

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
BAR CENTER, ALBANY, November 5, 1977

96

PATERMISTER
PRESENT: Members Amdursky, Aspland, Balsamo, Baltimore, Barlow, Block, Chase, Condon, Connelly, Connolly, Corbin, Cornfield, Cosgrove, Daly, Dee, Denton, Devorsetz, DeWind, Dougherty, C.E. Doyle, V.E. Doyle, Dunne, Eiber, Elwood, Erickson, Faber, Fales, Fallon, Farrell, Ford, Forger, Galante, Gillespie, Griffin, Guiney, Harrigan, Haskel, Hewitt, Hickey, Hoffman, Hoyt, Iovale, Johnston, Keeler, Kirsch, Klein, Lagarenne, Lapp, Lasher, Lord, McMahon, Meriam, Meyer, H.G. Miller, W.A. Miller, Mintz, Moses, Mousaw, G. Murphy, O'Brien, Palermo, Patterson, Peet, Pritchard, Reilly, Rosch, Russell, H.J. Smith, J.V. Smith, Spivack, Stakel, Staley, Stone, B.I. Taylor, D.R. Taylor, L.B. Taylor, Thoron, Tondel, Tucker, Vigdor, Whalen, Williams, Withrow, Yanelli, Yetter

1. Approval of minutes of June 25, 1977 meeting. The minutes were approved as distributed.
2. Amendment of Judicial Section Bylaws. Judge Staley presented the proposed amendments and a motion was adopted approving same.
3. Proposed 1978 Budget. Mr. Williams presented the proposed budget which had been furnished to members of the House. Estimated income and expense totaled \$2,447,790. A motion was adopted approving the budget for 1978.
4. Amendment of Association Bylaws. Mr. Erickson summarized proposed amendments to Article XIV which would add the following Standing Committees:
 - a) Committee on Courts and the Community
 - b) Committee on Judicial Election Monitoring
 - c) Committee on Environmental Law
 - d) Committee on Public Interest Law
 - e) Committee on Tort Reparations

The Committee on Judicial Discipline and Removal was discharged.

Upon motion, the amendments were approved.

5. Proposed amendments to the Constitution. Mr. Erickson summarized the proposed changes and a motion was adopted approving same in the subscribed form submitted by a majority of the members of the House to the Secretary.
6. Report of Action Unit No. 3. Mr. Palermo summarized the report and proposed resolution on lawyer advertising and reviewed the recommended changes to the Code of Professional Responsibility (copies of which had been previously furnished to members of the House). He then noted technical and substantive modifications which had been made to the proposed Code changes subsequent to its being sent to the members. Mr. Palermo stated that the proposed resolution and recommended Code changes were the result of a careful reading of the Bates decision, and incorporated decisions made at frequent meetings of Action Unit

No. 3, recommendations of various county bar association officers, section and committee chairmen and members, and individual lawyers throughout the state.

Professor Eleanor Fox summarized a report of the Executive Committee of The Association of the Bar of the City of New York which opposed adoption of Action Unit No. 3's position and supported adoption of a resolution which would permit any advertising by lawyers which was not false, misleading or deceptive. This and other amendments were defeated.

An amendment requiring that the word "advertisement" be set out in print or broadcast in any lawyer advertisement was adopted. A motion was adopted approving the Action Unit No. 3 resolution and recommended changes to the Code of Professional responsibility, as amended. (Copies of the resolution and recommended changes to the Code are attached to these minutes).

A motion was also adopted authorizing the Executive Committee to make grammatical and/or stylistic changes not affecting substance, as may be called for.

7. Report of the President. Mr. Smith reported on the following action by the Executive Committee since the last meeting of the House:

- a) Position taken in opposition to calling of State Constitutional Convention in 1979.
- b) Unanimous support for space in Uniondale to continue to be used as place for Federal Court Eastern District to sit.
- c) Support for addition of another U.S. District Court Judge in the Northern District of New York.

