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 Rules of Professional Conduct 7.1, 7.3, and 7.4. 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. 92-17
January 22, 1993

Topic: Solicitation of Clients

Digest: An attorney may solicit clients from a targeted group of individuals already involved in litigation, so long as that solicitation complies with Rule 7.3

Ref.: Illinois Rules of Professional Conduct, Rules 7.1, 7.3 and 7.4
Bates v. State Bar of Arizona, 433 U.S. 350 (1977)
Peel v. ARDC of Illinois, 496 U.S. 91 (1990)
In re RMJ, 455 U.S. 191 (1982)
Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626 (1985)
Shapero v. Kentucky Bar Association, 486 U.S. 466 (1988)
ISBA Opinions 90-37 and 91-3

FACTS

An attorney goes to Circuit Clerk and pulls files on all recent DUI tickets. He then sends a solicitation letter to those persons so charged. The letter outlines the serious nature of the offense, refers to the fact that the attorney spends a substantial amount of time handling such cases, encloses certain information, solicits representation of the defendant and is clearly labeled "advertising material."

QUESTION

May an attorney solicit clients from a targeted group of individuals already involved in litigation, so long as that solicitation complies with Rule 7.3?

OPINION

There can be no question that legal advertising is protected by the First Amendment. Bates v. State Bar of Arizona, 433 U.S. 350 (1977). It is equated with and enjoys the same protection as other forms of commercial speech. Peel v. ARDC of Illinois, 496 U.S. 91 (1990). The ability of the State to regulate and prohibit such speech is justified only to the extent necessary to protect a substantial state interest. In re RMJ, 455 U.S. 191 (1982); Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626 (1985).

Shapero v. Kentucky Bar Association, 486 U.S. 466 (1988) dealt with a very similar set of facts as set forth in this inquiry. There a Kentucky attorney requested approval of a letter to "potential clients who have had a foreclosure suit filed against them." After review of the commercial speech aspects of the letter and a review of the potential risk of deception, intentional or inadvertent, the Supreme Court said:

> The 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 to whom it would most interest is somehow inherently objectionable....
>
> But merely because targeted, direct mail solicitation presents lawyers with opportunities for isolated abuses or mistakes does not justify a total ban on that mode of protected commercial speech.

A review of previous opinions 90-37 and 91-3 is recommended. Such solicitation of a targeted group of individuals already involved in litigation is proper.

To comply with the provisions of Rule 7.3, such solicitation must be truthful, not deceptive and clearly labeled "advertising material." In stating a substantial amount of experience, care should be taken not to violate Rule 7.4, communications of fields of practice. Neither the quotation of a fee, enclosure of certain case law nor informational material from the Secretary of State violates these rules, so long as such statements are neither false nor misleading under Rule 7.1.

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