



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in January 2010. Please see the 2010 Illinois Rules of Professional Conduct 7.2 and 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. 97-02
July 18, 1997**

Topic: Solicitation of Professional Employment

Digest: A lawyer may not conduct in-person solicitation of prospective clients either personally or through a representative.

Ref.: Illinois Rules of Professional Conduct, Rules 7.3 and 7.2(b)
ISBA Advisory Opinion on Professional Conduct No. 832
Ohralik v. Ohio State Bar Association, 436 U.S. 447 (1978)
Peel v. Attorney Registration and Disciplinary Commission, 496 U.S. 91 (1990)
In re Teichner, 75 Ill.2d 88, 387 N.E.2d 265 (1979)
In re Primus, 436 U.S. 412 (1978)

FACTS

A lawyer hires an employee to personally contact injured people and hand them brochures extolling the benefits of hiring the lawyer to pursue personal injury claims on their behalf.

INQUIRY

Does the above practice violate the Rules of Professional Conduct?

OPINION

In-person solicitation of prospective clients, whether by a lawyer or another on the lawyer's behalf, is in almost all instances improper. To this effect, the United States Supreme Court, in Ohralik v. Ohio State Bar Association, 436 U.S. 447 (1978), recognized the dangers of in-person solicitation, and held that it may properly be restricted. The continued viability of Ohralik was recognized in Peel v. Attorney Registration and Disciplinary Commission, 496 U.S. 91 (1990), where Ohralik was cited approvingly for allowing restrictions as to in-person solicitation by lawyers. See also In re Teichner, 75 Ill.2d 88, 387 N.E.2d 265 (1979). Compare In re Primus, 436 U.S. 412 (1978).

The fact that the solicitation is to be conducted by the lawyer's representative, rather than by the lawyer himself, is of no import. As much was recognized in our previous Opinion No. 832, decided in 1984 under Rule 2-103 of the Code of Professional Responsibility then in effect, where we recognized that in-person solicitation of prospective clients was improper whether conducted personally or through a Welcome Wagon representative.

The prohibition against in-person solicitation is continued in current Rule 7.3, which provides in relevant part that "[e]xcept as provided in this Rule 7.3, or as permitted by Rule 7.2, 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 definition of "solicit" as is therein provided includes in-person contact. The exceptions set forth in Rule 7.3(a); i.e., solicitation of relatives, close friends, persons with whom a prior professional relationship existed, or under the auspices of certain public, charitable, or other organizations as specified in the Rule, are not here applicable. Similarly, Rule 7.2(b) provides, also with exceptions not here applicable, that "[a] lawyer shall not give anything of value to a person for recommending or having recommended the lawyer's services...."

Under the above Rules and the precedent cited, it is clear that the in-person solicitation contemplated in the present inquiry is improper.

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