REGULATION OF LAWYERS: MARKETING LEGAL SERVICES ON THE WEB*

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"Knowledge of the law is essential, but the lawyer's best asset is a deserved reputation for honesty, integrity, and dependability in short – true character."[1]

INTRODUCTION

The practice of law has always been regarded as a form of public trust, entrusted only to those who are fit to enjoy the privilege.[2] Since lawyers are officers of the court and at the same time advocates of those who wish to secure justice,[3] the State holds the important prerogatives of setting the qualifications for entry into the legal profession and regulating the conduct of its members.[4] Thus, a high level of professionalism is expected from those who practice the legal profession. This expectation leads to the consistent trend in the ethical rules of the profession of considering the practice of law not as a business and where gaining livelihood is but a mere secondary consideration.[5]

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[1] *See* Charles G. Rose, President, North Carolina State Bar Association SILVESTER QUINDRY, PRACTICING LAW, 1 (1938).

[2] Ruben Agpalo, *Legal and Judicial Ethics*, 7th ed., 3 (2002).

[3] AGPALO, *supra* note 2.

[4] Diaz v. Martinez, 119 Phil. 490 (1963).

[5] Khan v. Simbillo, A.C. No. 5299, (2003).

Given this principle, legal service should not be traded as if it were a set of wares in the open market.[6] The practice of law can be distinguished from that of a business by four features: 1) a duty of public service, in which emolument is a by-product, and in which one may attain the highest eminence without making a lot of money; 2) a duty as officer of the court to the administration of justice, which involves sincerity, integrity, and reliability; 3) a relationship with clients in the highest fiduciary degree; and 4) a relationship with bar colleagues characterized by candor, fairness, and unwillingness to resort to current business methods of advertising.[7] The Code of Professional Responsibility and the judicial pronouncements on these rules bolster these distinctive features.

However, with the advent of communication and information technology such as the Web, the marketing, promotion, and advertising of legal services has become too convenient. In the midst of clear and established jurisprudence that a lawyer must not advertise his talents, many Filipino lawyers and law firms now thrive in cyberspace, offering legal services, boasting cost-effective prices, claiming expertise in specific fields, and even publicizing their clients. While lawyers "generally"[8] avoid marketing their practice through the traditional forms of media – television, radio, print, billboards, and films – the Web has created a gray, unregulated area of cyberspace where lawyers can now freely sell their services. Emboldened by the lack of a specific proscription in the rules, lawyers and law firms in the Philippines have embarked on a land rush to claim this new space.

This article will look into the regulations behind lawyer marketing and the proscriptions against it in the Code of Professional Responsibility (CPR) *vis-a-vis* the American Bar Association (ABA) model. It will then look at how the CPR and its principles contained in Supreme Court decisions relate to the lawyer and law firm websites. Finally, it will propose a balanced approach for regulating lawyer and law firm websites.

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[6] *E.g.* In Re: Tagorda, 54 Phil. 37 (1929); Director of Religious Affairs v. Bayot, 74 Phil. 579 (1944); Rule 138, § 27, Rules of Court; Jayme v. Bualan, 58 Phil. 422 (1933).

[7] Ernesto Pineda, *Legal and Judicial Ethics* 58 (1999).

[8] Filipino lawyers have appeared in billboards endorsing various products that are not necessarily related to their profession. There are also Filipino lawyers who can be seen and heard on the television and radio giving free legal advice mostly claiming their acts as a public service. The same observation can be said of lawyers writing articles for the print media.

PART I. LAWYER MARKETING

A. Regulatory Background

The present CPR evolved from the Canons of Professional Ethics (CPE). The CPE was in turn an adoption of the canons codified and formulated by the ABA in 1908.[9] In 1917, Canons 1 to 32, written by Judge Thomas Goode Jones of Montgomery, Alabama based on a series of lectures of Judge George Sharswood of the University of Pennsylvania, were adopted verbatim by the Philippine Bar Association, a voluntary organization of lawyers.[10] Canons 33 to 47 were adopted by the ABA in the years 1928 through 1934 and again by the Philippine Bar Association through its Revised Constitution which was approved on 20 April 1946.[11] The Supreme Court made the CPE an appendix to the 1973 Rules of Court and has referred to it in resolving disciplinary actions against members of the bar.

In 1980, the Integrated Bar of the Philippines (IBP) Committee on Responsibility, Discipline and Disbarment drafted the CPR,[12] which was approved and promulgated by the Supreme Court on 21 June 1988. It is based heavily on the 1970 ABA Model Code of Professional Responsibility, the 1974 Canadian Bar Association's Code of Professional Conduct, the District of Columbia's Code of Professional Responsibility, and the Rules of Professional Conduct of the California State Bar. Some of its provisions were drawn from the CPE, the Civil Code,[13] the Local Government Code of 1991,[14] and the Code of Conduct and Ethical Standards for Public Official and Employees.[15] It is likewise based on Section 20 of Rule 138 of the Rules of Court, which deals

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[9] *Hereafter* the "ABA Rules"

[10] Ma. Jacqueline P. Swann, Roberto J. Consunji, and Susan S. Bustos, *Lawyer Advertising for the Philippines*, 60 PHIL. L.J. 369 (1985) citing Cruz, *In Search of the Filipino Lawyer's New Code of Ethics*, 6 J. Integ. Bar Phil. 317 (1981).

[11] *Id.*, citing Ruperto Martin, *Legal and Judicial Ethics* 379 (1980).

[12] This Committee was composed of Dean Irene Cortes as Chairman and Justice Carolina Grino-Aquino, Attys. Gonzalo W. Gonzales, Marcelo B. Fernan, Camilo Quiason, Jose F. Espinosa, and Carmelo V. Sison as members, with former Chief Justice Roberto Concepcion and former Justice Jose B.L. Reyes as consultants, and Prof. Myrna S. Feliciano and Atty. Concepcion Lim-Jardeleza as resource persons.

[13] Civil Code, R.A. 386, as amended.

[14] Local Government Code, R.A. 7160, as amended.

[15] Rep. Act No. 6713 (1989).

on the duties of attorneys and contains various decisions and circulars of the Supreme Court.

The CPR consists of 22 Canons and 77 Rules and is divided into four chapters: 1) The Lawyer and Society, 2) The Lawyer and the Legal Profession, 3) The Lawyer and the Courts, and 4) The Lawyer and the Client. It has remained unchanged since it was passed in 1988.

