LAWYER ADVERTISING FOR THE PHILIPPINES

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> A horde of pettifogging, barratrous, custom-seeking, money-making lawyers, is one of the greatest curses with which any state or community can be visited.
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> — JUDGE SHARSWOOD

INTRODUCTION

Advertising today has become a potent factor in the sale of products and services. Promotional conduct has become a prevalent and crucial factor in determining to whom work is allocated. Indeed advertising and vigorous solicitation of business are considered approved characteristics of our economy. In the legal profession, however, the traditional prohibition on advertising and solicitation of professional employment still exists. What one may consider at most as legal advertising in the Philippines are the customary listings in directories, professional cards and publication of firm names as sponsor in programmes.

In recent years there has been a growing awareness of the importance of access to the courts. The assistance of an attorney is frequently a necessity but securing that assistance can present obstacles. Finding a lawyer who best fits one's needs and means would be of utmost difficulty to one inexperienced or without contacts which is generally the situation. From the point of view of the lawyer, the procurement of clients and law business is of utmost concern to him. The profession of a lawyer is of great importance and the prosperity of his life may depend on its exercise.

As part of this trend of thought, restrictions on advertising and solicitation have come under attack in several countries, most especially the United States and Great Britain. More and more lawyers have turned to the practice of promoting work for the purpose of attracting clients or just simply for retaining them.

In view of the growing importance of the subject, this article will discuss the origin and present state of the law on lawyer advertising in the Philippines and the rationale therefor, make a comparison with the laws of other countries thereon, present a survey of the attitudes of lawyers

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belonging to law firms in Metro Manila to lawyer advertising, and expound on the arguments for and against lawyer advertising with an analysis of the applicability of such arguments to the Philippine setting.

It is to be emphasized, however, that this paper will tackle solely the issue of lawyer advertising and not solicitation. These are two distinct and separate things. Solicitation may be defined as the giving of legal advice motivated by a desire to obtain personal benefit, secure personal publicity, or cause litigation to be brought merely to harass or injure another. A lawyer is soliciting if he should contact a non-client, directly or indirectly, for the purpose of being retained to represent him for compensation.[1] Thus, its distinguishing feature from advertising is the direct contact with the prospective client. Lawyer advertising, on the other hand, is taken to mean the seeking of business without direct contact with the prospective client. It is offered as an alternative means of communicating necessary information to those who may be in need of legal services. It is conceded that the prohibition on direct solicitation is justified by the potential for abuse, it being fraught with undue influence, intimidation and over-reaching.

1. Origin and Present State of the Law on Lawyer Advertising in the Philippines

A. *History of the Canons of Professional Ethics*

The Canons of Professional Ethics presently in force in the Philippines is merely an adoption of the canons codified and formulated by the American Bar Association (ABA) in 1908. 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).[2] When canons 33 to 47, adopted by the ABA in the years 1928 through 1934, were already in effect in the Unted States, the Philippine Bar Association again adopted the same canons through its Revised Constitution which was approved on April 20, 1946.[3] Although the Supreme Court has not adopted the said canons as statutory rules, it has made the Canons of Professional Ethics an appendix[4] of the Rules of Court and has referred to them in resolving disciplinary actions against members of the bar.[5] Since its adoption, the Canons of Professional Ethics in the Philippines has remained unchanged.

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[1] Schoor, *Class Actions: The Right to Solicit*, 16 Santa Clara L. Rev. 216 (1976).

[2] Cruz, *In Search of the Filipino Lawyer's New Code of Ethics*, 6 J. Integ. Bar Phil. 317 (1981).

[3] Martin, Legal and Judicial Ethics 379 (1980).

[4] Rules of Court, app. B.

[5] For instance, in the following cases the Supreme Court referred to the Canons of Professional Ethics: Daroy p. Legaspi, G.R. Adm. Case No. 936, July 25, 1975, 65 SCRA 304; Director of Religious Affairs v. Bayot, 74 Phil. 579 (1944); In Re Tagorda, 52 Phil. 38 (1928); In Re Tiongko, 43 Phil. 191 (1922); and Hernandez v. Villanueva, 40 Phil. 775 (1920).