He noted his attendance at the summer meetings of Family Law, Trusts and Estates and Banking, Corporation and Business Law Sections, a meeting of the Committee on Courts and the Community, and meetings of the Nassau, Dutchess and Westchester County Bar Associations, and the Sixth District Federation. Mr. Smith also stated that the 1978 June meeting of the House would be at The Otesaga in Cooperstown. He then announced that the speaker at the Annual Dinner would be Judge William H. Mulligan of the Second Circuit Court of Appeals.

8. The President reported that he had appointed a Special Committee on Group Legal Services Plans to serve three years to replace the Special Committee on Availability of Legal Services. Motions were adopted to continue the Special Committees on Patents and Trademarks and Copyright Law for one year and the Special Committees on Specialization, Electronic Legal Research, Lawyers and the Community and Professional Liability for a period of three years. He then

observed that it was the sentiment of the Executive Committee that the process by which the discipline of judges is accomplished by the Commission on Judicial Discipline and should be monitored and evaluated and that a Special Committee should be appointed to provide a vehicle whereby lawyers could file complaints and oversee how the system is working. Mr. Smith indicated that he would have definite recommendations on this in January.

9. Report of the Chairman. Mr. Patterson reported that the June 21-24, 1979 meeting of the House would be held at the Georgian, Lake George.
10. Report of the Treasurer. The report, copies of which have been previously furnished to members of the House, was received with thanks.
11. Date and Place of Next Meeting. The next meeting of the House will be held January 20, 1978 at the New York Hilton Hotel.

New York State Bar Association

RESOLUTION ON LAWYER ADVERTISING

WHEREAS, the New York State Bar Association ("NYSBA") by prior resolution approved the Code of Professional Responsibility ("Code"), including Canon 2 and the Ethical Considerations and Disciplinary Rules following said Canon 2, effective January 1, 1970; and

WHEREAS, the Disciplinary Rules of the Code, and in particular those following Canon 2, have been expressly incorporated into rules of court by separate orders of the appellate divisions of each of the four judicial departments in New York State; and

WHEREAS, the United States Supreme Court decided the case of Bates and O'Steen v. State Bar of Arizona on June 27, 1977, enunciating new constitutional principles on the subject of lawyer advertising; it is

RESOLVED, that the Ethical Considerations and Disciplinary Rules following Canon 2 of the Code, previously adopted by the NYSBA, are repealed, contingent upon approval from the appellate divisions in each of the four judicial departments in New York State; and it is further

RESOLVED, that the Ethical Considerations and Disciplinary Rules following Canon 2 of the Code, as provided in the proposed Code attached hereto, are adopted, contingent upon approval from the appellate divisions in each of the four judicial departments in New York State; and it is further

RESOLVED, that the Disciplinary Rules following Canon 2 of the Code, as described in the proposed Code attached hereto, are recommended for incorporation into the rules of conduct of the appellate divisions of each of the four judicial departments in New York State; and it is further



RESOLVED, that the "First Action Resolution" relating to Code changes recommended by the House of Delegates at its meeting of June 25, 1977 is hereby rescinded; and it is further

RESOLVED, that action on the "Second Action Resolution" relating to a plan of practice identification and specialization be deferred pending further study and consultations concerning the subject with the appellate divisions in each of the four judicial departments in New York State.

Approved by the House of Delegates
November 5, 1977



RECOMMENDED CHANGES TO CODE OF PROFESSIONAL RESPONSIBILITY

Approved by the House of Delegates
November 5, 1977

CANON 2

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

EC 2-1 * * *

RECOGNITION OF LEGAL PROBLEMS

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

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

Deletions by brackets

New matter underscored

Asterisks indicates material unchanged from existing Code of Professional Responsibility

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

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

SELECTION OF A LAWYER[: GENERALLY]

EC 2-6 * * *

EC 2-7 Changed conditions, however, have seriously restricted the effectiveness of the traditional selection process. Often the reputations of lawyers are not sufficiently known to enable [laymen] potential users of legal services to make intelligent choices. The law has become increasingly complex and specialized. Few lawyers are willing and competent to deal with every kind of legal matter, and many [laymen] people 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, the areas of law in which lawyers accept representation and the cost of legal services impede the informed selection of lawyers.