B. Permissible Marketing of Services

Marketing is often used interchangeably with advertising, publicity, public relations (PR), sales, and promotions. However, marketing involves a wider range of activities that includes market research, competition analysis, product positioning, and pricing among others. Advertising, on the other hand, is bringing a product or service to the attention of potential and current customers as part of an overall marketing strategy.[16]

Canon 27 of the CPE regulates advertising within the legal profession as follows:

> "Advertising, direct or indirect -
>
> It is unprofessional to solicit professional employment by circulars, advertisements, through touters, or by personal communications or interviews not warranted by personal relations. Indirect advertisements for professional employment such as furnishing or inspiring newspaper comments, or procuring his photograph to be published in connection with causes in which the lawyer has been or is engaged or concerning the manner of their conduct, the magnitude of the interest involved, the importance of the lawyer's position, and all other like-laudation, offend the traditions and lower the tone of our profession and are reprehensible; but the customary use of simple professional cards is not improper.
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> Publication in reputable law lists in a manner consistent with the standards of conduct imposed by those canons of brief biographical and informative data is permissible. Such data must not be misleading and may include only a statement of the lawyer's name

[16] Carter McNamara, Basic Definitions: Advertising, Marketing, Promotion, Public Relations and Publicity, and Sales, http://www.managementhelp.org/ad_prmot/defntion.htm (last visited October 13, 2011)

> and the names of his professional associates; addresses, telephone numbers, cable addresses; branches of the profession practiced; date and place of birth and admission to the bar; schools attended; with dates of graduation, degrees and other educational distinctions; public or quasi-public offices; posts of honor; legal authorship; legal teaching positions; memberships and offices in bar associations and committees thereof, in legal and scientific societies and legal fraternities; the fact of references; and, with their written consent, the names of clients regularly represented. A certificate of compliance with the Rules and Standards issued by the Special Committee on Law Lists may be treated as evidence that such list is reputable.
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> A lawyer may also make known his legal service by writing an article which gives information on the law in a newspaper. The only prohibition is that he should not accept employment from such publications to advise inquiries in respect to their individual rights."[17]

In *Tagorda,*[18] the Supreme Court interpreted these provisions as proscriptions against advertising the practice of law, and imposes a prohibition against the use of media to make known legal services, save for certain exceptions.

For example, a lawyer may make known his legal services in a newspaper by writing an article that gives information on the law. The only prohibition is that he or she should not accept employment from such publications in order to advise inquiries as to the readers' individual rights.[19]

The CPR deals with lawyer marketing as follows:

> "CANON 2: A lawyer shall make his legal services available in an efficient and convenient manner compatible with the independence, integrity and effectiveness of the profession.
>
> Rule 2.03 – A lawyer shall not do or permit to be done any act designed primarily to solicit legal business.

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[17] Canon 40, Code of Professional Ethics.

[18] G.R. No. 32329, 54 Phil 37 (1929).

[19] *Id.* at 17.

> Rule 2.04 A lawyer shall not charge rates lower than those customarily prescribed unless the circumstances so warrant."

According to the aforementioned provisions, a lawyer must not directly or indirectly do any act or permit any act or thing to be done, which can be reasonably regarded as professional touting or as designed primarily to attract legal business.[20] Canon 3 of the CPR provides:

> "CANON 3: A lawyer in making known his legal services shall use only true, honest, fair, dignified and objective information or statement of facts.
>
> Rule 3.01 A lawyer shall not make use of any false, fraudulent, misleading, deceptive, undignified, self-laudatory, or unfair statement or claim regarding qualifications or legal services.
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> Rule 3.02 In the choice of a firm name, no false, misleading or assumed name shall be used. The continued use of the name of a deceased partner is permissible provided that the firm indicates in all its communications that said partner is deceased.
>
> Rule 3.03 - Where a partner accepts public office, he shall withdraw from the firm and his name shall be dropped from the firm name unless the law allows him to practice law currently.
>
> Rule 3.04 A lawyer shall not pay or give anything of value to representatives of the mass media in anticipation of, or in return for, publicity to attract business."

As can be observed from the above provisions, the CPR relaxes the restrictions imposed by the CPE. They no longer prohibit advertising *per se*, so long as the content consists of true, honest, fair, dignified and objective information and facts. Self-laudation, as proscribed in Rule 3.01, constitutes publication by a lawyer, personally or through another, extolling to the general public his witness, activities, and experience for the purpose of furthering his professional interests.

The CPR however does not define what constitutes "dignified and objective information or statement of facts" in making known the lawyer's legal services. However, taking into consideration its conservative origins, the

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[20] Code of Professional Responsibility.

traditionally acceptable ways by which a lawyer may make known his legal services may be understood to be as follows:

a. Simple professional calling cards

The giving out professional calling cards is unquestionably the most acceptable form of lawyer marketing. The only limitation to this form is that it must not be false or misleading with regard to statements and claims made pertaining to the lawyer's qualifications and services offered. There are several types of lawyer calling cards that go in various styles. Canon 27 of the CPE provides that such cards must be "simple". Section 27 of the ABA Rules, from which Canon 27 was derived, makes reference to "personal taste", "local custom", and "convenience" as possible guides on form and content.[21]

b. Publication in reputable law lists

Publication in reputable law lists is also another acceptable way in which a lawyer may make known his legal services. The reason behind this is that these lists filter information before publishing it for public consumption, making sure that no false, deceptive, or misleading information can be printed to deceive prospective clients. The CPE likewise provides for a Special Committee on Law Lists, which may issue a certificate of compliance. In the Philippines, some of the reputable law lists include Martindale.com, Philippine Law Review, Lawyer's Review, and the IBP Listings.

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[21] ABA Rules, §. 27: "Advertising, Direct or Indirect. - The most worthy and effective advertisement possible, even for a young lawyer, and especially with his brother lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity to trust. This cannot be forced, but must be the outcome of character and conduct. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not *per se* improper. But solicitation of business by circular or advertisements, or by personal communications or interviews not warranted by personal relations, is unprofessional. It is equally unprofessional to procure business by indirection through touters of any kind, whether allied real estate firms or trust companies advertising to secure the drawing of deeds or wills or offering retainers in exchange for executorships or trusteeships to be influenced by the lawyer. Indirect advertisement for business by furnishing or inspiring newspaper comments concerning the manner of their conduct, the magnitude of the interest involved, the importance of the lawyer's position, and all other like self-laudation, defy the traditions and lower the tone of our high calling, and are intolerable."

c. Publication of written materials (e.g. newspaper articles, law commentaries)

This is also one form of marketing strategy that is generally acceptable and patronized by law practitioners. A lawyer may also write legal articles for publication in which he gives information on the law, but he should not accept employment from such publication.[22] The benefits for allowing such publication is two-pronged: First, it may promote the author of the written material as an expert in the subject matter of his work; and second, it contributes to the body of written work on the law.

d. Word-of-Mouth or Reputation

A lawyer's well-merited reputation is however still the best proof of his skills and competence which he earns as the outcome of character and conduct.[23] Good and efficient service to a client as well as to the community has a way of catching public attention. That publicity is a by-product of effective service, which is right and proper. A good and reputable lawyer needs no artificial stimulus to generate it and to magnify his success. [24]

C. Evolving Practice and Motivations

The limitations in making legal services known is intertwined with the struggle to preserve professionalism in the practice of law. This is especially true in cases of lawyer advertising. Advocates for the imposition of stricter regulations on lawyer advertising or its absolute prohibition rest on the theory that too much advertising on the part of the lawyers breeds unprofessional conduct and services.