In 1978, however, the Integrated Bar of the Philippines (IBP), a compulsory national organization of lawyers created under Rule of Court 139-A in 1973 and constituted into a body corporate in the same year by Presidential Decree 181, drafted a Proposed Code of Professional Responsibility which is still pending approval by the Supreme Court.[6]

B. *Present State and Rationale of Philippine Law on Lawyer Advertising*

The restrictions on advertising arose out of societal characteristics of earlier times. They originated in England where barristers were sons of wealthy parents who did not worry about earning a living and who looked down on all forms of trade and competition. They came from a small select class which did not depend upon the legal profession for livelihood and where altruism was economically affordable.[7] The legal profession was regarded first as a form of public service and secondarily as a source of livelihood.[8] It was these English-trained barristers who brought the advertising ban to America. In 19th century America, there were few lawyers and access to information regarding the competence of such lawyers was easily accessible to clients. The view of most lawyers then was that advertising tended to increase corruption, barratry, champerty, over-reaching, fraud and overcharging. These strict attitudes against solicitation and advertising in time developed into a recognized custom and tradition of the legal profession.

Historically then, the condemnation of advertising was the result of the development of the prohibition on ambulance chasing, champerty, barratry and the maintenance and crystallization of principles of good taste and legal etiquette.[9]

It is interesting to note that despite this tradition of prohibition on advertising, such practices still persisted. In 1838, Abraham Lincoln ran and advertisement in the Sangamon Journal.[10] The 1887 Alabama Code of Ethics, the first code of ethics in the United States, banned only direct solicitation but permitted advertising in newspapers.[11] Judge Sharswood, in his work on legal ethics in 1854 on which the ABA Code was based, did not mention advertising.[12] It was only in 1908 that the ABA enacted its advertising ban predicating it on Judge Sharswood's view of a homogeneous, rural society in which people knew practitioners personally and

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6 Gonzalez, *Philippines Legal Profession: Code of Ethics and Disciplinary Procedures*, in 9 1980 ASEAN COMPARATIVE LAW SERIES 23-24 (1982).

7 Note, *Advertising, Solicitation and Legal Ethics*, 7 VAND. L. REV. 679 (1954).

8 Kindregan, *Where Are We Going With Lawyer Advertising?*, 62 MASS. L. Q. 43 (1977).

9 Note, *supra* note 7.

10 Attanasio, *Lawyer Advertising in England and the United States*, 32 AM. J. COMP. L. 502-503 (1984).

11 *Id.* at 503.

12 *Ibid.*

recognized their legal problems.[13] The people referred to therein were the corporate and wealthy clients of lawyers who enacted the advertising ban.

The anti-advertising rule adopted by the ABA in 1908 was later brought to the Philippines upon the adoption of the ABA Code of Professional Ethics. The Philippine rule as embodied by Canon 2 provides that:

> It is unprofessional to solicit professional employment by circulars, *advertisements*, through letters, 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 the causes in which the lawyer has been or is engaged in 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, offend the traditions and lower the tone of our profession and are reprehensible. (Emphasis supplied)

To further reinforce the rule, the Code of Civil Procedure, at the Philippine Bar Association's instance, was amended by Act No. 2828 adding at the end thereof the following:

> The practice of soliciting cases at law for the purpose of gain either personally or through paid agents or brokers, constitutes malpractice.[14]

This language has been continued without change in the last sentence of Rule 138, Sec. 27 of the Rules of Court.

The IBP Committee on Professional Responsibility, Discipline and Disbarment, which drafted the Proposed Code of Professional Responsibility, took into consideration the ABA Code of Professional Responsibility rules on permissible advertising in the mass media especially in the formulation of Canon 3.[15] Under the IBP Proposed Code, a lawyer is impliedly allowed to "advertise" his legal services, or at any rate, not clearly forbidden to do so:

> Canon 2. A lawyer should *make his legal services available* in an efficient and convenient manner compatible with the independence, integrity and effectiveness of the profession. (Emphasis supplied)[16]
>
> Canon 3. A lawyer in *making known his legal services* shall use only true, honest, fair, dignified and objective information or statement of fact. (Emphasis supplied)[17]

The sole limitation appears to be a prohibition on a lawyer doing or permitting "to be done any act or thing designed primarily to attract or solicit *illegal business* (Emphasis supplied)."[18] At the same time, however, the

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[13] *Ibid.*

[14] BATACAN, LEGAL AND JUDICIAL ETHICS 213 (1978).

