to require legal services, provided that such communications are clearly labeled as advertising materials.

Ref: Rules 2-101, 2-103(b), (d), (e).

FACTS

Opinion No. 832, issued by date of January 4, 1984, addressed 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 to be provided includes the attorney's name, business address, telephone number, professional specialties, and office hours. Our Opinion held, in part, that the dissemination of the intended congratulatory message and information either in person or by mail, and by either the attorney himself or through a Welcome Wagon service would be violative of Rule 2-103 of the Illinois Code of Professional Responsibility. This Supplemental Opinion is issued in light of the Supreme Court's recent

amendments to Rule 2-103.

OPINION

On April 6, 1984 the Supreme Court amended Rule 2-103 regarding private communications recommending or soliciting professional employment. Amended Rule 2-103(B) (2), which became effective on May 1, 1984, provides in relevant part that a lawyer may initiate contact with a perspective client:

...by written communication distributed generally to persons not known in a specific matter to require such legal services as the lawyer offers to provide but who in general might find such services to be useful and providing that such letters and circulars and the envelopes containing them are plainly labeled as advertising material.

Subsection (e) of Rule 2-103 was also amended to require that a copy of any written private communication be filed with the Attorney Registration and Disciplinary Commission together with a list of the names and addresses of the persons to whom it was sent.

~~Under the amended Rule, the mailing by the attorney of the specified written communication to the intended categories of individuals, if properly labeled as advertising, is not ethically improper. While the individuals who will be receiving the communication may be expected to have a greater inclination to need legal services than the general public, they are not known to require such services in a specific matter. Thus, to the extent here specified, we modify our Opinion 832 as originally issued.~~

We affirm our prior Opinion, however, to the extent that it precludes distribution of the intended written communication by means of an in-person visit by either the attorney or the Welcome Wagon service, or by a mailing by the Welcome Wagon Service on the attorney's behalf.

Initially, we do not believe that the amendment to Rule 2-103(b) (2) was intended to sanction in-person contact for the purpose of delivery of the written private communication as are now permitted under the amendment. The Committee Comments to the amended Rule are replete with references that the amendment was intended to permit what are viewed to be general advertising "mailings." That the amendment is intended to deal with mailings is also apparent from the language of the Rule itself, which requires the filing with the Attorney Registration and Disciplinary Commission of the name and address of each person to whom the communication is "sent." Moreover, as recognized in the Committee Comments to Rule 2-103 as originally enacted, in-person solicitation is fraught with dangers of abuse far beyond those inherent in direct mail or other more indirect contacts. Thus, we are of the view that Rule 2-103 (b) (2) as currently written does not sanction the in-person distribution of written communications such as is here contemplated.

We further believe the Welcome Wagon's participation, either as a mailer or deliverer of the

intended message on the attorney's behalf, is further precluded by Rule 2-103(d). Such section, which remained unchanged during the recent amendment, provides:

"A lawyer shall not promise or give another lawyer anything of value to initiate contact with a prospective client on behalf of the lawyer."

The Welcome Wagon service admittedly charges and is paid a fee for the services which it seeks to perform on behalf of attorneys. It is argued, however, that in so doing it does nothing more than a newspaper or telephone book publisher does in receiving fee for the placement of an attorney advertisement. Such comparison is, in our view, inapposite.

The fees paid to newspapers and other publications are for the purpose of placing advertisements permitted under Rule 2-101 as forms of public communication. They thus are not subject to the provisions of Rule 2-103, which pertain only to private communications. To the contrary, the activities here involved, whether on an in-person basis or by mail, are in the nature of private communications. As such, they are subject to the provisions of Rule 2-103, and specifically to the prohibition of Rule 2-103 (d) against the giving of value to initiate contact with a prospective client on behalf of a lawyer. While the recent amendment of Rule 2-103 has carved out an exception allowing certain direct mailing privileges by an attorney himself despite the fact that they constitute private communications, such exception is by no means broad enough to emasculate the language of subsection (d) precluding the giving of value to another to initiate contact with prospective clients.

We thus affirm our prior Opinion except to the extent stated herein.

Note: Supersedes Opinion 832 (1/4/84)