EC 2-8 Selection of a lawyer [by a layman often is the result of the] should be made on an informed basis. Disclosure of truthful and relevant information about lawyers and their areas of practice should assist in the making of an informed selection. Disinterested and informed advice and recommendation of third parties - relatives, friends, acquaintances, business associates, or other lawyers - may also be helpful. [A layman 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.]

[SELECTION OF A LAWYER: PROFESSIONAL NOTICES AND LISTINGS]

LAWYER ADVERTISING

EC 2-9 [The traditional ban against advertising by lawyers, which is subject to certain limited exceptions, is rooted in the public interest. Competitive advertising would encourage extravagant, artful, self-laudatory brashness in seeking business and thus could mislead the layman. Furthermore, it would inevitably produce unrealistic expectations in particular cases and bring about distrust of the law and lawyers. Thus, public confidence in our legal system would be impaired by such advertisements of professional services.] The attorney-client relationship is personal and unique and should not be established as the result of pressures and deceptions. [History has demonstrated that public confidence in the legal system is best preserved by strict, self-imposed controls over, rather than by unlimited, advertising.]

EC 2-10 [Methods of advertising that are subject to the objections stated above should be and are prohibited. However, the Disciplinary Rules recognize the value of giving assistance in the selection process through forms of advertising that furnish identification of a lawyer while avoiding such objections. For example, a lawyer may be identified in the classified section of the telephone directory, in the office building directory, and on his letterhead and professional card. But at all times the permitted notices should be dignified and accurate.] A lawyer should ensure that the information contained in any advertising which the lawyer publishes, broadcasts or causes to be published or broadcast is relevant, is disseminated in an

objective and understandable fashion, and would facilitate the prospective client's ability to select a lawyer. A lawyer should strive to communicate such information without undue emphasis upon style and advertising stratagems which serve to hinder rather than to facilitate intelligent selection of counsel. In disclosing information, by advertisements or otherwise, relating to a lawyer's education, experience or professional qualifications, special care should be taken to avoid the use of any statement or claim which is false, fraudulent, misleading, deceptive or unfair, or which is violative of any statute or rule of court.

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

EC 2-12 A lawyer occupying a judicial, legislative, or public executive or administrative position who has the right to practice law concurrently may allow his or her name to remain in the name of the firm if [he] the lawyer actively continues to practice law as a member thereof. Otherwise, [his] the lawyer's name should be removed from the firm name, and [he] the lawyer should not be identified as a past or present member of the firm; and [he] the lawyer should not hold himself or herself out as being a practicing lawyer.

EC 2-13 In order to avoid the possibility of misleading persons with whom [he] a lawyer deals, a lawyer should be scrupulous in the representation of [his]

professional status. [He] A lawyer should not hold himself or herself out as being a partner or associate of a law firm if [he is] not one in fact, and thus should not hold himself or herself out as a partner or associate if [he] the lawyer only shares offices with another lawyer.

EC 2-14 (REPEALED) [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.]

E 2-15* * *

E 2-16 [The legal profession cannot remain a viable force in fulfilling its role in our society unless its members receive adequate compensation for services rendered, and reasonable fees should be charged in appropriate cases to clients able to pay them. Nevertheless,] Persons unable to pay all or a portion of a reasonable fee should be able to obtain necessary legal services, and lawyers should support and participate in [ethical] appropriate activities designed to achieve that objective.