[15] Cortés, *Salient Features of the Proposed Code of Professional Responsibility*, 7 J. INTEG. BAR PHIL. 165 (1979).

[16] PROPOSED CODE OF PROFESSIONAL RESPONSIBILITY, Canon 2.

[17] PROPOSED CODE OF PROFESSIONAL RESPONSIBILITY, Canon 2.

[18] PROPOSED CODE OF PROFESSIONAL RESPONSIBILITY, Canon 21.

proposed code prohibits a lawyer from paying or giving "anything of value to representatives of the *mass media* in anticipation of, or in return for, *publicity* to attract legal business (Emphasis supplied)."[19]

According to Dean Cortes, Chairman of the IBP Committee, the Committee "opted for a general provision which emphasized truth in the advertisement of qualifications and legal services and proscribes among others undignified, self-laudatory and unfair statements."[20] This seems to indicate a liberal attitude towards advertising by lawyers. In view, however, of the prohibition on paid publicity, the question arises whether advertisements are within the concept of paid publicity proscribed by the proposed code. Is there a conflict between the above-quoted rules?

The IBP Proposed Code rules regarding the use of firm names and employment of press relations services also regulate advertising and the offer of legal services to the public by lawyers.[21]

The rules on firm names allow the retention of a deceased partner's name in the firm name; however, to avoid deception and imposition there must be a clear indication in all communications and advertisements that said partner is deceased.[22]

However, until the IBP proposal or some other proposal is approved by the Supreme Court, it is still the inflexible rule that a lawyer cannot advertise his talent as a shopkeeper advertises his wares.[23] It is well-settled in the ethics of the profession that the best advertising possible for a lawyer is a well-merited reputation for professional capacity and fidelity to trust which must be earned as the outcome of character and conduct.

The sanctions on lawyer advertising may range from reprimand to suspension and even possibly disbarment. In *In Re Tagorda,*[24] the use of a card containing the following was held to contribute improper advertising or solicitation, but the offending lawyer, due to certain mitigating circumstances, was merely suspended from law practice for a month:

> As a notary public, he can execute for you a deed of sale for the purchase of land as required by the cadastral office, can renew lost documents of young animals, can make your application and final requisites for your homestead, and execute any kind of affidavit. As a lawyer he can help you collect your loans, altogether long overdue, as well as any complaints for or against you. Come or write to him in his town, Echague, Isabela. He offers free consultation and is willing to help the poor.

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19 PROPOSED CODE OF PROFESSIONAL RESPONSIBILITY, Canon 3, Rule 3.04.
20 Cortés, *supra* note 15, at 165.
21 *Ibid.*
22 *Ibid.*
23 AGPALO, LEGAL ETHICS 110 (1983).
24 52 Phil. 38 (1928).

The same was held in *The Director of Religious Affairs v. Estanislao R. Bayot*[25] where the lawyer caused to be published in the *Sunday Tribune* of June 13, 1943 the following advertisement.

> Marriage license promptly secured thru our assistance and the annoyance of delay or publicity avoided if desired, and marriage arranged to wishes of parties. Consultation on matter free to the poor. Everything confidential.
>
> Legal Assistance Service
> 12 Escolta, Manila, Room 105
> Tel. 2-41-60

The lawyer was only reprimanded because of his plea for leniency and promise not to repeat the act.

However, not all types of advertising or solicitation are banned since advertising is not inherently a "*malum in se.*" The advertising abhorred is the use of methods which are incompatible with the traditional dignity of the lawyer and the maintenance of correct professional standards or means which augment the publicity that results from a lawyer's actions.[26] The problem lies in borderline cases where there are differences of opinion as to professional conduct, i.e. between a successful lawyer and that of a struggling lawyer. Hence, where to draw the line is a question of good faith and good taste.[27]

The Canons itself expressly provides the exceptions to the rule against advertising.

