Opinion No. 93-10
March, 1994

Topic: Solicitation

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


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 solicitation 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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