

NO. 46994

STATE OF MINNESOTA

IN SUPREME COURT

In the Matter of Petition of	)	PETITION TO AMEND MINNESOTA
Minnesota State Bar Association,	)	CODE OF PROFESSIONAL RESPON-
a Minnesota nonprofit Corpora-	)	SIBILITY RESPECTING LAWYER
tion, for Adoption of an Amendment)	)	ADVERTISING AND TO DISMISS
to Canon 2 of the Minnesota Code	)	PRIOR PETITION.
of Professional Responsibility)	

To the Supreme Court of the State of Minnesota:

Petitioner, Minnesota State Bar Association ("MSBA"),
petitions the Court and alleges:

1. MSBA is a Minnesota nonprofit corporation composed of attorneys at law duly licensed and admitted to practice before this Court. More than 83% of all lawyers so licensed and admitted are members of MSBA. The government of MSBA is vested in the MSBA General Assembly and House of Delegates which regularly meet only once a year at the Annual Convention in June of each year. Interim authority is conferred on the MSBA Board of Governors and authority between meetings of the Board of Governors is conferred on the MSBA Executive Committee.

2. MSBA in October 1976 petitioned this Court for an amendment of the Code of Professional Responsibility to liberalize Code provisions dealing with lawyer advertising in

accordance with its proposal for a "General Practice Identification Plan". This Court held hearings on this petition, set the matter for argument before this Court on February 17, 1977 and heard argument at that time. Owing to the then pendency of Bates v. State Bar of Arizona, dealing with lawyer advertising, before the United States Supreme Court, a final determination with respect to MSBA's petition, with the consent of MSBA, was deferred indefinitely and is still pending.

3. On June 27, 1977, the United States Supreme Court issued its decision in Bates v. State Bar of Arizona, holding that the Bates & O'Steen Legal Clinic in Phoenix, Arizona, had a right guaranteed by the First Amendment to the United States Constitution to publish its newspaper advertisement and that discipline or rebuke of the advertising lawyers under a prohibition on lawyer advertising contained in the Arizona Code of Professional Responsibility was therefore unconstitutional. While the Supreme Court was unanimous in holding that the prohibition in the Code which had been adopted by the Arizona Supreme Court, an agency of the state government of Arizona, was not violative of the Sherman Antitrust Act, it was split 5 to 4 on the constitutional question. In deciding that question the majority opinion indicated, among other things, that:

a. The lawyer's constitutional right to advertise and

the public's right to know, in general, are governed by whether information is likely to be supplied that will be relevant to the selection of a suitable lawyer by members of the public.

- b. Advertising of any kind that is false, deceptive or misleading may be prohibited by the appropriate state authority.
- c. While law must be recognized as being a business as well as a profession, lawyer advertising may be different from other kinds of advertising, permitting the appropriate state authority to make regulations as to lawyer advertising, beyond merely prohibiting what is false or misleading, that limit assertions as to the quality of legal services, include needed limitations or disclaimers, forbid "in-person" solicitation, recognize special problems of the use of the electronic media or qualify the time, place and manner of advertising.

4. Immediately following the Bates decision, the American Bar Association ("ABA") activated a Task Force on Lawyer Advertising which produced two models for changes in the ABA Code of Professional Responsibility to respond to the Bates decision, these being known as Proposals A and B. A majority of the ABA Task Force recommended Proposal A while

calling for dissemination of both A and B to all the states. This recommendation was approved by the ABA Board of Governors and by the ABA House of Delegates at the ABA's Annual Meeting in August, 1977. Meanwhile, parallels to this action were occurring in Minnesota under direction of MSBA. A Task Force on Lawyer Advertising of MSBA was appointed consisting of lawyers representing various points of view on the advertising question, with a charge of producing a recommendation or probably two recommendations representing contrasting approaches for Minnesota. Initially, the MSBA Task Force focused its study on ABA Proposals A and B, but by consensus determined to develop, as a substitute for ABA Proposal B, a Proposal C that was thought to be more representative than B of the non-regulatory point of view. Minnesota Proposal C was derived from a Discussion Draft on Lawyer Advertising published by the ABA Ethics Committee on December 6, 1975 that was never adopted by the ABA. Minnesota Proposal A was developed as an implementation and adaptation of ABA Proposal A. The MSBA Task Force therefore presented to the MSBA Board of Governors at its meeting of November 19, 1977 both Minnesota Proposal A and Minnesota Proposal C. The MSBA had determined, after soliciting comments from members, to present a proposal to this Court and gave notice that the matter would be decided by the MSBA Board of Governors at that meeting. After extensive presentation and debate, the MSBA Board of Governors took a preliminary vote in which members of the Board expressed their views as follows:

25 for approval of Minnesota Proposal A, 11 for Minnesota Proposal C and 4 for deferring action. After argument that the matter might wait for the MSBA Annual Convention in June, 1978, a motion, to transmit to this Court immediately Minnesota Proposal A, ABA Proposal B and Minnesota Proposal C with the recommendation to this Court that it adopt Minnesota Proposal A, passed by a vote of 28 to 13. This petition responds to that action. Minnesota Proposal A is attached hereto as Exhibit 1. ABA Proposal B and Minnesota Proposal C are separately filed herewith, as Exhibits 2 and 3 respectively, for the Court's information.

5. In carrying out the direction of the MSBA Board of Governors to file this petition, the MSBA Executive Committee has considered the divergent opinions expressed by the Task Force, MSBA's various committees and individual members, expressions from the media and the public and the growing experience and precedents available from the ABA and the bar associations, courts and commentators in the various states. The MSBA Executive Committee believes that prompt adoption of Minnesota Proposal A by this Court would be desirable for the following reasons:

- a. A failure to make responsive changes in the very near future would inhibit lawyers who may legitimately wish to offer their services to the public but would be forced to assert constitutional rights

in the face of prohibitions in the present Minnesota Code of Professional Responsibility and who presently lack any set of guidelines as to the nature of proper lawyer advertising. Because the flow of information relevant to lawyer selection would thus be inhibited, the public would be denied its right to acquire such information.

- b. Minnesota Proposal A provides lawyers the opportunity to disseminate, and the public the right to acquire, virtually all kinds of information relevant to lawyer selection without immediately sacrificing the traditional standards of professionalism and dignity that the United States Supreme Court and lawyers generally feel may still differentiate advertising legal services from advertising the products of the marketplace. It provides reasonable and wholesome regulation in all those areas the Supreme Court itself reserved for future consideration: quality assertions, limitations and disclaimers, "in-person" solicitation, the electronic media and the time, place and manner of advertising. It thus represents a responsible middle course between those asserting, on the one hand, that present changes should not go beyond the specific Bates & O'Steen advertisement and those

urging, on the other hand, immediate institution of "wide-open" advertising subject only to restraints on what is false or misleading. There is every present indication in Bates that such reasonable and responsible regulation will be sustained.

- c. Minnesota Proposal A will enhance the flow of legitimate information relevant to lawyer selection to the public because, unlike any other plan suggested, it provides the well-intentioned lawyer with understandable guidelines and the public with objective means of identifying and comparing lawyers. Proposal A provides 26 broad and definite kinds of permissible advertising statement and more than 30 comprehensible categories of law practice that will enable the public to find and compare lawyers in a needed field. It contains flexible procedures for expansion of both lists if experience ever requires such expansion. It facilitates conformity by lawyers and permits discipline under uniform and objective standards.

- d. Minnesota Proposal A is consistent with many of the objectives sought by MSBA in its previous petition for the "General Practice Identification Plan", but necessarily has broader concerns and objectives since the Bates decision.

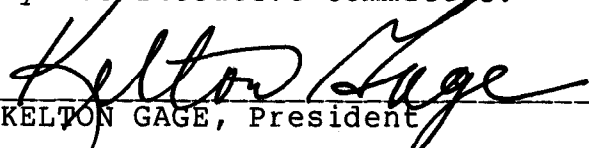
- e. Minnesota Proposal A provides general conformity with ABA Proposal A and the predominantly proposed plans for lawyer advertising in other states.

WHEREFORE, Petitioner respectfully requests this Court to dismiss petitioner's petition for the "General Practice Identification Plan" and to amend Canon 2 of the Minnesota Code of Professional Responsibility in accordance with Minnesota Proposal A attached hereto or such minor modifications thereof as may be further suggested by Petitioner or develop as a result of any hearing this Court may hold on this petition.

December 9, 1977

MINNESOTA STATE BAR ASSOCIATION
a Minnesota Non-Profit Corporation


By its Executive Committee:


KELTON GAGE, President


DAVID R. BRINK, President Elect


CLINTON A. SCHROEDER, Secretary


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Secretary-Treasurer



DAVID C. DONNELLY, Immediate
Past President

Exhibit 1

Minnesota Proposal A on Lawyer Advertising

Changes in Canon 2 of Minnesota Code of Professional Responsibility

(Only sections containing deletions or additions are quoted. If not quoted, sections remain unchanged.)

Canon 2

A Lawyer Should Assist the Legal Profession in Fulfilling
Its Duty to Make Legal Counsel Available

ETHICAL CONSIDERATIONS

EC 2-1. * * *

Recognition of Legal Problems

EC 2-2. The legal profession should assist ~~laymen~~ laypersons to recognize legal problems because such problems may not be self-revealing and often are not timely noticed. Therefore, lawyers ~~acting under proper auspices~~ should encourage and participate in educational and public relations programs concerning our legal system with particular reference to legal problems that frequently arise. ~~Such educational programs should be motivated by a desire to benefit the public rather than to obtain publicity or employment for particular lawyers. -- Examples of permissible activities include~~ Preparation of institutional advertisements and professional articles for lay publications and participation in seminars, lectures, and civic programs should be motivated by a desire to educate the public to an awareness of legal needs and to provide information relevant to the selection of the most appropriate counsel rather than to obtain publicity for particular lawyers. But a lawyer who participates in such activities should shun personal publicity. The problems of advertising on television require special consideration, due to the style, cost, and transitory nature of such media. If the interests of laypersons in receiving relevant lawyer advertising are not adequately served by print media and radio advertising, and if adequate safeguards to protect the public can reasonably be formulated, television advertising may serve a public interest.

EC 2-3. Whether a lawyer acts properly in volunteering in-person advice to a layman layperson to seek legal services depends upon the circumstances. The giving of advice that one should take legal action could well be in fulfillment of the duty of the legal profession to assist laymen laypersons in recognizing legal problems. The advice is proper only if motivated by a desire to protect one who does not recognize that he may have legal problems or who is ignorant of his legal rights or obligations. ~~Hence, the advice~~ It is improper if motivated by a desire to obtain personal benefit, secure personal publicity, or cause ~~litigation~~ legal action to be ~~brought~~ taken merely to harass or injure another. ~~Obviously,~~ A lawyer should not initiate an in-person contact with a non-client, ~~directly or indirectly,~~ personally or through a representative, for the purpose of being retained to represent him for compensation.

EC 2-4. Since motivation is subjective and often difficult to judge, the motives of a lawyer who volunteers in-person advice likely to produce legal controversy may well be suspect if he receives professional employment or other benefits as a result. A lawyer who volunteers in-person advice that one should obtain the services of a lawyer generally should not himself accept employment, compensation, or other benefit in connection with that matter. However, it is not improper for a lawyer to volunteer such advice and render resulting legal services to close friends, relatives, former clients (in regard to matters germane to former employment), and regular clients.

EC 2-5. A lawyer who writes or speaks for the purpose of educating members of the public to recognize their legal problems should carefully refrain from giving or appearing to give a general solution applicable to all apparently similar individual problems, since slight changes in fact situations may require a material variance in the applicable advice; otherwise, the public may be misled and misadvised. Talks and writings by lawyers for laymen laypersons should caution them not to attempt to solve individual problems upon the basis of the information contained therein.