These exceptions may be categorized broadly into those which are expressly allowed and those which are necessarily implied from the restrictions. The first of such exceptions is "publication in reputable law lists in a manner consistent with the standards imposed by these canons of brief biographical and informative data."[28] Such data must not be misleading and may include only a statement of enumerated items, e.g. lawyer's name, address, telephone numbers, etc. The law list must be a reputable law list published primarily for that purpose; it cannot be a mere supplemental feature of a paper, magazine, trade journal or periodical which is published principally for other purposes.[29]

The other expressly permitted advertisement is the customary use of simple professional cards.[30] Generally, the use of the professional card for advertising is condemned, but its good faith use for the convenience of the public is approved. As to what it may contain," it is doubtful whether it

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[25] 74 Phil. 579 (1944).
[26] AGPALO, *supra* note 23, at 115.
[27] *Ibid.*
[28] CANONS OF PROFESSIONAL ETHICS, Canon 43: Approved law lists — It is improper for a lawyer to permit his name to be published in a law list the conduct, management on contents of which are calculated or likely to deceive or injure the public on the profession, or to lower the dignity on standing of the profession.
[29] AGPALO, *supra* note 23, at 116, *citing* ABA Op. 69 (March 19, 1932).
[30] CANONS OF PROFESSIONAL ETHICS, Canon 27.

should ever include more than the attorney's name, address and some designation as 'Attorney at Law'."[31] These same items may be contained in modest announcements in the public press. Dignified signs announcing the attorney's name are also permissible and necessary.[32]

Brief, concise and modestly displayed announcements or notices of removals or changes in personnel are permitted; and likewise with announcements of openings of law offices or transfer of place of business.[33] Unsolicited "news items" about a lawyer may be permissible; however, to distinguish it from "advertisements," the controlling factor is whether the publication is paid for or initiated by the lawyer receiving the benefit.[34]

Canon 46 expressly permits a lawyer engaged in a particular branch of law and available to act as an associate of other lawyers in that specific branch of legal service to send local lawyers notice of such specialized legal service. The announcement or representation should be in a form which does not constitute a statement or representation of special experience or expertise. It may not refer to his supposed qualifications and may not be sent to non-lawyers.[35] It must be published only in legal periodicals and like publications.[36]

II. THE LAW ON LAWYER ADVERTISING IN OTHER COUNTRIES

A. *Great Britain*

The ban on lawyer advertising originated in England. The rule had always been maintained as a tradition on the rationale that to provide otherwise is against the profession's dignity. When Parliament gave disciplinary powers to the Law Society in 1933, the latter promulgated a rule that solicitation was professional misconduct, hence, subject to sanctions.[37] It first prohibited touting[38] and later extended the prohibition to all forms of solicitor advertising in the Solicitor's Practice Rules of 1936.

Since the ban's enactment, developments revealed a gradual softening of the absolute ban.[39] By 1960, solicitors were allowed to publish their names, addresses and description in law directories. By 1974, the Law Society relaxed the restrictions so that these listings would also mention

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[31] Note, *supra* note 7, at 683.
[32] MALCOLM, LEGAL AND JUDICIAL ETHICS 35 (1949).
[33] FRANCISCO, TRIAL TECHNIQUE AND PRACTICE COURT, 87 (1955).
[34] Note, *supra* note 7, at 680: ABA Ap. 43 (1931).
[35] AGPALO, *supra* note 23, at 117 *citing* ABA Op. 194 (April 22, 1939).
[36] CANONS OF PROFESSIONAL ETHICS, Canon 46; ABA Op. 116 (August 27, 1934).
[37] SOLICITOR'S PRACTICE RULES, Rule 1 — A solicitor shall not obtain or attempt to obtain professional business by: (a) directly or indirectly without reasonable justification inviting instructions for such business, or (b) doing or permitting to be done without reasonable justification, anything which by its manner, frequency or otherwise advertises his practice as a solicitor, or (c) doing or permitting to be done anything which may reasonably be regarded as touting; Attanasio, *supra* note 10, at 490.
[38] "Touting" is defined as attracting business by undercutting the statutory or customary rates.
[39] Attanasio, *supra* note 10, at 497-502.

what work they undertake, announce events like change of office and advertise for work in the legal press.

In the 1970's, the Monopolies and Merger Commission tackled the issue of solicitor advertising when anti-competitive restrictions on the Practice Rules were attacked. The Law Society opposed and offered as an alternative institutional advertising.

