Access to Legal Services Through Advertising and Specialization

Robert H. Staton
Indiana Court of Appeals
Comment

Access to Legal Services Through Advertising and Specialization

HON. ROBERT H. STATON*

In an American society which has grown in population from a few million to several hundred million, there is an urgent societal need for ready access to legal services. Much of this need has been generated by stratified governmental regulations which affect every conceivable movement of the individual and his family. These extensive government regulations coupled with an almost equal number of legislative enactments have completely extinguished the "simple life" of the past. In this highly complex, urbanized society, it has been estimated that seventy percent of the population does not have adequate access to legal services. This group consists principally the middle class—those persons who cannot qualify for free legal services but find that there is little reserve in the family budget for legal fees.

Some minimal efforts have been made to solve this festering societal need for ready access to affordable legal services. Pre-paid legal services is one effort which has not yet reached its full potential though other efforts have been made by state bar organizations. The American Bar Association has

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*Presiding Judge, Indiana Court of Appeals.
1R. POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES 242 (1953).
4See Meserve, Our Forgotten Client: The Average American, 57 A.B.A.J. 1092 (1971). In his discussion of prepaid legal services, Robert W. Meserve, who was then President-elect of the American Bar Association, noted: "The organized Bar now must move to make the necessary changes in the way legal services are made available to the client of moderate means because there are increasing and significant developments [towards this end] outside the organized profession." Id. at 1094. He further predicted in his article that, if we do not put forth this concerted effort, fundamental changes in the mode of practicing law will be determined to our disadvantage and to the disadvantage of our society as a whole by forces outside of the profession not restrained by professional, ethical requirements. Changes are already occurring in response to pressures for more adequate systems of making legal services available. We must participate in planning and reshaping a better system of providing our services so that the public will be assured of adequate and professionally sound services.
Id. at 1092.
5For prepaid legal services under the sponsorship of the Indiana State Bar Association see 21 RES GESTAE 477 (1977).
conducted surveys and appointed special committees to make factual findings and to make policy recommendations; its 1978 Law Day theme is, "The Law: Your Access to Justice." Inadequate access to legal services for the majority of the American people leaves little cause for celebration. Without adequate access to affordable legal services for the middle class majority, there can only be justice for the minority of the American society. Each day this problem becomes more visible, more urgent, and more immediate.

The immediacy of the problem has been magnified recently by the United States Supreme Court opinion in *Bates v. State Bar of Arizona* which permits lawyers to advertise. Justice Blackmun's majority opinion in which Justices Brennan, White, Marshall, and Stevens concurred, underscored the public's access to cost information as necessary for an intelligent selection of legal services. Such cost was the reason given for not consulting a lawyer by 47.6% of the families interviewed in one survey; however, fear of high costs appears to lack a factual basis. In another survey, the public estimated the cost of preparing a "simple will" to be ninety-one percent more than the actual cost. In the same survey, the cost estimated by the public for reading and advising upon the rights and duties of the parties as set forth in a two page installment sales contract exceeded actual cost by 340%; the cost estimate for a thirty minute consultation exceeded actual cost by 123%. These surveys were taken before the *Bates* opinion and without regard to "routine" legal services.

Following *Bates* there were very few lawyers who wanted to advertise the prices of their routine legal services. On August 5, 1977, *The New York Times* reported: "Lawyers around the country have begun slowly and cautiously testing the uncharted waters of advertising since the Supreme Court ruled in June that, for the first time in 69 years, they could publicize their services and probable fees." In the *Chicago Daily News* on the same day Don Wycliff reported: "Lawyers, generally regarded as a conservative lot, are living up to that image in reaction here to the Supreme Court's recent decision allowing them to advertise their prices and services. In fact, in the Chicago area they're going at it as gingerly as a swimmer dipping his toes into water he suspects may be ice cold." Most of the ads just advised the public as to what kind of services the lawyer

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8See PETITION OF THE BOARD OF GOVERNORS OF THE DISTRICT OF COLUMBIA BAR FOR AMENDMENTS TO RULE X OF THE RULES GOVERNING THE BAR OF THE DISTRICT OF COLUMBIA (1976), wherein the study was reported, as cited in *Bates* 433 U.S. at 370 n.22.

9See 433 U.S. at 370 n.22.