Selection of a Lawyer:--Generally

EC 2-6. * * *

EC 2-7. Changed conditions, however, have seriously restricted the effectiveness of the traditional selection process. Often the reputations of lawyers are not sufficiently known to enable laymen laypersons to make intelligent choices. The law has become increasingly complex and specialized. Few lawyers are willing and competent to deal with every kind of legal matter, and many laymen laypersons have difficulty in determining the competence of lawyers to render different types of legal

services. The selection of legal counsel is particularly difficult for transients, persons moving into new areas, persons of limited education or means, and others who have little or no contact with lawyers. Lack of information about the availability of lawyers, the qualifications of particular lawyers, and the expense of legal representation leads laypersons to avoid seeking legal advice.

EC 2-8. ~~Selecton of a lawyer by a layman-often-is-the-result of-the~~ layperson should be made on an informed basis. Advice and recommendation of third parties--relatives, friends, acquaintances, business associates, or other lawyers--and disclosure of relevant information about the lawyer and his practice may be helpful. A layman layperson is best served if the recommendation is disinterested and informed. In order that the recommendation be disinterested, a lawyer should not seek to influence another to recommend his employment. A lawyer should not compensate another person for recommending him, for influencing a prospective client to employ him, or to encourage future recommendations. Advertisements and public communications, whether in law lists, telephone directories, newspapers, other forms of print media or radio, should be formulated to convey only information that is necessary to make an appropriate selection. Such information includes: (1) office information, such as, name, including name of law firm and names of professional associates; addresses; telephone numbers; credit card acceptability; fluency in foreign languages; and office hours; (2) relevant biographical information; (3) description of a particular field or fields of practice, or non-practice of the lawyer (or, when authorized, law firm) as specified under DR 2-105(a) or a statement of the lawyer (or, when authorized, law firm) as specified under DR 2-105(a) that the lawyer is a recognized specialist in a particular field or fields of law or law practice; and (4) permitted fee information. Laudation of the lawyer (or law firm), by himself or by others, testimonials, statements of the quality of services to be rendered, comparative statements as to the lawyer's (or law firm's) fees or services in relation to those of others and statements of performance records are undignified, are primarily solicitative rather than informative and are apt to be misleading to the public. They should be avoided.

Selection of a Lawyer: Professional-Notices-and-Listings
Lawyer Advertising

EC 2-9. ~~The traditional ban against advertising by lawyers, which is subject to certain limited exceptions, is rooted in the public interest.-- Competitive advertising would encourage extravagant, artful, self-laudatory brashness in seeking business and thus could mislead the layman.-- Furthermore, it would inevitably produce unrealistic expectations in particular cases~~

~~and bring about distrust of the law and lawyers. Thus, public confidence in our legal system would be impaired by such advertisements of professional services. The attorney-client relationship is personal and unique and should not be established as the result of pressures and deceptions. History has demonstrated that public confidence in the legal system is best preserved by strict, self-imposed controls over, rather than by unlimited, advertising.~~ The lack of sophistication on the part of many members of the public concerning legal services, the importance of the interests affected by the choice of a lawyer and prior experience with unrestricted lawyer advertising, require that special care be taken by lawyers to avoid misleading the public and to assure that the information set forth in any advertising is relevant to the selection of a lawyer. The lawyer must be mindful that the benefits of lawyer advertising depend upon its reliability and accuracy. Examples of information in lawyer advertising that would be deceptive include misstatements of fact, suggestions that the ingenuity or prior record of a lawyer rather than the justice of the claim are the principal factors likely to determine the result, inclusion of information irrelevant to selecting a lawyer, and representations concerning the quality of service, which cannot be measured or verified. Statements that a lawyer's practice is "limited to" or "concentrated in" a certain field or fields of law or that otherwise imply some warranty of competence in a particular field or fields except in connection with recognition under a regulated plan of specialization are likely to be misleading or deceptive. Statements that imply that a law firm has a competence or capacity or practices in a field or fields of law beyond those of its individual members are also likely to be deceptive or misleading. Since lawyer advertising is calculated and not spontaneous, reasonable regulation of lawyer advertising designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public.

~~EC 2-10. Methods of advertising that are subject to the objections stated above should be and are prohibited. However, the Disciplinary Rules recognize the value of giving assistance in the selection process through forms of advertising that furnish identification of a lawyer while avoiding such objections. For example, a lawyer may be identified in the classified section of the telephone directory, in the office building directory, and on his letterhead and professional card. But at all times the permitted notices should be dignified and accurate. A lawyer should ensure that the information contained in any advertising which the lawyer publishes, broadcasts or causes to be published or broadcast is relevant, is disseminated in an objective and understandable fashion, and would facilitate the prospective client's ability to compare the qualifications of the lawyers available to represent him. A lawyer should strive~~

to communicate such information without undue emphasis upon style and advertising strategems which serve to hinder rather than to facilitate intelligent selection of counsel. Because technological change is a recurrent feature of communications forms, and because perceptions of what is relevant in lawyer selection may change, lawyer advertising regulations should not be cast in rigid, unchangeable terms. Machinery is therefore available to advertisers and consumers for prompt consideration of proposals to change the rules governing lawyer advertising. The determination of any request for such change should depend upon whether the proposal is necessary in light of existing Code provisions, whether the proposal accords with standards of accuracy, reliability and truthfulness, and whether the proposal would facilitate informed selection of lawyers by potential consumers of legal services. Representatives of lawyers and consumers should be heard in addition to the applicant concerning any proposed change. Any change which is approved should be promulgated in the form of an amendment to the Code so that all lawyers practicing in the jurisdiction may avail themselves of its provisions.

EC 2-11. The name under which a lawyer conducts his practice may be a factor in the selection process. The use of a trade name or an assumed name could mislead laymen laypersons concerning the identity, responsibility, and status of those practicing thereunder. Accordingly, a lawyer in private practice should practice only under a designation containing his own name, the name of a lawyer employing him, ~~a partnership name composed of~~ the name of one or more of the lawyers practicing in a partnership, or, if permitted by law, in the name of a professional legal corporation, which should be clearly designated as such. For many years some law firms have used a firm name retaining one or more names of deceased or retired partners and such practice is not improper if the firm is a bona fide successor of a firm in which the deceased or retired person was a member, if the use of the name is authorized by law or by contract, and if the public is not misled thereby. However, the name of a partner who withdraws from a firm but continues to practice law should be omitted from the firm name in order to avoid misleading the public.

EC 2-12. * * *

EC 2-13. * * *

EC 2-14. In some instances a lawyer confines his practice to a particular field of law. In the absence of state controls to insure the existence of special competence, a lawyer should not be permitted to hold himself out as a recognized specialist or as having special training or ability, ~~other than~~ except in the historically excepted fields of admiralty, trademark, and

patent law. A lawyer may, however, indicate in permitted advertising, to the extent otherwise authorized in this Code, statements that he practices or does not practice in one or more particular areas or fields of law, or, if and to the extent hereafter permitted, may indicate that he is a recognized specialist. If a lawyer discloses areas of law in which he practices or does not practice, but is not a recognized specialist, he should avoid any implication that he is a recognized specialist.

EC 2-15. * * *

EC 2-16. * * *

Financial Ability to Employ Counsel: Persons Able to Pay Reasonable Fees

EC 2-17. * * *

EC 2-18. The determination of the reasonableness of a fee requires consideration of all relevant circumstances, including those stated in the Disciplinary Rules. The fees of a lawyer will vary according to many factors, including the time required, his experience, ability, and reputation, the nature of the employment, the responsibility involved, and the results obtained. It is a commendable and long-standing tradition of the bar that special consideration is given in the fixing of any fee for services rendered another lawyer or a member of his immediate family.

* * *

DISCIPLINARY RULES

DR 2-101. ~~Publicity in-Generat~~

(A) A lawyer shall not ~~prepare, cause-to-be-prepared, , on behalf of himself, his partner, associate or any other lawyer affiliated with him or his firm, use, or participate in the use of, any form of public communication that-contains-professionally-self-laudatory-statements calculated-to-attract-lay-clients,-as-used-herein,-"public communication"-includes,-but-is-not-limited-to,-communication-by-means-of-television,-radio,-motion-picture,-newspaper,-magazine,-or-book~~ containing a false, fraudulent, misleading, deceptive, laudatory or unfair statement or claim.

~~(B)--A-lawyer-shall-not-publicize-himself-or-anyone-associated with-him-as-a-lawyer-through-newspaper-or-magazine advertisements,-radio-or-television-announcements,-display~~

~~advertisements in city or telephone directories, or other means of commercial publicity, nor shall he authorize or permit others to do so in his behalf. This rule does not prohibit limited and dignified identification of a lawyer as a lawyer as well as by name.~~

- ~~(1) In political advertisements when his professional status is germane to the political campaign or to a political issue.~~
- ~~(2) In public notices when the name and profession of a lawyer are required or authorized by law or are reasonably pertinent for a purpose other than the attraction of potential clients.~~
- ~~(3) In routine reports and announcements of a bona fide business, civic, professional, or political organization in which he serves as a director or officer.~~
- ~~(4) In and on legal documents prepared by him.~~
- ~~(5) In and on legal textbooks, treatises, and other legal publications, and in dignified advertisements thereof.~~

(B) In order to facilitate the process of informed selection of a lawyer by potential consumers of legal services, a lawyer may publish or broadcast, subject to DR 2-103, the following information in print media distributed or over radio broadcasted in the geographic area or areas in which the lawyer resides or maintains offices or in which a significant part of the lawyer's clientele resides, provided that the information disclosed by the lawyer in such publication or broadcast complies with DR 2-101(A), and is presented in a dignified manner:

- (1) Name, including name of law firm and names of professional associates; addresses and telephone numbers;
- (2) To the extent, but only to the extent, authorized under DR 2-105, a statement of one or more fields of law in which the lawyer practices, a statement that the lawyer does not practice in one or more fields of law or does not practice in fields other than any field or fields of practice he has specified or a statement that the lawyer specializes in a particular field of law practice; law firms may publish or broadcast like statements of practice, non-practice or specialization if the publication or broadcast is not misleading in stating or implying that individual

lawyers in the firm practice or specialize in fields other than their actual practice or specialty or that the law firm or all its lawyers practice or specialize in all the fields of law specified unless that is the fact.

- (3) Date and place of birth;
- (4) Date and place of admission to the bar of state and federal courts;
- (5) Schools attended, with dates of graduation, degrees and other scholastic distinctions;
- (6) Public or quasi-public offices;
- (7) Military service;
- (8) Legal authorships;
- (9) Legal teaching position;
- (10) Memberships, offices, and committee assignments, in bar associations;
- (11) Membership and offices in legal fraternities and legal societies;
- (12) Technical and professional licenses;
- (13) Memberships in scientific, technical and professional associations and societies;
- (14) Foreign language ability;
- (15) Names and addresses of bank references;
- (16) With their written consent, names of clients regularly represented;
- (17) Prepaid or group legal services programs in which the lawyer participates;
- (18) Whether credit cards or other credit arrangements are accepted;
- (19) Office and telephone answering service hours;
- (20) Fee for an initial consultation;
- (21) Availability upon request of a written schedule of

fees and/or an estimate of the fee to be charged for specific services;

(22) Contingent fee rates subject to DR 2-106(C), provided that the statement discloses whether percentages are computed before or after deduction of costs;

(23) Range of fees for services, provided that the statement discloses that the specific fee within the range which will be charged will vary depending upon the particular matter to be handled for each client and the client is entitled without obligation to an estimate of the fee within the range likely to be charged, in print size equivalent to the largest print used in setting forth the fee information;

(24) Hourly rate, provided that the statement discloses that the total fee charged will depend upon the number of hours which must be devoted to the particular matter to be handled for each client and the client is entitled to without obligation an estimate of the fee likely to be charged, in print size at least equivalent to the largest print used in setting forth the fee information;

(25) Fixed fees for specific legal services, the description of which would not be misunderstood or be deceptive, provided that the statement discloses that the quoted fee will be available only to clients whose matters fall into the services described and that the client is entitled without obligation to a specific estimate of the fee likely to be charged in print size at least equivalent to the largest print used in setting forth the fee information;

(26) Statements that legal services may be obtained at "reasonable" or "very reasonable" fees or the equivalent, provided that it is clear from the context that any such statement refers only to fixed fees for specific legal services, as described in DR 2-101(B) (25), which are published or broadcast in the same statement and that the statement is factual and capable of verification.