The Commission rejected this, reasoning that individual advertising was more effective in disseminating information, e.g. specialization, office hours, and in increasing competition.[40] The Commission recommended advertising by solicitors, regulated in form, content, frequency and expenditure by the Law Society, stating that "advertising is inherent in any free or mixed economy and helps the consumer to exercise choice in such economies."[41] Thus, on October 1979, the Law Society permitted local law societies to print individual firm advertisements monthly, authorized individual firms to make announcements, e.g. office openings, allowed listings in yellow pages and increased institutional advertising some of which were promotional.[42] In 1983, on recommendation by the government to review the ban, the Council of the Law Society agreed in principle to permit publication of one short advertisement per week in local newspapers detailing services provided but not prices.[43] Finally, on June 21, 1984, the Law Society adopted the proposal of its Advertising Working Party and Working Party on Contingency Planning to permit solicitor advertising on all types of matters which took effect on October 1, 1984.[44]

B. *United States of America*

Since the adoption of the 1908 Code of Professional Ethics by the ABA up to 1977, the prevailing sentiment was condemnation of advertising on the rationale that it was a form of solicitation. However, some form of communication with potential clients and the public was permitted; hence, exceptions were made, the regulation of which took the form of defining and listing referred to as laundry lists.[45] The 1908 ban continued in Canon 27 was retained in the 1969 Code of Professional Responsibility. This Code continued to regulate through Disciplinary Rules (DR) all individual activities which might have as their objective the attraction of legal business.[46] DR 2-101 provides that a lawyer cannot participate in misleading,

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[40] *Id.* at 499.
[41] *Ibid.*
[42] *Ibid.*
[43] *Ibid.*
[44] *Id.* at 502. It is important to note that only the solicitors are permitted to advertise. Barristers, who are essentially litigators, are contacted through solicitors; thus obviating the need for advertising by barristers. If barristers were allowed to advertise, clients will be permitted to contact them directly thus undermining an essential tenet of the split profession. *Id.* at 494-495.
[45] Boden, *Five Years After Bates: Lawyer Advertising in Legal and Ethical Perspective*, 65 MARQ. L. REV. 550 (1982).
[46] *Id.* at 552.

false, fraudulent, deceptive and self-laudatory public communications except for political advertisements, routing notices of civic or business organizations or in legal publications written.[47] DR 2-102 closely restricts the contents of a lawyer's professional notices, announcement cards, office names and participation in law tests.

Sometime in the 1970's the Anti-Trust Division, private attorneys and consumer groups filed an action against the ABA and local bar associations to end its advertising ban.

Recognizing the need for change, the ABA House of Delegates voted on February 17, 1976 to amend the Code of Professional Responsibility allowing lawyers to publish consultation fees and specialties in law lists, directories and classified section of telephone directories.[48] It also liberalized the data includible in these sources by permitting information on credit arrangements and office hours.[49] It was in 1977 that the total ban on lawyer advertising was lifted. In *Bates v. State Bar of Arizona*[50] the State Bar of Arizona had brought an action against two lawyers operating a legal clinic who had advertised fixed fees for certain routine legal services in the newspapers. The Supreme Court held that lawyers had a constitutional right to advertise their prices in print. In response to this ruling, all states adopted new rules to allow at least some promotional activities by lawyers, amendments which varied from state to state.[51]

The ABA responded to *Bates* by developing two models which it circulated to the individual state bar associations for their consideration. The first proposal was a laundry list of permissible information which can be conveyed by the broadcast and print media.[52] This is the regulatory approach in which a lawyer may include in an advertisement only the items of information listed in the State Code. The constitutionality of these limitations has been challenged in a number of cases, the more prominent of which is *In Re R. M. Johnson*[53] wherein the U.S. Supreme Court held that an attorney could state information as to the jurisdiction in which he is licensed to practice since such information was highly relevant to consumers. The second alternative was open-ended, specifying only the ways in which attorneys cannot advertise.[54] Primarily,

[47] This disciplinary rule regulates the information that may be published or broadcast, providing for a list of such permissible information and the manner of communication.

[48] Kindregan, *supra* note 8, at 42-43; DR 2-102 (A).