FINANCIAL ABILITY TO EMPLOY COUNSEL: PERSONS ABLE TO PAY REASONABLE FEES

EC 2-17 The determination of a proper fee requires consideration of the interests of both client and lawyer. A lawyer should not charge more than a reasonable fee, for excessive cost of legal service would deter non-lawyers [laymen] from [utilizing] using the legal system [in protection of] to protect their rights and to minimize and resolve disputes. Furthermore, an excessive charge abuses the professional relationship between lawyer and client. [On the other hand, adequate compensation is necessary in order to enable the lawyer to serve his client effectively and to preserve the integrity and independence of the profession.]

EC 2-18 The determination of the reasonableness of a fee requires consideration of all relevant circumstances, including those stated in the Disciplinary Rules. The fees of a lawyer will vary according to many factors, including the time required, [his] the lawyer's experience, ability, and reputation, the nature of the employment,

the responsibility involved, and the results obtained. It is a commendable and long-standing tradition of the bar that special consideration is given in the fixing of any fee for services rendered a brother lawyer or a member of [his] the lawyer's immediate family.

EC 2-19 As soon as feasible after a lawyer has been employed, it is desirable that [he reach] a clear agreement be reached with [his] the client as to the basis of the fee charges to be made. Such a course will not only prevent later misunderstanding but will also work for good relations between the lawyer and the client. It is usually beneficial to reduce to writing the understanding of the parties regarding the fee, particularly when it is contingent. A lawyer should be mindful that many persons who desire to employ [him] a lawyer may have had little or no experience with fee charges of lawyers, and for this reason [he] lawyers should explain fully to such persons the reasons for the particular fee arrangement [he] propose[s] d.

EC 2-20 * * *

EC 2-21 A lawyer should not accept compensation or any thing of value incident to [his] the lawyer's employment or services from one other than [his] the client without the knowledge and consent of [his] the client after full disclosure.

EC 2-22 Without the consent of [his] the client, a lawyer should not associate in a particular matter another lawyer outside [his] the lawyer's firm. A fee may properly be divided between lawyers properly associated if the division is in proportion to the services performed and the responsibility assumed by each lawyer and if the total fee is reasonable.

EC 2-23 A lawyer should be zealous in [his] efforts to avoid controversies over fees with clients and should attempt to resolve amicably any differences on the subject. A lawyer [He] should not sue a client for a fee unless necessary to prevent fraud or gross imposition by the client.

FINANCIAL ABILITY TO EMPLOY COUNSEL:
PERSONS UNABLE TO PAY REASONABLE FEES

EC 2-24 A [layman] person whose financial ability is not sufficient to permit payment of any fee cannot obtain legal services, other than in cases where a

contingent fee is appropriate, unless the services are otherwise provided [for him]. Even a person of moderate means may be unable to pay a reasonable fee, which is large because of the complexity, novelty, or difficulty of the problem or similar factors.

EC 2-25 * * *

ACCEPTANCE AND RETENTION OF EMPLOYMENT

EC 2-26 A lawyer is under no obligation to act as adviser or advocate for every person who may wish to become [his] a client; but in furtherance of the objective of the bar to make legal services fully available, a lawyer should not lightly decline proffered employment. The fulfillment of this objective requires acceptance by a lawyer of [his] a fair share of tendered employment which may be unattractive both to [him] the lawyer and the bar generally.

EC 2-27 History is replete with instances of distinguished sacrificial services by lawyers who have represented unpopular clients and causes. Regardless of [his] personal feelings, a lawyer should not decline representation because a client or a cause is unpopular or community reaction is adverse.

EC 2-28 The personal preference of a lawyer to avoid adversary alignment against judges, other lawyers, public officials, or influential members of the community does not justify [his] rejection of tendered employment.