(C) This Court may from time to time expand the information authorized for disclosure in DR 2-101(B), or provide for its dissemination through other media or forums. Any person desiring such expansion may apply to this Court or any body to which this Court may delegate its authority from time to time. Unless such application is granted ex parte, any such application shall be served upon this

Court, the Lawyers Professional Responsibility Board, the Minnesota State Bar Association, the District Bar Association of the District in which the applicant resides or practices, the Consumer Services Section of the State Department of Commerce and such others as this Court or such body may direct, who shall be heard, together with the applicant, as promptly as reasonably possible on the issues of whether the proposal is necessary or advisable in light of the applicable law and the existing provisions of the Code, accords with standards of accuracy, reliability and truthfulness, would comport with reasonable and wholesome regulation of the profession and would facilitate the process of informed selection of lawyers by potential consumers of legal services. If such application is granted ex parte or is decided by a body other than this Court to which the matter has been delegated, opportunity for prompt review by this Court in accordance with due process of law shall be granted. The relief granted in response to any such application shall be promulgated as an amendment to DR2-101(B), universally applicable to all lawyers.

- (D) If the advertisement is communicated to the public over radio, it shall be prerecorded, approved for broadcast by the lawyer, and a recording of the actual transmission shall be retained by the lawyer.
- (E) If a lawyer advertises a fee for a service, the lawyer must render that service for no more than the fee advertised.
- (F) Unless otherwise specified in the advertisement if a lawyer publishes any fee information authorized under DR 2-101(B) in a publication that is published more frequently than one time per month, the lawyer shall be bound by any representation made therein for a period of not less than 30 days after such publication. If a lawyer publishes any fee information authorized under DR 2-101(B) in a publication that is published once a month or less frequently, he shall be bound by any representation made therein until the publication of the succeeding issue. If a lawyer publishes any fee information authorized under DR 2-101(B) in a publication which has no fixed date for publication of a succeeding issue, the lawyer shall be bound by any representation made therein for a reasonable period of time after publication but in no event less than one year.
- (G) Unless otherwise specified, if a lawyer broadcasts any fee information authorized under DR 2-101(B), the lawyer shall be bound by any representation made therein for a period

of not less than 30 days after such broadcast.

(H) This rule does not prohibit limited and dignified identification of a lawyer as a lawyer as well as by name:

- (1) In political advertisements when his professional status is germane to the political campaign or to a political issue.
- (2) In public notices when the name and profession of a lawyer are required or authorized by law or are reasonably pertinent for a purpose other than the attraction of potential clients.
- (3) In routine reports and announcements of a bona fide business, civic, professional, or political organization in which he serves as a director or officer.
- (4) In and on legal documents prepared by him.
- (5) In and on legal textbooks, treatises, and other legal publications, and in dignified advertisements thereof.

(I)(e) A lawyer shall not compensate or give any thing of value to representatives of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item.

DR 2-102. Professional Notices, Letterheads, and Offices, ~~and~~
~~Law-Lists~~

(A) A lawyer or law firm shall not use or participate in the use of professional cards, professional announcement cards, office signs, letterheads, ~~telephone-directory-listings, law-lists, legal directory-listings,~~ or similar professional notices or devices, except that the following may be used if they are in dignified form:

- (1) A professional card of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, and any information permitted under DR 2-105. A professional card of a law firm may also give the names of members and associates. Such cards may be used for identification, ~~but may not be published in periodicals, magazines, newspapers, or other media.~~
- (2) A brief professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional offices of a lawyer or law firm, which may be mailed to lawyers, clients, former clients, personal friends, and relatives. It shall not state biographical data except to the extent reasonably necessary to identify the lawyer or to explain the change in his association, but it may state the immediate past position of the lawyer. It may give the names and dates of predecessor firms in a continuing line of succession. It shall not state the nature of the practice except as permitted under DR 2-105.

(3) * * *

(4) * * *

~~(5) -- A listing of the office of a lawyer or law firm in the alphabetical and classified sections of the~~

telephone directory or directories for the geographical area or areas in which the lawyer resides or maintains offices or in which a significant part of his clientele resides and in the city directory of the city in which his or the firm's office is located, but the listing may give only the name of the lawyer or law firm, the fact he is a lawyer, addresses, and telephone numbers. -- The listing shall not be in distinctive form or type. -- A law firm may have a listing in the firm name separate from that of its members and associates. -- The listing in the classified section shall not be under a heading or classification other than "Attorneys" or "Lawyers", except that additional headings or classifications descriptive of the types of practice referred to in DR-2-105 are permitted.

(6) -- A listing in a reputable law list or legal directory giving brief biographical and other informative data. A law list or directory is not reputable if its management or contents are likely to be misleading or injurious to the public or to the profession. -- A law list is conclusively established to be reputable if it is certified by the American Bar Association as being in compliance with its rules and standards. The published data may include only the following: name, including name of law firm and names of professional associates, addresses and telephone numbers, one or more fields of law in which the lawyer or law firm concentrates, a statement that practice is limited to one or more fields of law, a statement that the lawyer or law firm specializes in a particular field of law or law practice but only if authorized under DR-2-105(A)(4), date and place of birth, date and place of admission to the bar of state and federal courts, schools attended, with dates of graduation, degrees, and other scholastic distinctions, public or quasi-public offices, military service, posts of honor, legal authorships, legal teaching positions, memberships, offices, committee assignments, and section memberships in bar associations, memberships and offices in legal fraternities and legal societies, technical and professional licenses, memberships in scientific, technical and professional associations and societies, foreign language ability, names and addresses of references, and, with their consent, names of clients regularly represented.

(B) * * *

(C) * * *

(D) * * *

(E) * * *

(F) Nothing contained herein shall prohibit a lawyer from using or permitting the use of, in connection with his name, an earned degree or title derived therefrom indicating his training in the law.

DR 2-103. Recommendation of Professional Employment

- (A) A lawyer shall not except as authorized in DR 2-101(B), recommend employment, as a private practitioner, of himself, or anyone associated with him to a non-lawyer layperson who has not sought his advice regarding employment of a lawyer.
- (B) A lawyer shall not compensate or give anything of value to any-person a person or organization to recommend or secure, or as a reward for having recommended or secured, employment by a client of himself or any lawyer associated with him, except that he may pay the usual and reasonable fees or dues charged by any of the organizations listed in DR 2-103(D).
- (C) A lawyer shall not request any a person or organization to recommend employment, as a private practitioner, of himself, or anyone associated with him, or promote the use of his services or those of his partner or associate, or any other lawyer affiliated with him or his firm, as a private practitioner except as authorized in DR 2-101, and except that
- (1) He may request referrals from a lawyer referral service operated, sponsored, or approved by a bar association and may pay its fees incident thereto.
- (2) He may cooperate with the legal service activities of any of the offices or organizations enumerated in DR 2-103(D)(1) through (4) and may perform legal services for those to whom he was recommended by it to do such work if:
- (a) The person to whom the recommendation is made is a member or beneficiary of such office or organization; and
- (b) The lawyer remains free to exercise his independent professional judgment on behalf of his client.

(D) ~~A lawyer shall not knowingly assist any person to promote the use of his services or those of any lawyer associated with him.~~ A lawyer or his partner or associate or any other lawyer affiliated with him or his firm may be recommended, employed or paid by, or may cooperate with, one of the following offices or organizations that promote the use of his services or those of his partner or associate or any other lawyer affiliated with him or his firm if there is no interference with the exercise of independent professional judgment in behalf of his client:

(1) A legal aid office or public defender office:

(a) Operated or sponsored by a duly accredited law school.

(b) Operated or sponsored by a bona fide non-profit community organization.

(c) Operated or sponsored by a governmental agency.

(d) Operated, sponsored, or approved by a bar association.

(2) A military legal assistance office.

(3) A lawyer referral service operated, sponsored, or approved by a bar association.

(4) Any bona fide organization that recommends, furnishes or pays for legal services to its members or beneficiaries provided the following conditions are satisfied:

(a) Such organization, including any affiliate, is so organized and operated that no profit is derived by it from the rendition of legal services by lawyers, and that, if the organization is organized for profit, the legal services are not rendered by lawyers employed, directed, supervised or selected by it except in connection with matters where such organization bears ultimate liability of its member or beneficiary.

(b) Neither the lawyer, nor his partner, nor associate, nor any other lawyer affiliated with him or his firm, nor any non-lawyer, shall have initiated or promoted such organization for the primary purpose of providing financial or other benefit to such lawyer, partner, associate or affiliated lawyer.

- (c) Such organization is not operated for the purpose of procuring legal work or financial benefit for any lawyer as a private practitioner outside of the legal services program of the organization.
- (d) The member or beneficiary to whom the legal services are furnished, and not such organization, is recognized as the client of the lawyer in the matter.
- (e) Any member or beneficiary who is entitled to have legal services furnished or paid for by the organization may, if such member or beneficiary so desires, select counsel other than that furnished, selected or approved by the organization for the particular matter involved; and the legal service plan of such organization provides appropriate relief for any member or beneficiary who asserts a claim that representation by counsel furnished, selected or approved would be unethical, improper or inadequate under the circumstances of the matter involved and the plan provides an appropriate procedure for seeking such relief.
- (f) The lawyer does not know or have cause to know that such organization is in violation of applicable laws, rules of court and other legal requirements that govern its legal service operations.
- (g) The lawyer furnishes the Lawyers Professional Responsibility Board information as it may reasonably require relating to his compliance with this Code in rendering services to the members or beneficiaries.

~~(E) -- A lawyer shall not accept employment when he knows or it is obvious that the person who seeks his services does so as a result of conduct prohibited under this Disciplinary Rule.~~

~~(F) -- A lawyer shall not accept employment if he knows or it is obvious that it results from unsolicited advice by him or any lawyer associated with him to a layman that he should obtain counsel or take legal action, except:~~

~~(1) -- If the advice was to a close friend, relative, former client (if the advice is germane to the former employment), or one reasonably believed to be a client.~~

(2)--Without affecting the right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as he does not emphasize his own professional experience or reputation and does not undertake to give individual advice.

(3)--If success in asserting rights or defenses of his client in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept, but shall not seek, employment from those contacted for the purpose of obtaining their joinder.

DR 2-104. Participation with Organizations¹ - Legal Service Activities Suggestion of Need of Legal Services.

(A)--A lawyer may render legal services to a beneficiary of one of the following which employs, pays for, or recommends him or anyone associated with him to render the services, if he does not permit interference with the exercise of independent professional judgment in behalf of the beneficiary:

(1)--A legal aid office or public defender office operated or sponsored by a duly accredited law school, by a bona fide non-profit community organization, by a governmental agency, or by a bar association.

(2)--A military legal assistance office.

(3)--A lawyer referral service operated or sponsored by a bar association.

(B)--A lawyer may knowingly render legal services to a member or beneficiary of any other organization that employs, pays for, or recommends him or anyone associated with him to render the services only if the following conditions are satisfied:

(1)--He does not permit interference with the exercise of independent professional judgment in behalf of the member or beneficiary.

(2)--He recognizes the member or beneficiary for whom the legal services are rendered, and not the organization, as his client.