[49] Comments, *The Oregon Bar's Ban on Advertising: An Anti-Trust Analysis*, 55 ORE. L. REV. 551 (1976).

[50] 433 U.S. 350 (1977).

[51] Andrews, *The Model Rules and Advertising*, 68 A.B.A. J. 808 (1982).

[52] DR 2-101 (B) (1-25). This disciplinary rule allows the same information previously permitted in legal directories, including location, references, payment, arrangements, qualifications and personal information like military record; Attanasio, *supra* note 10, at 509.

[53] 455 U.S. 191 (1982).

[54] Attanasio, *supra* note 10, at 509-510.

it banned misrepresentation, quality advertising (including testimonials and non-loss records), certain emotional appeals and slogans, jingles and other showmanship or hucksterism.

On August 2, 1982, the ABA adopted as part of its new Model Rules for Professional Conduct a simpler substantially more permissive plan for lawyer advertising. Essentially, these new rules permit generally any information in their advertisements and proscribes only that which is false, misleading or deceptive.[55] This directive approach to advertising is more constitutionally sound than the limited list rule and is in keeping with the guidelines laid down in the cases of *Bates* and *In Re R. M. Johnson.*[56]

The volume of lawyer advertising has steadily risen since 1977. In 1978, approximately 3% had advertised, increasing to 7% by 1979, to 10% by 1981, and to 13% by 1983.[57] An ABA poll in 1981 indicated that the number of attorneys who would advertise for 1982 had doubled from that found in a similar 1979 poll.

C. *Canada*

Canada is experiencing similar developments in its restrictive rule. As in the U.S., each Canadian province has its own Law Society with different Codes of Professional Conduct. Prevalent among them is the traditional view that advertising is not permissible. Under the Code of Professional Conduct of the Canadian Bar Association, the pertinent rule is expressed in Rule 13:

> Lawyers should make legal services available to the public in an efficient and convenient manner which will command respect and confidence and by means which are compatible with integrity, independence and effectiveness of the profession.

The present trend, however, is towards liberality. Similar to the U.S. arguments that the traditional ban on legal advertising violates the anti-trust laws and the constitutional freedom of speech, the Supreme Court of British Columbia held that Law Society rulings regarding advertising were subject to the competition provisions in the Combines Investigation Act.[58] Although there was no actual decision that the said Act is contravened, the Law Society quickly redrafted its rules.[59]

Many other Canadian provinces have already made similar changes. In British Columbia and Alberta, advertising of a preferred area of practice and fees and telephone referral service is allowed. And in Manitoba, radio television advertisements are additionally permitted. Ontario allows adver-

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55 NEW RULES ON PROFESSIONAL RESPONSIBILITY. Rule 7.2.
56 Andrews, *supra* note 51, at 809-810.
57 Attanasio, *supra* note 10, at 524.
58 Shupe, *Legal Advertising in Saskatchewan: Tune-up or Overhaul?*, 45 SASK. LAW REV. 260 (1980-81).
59 *Ibid.*

tising of three preferred areas of practice in telephone directories or newspapers provided lawyers attended continuing Legal Education courses in those selected areas. Quebec permits advertising in nempapers and telephone directories of factual information including lawyers' specialties for which Bar recognized specialists' certificates are issued.

D. *Asean Countries*

In Thailand, the Bar Association established the lawyer's rule of conduct on July 31, 1939. The rule on advertising is contained in its miscellaneous category:

> Miscellaneous: The following practices are also considered as violations of the rules of conduct:
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> . . . . . .
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> 4. Advertising or letting others advertise by whatever means his qualifications, location of his residence or office in such a manner implying that he is superior to other lawyers.[60]

In Indonesia, the legal profession is comprised of judges, prosecutors, advocates and notaries public with each group having their own individual professional organization. The advocates are organized in the Persatuan Advokat Indonesia (PERADIN) to which membership is voluntary.[61]

The PERADIN's Code of Ethics for Advocates, modelled after the Dutch Bar Association's Code contains the Indonesian rule on advertising under Chapter 6 dealing with other provisions to uphold the integrity of the advocate's profession. It provides that "an advocate may not solicit business or advertise himself, directly or indirectly."[62]

Despite the similarly strict formulation in comparison to the restrictive rules of other countries, the Indonesian rule is weaker in terms of enforcement and sanctions in case of violation of the rule due to the voluntary nature in membership.[63] The mechanism for enforcement is weaker since non-members may simply resign from membership to evade sanctions and disbarred members can still appear in court and practice law.

