

STATE OF MINNESOTA  
IN SUPREME COURT

No. \_\_\_\_\_

In the Matter of Petition of	)	PETITION TO AMEND MINNESOTA
Minnesota State Bar Association,	)	CODE OF PROFESSIONAL
a Minnesota nonprofit Corporation,	)	RESPONSIBILITY RESPECTING LAWYER
for Adoption of an Amendment to	)	ADVERTISING
Canon 2 of the Minnesota Code 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 90% of all practicing 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. On April 14, 1978, this Court issued a Temporary Order on the subject of Lawyer Advertising following the Petition by MSBA and hearing for amendment of the Minnesota Code of Professional Responsibility Respecting Lawyer Advertising. In its Order of April, 1978, this Court directed Petitioner and others to continue to monitor the subject of Lawyer Advertising as it developed in practice in the State of Minnesota, and to report to this Court with further recommendations after the expiration of one year following the Court's original Order.

3. In response to the Order of this Court of April, 1978, Petitioner continued to study and monitor the subject of Lawyer Advertising through its Advertising by Lawyers Committee and directed its Advertising by Lawyers Committee to report to its Board of Governors on March 23, 1979.

4. On March 23, 1979 the Advertising by Lawyers Committee submitted the attached report and recommendations for changes to Canon 2 of the Minnesota Code of Professional Responsibility. The report and recommended changes prepared by the Committee were approved by the Board of Governors on

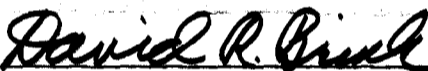
March 23, 1979, and said report and recommendations are attached hereto and incorporated herein by reference. Petitioner believes that these documents represent a very desirable "permanent" position on Lawyer Advertising in Minnesota so would appreciate the opportunity to submit a supplemental Statement or Brief reviewing the analysis and arguments supporting the position.

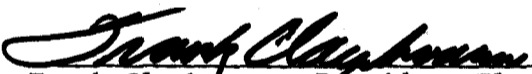
WHEREFORE, Petitioner respectfully requests this Court to amend Canon 2 of the Minnesota Code of Professional Responsibility in accordance with the recommendations attached hereto or such minor modifications thereof as may be further suggested by Petitioner or develop as a result of any hearing this Court may hold on this petition.

May 01, 1979

MINNESOTA STATE BAR ASSOCIATION  
A Minnesota Nonprofit Corporation

By Its Executive Committee:

  
\_\_\_\_\_  
David R. Brink, President

  
\_\_\_\_\_  
Frank Claybourne, President-Elect

## ADVERTISING BY LAWYERS COMMITTEE

### REPORT

The Committee was charged by MSBA President Brink with the responsibility of monitoring lawyer advertising in Minnesota and recommending to the Board of Governors what changes, if any, the Association should recommend to the Minnesota Supreme Court when the Court reviews the advertising question in April.

Initially, the Committee met with Walter Bachman, then Director of the Lawyers Professional Responsibility Board, to review with him the experience of his office under the regulations promulgated by our Court in April, 1978. Mr. Bachman emphasized problems with use of the word "specializing", with trade names, and with laudatory statements about the lawyer placing the ad, (e.g., "cheapest", "best", etc.).

After a well-attended Committee meeting in January, during which the Committee focused on the solicitation question, a draft of revisions to DR 2-101-105 was circulated to the Committee which was asked to respond provision by provision to the draft. The attached draft represents the consensus of the Committee which has been submitted to the Supreme Court by petition. On one issue there was a lack of Committee consensus, namely, direct mail solicitation. Direct mail solicitation is not included in the Committee draft.

Briefly summarized, the Committee recommended:

- (1) DR 2-101 be amended to include two provisions from last year's Proposal C which were omitted by the Court.
- (2) DR 2-102A is amended to conform DR 2-101, DR 2-102B, (E) and (F) are deleted.
- (3) DR 2-105 is amended to include a list of categories to assist a lawyer in describing his practice.