10See id. at 368.


rendered to the public. Rance Crain, editor-in-chief of Advertising Age, a national weekly advertising newspaper which reports marketing trends, said, "There is little need to list prices. . . The big benefit of advertising for lawyers is just to say that they are in business, that they are available, and that here are the kinds of work they do. Advertising probably will help the whole image of the law profession by helping people learn just what it is that lawyers do."14

At the American Bar Association meeting in Chicago held on August 10, 1977, S. Shepard Tate, Chairman of the Task Force on Lawyer Advertising, submitted proposed guidelines for lawyer advertising.15 The guidelines finally adopted by the American Bar Association were to be circulated to the highest courts of all states and to the state regulatory agencies for their consideration. These guidelines were only recommended guidelines and were to be amended by the various states as they deemed necessary. Following the submission of this proposal the Indiana State Bar Association's Advertising Committee met and revised the American Bar Association's guidelines so that they would conform with Indiana's Code of Professional Responsibility. These revised guidelines were finally submitted to the House of Delegates of the Indiana State Bar Association at the 1977 Fall Meeting of the Association with a report of the Lawyer Advertising Committee of the Indiana State Bar Association which is attached as Appendix A. Several amendments were made by the House of Delegates to the guidelines before they were approved. The Indiana Supreme Court adopted the guidelines recommended by the Indiana State Bar Association effective January 1, 1978. Its order is reproduced as appendix B.

Several fundamental concepts should be reviewed when examining the new advertising guidelines adopted by the Indiana Supreme Court. First, the "limited practice" concept is one which has been fostered by law list publishers to assist their subscribers to locate the most qualified lawyer in a particular geographic area. Although the guidelines submitted to the states by the American Bar Association carried forward this concept of limited practice, the Indiana State Bar Association did not recommend its adoption by the Indiana Supreme Court. There are several reasons for deleting this concept from the ABA guidelines.

One reason is the increasing number of approved specialization programs by state supreme courts.16 The term "limited practice," used in these specialization programs to designate competency, has become a term of art.

14Ibid. at 1057.
16The only source which collects information by state is the Specialization Committee of the American Bar Association in Chicago. A member of the Specialization Committee who is well acquainted with the material and source is Otto F. Schug, Attorney at Law, 1220 Washington Street, Columbus, Indiana 47201, Telephone 1-812-376-1915. Mr. Schug is also the Chairman of the Indiana State Bar Association's Committee on Specialization. See also note 23 supra.
In many of the specialization programs, "limited practice" means that the lawyer is a specialist in one or more fields of law. The state supreme court recognizes this special competency of the lawyer by formal certification or by permitting the lawyer to hold himself out to the public as a specialist. In either instance, the lawyer is permitted to advertise his specialty to the public. Recognition by the state supreme court as a specialist has two purposes: (1) to assist the public in finding a lawyer who would be best qualified to handle the legal problem; and (2) to avoid any possible deception through lawyer advertising as to the competency of the lawyer in a particular field of law.

A second reason for not adopting the "limited practice" concept is that any attempt to incorporate it would obviously create a conflict with any meaningful specialization program which might be adopted later by the Indiana Supreme Court. Therefore, a distinction exists between a lawyer who confines his practice to one or more fields of law and the lawyer who specializes in one or more fields of law. The amendment to Canon 2, EC 2-14, effective January 1, 1978 stresses the distinction as follows:

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, other than in the fields of admiralty, trademark, and patent law where a holding out as a specialist historically has been permitted.17

To make the distinction complete between a "limited practice" as it identifies a specialist on the one hand and a lawyer who merely confines his practice to certain fields of law on the other hand, Disciplinary Rule 2-105 was adopted. It provides:

DR 2-105 Limitation of Practice.
(A) A lawyer shall not hold himself out publicly as a specialist, or as limiting his practice, except:
   (1) A lawyer admitted to practice before the United States Patent and Trademark Office may use the designation 'Patents,' 'Patent Attorney,' '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.
   (2) 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.18

17See Appendix B.
18See id.
The concept of "limited practice" which has now become a term of art should be avoided in lawyer advertising since it transcends the ordinary and common meaning. In Indiana, the "limited practice" concept should be avoided until the Indiana Supreme Court adopts a specialization program which will take into consideration the concept of quality.

The Bates opinion excludes the quality of legal services concept from its consideration for lawyer advertising. It states:

First, we need not address the peculiar problems associated with advertising claims relating to the quality of legal services. Such claims probably are not susceptible to precise measurement or verification and, under some circumstances, might well be deceptive or misleading to the public, or even false.19

What Bates did singularly consider was a very narrow issue: "The heart of the dispute before us today is whether lawyers also may constitutionally advertise the prices at which certain routine services will be performed."20 Therefore, a meaningful specialization program will be needed to fill the hiatus caused by the exclusion of quality by Bates so that advertising will give the full access of legal services to the public. Any advertising scheme which does not provide for the quality concept will constantly be confronted with the problem of deceptive advertising and overreaching under the code of professional responsibility. Furthermore, the access problem is more pronounced in the area of where the public can find a competent lawyer to handle a particular legal problem than in the area of cost.