(3)--He has not, and he does not know and it is not obvious that anyone associated with him has, except with respect to a legal service arrangement initiated, sponsored, or operated by a bar association:

(a)--Requested or compensated any person to recommend

~~or secure, or compensated any person for having recommended or secured, the initiation of the organization or its legal service arrangement;~~

~~(b) Participated in the initiation of the organization or its legal service arrangement, other than by rendering, at the unsolicited request of those wishing to form it, legal services incident to its formation;~~

~~(c) Recommended, or requested another to recommend or secure, the organization's employment, payment, or recommendation of himself or any lawyer associated with him, when the organization had not sought advice regarding its employment, payment, or recommendation of a lawyer, unless the recommendation was for employment by the organization on a full-time salaried basis, or~~

~~(d) Compensated any person to recommend or secure or for having recommended or secured the organization's employment, payment, or recommendation of himself or any lawyer associated with him.~~

~~(4) He does not know and it is not obvious that the organization is in violation of any applicable filing or other requirement imposed by court rule, statute or regulation that governs, or is engaged in conduct that involves dishonesty, fraud, deceit, or misrepresentation regarding, its legal service operations.~~

~~(5) Any member or beneficiary who is entitled to have legal services furnished or paid for by the organization may, if such member or beneficiary so desires, select counsel other than that furnished, selected or approved by the organization for the particular matter involved, and the legal service plan of such organization provides appropriate relief for any member or beneficiary who asserts a claim that representation by counsel furnished, selected or approved would be unethical, improper or inadequate under the circumstances of the matter involved and the plan provides an appropriate procedure for seeking such relief.~~

~~(6) A lawyer shall not render legal services under DR-2-104(B) if he knows or it is obvious that the organization is organized for profit or, irrespective of its legal structure, is in fact operated for profit, and that the employment, payment, or recommendation is pursuant to a regular practice of providing for legal services to others, unless the services are provided for:~~

- (1) -- ~~As an employment fringe benefit, directly or through insurance;~~
- (2) -- ~~Through insurance used in connection with an employee organization's arrangement to provide for legal services to its members or their beneficiaries;~~
- (3) -- ~~Incident to a liability insurance policy; or~~
- (4) -- ~~Through an insurance policy under which the insurer does not employ or recommend the lawyer but only pays for the rendering of legal services by any lawyer the member or beneficiary may select.~~
- (D) -- ~~A sole proprietor providing for legal services as an employment fringe benefit is deemed an "organization" for purposes of this Rule.~~
- (E) -- ~~A lawyer who renders legal services under DR-2-104(B) shall furnish the Board of Professional Responsibility information as it may reasonably require relating to his compliance with this Code in rendering the services.~~
- (F) -- ~~A lawyer selected by an organization to render legal services to a member or beneficiary thereof shall not accept employment from the member or beneficiary to render legal services other than those for which the organization selected him if he knows or it is obvious that it results from unsolicited advice by him or any lawyer associated with him that the member or beneficiary should obtain counsel or take legal action.~~
- (G) -- ~~Notwithstanding any Disciplinary Rule, a lawyer who renders legal services, or who has been requested by an organization to be available to render legal services, under DR-2-104(A) or (B) may, without affecting the right to accept employment:~~
- (1) -- ~~Authorize, permit, or assist the organization to use a public communication or commercial publicity, which does not identify any lawyer by name, to describe the availability or nature of its legal service activities.~~
- (2) -- ~~Participate in activities conducted or sponsored by the organization and designed to educate laymen to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services, so long as he does not emphasize his own professional experience and does not undertake to give individual advice.~~

~~(3) -- Except as to an organization under DR-2-104(C)(4), authorize, permit or assist limited and dignified identification of himself as a lawyer and by name, along with the biographical information permitted under DR-2-102(A)(6), in communications by the organization directed to its members or beneficiaries.~~

~~(H) -- Notwithstanding any Disciplinary Rule, a lawyer may request referrals from a lawyer referral service operated or sponsored by a bar association, and may pay its fees incident thereto.~~

(A) A lawyer who has given in-person unsolicited advice to a layperson that he should obtain counsel or take legal action shall not accept employment resulting from that advice, except that:

(1) A lawyer may accept employment by a close friend, relative, former client (if the advice is germane to the former employment), or one whom the lawyer reasonably believes to be a client.

(2) A lawyer may accept employment that results from his participation in activities designed to educate laypersons to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services if such activities are conducted or sponsored by a qualified legal assistance organization.

(3) A lawyer who is recommended, furnished or paid by a qualified legal assistance organization enumerated in DR 2-103(D)(1) through (4) may represent a member or beneficiary thereof, to the extent and under the conditions prescribed therein.

(4) Without affecting his right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as he does not emphasize his own professional experience or reputation and does not undertake to give individual advice.

(5) If success in asserting rights or defenses of his client in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept, but shall not seek, employment from those contacted for the purpose of obtaining their joinder.

* * *

DR 2-105. Limitation Description of Practice

(A) A lawyer (or law firm) shall not hold himself (or itself) out publicly as a specialist ~~or as limiting his practice, except as permitted under DR-2-102(A)(6) or as follows~~, as practicing in certain fields of law or as not practicing in certain fields of law, as permitted under DR 2-101(B), except as follows:

(1) A lawyer admitted to practice before the United States Patent and Trademark Office may use the designation "Patents," "Patent Attorney," ~~or "Patent Lawyer," or "Registered Patent Attorney"~~ or any combination of those terms, on his letterhead and office sign. ~~A lawyer engaged in the trademark practice may use the designation "Trademarks," "Trademark Attorney," or "Trademark Lawyer," or any combination of those terms, on his letterhead and office sign, and a lawyer engaged in the admiralty practice may use the designation "Admiralty," "Proctor in Admiralty," or "Admiralty Lawyer," or any combination of those terms, on his letterhead and office sign.~~

~~(2) A lawyer may permit his name to be listed in lawyer referral service offices according to the fields of law in which he will accept referrals.~~

(2) A lawyer who (or a law firm which) publicly discloses fields of law in which the lawyer (or the law firm) practices or publicly states that he (or it) does not practice in one or more fields of law shall do so by using the following designated fields of practice, plus any others duly authorized and approved by this Court or any body to which this Court may delegate its authority from time to time:

Administrative Agency Matters
Admiralty Law
Antitrust and Trade Regulations
Banking and Creditor Law
Constitutional Law
Consumer Claims and Protection
Corporate and Business Law
Corporate Finance and Securities
Credit - Debt and Bankruptcy Problems
Criminal - Criminal and Traffic Charges
Damages - Personal Injury and Property
Damage Claims

Environmental Problems
Family - Divorce and Family Matters
General Practice - Family, Farm and
Small Business Matters
General Trial Practice - Civil
(Non-Criminal) Claims, Lawsuits
and Appeals
Governmental - Claims, Contracts,
Indian Affairs
International and Foreign Law
Labor Law
Legislation and Legislative Appearances
Military Law
Municipal and Governmental Law and Finance
Natural Resources - Timber, Water, Oil and
Gas and Mining Rights
Patent, Trademark and Copyright Law
Pension, Profit Sharing and Employee Benefits
Personal Rights - Civil Rights, Minority Rights
and Discrimination
Probate - Wills, Estates, Guardianships, Trusts
and Estate Planning
Public Utility Matters
Real Estate - Sales, Leases, Eminent Domain,
Real Estate Development and Financing
Taxation - Individual and Business
Transportation Law - Carriers, Aviation
Workers Compensation

~~(3) - A lawyer available to act as a consultant to or as an associate of other lawyers in a particular branch of law or legal service may distribute to other lawyers and publish in legal journals a dignified announcement of such availability, but the announcement shall not contain a representation of special competence or experience. -- The announcement shall not be distributed to lawyers more frequently than once in a calendar year, but it may be published periodically in legal journals.~~

(3) A lawyer who is recognized under a certification, self-designation or other regulated plan of specialization in a particular field of law or law practice under authority of this Code as hereafter amended or rules to be duly adopted by this Court or any body to which this Court may delegate its authority from time to time, may hold himself out as such, but only in accordance with such amendment or adoption; law firms may disclose publicly only such recognition of individual members.

(4)--A lawyer who is certified as a specialist in a particular field of law or law practice by the authority having jurisdiction under state law over the subject of specialization by lawyers may hold himself out as such specialist but only in accordance with the rules prescribed by that authority.

* * *

NO. 46994

STATE OF MINNESOTA
IN SUPREME COURT

In the Matter of Petition of	)	Exhibit 2
Minnesota State Bar Association,	)	ABA Proposal B
a Minnesota nonprofit Corpora-	)	For the Court's information
tion, for Adoption of an Amendment	)	in connection with Minnesota
to Canon 2 of the Minnesota Code	)	State Bar Association Petition
of Professional Responsibility	)	dated December 9, 1977

Minnesota State Bar Association
100 Minnesota Federal Building
Minneapolis, Minnesota 55402
Attention: Kelton Gage, President
(507) 387-1166

August 4, 1977

"B"

CANON 2

A LAWYER SHOULD ASSIST THE LEGAL
PROFESSION IN FULFILLING ITS DUTY TO
MAKE LEGAL COUNSEL AVAILABLE

EC 2-1 * * *

Recognition of Legal Problems

EC 2-2 The legal profession should assist ~~laymen~~ laypersons to recognize legal problems because such problems may not be self-revealing and often are not timely noticed. Therefore, lawyers ~~acting-under-proper-auspices~~ should encourage and participate in educational and public relations programs concerning our legal system with particular reference to legal problems that frequently arise. ~~Such-educational-programs-should-be-motivated-by-a-desire-to-benefit-the-public-rather-than-to-obtain-publicity-or-employment-for-particular-lawyers.--Examples-of-permissible-activities-include~~ Preparation of ~~institutional~~ advertisements and professional articles for lay publications and participation in seminars, lectures, and civic programs. should be motivated by a desire to benefit the public in its awareness of legal needs and selection of the most appropriate counsel rather than to obtain publicity for particular lawyers. ~~But-a-lawyer-who-participates-in-such-activities-should-shun-personal-publicity.~~

Deletions by ~~strikeouts~~

Changes or additions in text are indicated by underline.

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"B"

EC 2-3 Whether a lawyer acts properly in volunteering advice to a ~~layman~~ layperson to seek legal services depends upon the circumstances. The giving of advice that one should take legal action could well be in fulfillment of the duty of the legal profession to assist ~~laymen~~ laypersons in recognizing legal problems. The advice is proper whenever it is ~~only-if~~ motivated by a desire to protect one who does not recognize that he may have legal problems or who is ignorant of his legal rights or obligations. ~~It Hence, the advice~~ is improper if motivated by a desire to ~~obtain personal benefit, secure personal publicity, or cause litigation~~ legal action to be taken brought merely to harass or injure another. A lawyer best serves the public if he does not volunteer advice in order to obtain private gain in regard to employment. Obviously, A lawyer should not contact a non-client, personally or through a representative, directly or indirectly, for the purpose of being retained to represent him for compensation.

EC 2-4 ~~Since motivation is subjective and often difficult to judge, the motives of a lawyer who volunteers advice likely to produce legal controversy may well be suspect if he receives professional employment or other benefits as a result.~~ A lawyer who volunteers advice that one should obtain the services

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of a lawyer ~~generally-should-not-himself~~ and who then accepts employment, compensation, or other benefit in connection with that matter gives at least the appearance of impropriety.

However, it is not improper for a lawyer to volunteer such advice and render resulting legal services to close friends, relatives, former clients (in regard to matters germane to former employment), and regular clients.

EC 2-5 A lawyer who writes or speaks for the purpose of educating members of the public to recognize their legal problems and informing them of his services should carefully refrain from giving or appearing to give a general solution applicable to all apparently similar individual problems, since slight changes in fact situations may require a material variance in the applicable advice; otherwise, the public may be misled and misadvised. Talks and writings by lawyers for ~~laymen~~ laypersons should caution them not to attempt to solve individual problems upon the basis of the information contained therein.

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Selection of a Lawyer --Generally

EC 2-6 * * *

EC 2-7 Changed conditions, however, have seriously restricted the effectiveness of the traditional selection process. Often the reputations of lawyers are not sufficiently known to enable laymen laypersons to make intelligent choices. The law has become increasingly complex and specialized. Few lawyers are willing and competent to deal with every kind of legal matter, and many laymen laypersons have difficulty in determining the competence of lawyers to render different types of legal services. The selection of legal counsel is particularly difficult for transients, persons moving into new areas, persons of limited education or means, and others who have little or no contact with lawyers. Lack of information about the availability of lawyers, the specialized competence of particular lawyer, and the expense of initial consultation has been said to lead laypersons to avoid seeking legal advice.