One way of understanding how the field of lawyer marketing has become what is it now is to look at factors that have shaped it. The following factors are derived from the work of Alvin Toffler, the author of *Future Shock*, *The Third Wave*, and *Powershift*, in which he describes the social and economic transformations in the Information Age.[25] These factors show why lawyer marketing has changed in contemporary times:

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[22] Canon 40, CPE. *See* also: AGPALO, *supra* note 2 (1983 ed.) at 110-120.

[23] Director of Religious Affairs v. Estanislao Bayot, A.C. No. L-1117 (1944).

[24] Ulep v. Legal Clinic, B.M. No. 553, 223 SCRA 378 (1993).

[25] In the 1970s, ALVIN TOFFLER published the now-classic futurist book FUTURE SHOCK in which he discussed the process of change and how change affects people and

1. Substantive changes in the legal profession and the role of the lawyer

In the past, the primary role of the lawyer was that of a court's advocate. Lawyers were required to maintain a physical establishment accessible to the court and other members of the bar.[26] However, this archetype changed with the expansion, inclusion, and diversification of law into other fields such as business and trade, where representation before a local court was relatively less important. These fields usually only involved counseling on matters involving transactions that do not entail formal court proceedings.[27] This change has led to the emergence of a new type of lawyer mainly involved in counseling, as opposed to the traditional lawyer/advocate, whose main role was representation before the court.[28] In the Philippines, both practices are embraced in the definition of the term, "practice of law," which is further characterized by jurisprudence as part of the "administration of justice."[29]

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organizations. He defined "future shock" as the disorientation and stress brought on by trying to cope with too many changes in too short a time. Individuals, organizations, institutions, and even entire nations can be overloaded with too much change too soon, which may result in disorientation or even failure to make intelligent adaptive decisions. He discussed how the information age would have the effect of increasing the need for documentation and greater litigation, thus increasing the need for lawyers or their services. THE THIRD WAVE, the sequel of FUTURE SHOCK, was published in the 1980s and described the revolutionary changes in technology and society and placed these changes in a historical perspective. It described the industries that would take to the mainstream. The book foreshadowed such things as flexible manufacturing, niche markets, and the "de-massification" of media. In POWERSHIFT, he described how the availability of knowledge and information had drastically changed the public, their demands, and their expectations. These books provide the cultural backdrop on which to study the trends now affecting the practice of law and the marketing of legal services. In essence, it is this: that we live in different times, where the speed and the sheer number of transactions or potential transactions have changed the ways that the profession deals with internal and external pressures, and that the profession is adapting to these changes the same way that society is adapting.

[26] *Id.*

[27] *Id.*, at 401.

[28] *Id.*

[29] Cayetano v. Monsod, G.R. No. 100113, 201 SCRA 210, (1991).

In his Tresolini Lecture at Lehigh University on November 10, 1988, Judge Arlin M. Adams[30] observed that in the recent years, the legal profession has undergone fundamental changes that render the qualitative revolution within the legal community hardly recognizable from the practice that existed forty (40) years before.[31]

According to Adams, substantial changes arose in the body of substantive law and in the types of services that lawyers are now required to perform.[32] As a result, the legal profession underwent a drastic transformation to adapt to these substantive changes.[33]

Judge Adams explains how the traditional practitioner drew on diverse and established doctrine between the government and property, whereas the modern practitioner must now contend with various statutory, regulatory, and administrative specialties.[34] For example, a great deal of litigation today entails large and complex breach of contract suits, complex real estate transactions, intricate corporate matters, and financial maneuvering in the international capital markets.[35] In short, the law within which the modern practitioner practices his craft has become more complex. The modern lawyer cannot consider only one applicable law to his case as he/she must contend with other applicable rules and regulations as well as the binding contracts between his client and other parties.

2. Increase in lawyer specialization

One of the most dramatic trends prevalent in the legal industry is the specialization of lawyers in certain fields. In the United States, senior members of the bar have for the past five or six decades witnessed as to how the legal profession evolved from a local general practice to the "global, specialized, complicated, highly regulated, and sophisticated enterprise" that it is today.[36]

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[30] Arlin Adams, *The Legal Profession: A Critical Evalution, Remarks at the Tresolini Lecture at Lehigh University(Nov. 10,1988)* Dick.L.Rev.643(1989).

[31] *Id.*

[32] *Id.*. at 644.

[33] *Id.*, at 644.

[34] *Id.*, at 644-648.

[35] *Id.*, at 648.

[36] Janet Stidman Eveleth, *Practicing Law Yesterday and Today – How has it Changed?* 38-FEB Md. B.J 42, at 43 (2005).

Whereas the practice of law before was limited to generalists, the field has increasingly widened its scope. There is now great differentiation between the different fields of law, and each one has its own rules and practice. In the words of Anthony Kronman in his book *The Lost Lawyer*:

The increase in specialization, though not implying a "de-skilling of professional work", does suggest that large firms have made a conscious effort "to cultivate the specialized skill base" needed to attract corporate clients.

It can be done in two ways: First, by encouraging their lawyers to acquire greater expertise in narrower fields and second, by developing "a set of structured relationships between specialists in different fields and with different client bases."[37]

This change is brought about by many factors, the most important of which is that industries and disciplines have become more complex with the advent of technology. The latter has led to an increase in the number of and greater diversity in the transactions that can be completed within a shorter period of time. Because of this, government, through legislation, has increasingly stepped in to formulate legal standards and create specialized administrative agencies to govern legal transactions.[38] In many cases, these industries or regulatory agencies require integrated and specialized knowledge that are not of laymen's knowledge, but are limited to those educated specifically in a particular area.