The overwhelming consensus of the Committee was to retain the present rules prohibiting in-person solicitation.

The following is a draft of the disciplinary rules incorporating the committee's recommendations:

#### DR 2-101 Publicity

- (A) A lawyer shall not, 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 containing a false, fraudulent, misleading or deceptive statement or claim; or which contains statements laudatory, or comparative in nature, about a lawyer; or is intended or likely to appeal primarily to a lay person's fears, greed, desires for revenge, or similar emotions;
- (B) A false, fraudulent, misleading or deceptive 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) Is intended or is likely to create false or unjustified expectations of favorable results;
  - (4) Conveys the impression that the lawyer is in a position to influence improperly any court, tribunal, or other public body or official;
  - (5) Is intended or likely to result in a legal action or legal position being taken or asserted merely to harass or maliciously injure another;
  - (6) Contains other representations or implications that in reasonable probability will cause an ordinary, prudent person to misunderstand or be deceived.

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

- (A) A lawyer or law firm shall not use professional cards, professional announcement cards, office signs, letterheads, telephone directory listings, law lists, legal directory listings, or similar professional notices or devices that contain statements which are false, fraudulent, misleading or deceptive as those terms are defined and limited in DR 2-101.
- (B) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that 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 the law firm or to be used in professional notices of 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 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, professional corporation, or professional association 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 that jurisdictional limitations exist 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) Delete.
- (F) Delete.
- DR 2-103 Retain in present form.**
- DR 2-104 Retain in present form.**
- DR 2-105. Description of Practice.**

(A) A lawyer shall not hold himself out publicly as a specialist or as limiting his practice, 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, in any public communication. A lawyer engaged in the trademark practice may use the designation "Trademarks," "Trademark Attorney," or "Trademark Lawyer," or any combination of those terms in any public communication; 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 in any public communication.
- (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 fields of law, plus any others duly authorized and approved by the Minnesota Supreme Court or any body to which it may delegate its authority from time to time:

Administrative Agency Matters.  
 Admiralty  
 Antitrust and Trade Regulations  
 Appeals  
 Banking Law  
 Civil (Non-Criminal) Trial  
 Civil Rights and Discrimination  
 Claims Against Government  
 Constitutional Law  
 Consumer Claims and Protection  
 Corporate and Business Law  
 Corporate Finance and Securities  
 Criminal and Traffic Changes  
 Debtor-Creditor and Bankruptcy  
 Education  
 Entertainment and Sports  
 Environmental Law  
 Divorce, Adoption and Family Matters  
 General Practice  
 Health Care and Mental Health  
 Immigration and Customs  
 Insurance  
 International and Foreign Law  
 Labor Law  
 Legislation and Legislative Appearances  
 Military Law  
 Municipal and Local Government Law and Finance  
 Natural Resources  
 Patent, Trademark and Copyright  
 Pension, Profit Sharing and Employee Benefits  
 Personal Injury and Property Damage  
 Public Utility Matters  
 Taxation  
 Real Estate  
 Transportation  
 Wills, Estates and Estate Planning  
 Workers' Compensation

A lawyer who (or a law firm which) does not practice in all aspects of any one of such fields of law or does not wish to state that he (or it) so practices shall state the field, but shall use brief, appropriate and accurate words of limitation or qualification immediately following the title of the field of law, which, if written, shall be in parentheses or otherwise clearly shall qualify the title used.

The primary purpose of requiring use of such labels for fields of law practice is to assist the public in finding and comparing lawyers who practice in the same fields and to make statements as to their fields of practice readily comprehensible by the public, and therefore, minor departures from such use by lawyers, if necessary in a good-faith effort to describe their practices accurately are not infractions of this section.

- (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 by the Minnesota Supreme Court or any body to which it may delegate its authority from time to time, may hold himself out as such, but only in accordance with such plan; law firms may disclose publicly only such recognition of individual members.

Respectfully submitted,  
 Peter J. Schmitz, Chairman