EC 2-29 When a lawyer is appointed by a court or requested by a bar association to undertake representation of a person unable to obtain counsel, whether for financial or other reasons, the lawyer [he] should not seek to be excused from undertaking the representation except for compelling reasons. Compelling reasons do not include such factors as the repugnance of the subject matter of the proceeding, the identity or position of a person involved in the case, the belief of the lawyer that the defendant in a criminal proceeding is guilty, or the belief of the lawyer regarding the merits of the civil case.

EC 2-30 Employment should not be accepted by a lawyer [when he] who is unable to render competent service or [when he] who knows or it is obvious that the person seeking to employ [him] the lawyer desires to institute or maintain an action merely

for the purpose of harassing or maliciously injuring another. Likewise, a lawyer should decline employment if the intensity of [his] personal feelings, as distinguished from a community attitude, may impair [his] effective representation of a prospective client. If a lawyer knows a client has previously obtained counsel, [he] the lawyer should not accept employment in the matter unless the other counsel approves or withdraws, or the client terminates the prior employment.

EC 2-31 Full availability of legal counsel requires both that persons be able to obtain counsel and that lawyers who undertake representation complete the work involved. Trial counsel for a convicted defendant should continue to represent [his] the client by advising whether to take an appeal and, if the appeal is prosecuted, by representing [him] the client through the appeal unless new counsel is substituted or withdrawal is permitted by the appropriate court.

EC 2-32 A decision by a lawyer to withdraw should be made only on the basis of compelling circumstances, and in a matter pending before a tribunal [he] the lawyer must comply with the rules of the tribunal regarding withdrawal. A lawyer should not withdraw without considering carefully and endeavoring to minimize the possible adverse effect on the rights of [his] the client and the possibility of prejudice to [his] the client as a result of [his] the withdrawal. Even when [he] withdrawal is justifiable, [withdraws] a lawyer should protect the welfare of [his] the client by giving due notice of [his] the withdrawal, suggesting employment of other counsel, delivering to the client all papers and property to which the client is entitled, cooperating with counsel subsequently employed, and otherwise endeavoring to minimize the possibility of harm. Further, [he] the lawyer should refund to the client any compensation not earned during the employment.

EC 2-33 As a part of the legal profession's commitment to the principle that high quality legal services should be available to all, attorneys are encouraged to cooperate with qualified legal assistance organizations providing prepaid legal services. Such participation should at all times be in accordance with the basic tenets of the profession: independence, integrity, competence and devotion to the interests of individual clients. An attorney so participating should make certain that [his] the relationship with a qualified legal assistance organization in no way interferes with [his] independent, professional representation of the interests of the individual client. An attorney should avoid situations in which officials of the organization who are not lawyers attempt to direct attorneys concerning the manner

in which legal services are performed for individual members and should also avoid situations in which considerations of economy are given undue weight in determining the attorneys employed by an organization or the legal services to be performed for the member or beneficiary rather than competence and quality of service. An attorney interested in maintaining the historic traditions of the profession and preserving the function of a lawyer as a trusted and independent advisor to individual members of society should carefully assess such factors when accepting employment by, or otherwise participating in, a particular qualified legal assistance organization, and while so participating should adhere to the highest professional standards of effort and competence.

DISCIPLINARY RULES

DR 2-101 Publicity [in General].

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

(B) To assist the public in the selection of counsel, a lawyer may publish or broadcast, subject to DR 2-103, the following information in print media or over radio, provided that the information disclosed by the lawyer in such publication or broadcast complies with DR 2-101 (A), is presented in a dignified manner, and in any advertisement the attorney shall cause the word 'advertisement' to be set out in print or broadcast so that the reader or listener is advised that the message is an 'advertisement':

- (1) Name, including name of law firm and names of professional associates; addresses and telephone numbers;
- (2) To the extent authorized under DR 2-105, one or more areas of law in which the lawyer or law firm practices, a statement that practice is limited to one or more areas of law, or a statement that

the lawyer or law firm specializes in a particular area of law practice;