Inasmuch as many fields of legal regulation have cropped up, there are now more laws and jurisprudence than what a legal practitioner may hope to read in his lifetime. The reading list has expanded as more jurisprudence is written and more laws are passed. While a practitioner may take the time to study the pertinent laws and jurisprudence pertaining to a case, such research is time-consuming, and would keep him from other tasks that may be just as profitable. This process is simply not efficient.

In order to ensure that much of the available knowledge can be collated and utilized, practitioners specialize in their field of choice by studying all substantive subject matter and jurisprudence pertaining to their chosen

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[37] Anthony Kronman, *The Lost Lawyer: Failing Ideas of the Legal Profession*. 275 (1993), citing a recent study of large firm practice in Chicago by Robert Nelson.

[38] *See* Philippine International Trading Corp. v. Angeles, G.R. No. 108461, 331 Phil. 723, 750-751, at footnote 22 (1996).

specialty. Since practitioners need to be constantly updated in order to have an edge against the adverse party, the process also ensures that they cannot be an expert in all fields of law, but must instead select one or two in which they can concentrate on. In fact, some legal fields may even be so complex as to require sub-specializations.

Many medium-to-large Philippine law firms are divided into departments specializing in certain fields of law while several smaller firms exercise the option of engaging and specializing in certain related fields of legal practice. Because of this trend in specialization, firms are now seeing the need to inform the general public about their specializations, often by including these details in their websites.

This practice of specialization, taken from the business model of strategic management, has changed the legal practice because it creates a situation wherein a partnership must decline a prospective client because it may not be competent on a field of law while it entrenches in a field of expertise.

3. Rise of the legal mega-firms

The advent of the mega-firms has also greatly altered the landscape of the practice of law, and with some firms going international, the marketplace for legal services and for attorneys has grown significantly in scope.[39]

The Philippines has a number of legal mega-firms, mainly based in Metro Manila, such as SyCip Salazar Hernandez & Gatmaitan which has offices in Subic, Cebu, and Davao;[40] Angara Abello Concepcion Regala & Cruz which also has offices in Cebu and Davao;[41] Romulo Mabanta Buenaventura Sayoc & De Los Angeles which has an office in Hong Kong,[42] and Quisumbing Torres that is associated with the international legal firm Baker & McKenzie LLP.[43]

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[39] Adams, *supra* note 31 at 649.

[40] *See* http://www.syciplaw.com/contact.html (last accessed on October 13, 2011).

[41] *See* http://www.accralaw.com (last accessed on October 13, 2011).

[42] *See* http://www.romulo.com/?page=134 (last accessed on October 13, 2011)

[43] *See* http://www.internationallawoffice.com/directory/Detail.aspx?r=6972 (last accessed on October 13, 2011)

The reason behind the growth and popularity of these mega-firms is simply economic demand.[44] There is a demand for more lawyers who specialize in very particular and lucrative fields of law. Additional specialized departments or offices require additional counsel who can cater to these specialized fields.

An article written in the late 1980s made a prescient observation with regard to law firms:

> "The four main characteristics of large law firms in the 1990's are that they will be bigger, more fluid, more risky, and much more diversified and commercially aggressive.
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> First, size. There will be an accelerating trend toward larger and more diverse law firms. The data over the last decade dramatically document the trend toward larger legal institutions. Firms are becoming behemoths. Today, Baker & McKenzie has more than a thousand lawyers."[45]

This is most apparent in the Intellectual Property law practice in the country. Foreign businesses and corporations who desire to protect their trade names, trademarks, and patents within the Philippines need the services of local counsel who specialize in intellectual property, because the practice of law in the Philippines is limited to its citizens.

Second, fluidity. One of the most dramatic changes in the last third of this century in the practice of law is the loss of loyalty and 'family' in law firms. We are entering an era where talented lawyers with a large book of business will be 'at play' in the market, with firms bidding for those services. Star lawyers are the new 'free agents' in our society, just like professional athletes. No longer will a lawyer look forward to practicing with only a single law firm; rather, the lawyer may make three or four career changes. There will be intense bidding among big law firms for "heavy hitters" or lawyers with a big, mobile practice who will move with the promise of greater rewards. Assembling legal talent in a firm is increasingly a matter of hiring laterals rather than slowly building from the inside.[46] This trend is very visible in law firms today. Big law

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[44] John Heinz, Robert Nelson, Rebecca Sandefur and Edward Laumann, *Urban Lawyers: The New Social Structure of the Bar* (2005).

[45] James Fitzpatrick, *Legal Future Shock: The Role of Large Law Firms by the End of the Century*, 64 Ind. L.J. 461, 462-468 (1989).

[46] *Id.*

firms experience a turnover of associate lawyers usually after only two years. Most of these junior lawyers were carefully sought out and recruited during their senior year in the country's top law schools. However, many of them, after gaining experience in the big firms, move on to search for higher-paying firms or big corporations looking for in-house counsel.

Third, riskiness. There is no doubt that the business of law is going to be much more risky as a result of these trends. There is the increasingly onerous burden of meeting a huge payroll every week. Law firms, therefore, are extremely susceptible to severe strains if expected revenue growth does not materialize due to factors over which the law firm has no control. Facing a period of financial stress, many firms simply do not have the sense of tradition and mutual support at bottom and partnership that will permit a firm to survive. Thus, firms that were put together in a hurry can fall apart in a hurry.[47] This is why many law partnerships dissolve or merge with others. The pressure to stay financially afloat is the risk law firms have to take in the face of fierce competition among law firms. Good lawyers are attracted to the firm that offers the best package. Law firms hire topnotch lawyers on the premise that the added credentials will improve the quality of the services they offer. But this is always a risk, because clients may not base a firm's qualifications on the credentials of its lawyers alone as the legal fees may also be a factor.