EC 2-8 Selection of a lawyer by a layperson should be made on an informed basis. ~~layman-often-is-the-result-of-the~~ Advice and recommendation of third parties--relatives, friends, acquaintances, business associates, or other lawyers--and restrained publicity may be helpful. ~~-A-layman-is-best-served~~

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~~if-the-recommendation-is-disinterested-and-informed. In-order~~
~~that-the-recommendation-be-disinterested,~~-a A lawyer should
not seek to influence another to recommend his employment. A
lawyer should not compensate another person for recommending
him, for influencing a prospective client to employ him, or to
encourage future recommendations. Advertisements and public
communications, whether in law lists, announcement cards, news-
papers, other forms or radio, should be formulated to
convey only information that is necessary to make an appropriate
selection. Self-laudation should be avoided. Information that may
be helpful in some situations would include: (1) office informa-
tion, such as, name, including name of law firm and names of
professional associates; addresses; telephone numbers; credit
card acceptability; languages spoken and written; and office
hours; (2) biographical information; (3) description of the
practice but only by using designations and definitions authorized
by [the agency having jurisdiction of the subject under state law]
for example, one or more fields of law in which the lawyer or law
firm practices; a statement that practice is limited to one or
more fields of law; and a statement that the lawyer or law firm
specializes in a particular field of law practice but only by using
designations, definitions and standards authorized by [the agency having
jurisdiction under state law]; and (4) permitted fee information.

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EC 2-8A The proper motivation for commercial publicity by lawyers lies in the need to inform the public of the availability of competent, independent legal counsel. The public benefit derived from advertising depends upon the usefulness of the information provided to the community or to the segment of the community to which it is directed. Advertising marked by excesses of content, volume, scope or frequency, or which unduly emphasizes unrepresentative biographical information, does not provide that public benefit. For example, prominence should not be given to a prior governmental position outside the context of biographical information. Similarly, the use of media whose scope or nature clearly suggests that the use is intended for self-laudation of the lawyer without concomitant benefit to the public such as the use of billboards, electrical signs, soundtrucks, or television commercials distorts the legitimate purpose of informing the public and is clearly improper. Indeed, this and other improper advertising may hinder informed selection of competent, independent counsel, and advertising that involves excessive cost may unnecessarily increase fees for legal services.

EC 2-8B Advertisements and other communications should make it apparent that the necessity and advisability of legal action

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depends on variant factors that must be evaluated individually. Because fee information frequently may be incomplete and misleading to a layperson, a lawyer should exercise great care to assure that fee information is complete and accurate. Because of the individuality of each legal problem, public statements regarding average, minimum or estimated fees may be deceiving as will commercial publicity conveying information as to results previously achieved, general or average solutions, or expected outcomes. It would be misleading to advertise a set fee for a specific type of case without adhering to the stated fee in charging clients. Advertisements or public claims that convey an impression that the ingenuity of the lawyer rather than the justice of the claim is determinative are similarly improper. Statistical data or other information based on past performance or prediction of future success is deceptive because it ignores important variables. Only factual assertions, and not opinions, should be made in public communications. It is improper to claim or imply an ability to influence a court, tribunal, or other public body or official except by competent advocacy. Commercial publicity and public communications addressed to undertaking any legal action should always indicate the provisions of such undertaking and should disclose the

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impossibility of assuring any particular result. Not only must commercial publicity be truthful but its accurate meaning must be apparent to the layperson with no legal background. Any commercial publicity or advertising for which payment is made should so indicate unless it apparent from the context that it is paid publicity or an advertisement.

Selection-of-a-Lawyer:-Professional-Notices-and-Listings

EC 2-9 The traditional regulation of ban-against advertising by lawyers, which-is-subject-to-certain-limited-exceptions, is rooted in the public interest. Competitive advertising would eneourage through which a lawyer seeks business by use of ex-travagant, artful, self-laudatory brashness-in-seeking-business and-thus or brash statements or appeals to fears and emotions could mislead and harm the layman layperson. Furthermore, it public communications that would inevitably produce unrealistic expectations in particular cases and bring about distrust of the law and lawyers - and would be harmful to society. Thus, public confidence in our legal system would be impaired by such advertisements of professional services. The attorney-client relationship, being is personal and unique, and should not be

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established as the result of pressures or and deceptions.

~~History has demonstrated that confidence in the legal system is best preserved by strict, self-imposed controls over, rather than by unlimited, advertising.~~ However, the desirability of affording the public access to information relevant to legal rights has resulted in some relaxation of the former restrictions against advertising by lawyers. Those restrictions have long been relaxed in regard to law lists, announcement cards and institutional advertising and in certain other respects. Historically, those restrictions were imposed to prevent deceptive publicity that would mislead laypersons, cause distrust of the law and lawyers, and undermine public confidence in the legal system, and all lawyers should remain vigilant to prevent such results. Only unambiguous information relevant to a layperson's decision regarding his legal rights or his selection of counsel, provided in ways that comport with the dignity of the profession and do not demean the administration of justice, is appropriate in public communications.

EC 2-10 ~~Methods of advertising that are subject to the objections stated above should be and are prohibited.~~ However, t The

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Disciplinary Rules recognize the value of giving assistance in the selection process through forms of advertising that furnish identification of a lawyer while avoiding falsity, deception, and misrepresentation. All publicity should be evaluated with regard to its effect on the layperson with no legal experience. The non-lawyer is best served if advertisements contain no misleading information or emotional appeals, and emphasize the necessity of an individualized evaluation of the situation before conclusions as to legal needs and probable expenses can be made. The attorney-client relationship should result from a free and informed choice by the layperson. Unwarranted promises of benefits, overpersuasion, or vexatious or harassing conduct are improper. such-objections:--For-example, a-lawyer-may-be-identified-in-the-classified-section-of-the-telephone-directory, in the-office-building-directory, and-on-his-letterhead-and-professional-card:--But-at-all-times-the-permitted-notices-should-be dignified-and-accurate.

EC 2-11 The name under which a lawyer conducts his practice may be a factor in the selection process. The use of a trade name-or-an-assumed name which could mislead laymen laypersons

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concerning the identity, responsibility, and status of those practicing thereunder - is not proper. Accordingly, a lawyer in private practice should practice only under his own name, the name of a lawyer employing him, a partnership name composed of the name of one or more of the lawyers practicing in a partnership, or, if permitted by law, in the name of a professional legal corporation, which should be clearly designated as such. For many years some law firms have used a firm name retaining one or more names of deceased or retired partners and such practice is not improper if the firm is a bona fide successor of a firm in which the deceased or retired person was a member, if the use of the name is authorized by law or by contract, and if the public is not misled thereby. However, the name of a partner who withdraws from a firm but continues to practice law should be omitted from the firm name in order to avoid misleading the public.

EC 2-12 * * *

EC 2-13 * * *

EC 2-14 In some instances a lawyer confines his practice to a particular field of law. In the absence of state controls to

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insure the existence of special competence, a lawyer should not be permitted to hold himself out as a specialist or as having official recognition as a specialist, special-training-or-ability, other than in the-historically-excepted the fields of admiralty, trademark, and patent law where a holding out as a specialist historically has been permitted. A lawyer may, however, indicate if it is factual, a limitation of his practice or that he practices in one or more particular areas or fields of law in public announcements which will assist laypersons in selecting counsel and accurately describe the limited area in which the lawyer practices but only if he complies with the designations and definitions authorized and approved by [the agency having jurisdiction of the subject under state law]. A lawyer practicing in a jurisdiction which certifies specialists must also be careful not to confuse laypersons as to his status. If a lawyer limits his practice, but is not certified in the jurisdiction, he should clearly state in any announcement of limitation of practice that he is not certified. If the jurisdiction does not certify specialists, the lawyer should exercise care not to imply that he has been certified.

EC 2-15 * * *

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DR 2-101 ~~Publicity-in-General~~ Publicity and Advertising.

(A) A lawyer shall not, ~~prepare, cause to be prepared,~~ on behalf of himself, his partner, or associate, or any other lawyer affiliated with him or his firm, use, or participate in the use of, any form of public communication ~~that contains professionally self-laudatory statements calculated to attract lay clients,~~ containing a false, fraudulent, misleading, or deceptive statement or claim. ~~As used herein, "public communication" includes, but is not limited to, communication by means of television, radio, motion picture, newspaper, magazine, or book.~~

(B) Without limitation a lawyer shall ~~not publicize himself, or his partner, or associate, or any other lawyer affiliated with him or his firm, as a lawyer through newspaper or magazine advertisements, radio or television announcements, display advertisements in city or telephone directories, or other means of commercial publicity, nor shall he authorize or permit others to do so in his behalf.~~ However, a lawyer recommended by, paid by or whose legal

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services-are-furnished-by, a-qualified-legal assistance-organization-may-authorize-or-permit-or-assist such-organization-to-use-means-of-dignified-commercial publicity, which-does-not-identify-any-lawyer-by-name, to describe-the-availability-or-nature-of-its-legal-services-or legal-service-benefits.--This-rule-does-not-prohibit-limited and-dignified-identification-of-a-lawyer-as-a-lawyer-as well-as-by-name.

(1)--In-political-advertisements-when-his-professional-status-is-germane-to-the-political-campaign or-to-a-political-issue.

(2)--In-public-notice-when-the-name-and-profession-of-a-lawyer-are-required-or-authorized-by-law or-are-reasonably-pertinent-for-a-purpose-other-than the-attraction-of-potential-clients.

(3)--In-routine-reports-and-announcements-of-a bona-fide-business, civic, professional, or-political organization-in-which-he-serves-as-a-director-or officer.

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~~(4) -- In and on legal documents prepared by him.~~

~~(5) -- In and on legal textbooks, treatises, and other legal publications, and in dignified advertisements thereof.~~

~~(6) -- In communications by a qualified legal assistance organization, along with the biographical information permitted under DR-2-102(A)(6), directed to a member or beneficiary of such organization.~~

false, fraudulent, misleading, or deceptive statement or claim includes a statement or claim which:

(1) Contains a material misrepresentation of fact;

(2) Omits to state any material fact necessary to make the statement, in the light of all circumstances, not misleading;

(3) Is intended or is likely to create an unjustified expectation;

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(4) States or implies that a lawyer is a certified or recognized specialist other than as permitted by DR 2-105;

(5) Is intended or is likely to convey the impression that the lawyer is in a position to influence improperly any court, tribunal, or other public body or official;

(6) Relates to legal fees other than:

(a) A statement of the fee for an initial consultation;

(b) A statement of the fixed or contingent fee charged for a specific legal service, the description of which would not be misunderstood or be deceptive;

(c) A statement of the range of fees for specifically described legal services, provided there is a reasonable disclosure of all relevant

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variables and considerations so that the statement would not be misunderstood or be deceptive;

(d) A statement of specified hourly rates, provided the statement makes clear that the total charge will vary according to the number of hours devoted to the matter;

(e) The availability of credit arrangements;
and

(f) A statement of the fees charged by a qualified legal assistance organization in which he participates for specific legal services the description of which would not be misunderstood or be deceptive;

or

(7) Contains a representation or implication that is likely to cause an ordinary prudent person to misunderstand or be deceived or fails to contain reasonable warnings or disclaimers necessary to make a representation or implication not deceptive.

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(C) A lawyer shall not, on behalf of himself, his partner or associate, or any other lawyer affiliated with him or his firm, use or participate in the use of any form of public communication which:

(1) Is intended or is likely to result in a legal action or a legal position being asserted merely to harass or maliciously injure another;

(2) Contains statistical data or other information based on past performance or prediction of future success;

(3) Contains a testimonial about or endorsement of a lawyer;

(4) Contains a statement of opinion as to the quality of the services or contains a representation or implication regarding the quality of legal services which is not susceptible of reasonable verification by the public;

(5) Appeals primarily to a layperson's fear, greed, desire for revenge, or similar emotion; or

(6) Is intended or is likely to attract clients by use of showmanship, puffery, self-laudation or

hucksterism, including the use of slogans, jingles or garish or sensational language or format.