- (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 offices;
- (7) Military service;
- (8) Authorships;
- (9) Teaching positions;
- (10) Memberships, offices and committee assignments in bar associations;
- (11) Memberships and offices in legal fraternities and legal societies;
- (12) Technical and professional licenses;
- (13) Memberships in scientific, technical and professional associations and societies;
- (14) Foreign language ability;
- (15) Names and addresses of bank references;
- (16) With prior written consent, names of clients regularly represented;
- (17) Prepaid or group legal services programs in which the lawyer participates;
- (18) Credit cards or other credit arrangements accepted;
- (19) Office and telephone answering service hours;

advertised for such services. If a lawyer or law firm advertises a fixed fee for specified legal services, or performs services described in a fee schedule, the lawyer or law firm may not charge more than the fixed fee for such stated legal service as set forth in the advertisement or fee schedule, unless the client agrees in writing that the services performed or to be performed were not legal services referred to in the advertisement or in the fee schedule and, further, that a different fee arrangement shall apply to the transaction.

(E) Unless otherwise specified in the advertisement, if a lawyer publishes any fee information authorized under DR 2-101(B) in a publication which is published more frequently than one time per month, the lawyer shall be bound by any representation made therein for a period not less than 30 days after such publication. If a lawyer publishes any fee information authorized under DR 2-101(B) in a publication which is published once a month or less frequently, the lawyer 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 30 days after such broadcast.

(G)(B) Except as authorized by DR 2-101 (B), a lawyer shall not publicize himself or [his] herself, a partner, [or] an associate, or [any] other [lawyer] affiliated lawyer [with him or his firm], as a lawyer through newspaper or magazine advertisements, other print media, radio or television announcements, display advertisements [in city or telephone directories] or other means of commercial publicity, nor [shall he] authorize or permit others to do so in [his] the lawyer's behalf. However, a lawyer recommended by, paid by or whose legal services are furnished by, a qualified legal assistance organization may authorize or permit or assist such organization to use means of dignified commercial publicity, which does not identify any lawyer by name, to describe the availability or

nature of its legal services or legal service benefits. This rule does not prohibit limited and dignified identification of a lawyer as a lawyer as well as by name:

- (1) In political advertisements when [his] professional status is germane to the political campaign or to a political issue.
- (2) In public 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 the lawyer [he] serves as a director or officer, or is a member.
- (4) In and on legal documents prepared by the lawyer [him].
- (5) In and on legal textbooks, treatises, and other legal publications, and in dignified advertisements thereof.
- (6) In communications by a qualified legal assistance organization, along with the [biographical] information permitted under DR 2-101 (B), directed to a member or beneficiary of such organization.

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

DR 2-102 Professional Notices, Letterheads, Offices and Signs [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, except that the following may be used if they are in dignified form:
 - (1) A professional card of a lawyer identifying [him] the lawyer by name and as a lawyer, and giving [his] addresses, telephone numbers, the name of [his] the law firm, and any information permitted under DR 2-105. A professional card of a law firm may also give the names of members and associates. [Such cards may

be used for identification. but may not be published in periodicals, magazines, newspapers, or other media.]

- (2) A [brief] professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional offices of a lawyer or law firm, which may be mailed to lawyers, clients, former clients, personal friends, and relatives. It [shall not] may 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] the names of members of the firm and associates and [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] in 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] the lawyer by name and as a lawyer, and giving [his] addresses, telephone numbers, the name of the [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] there is 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] the lawyer or the firm devotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.

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

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

associations and societies; foreign language ability; names and addresses of references, and, with their consent, names of clients regularly represented.]