Finally, diversification and commercial aggressiveness. I believe that the most marked characteristic of the practice by the end of the century is that large firms will become immensely more diversified in the services they offer. They will become more oriented toward problem-solving than traditional law firms. The firms will assemble teams of experts-lawyers and non-lawyers to offer their clients a "one-stop shopping" forum. Traditional lines that have long separated the professions will become significantly blurred. By the end of the century, legal services will be provided broadly in the context of a diversified service firm that will draw upon the talents of many disciplines with financial, economic, and scientific resources available within a single institution. This evolution is indeed the most exciting development that I foresee in large corporate law firms. [48]

4. The increase in opportunities for international practice

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[47] *Id.*

[48] *Id.*

The legal services sector has experienced continued growth over the past decades as a consequence of growth in international trade and the burgeoning practice of business law.[49] This means that lawyers are progressively encountering more and more transactions involving multiple jurisdictions. The demand comes mostly from corporate clients who do business in foreign jurisdictions and choose to rely on professionals who are already familiar with the local business laws and can guarantee high-quality legal services.[50]

Lawyers cannot ignore the effects of globalization. Those who recognize the increased significance of international economic relations must be wary of the consequences of these changes as providers of services.[51] In the new economy, it would be difficult for many companies to exist in a purely domestic setting. The growth of transnational corporations brought with it the increasing need for multi-national legal advice. The opening of the international market in many countries brought with it an influx of foreign legal consultants. But even with the expansion of US firms into other countries, foreign markets are still far from being fully tapped.[52]

The popular international areas of practice seems to be in joint ventures, mergers and acquisitions, project financing, debt restructuring, hedge fund practice, corporate restructuring, international arbitration, and cross-border transactions.[53] Outside the corporate practice, there is also estate planning, probate work, and even tort.

PART II. LAWYER AND LAW FIRM ADVERTISING ON THE WEB

A. The World Wide Web Landrush

The repercussions of information technology on the practice of law at both municipal and international levels are staggering. This era has seen a remarkable increase in the speed and number of transactions. It is a witness to an age where time has become increasingly valuable and space has become

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[49] *Supra* note 26 at 104 and 309.

[50] *Id.*

[51] Jens Drolshammer and Michael Pfeifer, *The International Practice Of Law: The Swiss Experience*, 14 Tul. Euro. Civ. LF 65, 78-79 (1999).

[52] Martha Neil, *Over There,* 89 ABA Journal 57 (2003).

[53] *Id.*

relative to a keyboard, keypad, or click of a mouse. Although the courts may have been slow in internalizing the effects of technology, the practice certainly has not.

Modern Filipino lawyers and law firms have moved away from the traditional ways of lawyer marketing. The use of simple professional calling cards, inclusion in reputable law lists, and publicity by word of mouth are now insufficient to compete in the Information Age. Just as the Web has changed the marketing strategies of businesses, it has also altered lawyers' attitude towards advertising their services. The online community has provided lawyers with an effective marketing tool, virtually unregulated, and which calls for minimal capital outlay. With a computer, Internet access, and basic computer literacy, a lawyer can maintain presence on the Web. Through the mix of technical means and a lack of express regulation, Filipino lawyers are now doing what they could not do with traditional media – sell legal services to target consumers.

1. Practice Information Websites

If the practice of the Philippine mega firms is any indication, lawyers and law firms have claimed their stakes in this new space. A domain or a Web address, which points to a firm's official website, is now a necessity for any law firm. Through such an address, users can access the firm's website, which may open with or include the firm's profile. The profile gives the site visitor an overview of the practice of the firm and highlights its strong points. Other law firm web sites may also give the history of the firm, including how it began, what its achievements were in the past, and the prominent personalities that had once been part of it. Some distinguished law firms include information on current international affiliations and how it recruits and trains lawyers in the firm. Meanwhile, other law firms, instead of a profile or history, present the firm's mission statement and outlines the fundamental principles adhered to by the firm. Whether the website contains the firm's profile, history, or mission statement, all these seek to give a background or overview of the firm and introduce the firm to the visitor.

A typical website of a firm would also contain a list of available legal services or areas of specialization. This gives visitors an idea whether they would be properly assisted by the firm. A very thorough description of areas of law covered by the firm gives them a concrete idea of the firm's practice. It also convinces visitors that it can efficiently handle cases of potential clients. Most law firm websites also give a list and description of lawyers working in the firm, including their educational background, work experience, and fields of specialization.

A firm's website would not be complete without its contact information, which usually includes the office address, email address, and telephone and fax numbers. Some websites also provide for a standard form, which the site visitors can fill out for their queries or messages. Whether by telephone, email or a personal visit at the law office, site visitors can get in touch with the law firm, either to request for more information or secure legal services.[54]

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[54] Claudia Rast, *Marketing Your Practice on the Internet*, in The Internet Guide for Pennsylvania Lawyers at 98 PBI Course Handbook, No. 1997-1248).

A few firms also include in their websites a list of their "major" clients, which are usually prominent corporations. While this practice may raise ethical questions on the privacy of the client and adherence to the attorney-client privilege, a list of distinguished clients nevertheless helps the firm build credibility and earn the trust and respect of potential clients.

A "news" section may also be found in a few law office websites. This section may be considered an online press release, as it contains articles in news format, detailing the recent achievements of the firm and its lawyers, events in the firm, and other related stories. Some law firm websites also include sections devoted to legal updates, such as Supreme Court Decisions, laws, issuances, rules and regulations, among others. One law firm website has the most extensive online legal library which covers almost all fields of law, both domestic and international. Each link in the virtual library, when clicked, leads visitors to the information they might be looking for. Other firms, on the other hand, have smaller online legal libraries which contain online legal articles written by lawyers that have been published in magazines and newspapers. By putting up a virtual law library, the information in which show up in search engines, online researchers are led to the firm's website. While visitors might not be particularly looking for a law firm, their search for legal materials may direct them to the websites of law firms. Chanrobles.com, for example, is one of the most visited sites by law students because of its immense virtual library. This method helps bring in the needed traffic for the website.[55]

Some firm sites also provide the reader with helpful links to related sites. A law firm's online legal library may have links that lead visitors to other sites and which might provide the needed information. Some links include a "governmental portal" section where visitors finds links to websites of the Supreme Court, the Office of the President, *Bangko Sentral ng Pilipinas*, Intellectual Property Office, Bureau of Internal Revenue, and other government agencies. There are some law firm websites that have a section on "Career Opportunities", where job seekers may apply online for employment in the firm. Usually a standard questionnaire is provided, which visitors can fill out and attach their resumes to.

The Web offers unique advantages over traditional media. For one, given the globe-spanning nature of the medium, the Web gives practitioners an

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[55] *See* http://www.chanrobles.com

instantaneous gateway to the global marketplace, twenty-four hours a day.[56] A web presence may also project the image that the law firm is technologically adept or cutting edge.[57] By including the profiles of the lawyers behind the firms, websites are able to humanize the law firms. Websites give the firm a face and a personality, and tells visitors that these are the people who could assist them in their legal situation. Aside from giving that personal touch, the profile of lawyers – which highlight the educational background, work experience, and achievements– positively affects the over-all image of the firm. It gives visitors a picture of a law office run by highly efficient and competent lawyers.

