

# ADVISORY ETHICS OPINION 81-05

## **SYNOPSIS:**

The Code prohibits advertising regarding lawyers except as specifically authorized. Those prohibitions do not apply to a law clerk. Therefore, such advertising may be done. (T. 12 V.S.A. App. LX, C2)

## **QUESTION PRESENTED:**

Lawyers want to advertise a law clerk's employment by its firm both through the use of newspaper advertisement and by sending cards notifying persons of his association with the firm. Advertisement will make it clear a law clerk is not an attorney.

## **DISCUSSION:**

Disciplinary Rule 2-101(2) – Publicity in General provides:

- (A) A lawyer shall not ... use any form of public communication that contains professionally self-laudatory statements calculated to attract lay clients...
- (B) A lawyer shall not publicize himself, or his partner, or associate, or any other lawyer affiliated with him or his firm, as a lawyer through newspaper... announcements... or other means of commercial publicity... except as provided in DR 2-101(2).

The provisions of Disciplinary Rule 2-101(2) permit various forms of regulated advertising by attorneys.

The foregoing provisions of the Code of Professional Responsibility, as adopted by the Vermont Supreme Court, were added by amendment of July 15, 1977, in response to the U.S. Supreme Court's opinion of June 27, 1977, in Bates et al. v. State Bar of Arizona<sup>1</sup>. In that case, the Court held that the First Amendment to the United States Constitution prohibited states from preventing truthful advertisements by attorneys concerning the availability of and price for routine legal services. The Court's opinion in Bates, supra, makes it clear that the type of advertising which may be prohibited by regulation is that which would likely be deceptive or misleading to the public. In view of the clearly stated First Amendment ramifications of such regulation, we believe that the regulations must be strictly construed.

Since the present regulations do not prohibit lawyers from advertising the employment of a law clerk and since the advertisement proposed is going to make it clear that the law clerk is not an attorney, we believe that such advertisement would be outside of the disciplinary rules and may be done in this case. The disclosure of the non-lawyer status of the clerk is critical, however, since the advertisement is not then misleading to the public.

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<sup>1</sup> Bates et al v. State Bar of Arizona, 433 U.S. 350 (1977).