- (B) 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] such symbols permitted by law, 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. Such terms as 'legal clinic', 'legal aid', 'legal service office', 'legal assistance office', 'defender office', and the like, may be used only by qualified legal assistance organizations described in DR 2-103 (D), except that the term 'legal clinic' may be used by any lawyer or law firm provided the name of the lawyer or firm is incorporated therein. A lawyer who assumes a judicial, legislative or public executive or administrative post or office shall not permit his or her 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] the lawyer 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] the lawyer's name in the firm name or in professional notices of the firm.
- (C) A lawyer shall not hold himself or herself out as having a partnership with one or more other lawyers unless they are in fact partners.
- (D) A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction.
- (E) 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] the lawyer be identified as a lawyer in any publication in connection with [his] the other profession or business.

- (F) Nothing contained herein shall prohibit a lawyer from using or permitting the use of, in connection with [his] the lawyer's 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] or herself, a partner or an associate to a [non-lawyer] person who has not sought [his] advice regarding employment of a lawyer. A lawyer shall not initiate in-person contact with a non-client, directly or indirectly, including but not limited to in-person communication through mail, direct delivery of material or otherwise, for the purpose of being employed to represent such non-client for compensation. Actions permitted by DR 2-104 shall not constitute in-person contact in violation of this provision.
- (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) may be paid.
- (C) A lawyer shall not request a person or organization to recommend or promote the use of [his] the lawyer's services or those of [his] the lawyer's partner or associate, or any other [lawyer] affiliated lawyer [with him or his firm] as a private practitioner, except as authorized in DR 2-101, and except that:
- (1) [He] The lawyer 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] The lawyer 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] the lawyer 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] the client.

(D) [A lawyer shall not knowingly assist a person or organization that furnishes or pays for legal services to others to promote the use of his services or those of his partner or associate or any other lawyer affiliated with him or his firm except as permitted in DR 2-101(B). However, this does not prohibit] A lawyer or [his] the lawyer's partner or associate or any other [lawyer] affiliated lawyer [with him or his firm from being] may be recommended, employed or paid by, or [cooperating] may cooperate with, one of the following offices or organizations [that] which promote the use of [his] the lawyer's services or those of [his] a partner or associate or any other [lawyer] affiliated lawyer [with him or his firm,] if there is no interference with the exercise of independent professional judgment in behalf of [his] the 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] which recommends, furnishes or pays for legal services to its members or beneficiaries provided the following conditions are satisfied:
 - (a) Such organization, including any affiliate, is so organized and operated that no profit is derived by it from the rendition of legal services by lawyers, and that, if the organization is organized for profit, the legal services are not rendered by lawyers employed, directed, supervised or selected by it

except in connection with matters where such organization bears ultimate liability of its member or beneficiary.

- (b) Neither the lawyer, nor [his] the lawyer's partner, nor associate, nor any other [lawyer] affiliated lawyer [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 appropriate disciplinary authority at least annually a report with respect to its legal service plan, if any, showing its terms, its schedule of

benefits, its subscription charges, agreements with counsel, and financial results of its legal service activities or, if it has failed 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] the lawyer knows or it is obvious that the person who seeks [his] services does so as a result of conduct prohibited under this Disciplinary Rule.

DR 2-104 Suggestion of Need of Legal Services.

- (A) A lawyer who has given in-person, unsolicited advice to [a layman] an individual [that he should] to 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] which results from [his] participation in activities designed to educate [laymen] the public 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] the right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long [as he] the lawyer does not emphasize his or her own professional experience or reputation and does not undertake to give individual advice.
- (5) If success in asserting rights or defenses of [his] the 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 or herself out publicly as a specialist, as practicing in certain areas of law or as limiting [his] practice [except as permitted] under [DR 2-102(A)(6)] DR 2-101(B), or DR 2-102, except as follows:

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

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

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

- (2) A lawyer or law firm may publicly identify one or more areas of law in which the lawyer or the law firm practices, or may state that the practice of the lawyer or law firm is limited to one or more areas of law using designations and definitions authorized by the appellate division of the Supreme Court having jurisdiction or pursuant to a plan of practice identification adopted by such Court. Pending the adoption and publication of designations and definitions for use in such identification, one or more areas of law may be identified by setting forth, without elaboration and without any implication of special competence in the area or areas, the designation commonly accepted by lawyers practicing in the locality where the identification is published or broadcast.
- (3) [4] A lawyer who is certified as a specialist in a particular [field] area of law or law practice [by the authority having jurisdiction under state law over the subject of specialization by lawyers] pursuant to a plan adopted by the appellate division of the Supreme Court having jurisdiction may hold himself or herself out as such, [specialist but only] in accordance with the applicable rules. [prescribed by that authority.]