Maintaining websites has almost become a standard practice for law firms. Through a website, law firms, and even individual practitioners, are able to build a corporate image, one that they cannot achieve through the traditional means allowed by the legal profession. They are able to provide more in-depth information about the practice of law and available legal services. By giving information on its lawyers and clientele, and by posting press releases, law firms are able to generate credibility and an impression of competence. To attract visitors to their websites, law firms put up online legal libraries, resource centers, and links sections. This way, legal researchers and other visitors stumble upon the firms' websites when they are looking for legal information. By providing various ways to contact the firm, including prepared query forms, potential clients are able to choose the means that they are most comfortable with.

2. Online Directories

Most law firms have also resorted to online directories. Just like paper-based directories, online directories offer a convenient way to locate legal service providers. However, the variations made online, such as priority listing and recommendations made by those who maintain the directory websites, may elicit questions of propriety. The practice of lawyers going online and making known their legal services is in itself ethically questionable, more so if the manner by which it is done is obviously to forward a firm's advantage over other firms.

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[56] Vanessa Browne-Barbour, *Lawyer and Law Firm Web Pages as Advertising: Proposed Guidelines*, 28 Rutgers Computer & Tech. L.J. 275, at 280 (2002).

[57] Gregory Siskind and Timothy Moses, *The Lawyer's Guide to Marketing on the Internet,* 9 (1996); "Clients want to believe that their lawyers have the best tools available to help in getting the best results." *See* Rast, *supra* at 98.

Similar to a telephone directory, an online directory lists law firms and supplies contact details. The Legal 500, for example, has a website which offers a directory of law firms in various countries, including the Philippines.[58] Firms included in its directory for a specific country are listed alphabetically and by recommendation. In the first kind of listing, firms are simply enumerated alphabetically. In the second type of listing, the website catalogs different fields of practice and includes for a certain field the law firms which it recommends. The site even gives a brief explanation why it recommends particular firms.

Martindale.com, for example, provides an online directory of firms and lawyers for various countries, including the Philippines.[59] Its directory may be viewed alphabetically or by field of specialization. The listing includes basic contact information, whereas some have brief law firm profiles. Hierosgamos.org is another online directory which lists law firms in two ways: by geographical location and by area of practice. The list provides basic contact information for the listed law firms.

3. Blogs

Another manner by which lawyers make known their legal service online is by way of weblogs or blogs. Because of the simplicity by which an Web users can create blogs (as compared to a custom-made informational website as discussed above), blogging has become an immensely popular activity on the Web, including among lawyers. Compared to informational websites, which are commonly utilized by law firms, blogs are more frequently used by lawyers for personal purposes. For example, a certain lawyer's blog purports to provide free legal advice, and a reader may leave a message or a comment describing a legal dilemma. The the lawyer-blogger can then reply through the blog. Most other blogs of lawyers serve as their online journals where they write about their everyday lives, comment on national issues, or tackle specific fields of law.

Unlike informational websites and online directories, both of which seek to provide information on the law firm, blogs are usually put up by lawyers for other purposes, such as to provide free legal consultation, give commentaries on legal or non-legal issues, or simply to provide the blogger

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[58] *See* http://www.legal500.com

[59] *See* http://lawyers.martindale.com

with an online journal. However, lawyers inadvertently make known their legal services. It cannot be discounted that blog readers become aware of the lawyer's practice through the blog. Thus, while blogging lawyers may not be conscious of it, they actively make known their practice of law by maintaining personal blogs.

4. Social Media

Social networking websites such as Facebook, Twitter, or LinkedIn enable lawyers to map online their personal network of friends, acquaintances, or professional contacts. These social media sites provide another vast, globe-spanning platform for lawyers to publicize their practice at little or no cost.

As of October 2011, Facebook reports that it has over eight hundred million active users.[60] LinkedIn, a similar site popular with lawyers and other professionals, claim to have a hundred million users.[61] Though the precise impact of this new mode of connectivity on the profession has not yet been closely scrutinized, one commentary predicts that the social media will effect a revolution in the practice in much the same way that the Internet did in the early nineties.[62]

B. Ethical Limits of Lawyer Advertising

At the British Inns of Court, the earliest known regulatory body for the legal profession, the marketing of legal services was frowned upon or even strictly prohibited. Advocates refrained from even mentioning, much less glorifying, their victories in courts and other related cases. It was the culture of the legal profession back then to live by the strength of their record and not by self-acclamation. It seemed that "early lawyers in Great Britain viewed the law as a form of public service, rather than as a means of earning a living, and they looked down on "trade" as unseemly".[63]

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[60] *See* https://www.facebook.com/press/info.php?statistics (last accessed October 13, 2011).

[61] *See* http://blog.linkedin.com/2011/03/22/linkedin-100-million/ (last accessed October 13, 2011)

[62] Dustin Bernham, *The State Bar of Texas Provides New Guidance to Attorneys Regarding the Proper Use of Social Media and Blogs for Advertising Purposes*, The Advocate (Texas) 1 (Fall 2010).

[63] Bates v. State Bar of Arizona, 433 U.S. 350 (1977).

Through the years, this negative attitude toward advertising eventually evolved into an aspect of the ethics of the profession.[64] To treat the legal profession as if it were like any other trade or business was seen to "...adversely affect the profession's service orientation, and irreparably damage the delicate balance between the lawyer's need to earn and his obligation to serve selflessly."[65] In particular, lawyer advertising was seen to affect greatly three things: the relationship between the lawyer and client, the quality of the legal service and the number of litigation.

The dicta in *Bates vs. State Bar of Arizona* stated that "Advertising is also said to erode the client's trust in his attorney: Once the client perceives that the lawyer is motivated by profit, his confidence that the attorney is acting out of a commitment to the client's welfare is jeopardized."[66] Aggressive advertising may be seen as an unprofessional and unethical desire to gain many clients who can be milked for their money. This may lead to potential and current clients to feel like they are just being used to fill the pockets of the lawyer.

In 1986, the American Bar Association Commission on Professionalism conducted and issued a report, which showed that the American public is of the opinion that lawyers abandoned principle for profit and professionalism for commercialism.[67] First, many blame lawyers for grave public crises, such as the increase in medical malpractice litigation and the high costs of liability insurance. Second, the public views litigation as consuming large amounts of resources. Third, many members of society feel that lawyers lack moral character.[68]

There is also the situation wherein "the attorney may advertise a given package of service at a set price, and will be inclined to provide, by indiscriminate use, the standard package regardless of whether it fits the client's needs."[69] With such package deals, the lawyer would be less inclined to serve his client well just as long as he can serve such client so that he could move on to the next and in doing so, earn more. Hence, advertising is also "said to have

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[64] *Id.* at 371, citing Henry Drinker, *Legal Ethics.* 5, 210-211 (1953).