Canon 2 of the Code of Professional Responsibility has been amended by the Indiana Supreme Court to avoid certain references to quality. One example is

EC 2-9 which in part provides: Examples of information in law advertising that would be deceptive includes 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.21

The Indiana Judicial Council on Legal Education and Competence at the Bar has been studying the suitability of a specialization program for Indiana. At the 1977 Fall Meeting of the Indiana State Bar Association, it joined the Association's Specialization Committee Chairman in presenting a seminar on specialization.22 Five articles published in the Indiana State Bar Association

20Id. at 367-68.
21See Appendix B.
22See Appendix C.
Journal, *Res Gestae*, were used as an introductory text to the specialization seminar. At the seminar, six panelists explained the certification programs and the self-designation programs of specialization which have been adopted in California, Texas, Florida, and New Mexico. Other similar specialization programs which have been approved by state supreme courts in other states were also discussed by the panel. An inherent part of any specialization program is the advertising of specialized legal services and making those services more accessible to the public. The Indiana Judicial Council on Legal Education and Competence at the Bar is conducting a specialization survey of all Indiana lawyers registered to practice law. This survey will be completed in January, 1978. After the results of the survey have been determined, The Indiana Judicial Council will make its recommendations to the Indiana Supreme Court.

The price information and "limited practice" concepts of lawyer advertising are only a part of the problem of making legal services more accessible to the majority of the public. In the Bates opinion, it was noted that: "The absence of advertising may be seen to reflect the profession's failure to reach out and serve the community: studies reveal that many persons do not obtain counsel even when they perceive a need because of the feared price of services or because of an inability to locate a competent attorney." The public's "inability to locate a competent attorney" is not only reflected in the surveys referred to by the Bates opinion but by the increase in insurance premiums being paid for malpractice programs in an effort to solve the problem of the public's inability to find a competent lawyer. A specialization program should have at least three major purposes: (1) to increase the access of the public to specialized legal services; (2) to promote quality specialized legal services by establishing minimum standards of competence; and (3) to reduce the cost of specialized legal services to the middle class or the seventy per cent

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24See Appendix C.
25Specialization programs have been approved in Arizona, Colorado, Louisiana, Minnesota, Nebraska, Nevada, Oklahoma, South Carolina, and Washington. See notes 16 and 23 supra.
26See Appendix C.
27In Bates, the Supreme Court, per Mr. Justice Blackmun, noted:

The preliminary release of some of the results of a survey conducted by the ABA Special Committee to Survey Legal Needs in collaboration with the American Bar Foundation reveals that 48.7% strongly agreed and another 30.2% slightly agreed with the statement that people do not go to lawyers because they have no way of knowing which lawyers are competent to handle their particular problems. 3 Alternatives: Legal Services & the Public, January 1976, 15. See B. Curran & F. Spalding, *The Legal Needs of the Public* 96 (Preliminary Report 1974) (an earlier report concerning the same survey). Although advertising by itself is not adequate to deal with this problem completely, it can provide some of the information that a consumer needs to make an intelligent selection.

433 U.S. at 370-71 n.23 (1977).
28Id. at 370 n.22.
29See note 25 supra & text accompanying.
referred to in the *Bates* opinion. The American Bar Association's Special Committee on Specialization reported that:

Specialization permits the lawyer to make the most efficient use of his time, skills and knowledge. The complexity of our society and the increasing participation therein by government ... [make] it clear that no individual lawyer can be proficient in the performance of all legal tasks. We believe that an ever-expanding economy will inevitably lead to an ever-increasing pattern of specialization by practicing lawyers in a limited number of the various fields of law practice. It also appears to us that an increase in the number of lawyers who specialize in and of itself would improve the overall quality of total services rendered by lawyers to their clients, simply because those lawyers who specialize will have an opportunity to concentrate their experience and their continuing legal education.

The policy of the American Bar Association has been to let the several states initiate and develop specialization programs rather than suggesting a national specialization program. Disciplinary Rule 2-105(A)(4) provides:

(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 rules prescribed by that authority.

The rationale for Disciplinary Rule 2-105(A)(4) is set forth in EC 2-14 which states that:

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 special training or ability, other than in the historically excepted fields of admiralty, trademark, and patent law.

Therefore, every state supreme court will have to adopt its own specialization program and make the necessary adjustments required for lawyer advertising.

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30 See note 2 supra.

31 The ABA Special Committee on Specialization reported to the ABA House of Delegates at its 1969 mid-Winter meeting that several states are now actively considering whether or not they should promulgate their own plans for the certification and regulation of legal specialists. Among those states are California, Colorado, Florida, Pennsylvania, Virginia, and Wisconsin. In fact, at least twenty-five state bar associations have committees studying the matter of specialization.

ABA SPECIAL COMMITTEE ON SPECIALIZATION, COMMITTEE AND SECTION REPORTS TO THE HOUSE OF DELEGATES, Rep. 33, at 9 (1969). It should be noted that a number of those states as well as others have adopted programs. See note 25 supra & text accompanying.