The Singaporean Etiquette Rules, approved by the Bar on August 10, 1935 which came into force in 1936 after the Council of Judges approved it have amended several times. The rules relating to advertising have been updated to wit:

> It is contrary to the etiquette of the profession for an advocate and solicitor to advertise his address or the address of his firm in any newspaper, periodical or other publication. It is also contrary to etiquette of

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[60] Nanakorn, *Thailand Legal Profession: Code of Ethics and Disciplinary Procedures*, in 9 1980 ASEAN COMPARATIVE LAW SERIES 85-86 (1982).

[61] Tasrif, *Indonesia Legal Profession: Code of Ethics and Disciplinary Procedures*, in 9 1980 ASEAN COMPARATIVE LAW SERIES 1 (1982).

[62] *Id.* at 5-6.

[63] *Id.* at 7.

> the profession for an advocate and solicitor to sanction the publication in the press or elsewhere (other than certain authorized publications), his professional qualifications or to display any document commences to him in his professional capacity or containing expressions of gratitude for professional work done.[64]

The rule is also undergoing a liberal change. In 1978, the rule prohibiting advocates and solicitors from reading news on radio and newsreel or television was revised so that these acts are now allowed subject to non-disclosure of name. Since then, however, there have been occasions when advocates and solicitors have appeared in public fora or on TV where they were identified or described as an advocate and solicitor but without any reference to his specialty or field of law.[65]

III. Arguments for and Against Lawyer Advertising

A. *Freedom of Speech*

Formerly "purely commercial" advertising was carefully distinguished from other forms of speech protected by the constitutional guarantee of the freedom of speech. In *Bigelow v. Virginia,*[66] the American Supreme Court recognized that the public had a right to receive commercial information which is proected by the freedom of speech. In the case of *Bates,* the total ban on lawyer advertising was lifted. However, the holding in *Bates* was confined to its facts: The state may not suppress truthful advertising (not false, deceptive, or misleading) of the availability and prices of routine legal services. In the case of *In Re R. M. Johnson,* the test for evaluating commercial speech in lawyer advertising was formulated by dividing lawyer advertising into three categories: (1) inherently misleading or proven to be misleading in practice; (2) potentially misleading; and (3) not misleading. The first category may be prohibited entirely. Restrictions on the second category "may be no broader than reasonably necessary to prevent deception."[67] Regulation of the third category must be justified by a showing of a substantial state interest and the restriction must be narrowly drawn.

The latest and leading case on lawyer advertising in the United States is *Zauderer v. Office of Disciplinary Council.*[68] The American Supreme Court reaffirmed its approcal of lawyer advertising as commercial speech protected by the freedom of speech. It was held that lawyer advertising may be regulated only to block false and misleading statements. Further-

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[64] Menon, *Singapore Legal Profession: Code of Ethics and Disciplinary Procedures,* in 9 1980 Asean Comparative Law Series 64 (1982). Examples of authorized publications: law lists, law directories, Straits Times Directory, and other publications as the Bar Council may approve.

[65] *Ibid.*

[66] 421 U.S. 809 (1975).

[67] Notes, *In Re Johnson: A Lawyer's Right to Advertise Specialized Expertise,* 29 So. Dak. L. Rev. 532-533 (1984).

[68] No. 83-2166, June 1985, *cited in* Stewart, *Supreme Court Report,* 71 A.B.A. J. 84 (1985).

more as the statements in Zauderer's advertisement were accurate, the state had the burden to prove that the suppression of the advertisement directly advanced a substantial government interest.[69]

