



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in May 2010. Please see the 2010 Illinois Rule of Professional Conduct 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 No. 93-10
March, 1994**

Topic: Solicitation

Digest: A lawyer shall not conduct in-person solicitation of professional employment for pecuniary gain.

Ref: Illinois Rule of Professional Conduct, Rule 7.3;
Ohralik v. Ohio State Bar Assn., 436 U.S. 447 (1978);
Shapero v. KY State Bar Assn., 486 U.S. 466 (1988).
ISBA Advisory Opinion No. 92-03.

FACTS

A lawyer approached a local county board member suggesting that the board abolish the public defender's office and hire the lawyer's firm to do such work on a contract basis at a rate which would save the county money.

QUESTION

Does such contact constitute improper solicitation contrary to Rule 7.3 of the Rules of Professional Conduct?

OPINION

We interpret the inquiry as stating that the questioned contact between the lawyer and county board member was on an in-person basis. In such instance, the lawyer's solicitation was contrary to Rule 7.3. Such Rule provides in relevant part, and with exceptions not here applicable, that a lawyer "shall not, directly or through a representative, solicit professional employment when a significant motive for doing so is the lawyer's pecuniary gain." The term "solicit" is defined as meaning "contact with a person other than a lawyer in person...."

While some forms of contact previously viewed as constituting improper solicitation have come to be recognized as being constitutionally protected, in-person solicitation has not.

In-person insolicitation has instead been recognized as possessing such inherent dangers as to warrant a categorical ban. Ohralik v. Ohio State Bar Assn., 436 U.S. 447 (1978). See also Shapero v. Kentucky State Bar Assn. 486 U.S. 466 (1988).

Nor do considerations of freedom to petition one's government come into play in the present instance as they did in Opinion No. 92-3. Rather, the communications involved in the present inquiry relate solely to the solicitation of employment. The fact that the recipient of the solicitation is a governmental representative is irrelevant to the inquiry.

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