



**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(c) with its Comment [7]. 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 No. 90-37  
May 15, 1991**

Topic: Solicitation of Clients

Digest: A lawyer may initiate contact with a prospective client by written communication plainly labeled as advertising material.

Ref: 1990 Illinois Rules of Professional Conduct Rule 7.3(a)(2)  
ISBA Opinion 90-22  
Bates v. State Bar of Arizona 433 U.S. 350 (1977)  
Shapero v. Kentucky Bar Ass'n 486 U.S. 466 (1988)  
Peel v. A.R.D.C. of Illinois, 496 U.S. 91, 110 S. Ct. 2281 (1990)  
In the matter of R.M.J., 455 U.S. 191 (1982)

## FACTS

A lawyer inquires whether he is permitted "to mail a direct mailing piece to various individuals that I read about in the newspaper such as, individuals involved in automobile accidents, etc." The inquiry does not refer to any specific situation.

## QUESTION

May a lawyer initiate contact by mail with prospective clients targeted because of their known

involvement in situations likely to create the need for legal services?

### OPINION

A lawyer may initiate contact by mail with prospective clients known to be so situated as to be likely to need legal services. In doing so, however, the lawyer must label both the envelope and the letter as advertising material, and must observe all rules relevant to lawyer advertisements. See ISBA Opinion No. 90-22.

The Supreme Court opinion in Bates v. State Bar of Arizona, 433 U.S. 350 (1977), established the principle that the First Amendment protects lawyer advertising. Such advertising enjoys the same Constitutional status as does any other form of commercial speech. Peel v. Attorney Registration and Disciplinary Commission of Illinois, \_\_\_\_\_ U.S. \_\_\_\_\_, 110 S.Ct. 2281 (1990). It may be restricted only to the extent that restriction is justified in order to vindicate a substantial state interest. In the matter of R.M.J., 455 U.S. 191 (1982).

A.B.A. Model rule 7.3 in its original form echoed the spirit of former DRs 2-103 and 2-104. It prohibited lawyers from all solicitation of business with few exceptions. One such exception was made for:

letters addressed or advertising circulars distributed generally to persons not known to need legal services of the kind provided by the lawyer, but who are so situated that they might in general find such services useful. (Emphasis added)

In Shapero v. Kentucky Bar Association, 486 U.S. 466 (1988), the Court found no justification for that restriction:

(T)he First Amendment does not permit a ban on certain speech merely because it is more efficient; the State may not constitutionally ban a particular letter on the theory that to mail it only to those whom it would most interest is somehow inherently objectionable.

Shapero also holds that there is no constitutional distinction between letters and advertising circulars. A personalized letter may be directed to any target to whom an impersonal circular may be addressed.

Model Rule 7.3 now has been amended in light of Shapero by deletion of the reference to "persons not known to need legal services." Illinois Rule of Professional Conduct 7.3(a)(2) is to the same effect. In relevant part, it provides:

(A) lawyer may initiate contact with a prospective client for the purpose of solicitation...by letters or advertising circulars, provided that such letters and circulars and the envelopes containing them are plainly labeled advertising material...

Accordingly, a lawyer who learns from the public media the name of a person who might well require legal assistance, whether as an accident victim, as one criminally accused, or in any other status, may address to that person a written communication soliciting legal employment.

A lawyer who initiates such a communication must take particular care to label the envelope and the writing plainly as advertising material; to observe the restrictions expressed within Rule 7.3(b); and to assure that his statements are not misleading.

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