32 See id. National specialization plan was deferred by ABA House of Delegates at the 1969 mid-winter meeting.

33 ABA CANONS OF PROFESSIONAL RESPONSIBILITY No. 2.

34 Id.
This will be a most formidable task, since specialization is directly related to advertising. Not only will some form of certification be necessary for the specialist, but the price of "routine" specialized services may have to be considered.\(^5\)

Most specialization programs considered before Bates limited advertising to the yellow pages of telephone directories. As a matter of policy, most telephone companies do not permit the advertising of prices in their directories. One reason for this policy is obviously the elapse time between the publication of directories. This elapse time is usually twelve months; any price given to the telephone company while it is preparing for the publication and distribution of its directories might likely be obsolete before the next directory could be published. If a policy were adopted which would provide for a more frequent publication of telephone directories, the cost of advertising would undoubtedly be increased and so would the cost of legal services. An alternative may be the publication of a directory by the organized bar of each state.

Publication of prices for "routine" legal services may be binding on the lawyer for different periods of time after publication. The periods of time are set forth in Indiana's new DR 2-101(E) which became effective January 1, 1978. It provides:

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(E) \text{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.}\]

\[^6\]

If a directory is published without any fixed date for a succeeding issue to be published, the lawyers listing prices for their services would be bound to

\(\text{In concurring in part and dissenting in part from the majority opinion in Bates, Mr. Justice Powell observed:}

What legal services are "routine" depends on the eye of the beholder. A particular service may be quite routine to a lawyer who has specialized in that area for many years. The marital trust provisions of a will, for example, are routine to the experienced tax and estate lawyer; they may be wholly alien to the negligence litigation lawyer. And what the unsophisticated client may think is routine simply cannot be predicted.

433 U.S. 250, 392 n.3 (Powell, J., concurring in part and dissenting in part).

\[^6\]\(\text{See Appendix B.}\)
the price advertised for at least a year. In an economy with uncertain inflationary problems, price advertising of legal services could become disastrous.

Price is not the only difficulty with directory advertising. The listing of legal services in telephone directories by states which have specialization programs has been plagued by "legalese". Legalese is the language of the legal profession, and it is seldom understood by the lay public. This is especially true of the members of the lay public who have never had an occasion to seek a lawyer's advice. Even one visit to a lawyer's office does not increase the understanding of legalese for the lay public sufficiently to understand such directory designations as "Consumer Law", "Domestic Relations", and "Wrongful Death." An American Bar Association survey revealed that 35.8% of the adult population has never visited a lawyer for legal services and that another 27.9% of the adult population has visited a lawyer only once for legal services. Any published directory which is intended to make legal services more accessible to those members of the public who have no or very little experience with the legal profession, should designate the legal services being made available in the language of the lay public. An ideal approach would be to make a preliminary language study so that the legal service could be identified with the most frequently understood designation. Of course, there are some common sense designations which could be used: "Divorce"; "Custody of Child"; "Changing Divorce Decree"; "Support in Arrears"; "Adoptions"; "Wills"; "Estate Planning"; "Estate Administration"; "Estate, Claims Against"; "Estate Taxes-Return Preparation"; "Corporate Taxes"; "Taxes-Personal Returns"; "Workmen's Compensation Claims"; "Accidents", with subheadings such as "Automobile", "Goods Purchased", "Pedestrian"; and many others which relate to the understanding of the lay public. Admittedly, changes of designations for certain legal services would have to be made where experience dictated that a change is necessary.

The District of Columbia Bar has published a directory which attempts to make legal services more accessible to the lay public. Most of the prices quoted in the directory relate to initial consultations and hourly rates charged for "out of court" and "in court" legal services. Even some of the dissenters in Bates agreed that these advertised prices would not be misleading. Justice Powell in his opinion which concurred in part and dissented in part from the majority opinion written by Justice Blackmun, stated:

The Court observes, and I agree, that there is nothing inherently misleading in the advertisement of the cost of an initial consultation. Indeed, I would not limit the fee information to the initial conference. Although the skill and experience of lawyers vary so widely as to negate any equivalence between

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9See ABA SPECIAL COMMITTEE TO SURVEY LEGAL NEEDS, 3 ALTERNATIVES: LEGAL SERVICE & THE PUBLIC 15 (1976).
hours of service by different lawyers, variations in quality of service by duly licensed lawyers are inevitable. Lawyers operate, at least for the purpose of internal control and accounting, on the basis of specified hourly rates, and upon request—or in an appropriate case—most lawyers are willing to undertake employment at such rate. The advertisement of this rate in an appropriate medium, duly designated, would not necessarily be misleading if this fee information also made clear that the total charge for the representation would depend on the number of hours devoted to the client's problem—a variable difficult to predict. Where the price content of the advertisement is limited to the finite item of rate per hour devoted to the client's problem, the likelihood of deceiving or misleading is considerably less than when specific services are advertised at a fixed price.\(^9\)

