

Utah Ethics Opinions

1978.

50. USB EAOE Opinion No. 50

Utah State Bar

Ethics Advisory Opinion No. 50

Approved August 25, 1978

[Overruled by Opinion 97-05]

Summary: Attorneys may not join barter exchanges.

Comments: See Utah Opinion 12.

Facts: Inquiry has been made as to the propriety of an attorney joining a business exchange operation. The exchange is to be made up of various businesses in the community, each of which pays a membership fee to the exchange operators and receives, in turn, a credit in the same amount in its exchange account. Thereafter, payment for any services or goods which one member provides to another member of the exchange is reflected as a credit to its exchange account rather than being paid for by the recipient business. There is a percentage fee for each transaction. A monthly newsletter is distributed which includes a general description as to what types of businesses are associated with the exchange. The newsletter would note that the attorneys at law are members of the exchange. If an exchange member needs legal services, he would call the business exchange which would then list for him the attorneys that are exchange members.

This same question was presented to this committee in 1973 in Utah Opinion 12 (August 15, 1973). That situation also, dealt with the bartering of services by attorneys with other persons or businesses. The opinion held that the proposal constituted an improper activity for attorneys under the provisions of Canon 2, DR 2-101(B) and DR 2-103(B) and (C). There has been some change in Canon 2 since the issuance of that opinion. Most significantly, DR 2-101(B) now allows advertisement of legal services under certain restrictions. However, DR 2-103 which deals with solicitation, has been virtually unchanged. Solicitation of services by an attorney is still prohibited by the Code of Professional Responsibility. The recent Supreme Court cases involving the issue of solicitation have reinforced the right of the bar to regulate and prohibit attorney solicitation. See *Ohralik v. Ohio State Bar*, 436 U.S. 447, and *In Re Primus*, 436 U.S. 412. The *Primus* case, wherein certain types of solicitation were allowed, presented facts which are

not found in questions presented herein.

The Committee concludes, therefore, that participation of an attorney in a business exchange as described herein, would be improper.

Rule Cited:

Canon 2