(7) Utilizes television or until [the agency having jurisdiction under state law] shall have determined that the use of such media is necessary in light of the existing provisions of the Code, accords with standards of accuracy, reliability and truthfulness, and would facilitate the process of informed selection of lawyers by potential consumers of legal services.

~~(E)~~ (D) A lawyer shall not compensate or give anything of value to representatives a representative of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item. A paid advertisement must be identified as such unless it is apparent from the context that it is a paid advertisement. If the paid advertisement is communicated to the public by use of radio, it shall be pre-recorded, approved for broadcast by the lawyer and a recording of the actual transmission shall be retained by the lawyer.

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DR 2-102 Professional Notices, Letterheads, Offices, and Law Lists.

(A) A lawyer or law firm shall not use or participate in the use of a professional cards, professional announcement cards, office signs, letterheads, telephone directory listings, law lists, legal directory listings, or a similar professional notices or devices, ~~except that the following may be used if they are in dignified form:~~

~~(1) -- A professional card of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, and any information permitted under DR-2-105. -- A professional card of a law firm may also give the names of members and associates. -- Such cards may be used for identification but may not be published in periodicals, magazines, newspapers, or other media.~~

~~(2) -- A brief professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional office of a lawyer or law firm, which may be mailed to lawyers, clients, former~~

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clients, personal friends, and relatives,--It shall not state biographical data except to the extent reasonably necessary to identify the lawyer or to explain the change in his association, but it may state the immediate past position of the lawyer. It may give the names and dates of predecessor firms in a continuing line of succession,--It shall not state the nature of the practice except as permitted under DR-2-105.

(3)--A sign on or near the door of the office and in the building directory identifying the law office. The sign shall not state the nature of the practice, except as permitted under DR-2-105.

(4)--A letterhead of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, associates and any information permitted under DR-2-105.--A letterhead of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members.--A lawyer may be designated "Of Counsel" on a letterhead if he has a

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continuing-relationship-with-a-lawyer-or-law-firm,
 other-than-as-a-partner-or-associate.--A-lawyer-or
 law-firm-may-be-designated-as-"General-Counsel"-or
 by-similar-professional-reference-on-stationery-of
 a-client-if-he-or-the-firm-devotes-a-substantial
 amount-of-professional-time-in-the-representation
 of-that-client.--The-letterhead-of-a-law-firm-may
 give-the-names-and-dates-of-predecessor-firms-in
 a-continuing-line-of-succession.

(5)--A-listing-of-the-office-of-a-lawyer-or
 law-firm-in-the-alphabetical-and-classified-sections
 of-the-telephone-directory-or-directories-for-the
 geographical-area-or-areas-in-which-the-lawyer-resides
 or-maintains-offices-or-in-which-a-significant-part
 of-his-clientele-resides-and-in-the-city-directory
 of-the-city-in-which-his-or-the-firm's-office-is
 located,-but-the-listing-in-the-alphabetical-section
 may-give-only-the-name-of-the-lawyer-or-law-firm,
 the-fact-he-is-a-lawyer,-addresses,-and-telephone
 numbers-and-the-listing-in-the-classified-section-may
 contain-only-the-data-that-DR-2-102(A)(6)-permits-in-a
 reputable-law-list,-legal-directory,-or-a-directory
 published-by-a-state,-local-or-county-bar

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association.---The listing shall not be in distinctive form or type.---A law firm may have a listing in the firm name separate from that of its members and associates.---The listing in the classified section shall not be under a heading or classification other than "Attorneys" or "Lawyers," except that additional headings or classifications descriptive of the types of practice referred to in DR-2-105 are permitted.

(6)---A listing in a reputable law list, legal directory, a directory published by a state, county or local bar association, or the classified section of telephone company directories giving brief biographical and other informative data.---A law list or any directory is not reputable if its management or contents are likely to be misleading or injurious to the public or to the profession.---A law list or any directory is conclusively established to be reputable if it is certified by the American Bar Association as being in compliance with its rules and standards.---The published data may include only the following:---name, including name of law firm and names of professional associates, addresses and telephone numbers, one or

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more-fields-of-law-in-which-the-lawyer-or-law-firm concentrates,--to-the-extent-not-prohibited-by-the authority-having-jurisdiction-under-state-law-over the-subject,--a-statement-that-practice-is-limited to-one-or-more-fields-of-law,--to-the-extent-not prohibited-by-the-authority-having-jurisdiction under-state-law-over-the-subject-of-limitation-of practice-by-lawyers,--a-statement-that-the-lawyer-or law-firm-specializes-in-a-particular-field-of-law-or law-practice,--to-the-extent-permitted-by-the-authority having-jurisdiction-under-state-law-over-the-subject of-specialization-by-lawyers-and-in-accordance-with rules-prescribed-by-that-authority,--date-and-place-of birth,--date-and-place-of-admission-to-the-bar-of-state and-federal-courts,--schools-attended,--with-dates-of graduation,--degrees,--and-other-scholastic-distinctions, public-or-quasi-public-offices,--military-service,--posts of-honor,--legal-authorships,--legal-teaching-positions, memberships,--offices,--committee-assignments,--and-section memberships-in-bar-associations,--memberships-and-offices in-legal-fraternities-and-legal-societies,--technical-and professional-licenses,--memberships-in-scientific,--technical-and-professional-associations-and-societies;

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foreign-language-ability, names-and-addresses-of-references, and, with-their-consent, names-of-clients-regularly-represented, whether-credit-cards-or-other-arrangements-are-accepted, office-and-other-hours-of-availability, a-statement-of-legal-fees-for-an-initial-consultation-or-the-availability-upon-request-of-a-written-schedule-of-fees-or-an-estimate-of-the-fee-to-be-charged-for-the-specific-services, provided, all-such-published-data-shall-be-disseminated-only-to-the-extent-and-in-such-format-and-language-uniformly-applicable-to-all-lawyers, as-prescribed-by-the-authority-having-jurisdiction-by-state-law-over-the-subject. This-provision-is-not-applicable-in-any-state-unless-and-until-it-is-implemented-by-such-authority-in-that-state. if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of DR 2-101 (B) or that violates the regulations contained in DR 2-101(C).

(B) A lawyer in-private-practice shall not practice under a-trade-name, a name that is misleading as to the identity, responsibility or status of those of-the-lawyer or-lawyers practicing thereunder, or is otherwise false,

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fraudulent, misleading, or deceptive within the meaning of DR 2-101(B), or is contrary to law. under-such-name, or a firm-name-containing-names-other-than-these-of-one-or-more of-the-lawyers-in-the-firm, except-that However, the name of a professional corporation or professional association may contain "P.C." or "P.A." or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. A lawyer who assumes a judicial, legislative, or public executive or administrative post or office shall not permit his name to remain in the name of a law firm or to be used in professional notices of or public communications by the firm during any significant period in which he is not actively and regularly practicing law as a member of the firm, and during such period other members of the firm shall not use his name in the firm name or in professional notices of or public communications by the firm.

(C) A lawyer shall not hold himself out as having a partnership with one or more other lawyers unless they are in fact partners.

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(D) A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction.

~~(E) -- A lawyer who is engaged both in the practice of law and another profession or business shall not so indicate on his letterhead, office sign, or professional card, nor shall he identify himself as a lawyer in any publication in connection with his other profession or business.~~

~~(F)~~ (E) Nothing contained herein shall prohibit a lawyer from using or permitting the use of, in connection with his name, an earned degree or title derived therefrom indicating his training in the law.

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DR 2-103 Recommendation or Solicitation of Professional Employment.

(A) A lawyer shall not seek by direct mail or other form of personal contact and shall not recommend employment, as a private practitioner, of himself, his partner, or associate to a non-lawyer who has not sought his advise regarding employment of a lawyer, or assist another person in so doing, except that if success in asserting rights or defenses of his clients in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept employment from those he is permitted under applicable law to contact for the purpose of obtaining their joinder. This Disciplinary Rule does not prohibit a lawyer or his partner or associate or any other lawyer affiliated with him or his firm from requesting referrals from a lawyer referral services operated, sponsored, or approved by a bar association or from cooperating with any other qualified legal assistance organization.

Committee Note: Present DR 2-103(B) becomes DR 2-103(C)

~~(C) -- A lawyer shall not request a person or organization to recommend or promote the use of his services or those of his partner or associate, or any other lawyer~~

~~affiliated with him or his firm, as a private practitioner, except that~~

~~(1) -- He may request referrals from a lawyer referral service operated, sponsored, or approved by a bar association and may pay its fees incident thereto.~~

~~(2) -- He may cooperate with the legal service activities of any of the offices or organizations enumerated in DR-2-103(B)(1) through (4) and may perform legal services for those to whom he was recommended by it to do such work if:~~

~~(a) -- The person to whom the recommendation is made is a member or beneficiary of such office or organization, and~~

~~(b) -- The lawyer remains free to exercise his independent professional judgment on behalf of his client.~~

~~(D) (B) A lawyer shall not knowingly assist a person or an organization that furnishes or pays for legal services~~

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to others to promote the use of his services or those of his partner or associate or any other lawyer affiliated with him or his firm, except as permitted in BR-2-101(B). However, this does not prohibit a lawyer or his partner or associate or any other lawyer affiliated with him or his firm from being recommended, employed or paid by, or cooperating with, one of the following offices or organizations that promote the use of his services or those of his partner or associate or any other lawyer affiliated with him or his firm if there is no interference with the exercise of independent professional judgment in behalf of his client:

(1) -- A legal aid office or public defender office:

(a) -- Operated or sponsored by a duly accredited law school:

(b) -- Operated or sponsored by a bona fide nonprofit community organization:

(c) -- Operated or sponsored by a governmental agency:

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(d) -- Operated, sponsored, or approved by a bar association.

(2) -- A military legal assistance office.

(3) -- A lawyer referral service operated, sponsored, or approved by a bar association.

(4) -- Any bona fide organization that recommends, furnishes or pays for legal services to its members or beneficiaries provided the following conditions are satisfied:

(a) -- Such organizations, including any affiliate, is so organized and operated that no profit is derived by it from the rendition of legal services by lawyers, and that, if the organization is organized for profit, the legal services are not rendered by lawyers employed, directed, supervised or selected by it except in connection with matters where such organization bears ultimate liability of its member or beneficiary.

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(b)--Neither the lawyer, nor his partner, nor associate, nor any other lawyer affiliated with him or his firm, nor any non-lawyer, shall have initiated or promoted such organization for the primary purpose of providing financial or other benefit to such lawyer, partner, associate or affiliated lawyer.

(c)--Such organization is not operated for the purpose of procuring legal work or financial benefit for any lawyer as a private practitioner outside of the legal services program of the organization.

(d)--The member or beneficiary to whom the legal services are furnished, and not such organization, is recognized as the client of the lawyer in the matter.

(e)--Any member or beneficiary who is entitled to have legal services furnished or paid for by the organization may, if such member or beneficiary so desires, select counsel other than that furnished, selected or approved by the

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organization for the particular matter involved, and the legal service plan of such organization provides appropriate relief for any member or beneficiary who asserts a claim that representation by counsel furnished, selected or approved would be unethical, improper or inadequate under the circumstances of the matter involved and the plan provides an appropriate procedure for seeking such relief.

(f) -- The lawyer does not know or have cause to know that such organization is in violation of applicable laws, rules of court and other legal requirements that govern its legal service operations.

(g) -- Such organization has filed with the appropriate disciplinary authority at least annually a report with respect to its legal service plan, if any, showing its terms, its schedule of benefits, its subscription charges, agreements with counsel, and financial results of its legal service activities or, if it has failed

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~~to do so, the lawyer does not know or have cause
to know of such failure.~~

as a private practitioner, if:

(1) The promotional activity involves use of a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of DR 2-101(B) or that violates the regulations contained in DR 2-101(C); or

(2) The promotional activity involves the use of coercion, duress, compulsion, intimidation, threats, unwarranted promises of benefits, overpersuasion, overreaching, or vexatious or harassing conduct.