In the front of the District of Columbia Bar Directory, there is a disclaimer as to the accuracy of the information concerning “… lawyer's fees, areas of practice, or experience…”, and it further warns the public to “Be certain to discuss 1977 fee schedules with your lawyer in the event that they may differ from the published information.”\(^4\) Under “Areas of Legal Practice” this designation of legal services is used “ADMINISTRATIVE LAW AND AGENCY PRACTICE (including Aviation and Air Transportation Law, Communications Law, Consumer Product Safety, Energy and Environmental Law, and Freedom of Information Act)”. Several of the listings under this heading are as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Birth Date</th>
<th>Address</th>
<th>Bar Admissions</th>
<th>Type of Practice</th>
<th>Fee for Initial Office Consultation</th>
<th>Other Fee Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>BEAR, ROBERT HARLEY</td>
<td>05/26/50 2600 Virginia Avenue, N.W., #300, Washington, DC 20037 333-4500</td>
<td>Bar admissions: DC-75; US Ct. of ClA</td>
<td>General practice with emphasis on civil and criminal litigation before courts and federal agencies.</td>
<td>None</td>
<td>I charge $20 per hour for work performed out of court and $30 per hour for court appearances and other hearing appearances. Upon request, I will quote in most cases a flat fee.</td>
<td></td>
</tr>
<tr>
<td>BEITER, NANCY RANDALL</td>
<td>12/13/46</td>
<td>Law Offices of George T. Qualley (2 Atys.) Suite 320, 1819 H Street, N.W., Washington, D.C. 20006 223-8797</td>
<td>Bar admissions: DC-74</td>
<td>General Practice</td>
<td>None</td>
<td>$30 per hour for most types of work, $50 per hour for specialized work practicing before the Interstate Commerce Commission.</td>
</tr>
</tbody>
</table>

\(^9\) 350, 399-400 (1977) (Powell, J., concurring in part and dissenting in part).  
\(^4\) See note 38 supra at iv; note 36 supra & text accompanying.
Some flat fees for domestic relations or criminal cases. $150 per day in court or before Admin agency.

Languages: Spanish

Education: B.A. Manhattanville College, Purchase, New York, J.D. George Washington University, Washington, D.C.41

The District of Columbia Lawyer Directory includes the following explanation:

This Directory of lawyers and legal service organizations has been compiled by the District of Columbia Bar as an experimental effort to help people find lawyers.

This Directory lists lawyers in eighteen generally recognized areas of legal practice. Each lawyer chose the area or areas of practice where he or she is listed and provided the information about himself or herself. Lawyers within each particular area of legal practice are listed alphabetically. Information about the listed lawyers—such as length and kind of legal experience, fee information, educational background, and other professional information—is included so that a person seeking legal assistance will be able to make comparisons.

The District of Columbia Bar does not guarantee the accuracy or completeness of the information listed. Each lawyer is personally responsible for the information that he or she has given. No group of lawyers at this time is formally recognized as 'specialists' in the District of Columbia, except for patent and trademark lawyers.

In addition there is a list of legal services organizations which furnish fee or reduced cost legal services to persons who cannot afford the full cost of legal services. Finally, there is a list of other service organizations which do not provide legal services but do help people with problems.42

It has been suggested that a separate directory be prepared for the specialist.43 The services of a specialist are used by the more sophisticated lay public. These members of the public have used the services of a lawyer many times and are familiar with the legalese used by the legal profession. They are usually acquainted with the specialized legal service need to help them solve their problem. What they lack is the information to find the lawyer who can render the specialized legal service. General business corporations, banks, savings and loan companies, public utilities, land developers, and real estate brokers are among those members of the lay public who know the kind of specialized legal service needed. They might need a specialist on zoning, estate planning, corporate taxation, or even legislative drafting for a proposed piece of legislation. Perhaps a lawyer engaged in the general practice

41See note 38 supra at 3.
42See id. at 1.
might need to consult a specialist regarding a problem in a field of law in which he has limited knowledge. This would permit the general practitioner to render more competent legal service. Additionally, the time spent researching unfamiliar legal problems could be used to serve other clients and hopefully reduce the cost to the client.

The public's lack of access to legal services is primarily a problem which should be solved by the legal profession. Advertising in the newspapers and other media may be too expensive. It may increase rather than decrease the cost of legal services. Each lawyer has a limited number of hours each day that he can sell to the public. Directory advertising has many advantages. Cost is comparatively small since there is only one publication a year, and the directory can be placed directly in the hands of those members of the public who need legal services in contrast to the "shotgun" approach used in newspaper advertising. A single newspaper advertisement which informs the public that the directory is available upon request would be much more economical. Who will prepare the directory? The state bar association might be willing to take on the task. It would not only be serving its members but the public as well. If numerous directory publishers surface to perform the task, the information will not only be incomplete but confusing to the public.

