

LAWYER ADVERTISING – MINNESOTA SUPREME COURT ACTION

By

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Prior to the 1977 *Bates* decision, virtually all advertising and solicitation was prohibited. In April, 1978, the Minnesota Supreme Court amended DR 2-101 of the Code of Professional Responsibility, to permit certain forms of advertisements. After a period of experimentation, the Court again considered the advertising question and has recently promulgated various amendments to the Minnesota Code of Professional Responsibility concerning attorney advertising.

The Court's May 30, 1980, Order has significantly amended DR 2-101 through DR 2-105. There are many changes, and some of them alone would warrant an entire column. I can only attempt to summarize some of the more significant changes and suggest that the Order itself be consulted for further information.

The most significant effects of the Court's Order are as follows:

1. Advertising continues to be generally permitted so long as the lawyer does not engage in any false, fraudulent, misleading or deceptive statement or claim. Virtually any media, including television, radio, newspapers, directories, and general direct mail may be used. It is assumed that lawyers who advertise will do so responsibly. The standard of regulation is, however, truth or falsity, rather than "taste" or "dignity".
2. In-person and telephonic solicitation of cases continues to be prohibited. Lawyers are prohibited from hiring or requesting someone to do what they themselves cannot do. Thus, the use of runners continues to be prohibited, as does the payment of a reward to someone for recommending the lawyer. In a major change, however, written solicitation of cases is permitted so long as the written communication does not contain a false, fraudulent, misleading, or deceptive statement or claim.
3. A laundry list of regulations under DR 2-102 concerning professional cards, announcement cards, office signs, letterheads, telephone directory listings, law lists, legal directory listings, and similar professional notices or devices, has been deleted. A simple regulation that such material refrain from including false, fraudulent, misleading, or deceptive statements has been substituted.
4. DR 4-102 admonishes lawyers that they should not engage in the practice of law under a name that is false, fraudulent, misleading, or deceptive. In general, lawyers will be in compliance with this rule if they abide by the pre-existing rules concerning firm names. There is one major exception, however, concerning trade names (e.g., Hennepin-Lake Law Offices). The express prohibition against the practice of

law under trade names has been repealed. Lawyers will apparently be permitted to practice under trade names so long as the trade name is not false, fraudulent, misleading, or deceptive.

5. Lawyers may not use any false, fraudulent, misleading, or deceptive statements, claims, or designations in describing their practices or in indicating the practices' natures or limitation. Lawyers are also expressly prohibited from holding themselves out as specialists until the Supreme Court adopts rules or regulations permitting them to do so. See DR 2-105.

6. The right to engage in private legal services plans has been broadened considerably. The lawyer must not permit any interference with the exercise of professional judgment in behalf of the member or beneficiary. The lawyer must also recognize the member or beneficiary for whom the services are rendered and not the organization as the client. Finally, the lawyer must not know, and it must not be obvious, that the organization has violated any applicable court rule, statutes, or regulations, or is engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation concerning its legal service operations.

The Lawyers Professional Responsibility Board, at its June 18, 1980, meeting, amended Formal Opinion No. 8, to make it consistent with the new rules promulgated by the Supreme Court. Formerly, Opinion No. 8 had, among other things, prohibited the listing of paralegal employees on the law office letterhead. The portion of Opinion No. 8 dealing with this subject has now been amended to read as follows:

"Legal assistants, or other paralegal employees, may be listed on professional cards, professional announcement cards, office signs, letterheads, telephone directory listings, law lists, legal directory listings, or similar professional notices or devices, so long as the paralegals are clearly identified as such, and so long as no false, fraudulent, misleading, or deceptive statements or claims are made concerning said paralegals, their status and authority, or their relationship to the firms by which they are employed. Paralegals may use business cards so identifying themselves, which cards carry the law firm's name and address."

The foregoing changes in attorney advertising and solicitation rules are another indication that the profession is in the midst of profound changes.