DR 2-106 Fees for Legal Services.

- (A) A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee.
- (B) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:
- (1) The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that particular employment will preclude other employment by the lawyer.

(3) The fee customarily charged in the locality for similar legal services.

(4) The amount involved and the results obtained.

(5) The time limitations imposed by the client or by circumstances.

(6) The nature and length of the professional relationship with the client.

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.

(8) Whether the fee is fixed or contingent.

(C) A lawyer shall not enter into an arrangement for, charge or collect a contingent fee for representing a defendant in a criminal case.

DR 2-107 Division of Fees Among Lawyers.

(A) A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of [his] the lawyer's law firm or law office, unless:

(1) The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made.

(2) The division is made in proportion to the services performed and responsibility assumed by each.

(3) The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client.

- (B) This Disciplinary Rule does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement.

DR 2-108 Agreements Restricting the Practice of a Lawyer.

- (A) A lawyer shall not be a party to or participate in a partnership or employment agreement with another lawyer that restricts the right of a lawyer to practice law after the termination of a relationship created by the agreement, except as a condition to payment of retirement benefits.
- (B) In connection with the settlement of a controversy or suit, a lawyer shall not enter into an agreement that restricts [his] the lawyer's rights to practice law.

DR 2-109 Acceptance of Employment.

- (A) A lawyer shall not accept employment on behalf of a person if [he] the lawyer knows or it is obvious that such person wishes to:
- (1) Bring a legal action, conduct a defense, or assert a position in litigation, or otherwise have steps taken for such person [him,] merely for the purpose of harrassing or maliciously injuring any person.
 - (2) Present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by good faith argument for an extension, modification, or reversal of existing law.

DR 2-110 Withdrawal from Employment.

- (A) In general.
- (1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.
 - (2) In any event, a lawyer shall not withdraw from employment until [he] the lawyer has taken reasonable steps to avoid foreseeable prejudice to the right of [his] the client, including giving due

notice to [his] the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled and complying with applicable laws and rules.

- (3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(B) Mandatory withdrawal.

A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

- (1) [He] The lawyer knows or it is obvious that [his] the client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken, [for him,] merely for the purpose of harrassing or maliciously injuring any person.
- (2) [He] The lawyer knows or it is obvious that [his] continued employment will result in violation of a Disciplinary Rule.
- (3) [His] The lawyer's mental or physical condition renders it unreasonably difficult [for him] to carry out the employment effectively.
- (4) [He] The lawyer is discharged by his or her client.

(C) Permissive withdrawal.

If DR 2-110(B) is not applicable, a lawyer may request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

- (1) [His] The client:
 - (a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law.
 - (b) Personally seeks to pursue an illegal course of conduct.
 - (c) Insists that the lawyer pursue a course of conduct [that] which is illegal or [that is] prohibited under the Disciplinary Rules.
 - (d) By other conduct renders it unreasonably difficult for the lawyer to carry out [his] employment effectively.
 - (e) Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct [that] which is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules.
 - (f) Deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.
- (2) [His] The lawyer's continued employment is likely to result in a violation of a Disciplinary Rule.
- (3) [His] The lawyer's inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal.
- (4) [His] The lawyer's mental or physical condition renders it difficult for [him] the lawyer to carry out the employment effectively.
- (5) [His] The lawyer's client knowingly and freely assents to termination of [his] the employment.
- (6) [He] The lawyer believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other