In the light of the societal interest to be served, advertising can be either an "age of enlightenment" or a disaster for the legal profession. The Bates opinion does not define "routine" legal services. It merely states that "The only services that lend themselves to advertising are the routine ones: the uncontested divorce, the simple adoption, the uncontested personal bankruptcy, the change of name, and the like—. . .". If truly "routine" legal services do not exist, a conceptual compromise may be required to accomplish a more meaningful purpose—the avoidance of deceptive advertising. Certainly, the use of disclaimers should be used to avoid any overreaching on the quality of legal service. Furthermore, a constant vigilance should be maintained by the organized bar for necessary changes in advertising guidelines so that the public interest is served by making legal services more accessible.

Unfortunately, the legal profession in the past has approached solutions for the protection of the public with too much caution, and, as a result, too little progress has been made. However, as JUSTICE POWELL points out, infra, at 2716, the organized bar has recently made some reforms in this sensitive area and more appear to have been in the offing. Rather than allowing these efforts to bear fruit, the Court today opts for a draconian "solution" which I believe will only breed more problems than it can conceivably resolve.

APPENDIX A

REPORT OF THE
LAWYER ADVERTISING COMMITTEE
OF THE
INDIANA STATE BAR ASSOCIATION

Indianapolis, Indiana
October 15, 1977

(Nothing contained herein shall be construed as the action of the Indiana State Bar Association. Any opinions or recommendations herein expressed or made are those of the Committee submitting this report and do not necessarily reflect the views of the Association until such time as the Association has duly adopted them as Association policy.)

The Lawyer Advertising Committee was created by the Board of Managers to study and monitor various developments regarding proposed ethics and disciplinary rule changes arising nationally and in the states, and challenges to traditional rules by action in the courts.

The framework of its current studies has been (1) the decision of the United States Supreme Court of June 27, 1977, in Bates & O'Steen v. State Bar of Arizona, and (2) revisions in Canon 2 of the Code of Professional Responsibility adopted August 10, 1977, by the House of Delegates of the American Bar Association.

The committee's review of the Bates decision brought the conclusion that the current Canon 2 of the Rules of the Indiana Supreme Court, in effect, was inoperable in many of its substantive parts. Also it was concluded that it was an obligation of the Indiana Bar to work promptly toward giving advisory counsel to the Indiana Supreme Court to the end that Indiana lawyers would have guidance regarding the restrained advertising permitted.

Meanwhile, the Chief Justice of Indiana, Richard M. Givan, said in a public statement that the Bates decision will require the Indiana Supreme Court to revise its current Rules, and that the Court anticipates guidelines would be formulated and incorporated in its Rules by January, 1978.

Coincidental with a meeting of the Lawyer Advertising Committee on July 6, a mailgram message of the American Bar Association was received which requested that state authorities delay taking actions until proposals of an ABA Task Force on Lawyer Advertising could be considered by that organization's House of Delegates. The committee concurred in that request.

Proposed modifications in Canon 2 were adopted by the ABA House of Delegates on August 10. The text of that proposal immediately was supplied members of the Indiana committee. The committee met on August 18 for a section-by-section discussion of the proposal and recommendations to be made. The result is the exhibit attached to this report.

*Legal Implications of Bates & O'Steen v. State Bar of Arizona:*

While the Bates decision does not answer all questions, the following principles concerning lawyer advertising were set forth:
1. Advertising regulations adopted by state authorities are deemed to be a legitimate means of preserving professional integrity, and are exempt from the Sherman Act.

2. The traditional ban against lawyer advertising is contrary to the First Amendment. The five-member majority noted with "particular interest" the dissenting view in the terms of "the right of the public as consumers and citizens to know about the activities of the legal profession."

3. Appropriate regulations may be established to restrain false, deceptive or misleading advertising and to some extent control the time, place and manner of advertising.

4. A lawyer may advertise certain factual and fee information in print media, including the prices at which certain "routine" services will be performed.

5. The First Amendment overbreadth doctrine does not apply to commercial speech thereby limiting the holding of the Bates decision to the particular facts of the case.

6. Although the facts of the case dealt with newspaper advertising, Mr. Justice Powell notes in footnote 12 in his dissenting opinion, "[I]t is clear that today's decision cannot be confined on a principled basis to price advertisements in newspapers. No distinction can be drawn between newspapers and a rather broad spectrum of other means, for example, magazines, signs in buses and subways, posters, handbills and mail circulations. But questions remain open as to time, place, and manner restrictions affecting other media, such as radio and television." Similarly, the majority opinion at footnote 26 refers to the fact that certain information is already permitted in legal directories and telephone books, and states, "If the information is not misleading when published in a telephone directory, it is difficult to see why it becomes misleading when published in a newspaper."