~~(B)~~ (C) A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client, or as a reward for having made a recommendation resulting in his employment by a client, except that he may pay for public communications permitted by DR 2-101 and the usual and reasonable fees or dues charged by any of the organizations listed in DR 2-103(D); a lawyer referral service operated, sponsored, or approved by a bar association.

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~~(E)~~ (D) A lawyer shall not accept employment when he knows or it is obvious that the person who seeks his services does so as a result of conduct prohibited under this Disciplinary Rule.

DR 2-104 Suggestion of Need of Legal Services.

(A) A lawyer who has given unsolicited advice to a layman layperson that he should obtain counsel or take legal action shall not accept employment resulting from that advice, ~~except that~~

~~(1)---A lawyer may accept employment by a close friend, relative, former client (if the advice is germane to the former employment), or one whom the lawyer reasonably believes to be a client.~~

~~(2)---A lawyer may accept employment that results from his participation in activities designed to educate laymen to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services if such activities are conducted or sponsored by a qualified legal assistance organization.~~

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(3)--A lawyer who is recommended, furnished or paid by a qualified legal assistance organization enumerated in DR-2-103(D)(1) through (4) may represent a member or beneficiary thereof, to the extent and under the conditions prescribed therein.

(4)--Without affecting his right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as he does not emphasize his own professional experience or reputation and does not undertake to give individual advice.

(5)--If success in asserting rights or defenses of his clients in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept, but shall not seek, employment from those contacted for the purpose of obtaining their joinder.

if:

(1) The advice embodies or implies a statement or claim that is false, fraudulent,

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misleading, or deceptive within the meaning of DR 2-101(B); or that violates the regulations contained in DR 2-101(C); or

(2) The advice involves the use by the lawyer of coercion, duress, compulsion, intimidation, threats, unwarranted promises of benefits, overpersuasion, overreaching, or vexatious or harassing conduct.

DR 2-105 Limitation of Practice.

(A) A lawyer shall not hold himself out publicly as, a ~~specialist or as limiting his practice, except as permitted under DR-2-102(A)(6)~~ or imply that he is, a recognized or certified specialist, except as follows:

(1) A lawyer admitted to practice before the United States Patent and Trademark Office may use the designation "Patents," "Patent Attorney," or "Patent Lawyer," or any combination of those terms, on his letterhead and office sign. A lawyer engaged in the trademark practice may use the designation "Trademarks," "Trademark

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Attorney," or "Trademark Lawyer," or any combination of those terms, on his letterhead and office sign, and a lawyer engaged in the admiralty practice may use the designation "Admiralty," "Proctor in Admiralty," or "Admiralty Lawyer," or any combination of those terms, on his letterhead and office sign.

~~(2)--A-lawyer-may-permit-his-name-to-be-listed-in lawyer-referral-service-offices-according-to-the-fields of-law-in-which-he-will-accept-referrals.~~

~~(3)--A-lawyer-available-to-act-as-a-consultant-to or-as-an-associate-of-other-lawyers-in-a-particular branch-of-law-or-legal-service-may-distribute-to-other lawyers-and-publish-in-legal-journals-a-dignified announcement-of-such-availability,-but-the-announcement-shall-not-contain-a-representation-of-special competence-or-experience.--The-announcement-shall-not be-distributed-to-lawyers-more-frequently-than-once in-a-calendar-year,-but-it-may-be-published-periodically-in-legal-journals.~~

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(4) (2) A lawyer who is certified as a specialist in a particular field of law or law practice by [the authority having jurisdiction under state law over the subject of specialization by lawyers] may hold himself out as such specialist but only in accordance with the rules prescribed by that authority.

(B) A statement, announcement, or holding out as limiting practice to a particular area or field of law does not constitute a violation of DR 2-105(A) if the statement, announcement, or holding out complies with the designations and definitions authorized by [the agency having jurisdiction of the matter under state law] does not include a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of DR 2-101(B) or that violates the regulations contained in DR 2-101(C), and if, [in a jurisdiction having a program for certifying specialists], it clearly reflects that the lawyer has not been officially recognized or certified as a specialist.

* * *

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As used in the Disciplinary Rules of the Code of Professional Responsibility:

(1) * * *

(2) * * *

(3) * * *

(4) * * *

(5) * * *

(6) * * *

(7) "A Bar association" includes a bar association of specialists as referred to in DR 2-105(A) (1) or ~~(4)~~ (2).

(8) "Qualified legal assistance organization" means ~~an-office-or-organization-of-one-of-the-four-types-listed-in-DR-2-103(B)(1)-(4),~~ inclusive a legal aid, public defender, or military assistance office; a lawyer referral service; or a bona fide organization that recommends, furnishes or pays for legal services to its members or beneficiaries, provided the office, service, or organization receives no profit from the rendition of legal services, is not designed to procure

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"B"

financial benefit or legal work for a lawyer as a private practitioner, does not infringe the individual member's freedom as a client to challenge the approved counsel or to select outside counsel at the client's expense, is not in violation of any applicable law, and has filed with [the appropriate disciplinary authority] at least annually a report with respect to its legal service plan. ~~that-meets all-the-requirements-thereof.~~

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NO. 46994

STATE OF MINNESOTA

IN SUPREME COURT

In the Matter of Petition of)
Minnesota State Bar Association,)
a Minnesota nonprofit Corpora-)
tion, for Adoption of an Amendment)
to Canon 2 of the Minnesota Code)
of Professional Responsibility)

Exhibit 3
Minnesota Proposal C
For the Court's infor-
mation in connection with
Minnesota State Bar Asso-
ciation Petition dated
December 9, 1977

Minnesota State Bar Association
100 Minnesota Federal Building
Minneapolis, Minnesota 55402
Attention: Kelton Gage, President
(507) 387-1166

H. J. O. N. 1

PROPOSAL "C"

(Based on ABA Discussion Draft of 12/6/75)

Canon 2 reads as follows:

"A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available."

Historically, the profession has believed that advertising by lawyers was neither required nor appropriate to fulfill its responsibilities under this Canon. However, in the context of contemporary society, particularly with respect to its metropolitan characteristics in a service-oriented economy, the continued validity of these beliefs has been questioned by some. The draft amendment would permit advertising by lawyers, unless the material contains "a false, fraudulent, misleading, deceptive or unfair statement or claim". The proposal defines such a statement as one which:

- "(1) contains a misrepresentation of fact;
- "(2) is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts;
- "(3) contains laudatory statements about a lawyer;
- "(4) is intended or is likely to create false or unjustified expectations of favorable results;
- "(5) implies unusual legal ability, other than as permitted by DR 2-105;
- "(6) conveys the impression that the lawyer is in a position to influence improperly any court, tribunal, or other public body or official;
- "(7) is intended or likely to result in a legal action or a legal position being taken or asserted merely to harass or maliciously injure another;
- "(8) is intended or is likely to appeal primarily to a lay person's fears, greed, desires for revenge, or similar emotions;
- "(9) contains other representations or implications that in reasonable probability will cause an ordinary, prudent person to misunderstand or be deceived."

Consistent with the foregoing Disciplinary Rules, changes in the Ethical Considerations of Canon 2, particularly EC 2-8 and EC 2-8A, have been drafted which read as follows:

"EC 2-8. Selection of a lawyer by a lay person should be informed. Advice and recommendations of third parties - relatives, friends, acquaintances, business associates, or other lawyers - and proper publicity may be helpful. Advertisements and public communications, whether in law lists, announcement cards, newspapers or other forms, should be formulated to convey only information that is necessary to make an appropriate selection. Self-laudation should be avoided. Information that may be helpful in some situations would include: (1) office information, e.g., name, including name of law firm and names of professional associates; addresses; telephone numbers; and office hours; (2) biographical data; and (3) description of the practice, e.g. one or more fields of law in which the lawyer practices.

"The proper motivation for commercial publicity by lawyers lies in the need to inform the public of the availability of competent, independent legal counsel. The public benefit derived from advertising depends upon the usefulness of the information provided to the community or to the segment of the community to which it is directed. Advertising marked by excesses of content, volume, scope or frequency, or which unduly emphasizes unrepresentative biographical data, does not provide that public benefit. The example, undue prominence should not be given to a prior governmental position outside the context of biographical information. Similarly, the use of media whose scope or nature clearly suggests that the use is intended for self-laudation of the lawyer without concomitant benefit to the public does not serve the public need. Improper advertising may hinder informed selection of competent, independent counsel, and advertising involving excessive cost may unnecessarily increase fees for legal services.

"EC2-8A. Advertisements and other public communications should make it apparent that the necessity and advisability of legal action depends on variant factors that must be evaluated individually. Fee information usually will be incomplete and misleading to a lay person. Therefore, public communications should not attempt to give fee information beyond a statement of a standard consultation fee, a statement of a range of fees for specific types of legal services, and the availability of credit arrangements. Because of the individuality of each legal problem, public statements regarding average, minimum or estimated fees normally will be deceiving as will commercial publicity conveying information as to results previously achieved, general or average solutions, or expected outcomes. For example, it would be misleading to advertise a set fee for a divorce case without disclosing the fact that the particular lawyer will not accept employment by every potential client for that fee. Advertisements or public claims that convey an impression that the ingenuity of the lawyer rather than the justice of the claim is determinative are similarly improper. Statistical data based on past performance or prediction of future success is deceptive because it ignores important variables. The context of factual assertions and opinions should be clearly evident in all public communications. It is improper to claim or imply an ability to influence a court, tribunal, or other public body or official by other than competent representation of a just cause. Commercial publicity and public communications should indicate the seriousness of undertaking any legal action. Not only must commercial publicity be truthful but its accurate meaning must be apparent to the lay person with no legal background. Any commercial publicity for which payment is made should so indicate."

The proposal would permit a lawyer to state the fields of law in which he practices.

The proposal does not distinguish television, radio, newspapers, magazines, and direct mail advertisements. All paid advertisements must be identified as such.

The suggested amendments would not affect existing prohibitions of solicitation of clients by lawyers.

CANON 2

A Lawyer Should Assist the Legal Profession in Fulfilling Its Duty to Make Legal Counsel Available

EC 201 * * *

Recognition of Legal Problems

EC 2-2 The legal profession should assist lay persons to recognize legal problems because such problems may not be self-revealing and often are not timely noticed. Therefore, lawyers should encourage and participate in educational and public relations programs concerning our legal system with particular reference to legal problems that frequently arise. Preparation of advertisements and professional articles for lay publications and participation in seminars, lectures, and civic programs should be motivated by a desire to benefit the public in its awareness of legal needs and selection of the most appropriate counsel.

EC 2-3 Whether a lawyer acts properly in volunteering advice to a lay person to seek legal services depends upon the circumstances. The giving of advice that one should take legal action could well be in fulfillment of the duty of the legal profession to assist lay persons in recognizing legal problems. The advice is proper whenever it is motivated by a desire to protect one who does not recognize that he may have legal problems or who is ignorant of his legal rights or obligations. It is improper if motivated by a desire to cause legal action to be taken merely to harass or injure another. A lawyer best serves the public if he does not volunteer advice in order to obtain private gain in regard to employment. A lawyer should not contact a non-client, personally or through a representative, for the purpose of being retained to represent him for compensation.

EC 2-4 Since motivation is subjective and often difficult to judge, the motives of a lawyer who volunteers advice likely to produce legal controversy may well be suspect if he receives professional employment or other benefits as a result. A lawyer who volunteers advice that one should obtain the services of a lawyer and who then accepts employment, compensation, or other benefit in connection with that matter gives at least the appearance of impropriety. However, it is not improper for a lawyer to volunteer such advice and render resulting legal services to close friends, relatives, former clients, and regular clients.

EC 2-5 A lawyer who writes or speaks for the purpose of educating members of the public to recognize their legal problems and informing them of his services should carefully refrain from giving or appearing to give a general solution applicable to all apparently similar individual problems, since slight changes in fact situations may require a material variance in the applicable advice; otherwise the public may be misled and misadvised. Talks and writings by

*Additions Underlined

lawyers for lay persons should caution them not to attempt to solve individual problems upon the basis of the information contained therein.