[65] *Id.*, at 368.

[66] *Id.*, at 368.

[67] Jim Rossi and Mollie Weighner, *An Experimental Examination of the Iowa Bar's Approach to Regulating Lawyer Advertising,* 77 Iowa L. Rev. 179 (1991).

[68] *Id.*

[69] Bates, *supra* note 65 at 378.

the undesirable effect of stirring up litigation...thereby undesirably unsettling societal repose." [70]

This stance towards advertisement is clearly espoused by the CPR. The Supreme Court has been consistent in ruling that the law profession is not a business,[71] and as such, lawyers should not resort to direct or indirect advertisements for professional employment.[72] In the case of *Ulep vs. Legal Clinic*, the court held:

> "The standards of the legal profession condemn the lawyer's advertisement of his talent. The lawyer degrades himself and his profession who stoops to and adopts the practices of mercantilism by advertising his services or offering them to the public."[73]

At the same time, as early as 1977, the United States Supreme Court ruled that it found "the postulated connection between advertising and the erosion of true professionalism to be severely strained. At its core, the argument presumes that attorneys must conceal from themselves and from their clients the real-life fact that lawyers earn their livelihood at the bar."[74]

The ruling in *Bates* thus realized that while being a lawyer was and still is a noble profession, it was also still *the* way for lawyers to earn a decent living. Hence, lawyer advertising may fall under commercial speech that is protected speech under the First Amendment.

Moreover, it appeared that the ban on advertising originated as a rule of etiquette and not so much as a rule of ethics. The Court in *Bates* continued by holding that "habit and tradition are not in themselves an adequate answer to a constitutional challenge. In this day, we do not belittle the person who earns his living by the strength of his arm or the force of his mind. Since the belief that lawyers are somehow "above" trade has become an anachronism, the historical foundation for the advertising restraint has crumbled."[75] Lawyer advertising was therefore acknowledged as legitimate speech that could be made within certain boundaries. The Court held that if "the commercial basis

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[70] *Id.*

[71] In Re: Tagorda, supra note 6.

[72] Ulep v. Legal Clinic, B.M. No. 553, 223 SCRA 378, 407 (1993).

[73] *Id.*

[74] Bates, *supra* note 65 at 368.

[75] *Id.* at 372.

of the relationship is to be promptly disclosed on ethical grounds, once the client is in the office, it seems inconsistent to condemn the candid revelation of the same information before he arrives at that office."[76]

Also, contrary to earlier views, lawyer advertising is now seen as a valid way of making legal services more available. It is seen as a helpful way of disseminating knowledge about services to places that were far from commercial and urban centers. In fact, "it has been suggested that the failure of lawyers to advertise creates public disillusionment with the profession. The absence of advertising may be seen to reflect the profession's failure to reach out and serve the community..." [77] Furthermore, it was found that "cynicism with regard to the profession may be created by the fact that it has long publicly eschewed advertising even as it condones the practice of lawyers who structure their social or civic associations so as to get more potential clients." [78] In any case, the *Bates* Court held that an "attorney who is inclined to cut quality will do so regardless of the rule on advertising."[79]

Other than *Bates,* the United States Supreme Court has underscored in numerous other decisions that lawyer advertising *per se* is not illegal as long as it was within set boundaries. Now, the most recent amendment of the American Bar Association (ABA) Model Rules of Professional Conduct permits truthful advertising through any medium except "in-person solicitation". The 2004 ABA Model Rules provide:

> "Rule 7.1: Communications Concerning a Lawyer's Services
>
> A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading."

To place a blanket proscription on lawyer advertising was seen as detrimental to valid information dissemination, especially now that lawyer advertising is acknowledged as a "category of constitutionally protected

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[76] *Id.* at 369.
[77] *Id.* at 370.
[78] *Id.* at 371.
[79] *Id.* at 378.

commercial speech."[80] The First Amendment principles governing the state regulation of lawyer solicitations for pecuniary gain provide that "[commercial] speech that is not false or deceptive and does not concern unlawful activities . . . may be restricted only in the service of a substantial governmental interest, and only through means that directly advance that interest."[81] In an instance of magnanimity, the *Bates* Court also held that for "every attorney who overreaches through advertising, there will be thousands of others who will be candid and honest and straightforward. And, of course, it will be in the latter's interest, as in other cases of misconduct at the bar, to assist in weeding out those few who abuse their trust."[82]

The ABA found that regulated lawyer advertising had more benefits than prohibiting it altogether. In one statement, the ABA said that:

> "Advertising can help to solve this acknowledged problem: Advertising is the traditional mechanism in a free-market economy for a supplier to inform a potential purchaser of the availability and terms of exchange. The disciplinary rule at issue likely has served to burden access to legal services, particularly for the not-quite-poor and the unknowledgeable. A rule allowing restrained advertising would be in accord with the bar's obligation to "facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available."[83]

This more relaxed view of lawyer advertising is reflected in a fairly recent Philippine Supreme Court decision. In a 2003 case entitled *Khan vs. Simbillo*,[84] Atty. Simbillo was found guilty of violating Rule 2.03 and 3.02 of the Code of Professional Responsibility and Sec. 27 Rule 138 of the Rules of Court for advertising his services in a Philippine Daily Inquirer ad which read "Annulment of Marriage Specialist 532-433/521-2667". Citing the case of *Ulep vs. Legal Clinic*, the court reiterated that not all forms of solicitation may be proscribed by the Code of Professional Responsibility. The Supreme Court held:

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[80] Central Hudson Gas & Electric Corp. v. Public Service Commission of New York, 447 U.S. 557 (1980).

[81] *Id.*

[82] Bates, *supra* note 65 at 379.

[83] ABA Code of Professional Responsibility EC 2-1 (1976), as quoted in Bates, *supra* note 65.

[84] G.R. No. 157053 (2003).

> "The solicitation of legal business is not altogether proscribed. *However, for solicitation to be proper, it must be compatible with the dignity of the legal profession. If it were made in a modest and decorous manner, it would bring no injury to the law and to the bar.* Thus, the use of simple signs stating the name or names of the lawyers, the office, and the residence address and fields of practice, as well as advertisements in legal periodicals bearing the same brief data and the use of calling cards are permissible...The publication in reputable law lists, in a manner consistent with the standards of conduct imposed by the canon, of brief biographical and informative data is likewise allowable...a lawyer may not properly publish his brief biographical and informative data in a daily paper, magazine, trade journal or society program."[85]

Proper lawyer advertising was also seen as a way of weeding out "false lawyers". As held again in *Bates,* the Court said that "[because] the public lacks sophistication in legal matters, it may be particularly susceptible to misleading or deceptive advertising by lawyers. After-the-fact action by the consumer lured by such advertising may not provide a realistic restraint because of the inability of the layman to assess whether the service he has received meets professional standards.