Proposed Canon 2 Modifications:

The proposal may be described as "regulatory," rather than "directive." It would specifically authorize certain prescribed forms of lawyer advertising once it is adopted by the state authority. It would seek in advance to channel commercial announcements, but would rely on "after-the-fact" enforcement to discipline persons violating the regulation.

It is a constructive response to the goal recognized by the Supreme Court of providing consumers with needed information about lawyer services and their costs.

It retains many of the present disciplinary rules that specify the categories of information that can be published: name, field or fields of law practice, education, client reference, etc. It adds certain fee information: contingency fees, a range of fees for services, hourly rate, and fixed fees for "special legal services the description of which would not be misunderstood or deceptive." In all, 25 categories of information are given. [See DR 2-101(B).]

The proposal would not allow one-to-one solicitation, nor would it now permit the use of television, although permitting the use of radio with the messages prerecorded and approved for broadcast by the lawyer. [In the ABA discussions regarding radio, it was noted a large segment of the population is only marginally literate and does not normally read print media, but is exposed to electronic media regularly.]
ADVERTISING AND SPECIALIZATION

It permits statements as to one or more fields of law in which the lawyer or law firm practices, "using commonly accepted and understood designations and definitions." However, it does not permit statements that the practice is "limited" to one or more fields of law, nor statements that a lawyer or law firm "specializes" in a particular field of law practice. It recognizes the historical tradition of designations for patent and admiralty lawyers.

Monitoring Developments and Improving the Guidelines:

In ruling that the Constitution permits lawyers to advertise within restrained limitations, the Supreme Court recognized that the Bar has an important role to play:

"In sum, we recognize that many of the problems in defining the boundary between deceptive and non-deceptive advertising remain to be resolved, and we expect that the bar will have a special role to play in assuring that advertising by attorneys flows both freely and cleanly." [See slip Opinion at page 32.]

Because of the novelty of lawyer advertising and the limitations of the present disciplinary system, it is recommended that the Lawyer Advertising Committee of the Indiana State Bar Association be continued. The Committees should have the duty of monitoring developments at the local and state bar level, and evaluating the various systems adopted by other states toward the end that improved guidelines may be considered and recommended.

It is noted that administrative enforcement of Indiana's current Code of Professional Responsibility is lodged with the Disciplinary Commission of the Supreme Court of Indiana, and it is assumed that this designated authority will continue.

RECOMMENDATIONS:

The Lawyer Advertising Committee makes the following recommendations to the House of Delegates of the Indiana State Bar Association:

1. That the House of Delegates of the Indiana State Bar Association recommend to the Indiana Supreme Court the amendment of Canon 2 of the Indiana Code of Professional Responsibility to conform with the exhibit attached.

2. That the Lawyer Advertising Committee continue to be maintained, or be re-organized as the Board of Managers may determine as appropriate, to monitor developments at the local and state bar level, to evaluate the various systems adopted by other states, and to make recommendations with respect to improving guidelines on lawyer advertising.

Respectfully submitted,

/s/ Rabb Emison

Rabb Emison, Chairman
Agnes P. Barrett
John L. Carroll
Gordon S. Eslick
Michael H. Kast
James L. Lowry
Frederick E. Rakestraw
Otto F. Schug
David O. Tittle
APPENDIX B
ORDER AMENDING RULES

Pursuant to the inherent rule-making power and authority vested in this Court [Supreme Court of Indiana] and pursuant to this Court's constitutional responsibility in the discipline and disbarment of those admitted to practice law, the provisions of Canon 2 of the Code of Professional Responsibility specified in this order are amended to read as follows:

RECOGNITION OF LEGAL PROBLEMS

EC 2-2 The legal profession should assist laypersons 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 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. 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 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 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. It is improper if motivated by a desire to obtain personal benefit, secure personal publicity, or cause legal action to be taken merely to harass or injure another. A lawyer should not initiate an in-person contact with 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 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 important 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 laypersons should caution them not to attempt to solve individual problems upon the basis of the information contained therein.

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 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 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 Selection of a lawyer by a layperson should be made on an informed basis. Advice and recommendations 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 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 the practice, but only by using commonly accepted and understood designations and definitions, for example, one or more fields of law in which the lawyer or law firm practices; and (4) permitted fee information. Self-laudation should be avoided.

EC 2-8(A) 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 the community or to the segment of the community to which it is directed. Advertising marked by excesses of content, volume, scope, or frequency which unduly emphasizes unrepresented biographical information does not provide that public benefit. For example, prominence should not be given to a prior governmental position outside the context of the 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 benefit to the public such as the use of billboards, electrical signs, sound trucks, or television commercials distorts the legitimate purpose of informing the public and is clearly improper. Indeed this and
other improper advertising may hinder an independent competent counsel, and advertising that involves excessive cost may unnecessarily increase the cost for fees for legal service.