Selection of a Lawyer

EC 2-6 * * *

EC 2-7 Changed conditions, however, have seriously restricted the effectiveness of the traditional selection process. Often the reputations of lawyers are not sufficiently known to enable lay persons to make intelligent choices. The law has become increasingly complex and specialized. Few lawyers are willing and competent to deal with every kind of legal matter, and many lay persons have difficulty in determining the competence of lawyers to render different types of legal services. The selection of legal counsel is particularly difficult for transients, persons moving into new areas, persons of limited education or means, and others who have little or no contact with lawyers. Lack of information about the availability of lawyers and the expense of initial consultation have been said to lead lay persons to avoid seeking legal advice.

EC 2-8 Selection of a lawyer by a lay person should be informed. Advice and recommendation of third parties - relatives, friends, acquaintances, business associates, or other lawyers - and proper publicity may be helpful. Advertisements and public communications, whether in law lists, announcement cards, newspapers or other forms, should be formulated to convey only information that is necessary to make an appropriate selection. Self-laudation should be avoided. Information that may be helpful in some situations would include: (1) office information, e.g. name, including name of law firm and names of professional associates; addresses; telephone numbers; and office hours; (2) biographical data; and (3) description of the practice, e.g. one or more fields of law in which the lawyer practices.

The proper motivation for commercial publicity by lawyers lies in the need to inform the public of the availability of competent, independent legal counsel. The public benefit derived from advertising depends upon the usefulness of the information provided to the community or to the segment of the community to which it is directed. Advertising marked by excesses of content, volume, scope or frequency, or which unduly emphasizes unrepresentative biographical data, does not provide that public benefit. For example, undue prominence should not be given to a prior governmental position outside the context of biographical information. Similarly, the use of media whose scope or nature clearly suggests that the use is intended for self-laudation of the lawyer without concomitant benefit to the public does not serve the public need. Improper advertising may hinder informed selection of competent, independent counsel, and advertising involving excessive cost may unnecessarily increase fees for legal services.

EC 2-8A Advertisements and other public communications should make it apparent that the necessity and advisability of legal action depends on variant factors that must be evaluated individually. Because of the individuality of each legal problem, public statements normally will be deceiving as to results previously achieved, general or average solutions, or expected outcomes. For example, it would be misleading to advertise a set fee for a divorce case without disclosing whether the particular lawyer will accept employment by every potential client for that fee. Advertisements or public claims that convey an impression that the ingenuity of the lawyer rather than the justice of the claim is determinative are similarly improper. Statistical data based on past performance or prediction of future success is deceptive because it ignores important variables. The context of factual assertions and opinions should be clearly evident in all public communications. It is improper to claim or imply an ability to influence a court, tribunal, or other public body or official by other than competent representation of a just cause. Commercial publicity and public communications should indicate the seriousness of undertaking any legal action. Not only must commercial publicity be truthful but its accurate meaning must be apparent to the lay person with no legal background. Any commercial publicity for which payment is made should so indicate.

EC 2-9 The traditional regulation of advertising by lawyers is rooted in the public interest. Competitive advertising through which a lawyer seeks business by use of extravagant, artful, self-laudatory or brash statements or appeals to fears and emotions could mislead and harm the lay person. Furthermore, public communications that would produce unrealistic expectations in particular cases and bring about distrust of the law and lawyers would be harmful to society. Thus, public confidence in our legal system would be impaired by such advertisements of professional services. The attorney-client relationship, being personal and unique, should not be established as a result of pressure or deceptions. The necessity of affording the public access to information relevant to legal rights has resulted in relaxation of the former restrictions against advertising by lawyers. Those restrictions have long been relaxed in regard to law lists, announcement cards and institutional advertising and in certain other respects. Historically, those restrictions were imposed to prevent deceptive publicity that would mislead laypersons, cause distrust of the law and lawyers, and undermine public confidence in the legal system, and all lawyers should remain vigilant to prevent such results. Only unambiguous information relevant to a lay person's decision regarding his legal rights or his selection of counsel is appropriate in public communications.

EC 2-10 The Disciplinary Rules recognize the value of giving assistance in the selection process through forms of advertising that furnish identification of a lawyer while avoiding falsity, deception, and misrepresentation. All publicity should be evaluated with regard to its effect on the layperson with no legal experience. The layperson is best served if advertisements only identify the lawyer and his location, indicate the fields of law in which the lawyer practices, contain no misleading fee information or emotional appeals, and emphasize the necessity of an individualized evaluation of the situation before conclusions as to legal needs and probable expenses can be made. The attorney-client

relationship must result from a free and informed choice by the lay person. Unwarranted promises of benefits, overpersuasion, or vexations or harassing conduct are improper.

EC 2-11 The name under which a lawyer conducts his practice may be a factor in the selection process. The use of a name which could mislead lay persons concerning the identity, responsibility, and status of those practicing thereunder is not proper. For many years some law firms have used a firm name retaining one or more names of deceased or retired partners and such practice is not improper if the firm is a bona fide successor of a firm in which the deceased or retired person was a member, if the use of the name is authorized by law or by contract, and if the public is not misled thereby. However, the name of a partner who withdraws from a firm but continues to practice law should be omitted from the firm name in order to avoid misleading the public.

EC 2-12 * * *

EC 2-13 * * *

EC 2-14 In some instances a lawyer confines his practice to a particular field of law. In the absence of state controls to insure the existence of special competence, a lawyer should not be permitted to hold himself out as a specialist or as having official recognition as a specialist, other than in the fields of admiralty, trademark, and patent law where holding one's self out as a specialist historically has been permitted. A lawyer may, however, publicly indicate the fields of law in which he practices.

EC 2-15 * * *

DR 2-101. Publicity and Advertising.

- (A) A lawyer shall not, on behalf of himself, his partner, or associate, or any other lawyer affiliated with him or his firm, use or participate in the use of any form of public communication containing a false, fraudulent, misleading, deceptive or unfair statement of claim. A "public communication" as used herein includes, but is not limited to, communication by means of television, radio, motion picture, newspaper, book, law list or legal directory.
- (B) A false, fraudulent, misleading, deceptive or unfair statement or claim includes a statement or claim which:
- (1) contains a misrepresentation of fact;
 - (2) is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts;
 - (3) contains laudatory statements about a lawyer;
 - (4) is intended or is likely to create false or unjustified expectations of favorable results;
 - (5) implies unusual legal ability, other than as permitted by DR 2-105;
 - (6) conveys the impression that the lawyer is in a position to influence improperly any court, tribunal, or other public body or official;

- (7) is intended or likely to result in a legal action or a legal position being taken or asserted merely to harass or maliciously injure another;
- (8) is intended or is likely to appeal primarily to a lay person's fears, greed, desires for revenge, or similar emotions;
- (9) contains other representations or implications that in reasonable probability will cause an ordinary, prudent person to misunderstand or be deceived.

(C) A lawyer shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity unless the fact of compensation is made known in such publicity.

(D) If a paid advertisement is communicated to the public by use of radio or television, it shall be pre-recorded, approved for broadcast by the lawyer, and a recording of the actual transmission shall be retained by the lawyer.

DR 2-102. Professional Notices, Letterheads, Office and Law Lists.

(A) A lawyer or law firm may not use a professional card, professional announcement card, office sign, letterhead, telephone directory listing, law list, legal directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, deceptive or unfair within the meaning of DR 2-101 (B).

(B) A lawyer shall not practice under a name that is misleading as to the identity, responsibility or status of those practicing thereunder, or is otherwise false, fraudulent, misleading, deceptive or unfair within the meaning of DR 2-101 (B), or is contrary to law. However, the name of a professional corporation or professional association may contain "P.C." or "P.A." or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. A lawyer who assumes a judicial, legislative, or public executive or administrative post or office shall not permit his name to remain in the name of a law firm or to be used in professional notices of or public communication by the firm during any significant period in which he is not actively and regularly practicing law as a member of the firm, and during such period other members of the firm shall not use his name in the firm name or in professional notices of or public communications by the firm.

(C) A lawyer shall not hold himself out as having a partnership with one or more other lawyers unless they are in fact partners.

(D) A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions;

however, the same firm name may be used in each jurisdiction.

- (E) Nothing contained herein shall prohibit a lawyer from using or permitting the use of, in connection with his name, an earned degree or title derived therefrom indicating his training in the law.

DR 2-103. Recommendation or Solicitation of Professional Employment.

- (A) A lawyer shall not recommend employment or assist another person in recommending employment, as a private practitioner, of himself, his partner, or associate to a non-lawyer who has not sought his advice regarding employment of a lawyer, except that if success in asserting rights or defenses of his clients in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept employment from those he is permitted under applicable law to contact for the purpose of obtaining their joinder.
- (B) A lawyer shall not knowingly assist an organization that furnished or pays for legal services to others to promote the use of his services or those of his partner, or associate, or any other lawyer affiliated with him or his firm, as a private practitioner, if:
- (1) the promotional activity involves use of a statement or claim that is false, fraudulent, misleading, deceptive or unfair within the meaning of DR 2-101 (B); or
 - (2) the promotional activity involves the use of coercion, duress, compulsion, intimidation, threats, unwarranted promises of benefits, overpersuasion, overreaching, or vexations or harassing conduct.
- (C) A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client, or as a reward for having made a recommendation resulting in his employment by a client, except that he may pay for publicity and advertising permitted by DR 2-101 and the usual and reasonable fees or dues charged by a lawyer referral service operated, sponsored, or approved by a bar association.
- (D) A lawyer shall not accept employment when he knows or it is obvious that the person who seeks his services does so as a result of conduct prohibited under this Disciplinary Rule.

DR 2-104 Suggestion of Need of Legal Services.

- (A) A lawyer who has given unsolicited advice to a lay person that he should obtain counsel or take legal action shall not accept employment resulting from that advice if:
- (1) The advice embodies or implies a statement or claim that is false, fraudulent, misleading, deceptive or unfair within the meaning of DR 2-101 (B); or
 - (2) The advice involves the use by the lawyer of coercion, duress, compulsion, intimidation, threats, unwarranted promises of benefits, overpersuasion, overreaching, or vexations or harassing conduct.

Description

DR 2-105. Limitation of Practice.

out

- (A) A lawyer shall not hold himself, publicly as, or imply that he is, a recognized or certified specialist, except as follows:
 - (1) A lawyer admitted to practice before the United States Patent Office may use the designation "Patents," "Patent Attorney," or "Patent Lawyer," or any combination of those terms, on his letterhead and office sign. A lawyer engaged in the trademark practice may use the designation "Trademarks", "Trademark Attorney", or "Trademark Lawyer", or any combination of those terms, on his letterhead and office sign, and a lawyer engaged in the admiralty practice may use the designation "Admiralty", or "Admiralty Lawyer", or any combination of those terms, on his letterhead and office sign.
- (B) A statement or announcement that a lawyer practices in a particular area or field of law does not constitute a violation of DR 2-105 (A) if the statement, announcement, or holding out does not include a statement or claim that is false, fraudulent, misleading, deceptive or unfair within the meaning of DR 2-101 (B).

* * *

Definitions

As used in the Disciplinary Rules of the Code of Professional

Responsibility:

- (1) * * *
- (2) * * *
- (3) * * *
- (4) * * *
- (5) * * *
- (6) * * *
- (7) "A Bar association" includes a bar association of specialists as referred to in DR 2-105 (a) (1) or [(4)] (2).
- (8) "Qualified legal assistance organization" means [an office or organization of one of the four types listed in DR 2-103(D) (1)-(4), inclusive] a legal aid, public defender, or military assistance office; a lawyer referral service; or a bona fide organization that recommends, furnishes or pays for legal services to its members or beneficiaries, provided the office, service or organization receives no profit from the rendition of legal services, is not designed to procure financial benefit or legal work for a lawyer as a private practitioner, does not infringe the individual member's freedom as a client to challenge the approved counsel or to select outside counsel at client's expense, is not in violation of any applicable law, and has filed with the appropriate disciplinary authority at least annually a report with respect to its legal service plan. [That meets all the requirements thereof.]

and