Thus, if certain types of lawyer advertising were to be allowed, then there must be a vigilant regulatory agency to ensure that such advertising does not go beyond prescribed limitations.[86]

C. Application of Ethical Limitations to the Web

Websites, whether framed as standard practice information sites, blogs, or profile pages in social networking sites, are in most instances a form of advertising. In informing users of the availability of services, and in providing information partly aimed at convincing users of the desirability of engaging a particular lawyer or law firm, websites may be considered as a proposal to contract with prospective clients.[87] Consequently, "such communications constitute advertising".[88] States have consistently treated websites as advertising, and therefore subject to regulation against false,

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[85] *Id.*, emphasis supplied.

[86] Bates, *supra* note 65 at 379.

[87] Browne-Barbour, *supra* note 58 at 302.

[88] *Id.*

misleading, or deceptive content.[89] Given the correspondence between our local ethical rules and those of various jurisdictions in the U.S., there is no credible reason for departing from this view.

As held in *Virginia Pharmacy Board vs. Virginia Consumer Counsel,* lawyers "do not dispense standardized products; they render professional services of almost infinite variety and nature, with the consequent enhanced possibility for confusion and deception if they were to undertake certain kinds of advertising."[90] To avoid such confusion and deception, it has been held that there must be an agency to regulate such advertising. The United States Supreme Court underscored this when they said that "in holding that advertising by attorneys may not be subjected to blanket suppression, and that the advertisement at issue is protected, we, of course, do not hold that advertising by attorneys may not be regulated in any way."[91] It was also held that "advertising that is false, deceptive, or misleading of course is subject to restraint."[92]

Even with the long history of the legal profession and the changes it has undergone, it should not forgotten that it is a noble profession. Hence, "in addition to its general interest in protecting consumers and regulating commercial transactions, the State bears a special responsibility for maintaining standards among members of the licensed professions."[93] The interest of the State in regulating lawyers is "especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been officers of the courts."[94] Because it is the State which licenses members of the profession, it is justified in "the application of narrowly drawn rules to proscribe solicitation that in fact is misleading, overbearing, or involves other features of deception or improper influence."[95]

In the case of *In Re: Primus,* the United States Supreme Court held that "a State may regulate in a prophylactic fashion all solicitation activities of lawyers because there may be some potential for overreaching, conflict of

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[89] *Id.* at 303-304.

[90] Virginia Pharmacy Board v. Virginia Consumer Council, 425 U.S. 748, Footnote 25 (1976).

[91] Bates *supra* note 65 at 383.

[92] *Id.*

[93] Ohralik v. Ohio State Bar Association, 436 U.S. 447, 448 (1978).

[94] Goldfarb v. Virginia State Bar, 421 U.S. 773, 792 (1975).

[95] In Re: Primus, 436 U.S. 412, 437 (1978).

interest, or other substantive evils whenever a lawyer gives unsolicited advice and communicates an offer of representation to a layman."[96] This danger was all too clear given that "the public lacks sophistication concerning legal services."[97] Non-lawyers may be led to believe that the lawyers who are advertising would give them their money's worth even when they do no not. Such "misstatements that might be overlooked or deemed insignificant in other fields may be found quite inappropriate in legal advertising"[98] because the client's legal interest hangs on whether the lawyer who advertises can really deliver or not.

The ABA proscriptions then are seen as prophylactic measures, the objective of which is to prevent harm before it occurs. The Rules are applied to discipline lawyers who solicit employment for pecuniary gain under circumstances that are likely to result in the adverse consequences the State seeks to avert. In such situations, which may give rise to overreaching and other forms of misconduct, the State has a strong interest in adopting and enforcing rules of conduct designed to protect the public from harmful solicitation by the lawyers it has licensed.[99]

However, even if the State has the power and resources to regulate lawyer advertising, which is seen as a form of commercial speech and which may tend to mislead those who are not versed in legalese, the US Supreme Court has held that "the First and Fourteenth Amendments require that they do so with care and in a manner no more extensive than reasonably necessary to further substantial interests."[100] As long as such speech is protected, "the State may claim no substantial interest in restricting truthful and non-deceptive lawyer solicitations... Moreover, the First Amendment limits the State's authority to dictate what information an attorney may convey in soliciting legal business."[101]

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[96] *Id.*

[97] Bates, *supra* note 65 at 383.

[98] *Id.*

[99] Ohralik, *supra* note 96.

[100] *In Re R.M.J.*, 455 U.S. 191, 207 (1982).

[101] Shapero v. Kentucky Bar Association, 486 U.S. 466, 479 (1988).

CONCLUSION

A resolution must be done in the discrepancy between what transpires in actual practice regarding lawyer advertising on the web and the ethical rules of the profession.

Perhaps it is time to revisit our Code of Professional Responsibility to accommodate the need of the profession and society. One can take a look at the trends in other countries which are also adjusting to the transformation brought about by the recent changes in technology vis-à-vis the marketing arena. This way, we will not only be more responsive to the changing times, but will also become more effective in managing the virtually unregulated advertising activities of lawyers.

In this effort, the author urges a balanced, nuanced approach, taking into account the singular opportunity offered by the Web to democratize access to legal information and legal services. The new regulations should take into account the fact that the Web can accommodate multiple modes of communication: from one-to-one correspondence in social networks to posts in a website available to millions. It should also be considered that, unlike other media before it, the Web is capable of integrating aspects of other media. Web pages after all, are not limited to text and images like traditional print media, but can also accommodate sounds and video. At the same time, individual practitioners and law firms will do well to structure their online content and activities in a more circumscribed manner, avoiding language, imagery, or other forms of media that amount to or facilitate touting, self-laudation, or deceptive or misleading information.

On a last note, the need to know about legal services is particularly acute among persons of moderate means who have not made extensive use of such services and the Internet is now among the most powerful media for getting information to the public, particularly persons of low and moderate income. So while the traditional view is that a lawyer should not use advertising to seek clientele, the interest in expanding public information about legal services ought to prevail over tradition.[102]

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[102] ABA Commission on Ethics 20/20 Initial Draft Proposal –Technology and Advertising (June 29, 2011). *See* http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/tech_client_development.authcheckdam.pdf