EC 2-8(B) Advertisements and other communications should make it apparent that the necessity and advisability of legal action depends on various factors and 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 of the ingenuity of the lawyer rather than the justice of the claim is determinative and similarly improper. Statistical data or other information based on past performance or on prediction of future success is deceptive because it ignores important parables. 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 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 is apparent from the context that it is paid publicity or an advertisement.

SELECTION OF A LAWYER: LAWYER ADVERTISING

EC 2-9 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 law 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. 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 2-9(A) 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 or brash statements or appeals to fears or emo-
tions could mislead and harm the layperson. Furthermore, public communication that would produce unrealistic techniques in particular cases and bring about distrust of the law and the lawyers would be harmful to society. Thus, public confidence in our legal system would be impaired by such advertisements on professional services. The attorney-client relationship being personal and unique, should not be established as a result of pressures or deceptions. However, the desirability of affording the public access to information relevant to legal rights have resulted in some relaxation of the former restrictions against advertising by lawyers. Those restrictions have long been relaxed in regard to announcement cards, institutional advertising, and in certain other respects. Historically those restrictions were imposed to prevent deceptive publicity misleading laypersons, cause distrust in 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 A lawyer should ensure that the information contained in any advertising which the lawyer publishes, broadcasts or causes to be published or broadcasted 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.

EC 2-10(A) 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 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, over persuasion, or vexatious 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 trade name or an assumed name could mislead 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, the name of one or more of the lawyers practicing in a partnership, or, if permitted by law, 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 practices 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 2-14 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 com-
petence, a lawyer should not be permitted to hold himself out as a specialist,
other than in the fields of admirality, trademark, and patent law where a
holding out as a specialist historically has been permitted.

DISCIPLINARY RULES

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, deceptive, self-
laudatory or unfair statement or claim.

(B) In order to facilitate the process of informed selection of a
lawyer by potential consumers of legal services, a lawyer may
publish without photograph or other pictoral matter, or
broadcast without background music or other sound effects,
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) One or more fields of law in which the lawyer or law
firm practices, using commonly accepted and under-
stood definitions and designations, or to the extent
authorized under DR 2-105;

(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;
9
(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) Prepaid or group legal services programs in which the lawyer participates;
(17) Whether credit cards or other credit arrangements are accepted;
(18) Office and telephone answering service hours;
(19) Fee for an initial consultation;
(20) Availability upon request of a written schedule of fees and/or an estimate of the fee to be charged for specific services;
(21) Contingent fee rates subject to DR 2-106(C), provided that the statement discloses whether percentages are computed before or after deduction of costs;
(22) 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 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;
(23) 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 without obligation to 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;
(24) 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;

(C) 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.

(D) If a lawyer advertises a fee for a service, the lawyer must render that service for no more than the fee advertised.

(E) 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.

(F) 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 90 days after such broadcast.

(G) 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.

(H) A lawyer shall not compensate or give anything 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.

(A) A lawyer or law firm shall not use or participate in the use of professional cards, professional announcement cards, office signs, letterheads, 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.

(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) 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 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.

(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 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 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 shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of 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) 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, his partner, or associate to a layperson who has not sought his advice regarding employment of a lawyer.

(B) 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 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 a person or organization to recommend or promote the use of his services or those of his partner or associate, or any or both 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 or his partner or associate or any other lawyer affiliated with him or his firm may be recommended, employed by 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 that organization is organized for profit, the 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 of 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) Such organization has filed with the Disciplinary Commission of the Supreme Court of Indiana 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 to do so, the lawyer does not know or have cause to know of such failure.

(E) A lawyer shall not accept employment when he knows or it is obvious that a 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 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 defense 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 of Practice.

(A) A lawyer shall not hold himself out publicly as a specialist, or as limiting his practice, except:
A lawyer admitted to practice before the United States Patent and Trademark Office may use the designation “Patents,” “Patent Attorney,” “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.

A lawyer engaged in the admirality practice may use the designation “Admiralty,” “Proctor in Admiralty,” or “Admiralty Lawyer,” or any combination of those terms, on his letterhead and office sign.

The above amendments to Canon 2 of the Code of Professional Responsibility shall become effective January 1, 1978.

The Clerk is ordered to include this change in the next printing of the rules of this Court and to send at this time a copy of this Order to the Reporter of the Supreme Court and the Court of Appeals for publication in the next volume of the Indiana Reports, to each judge and each clerk of each circuit, superior, criminal, juvenile, county and small claims court in the State of Indiana, to the Indiana State Bar Association, to West Publishing Company for publication in the Northeastern Advance Sheets and to the Bobbs-Merrill Company for publication in the Indiana Decisions and Law Reporter Advance Sheets.

DATED this 14 day of December, 1977.

Richard M. Givan
Chief Justice of Indiana

Appendix C

Chairman of the Indiana State Bar Association Specialization Committee
Otto Schug
1220 Washington Street
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Panelists at the 1977 Fall meeting of the Indiana State Bar Association

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