Access to legal counsel and free speech are paramount over the narrow right of the state to control the practice of law. The current prohibitions upon lawyer advertising constitute an indefensible curtailment of essential information which violates the freedom of speech. Placing lawyer advertising within the protection of the freedom of speech does not mean absolute non-regulation. For ironically, non-regulation of advertising also substantially impairs the reasons of freedom of choice and freedom of information proposed for protecting commercial speech in the first place. Commercial speech should focus on the flow of accurate information to thet listener.[70] The doctrines of the above cases are not attempts to evade a moral or ethical principle in order to give constitutional protection to a form of speech. "They are words which enshrine the true moral principles in a constitutional doctrine and extend its protection to our efforts at preventing misleading or deceptive advertising."[71]

B. *Effect on Professionalism*

Roscoe Pound aptly expresses the traditional view against lawyer advertising that advertising a lawyer's services destroys the integrity and dignity of the profession:

> There is no such thing as competition for clientage in a profession. Every lawyer should exert himself freely to do his tasks of advice, representation, and advocacy to the best of his abilities. But competition with fellow members of the profession in any way is forbidden. Competition belongs to the activities which are primarily acquisitive. It is not allowable in those primarily for the public service. Next to idea of public service, the important ideas in a profession are organization and pursuit of a learned art.[72]

The Philippine Supreme Court has the same uncompromising attitude to lawyer advertising as revealed in the leading case of *The Director of Religious Affairs v. Estanislao R. Bayot,* the only case on lawyer advertising in the Philippines:

> It is highly unethical for an attorney to advertise his talents or skill as a merchant advertises his wares. Law is a profession and not a trade. 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. As a member of the bar, he defiles the temple of justice with mercenary activities as the money-changers of old defiled the temple of Jehovah.[73]

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69 Stewart, *Supreme Court Report,* 71 A.B.A. J. 84 (1985).
70 Attanasio, *supra* note 10, at 516.
71 Boden, *supra* note 45, at 570.
72 Shupe, *supra* note 58, at 264.
73 74 Phil. 579, 581 (1944).

In *Calo v. Degamo*[74] (although this was not a case on lawyer advertising), the Supreme Court said that the conduct of lawyers, as officers of the court, must necessarily be one higher than that of a market place. It has been suggested that if the bar were seen as merely another commercial enterprise, the public would lose confidence in lawyers, the law, and the courts.[75] It has also been urged that any diminution in the status and self-image of the lawyer would make it more difficult for lawyers to live up to the ethical demands of their roles.[76] A lawyer is viewed as a member of an honorable profession whose primary purpose is to render public service and help secure justice, and in which remuneration is a mere incident.[77]

Yet the Supreme Court now recognizes the dual aspects of the legal profession, as may be seen from the case of *Noriega v. Sison*:

> By years of patience, zeal and ability the attorney acquires a fixed means of support for himself and his family... 'On the one hand, the profession of an Attorney is of great importance to an individual and the prosperity of his life may depend on its exercise... On the other hand, it is extremely desirable that the respectability of the Bar should be maintained and that its harmony, with the bench should be preserved.'[78]

Thus, the rules on advertising must be distinguished from principles of ethics relating to advertising by lawyers. Those rules can no longer be all disguised as principles of ethics. The Philippine bar derived its code of ethics from the canons of the American bar which in turn derived its own canon from those of the British bar. The ban on advertising originated as a rule of etiquette rather than as a rule of ethics. Early lawyers in Great Britain looked down on "trade" as unseemly and viewed the law as a form of public service rather than a means of earning a living. Eventually, the attitude towards advertising fostered by this view evolved as a principle of the ethics of the legal profession.[79] However, habit and tradition do not in themselves justify the ban against lawyer advertising. In present times, the person who earns his living by the strength of his body or the power of his mind is not belittled. The belief that lawyers are "above" trade has become an anachronism.[80] Bankers employ extensive advertising yet do not seem to have suffered any diminution in status or public trust.

Why in a nation where advertising is considered proper for nearly all types of businessmen are lawyers so certain that by advertising their services, the legal profession would be degraded in the eyes of the public?

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[74] G.R. Adm. Case No. 516, June 27, 1967, 20 SCRA 447, 451.

[75] Notes, *Advertising, Solicitation and the Profession's Duty to Make Legal Counsel Available*, 81 YALE L. J. 1184 (1972).

[76] *Ibid.*

[77] CANONS OF PROFESSIONAL ETHICS, Canon 12.

[78] G.R. Adm. Case No. 2266, October 27, 1983, 125 SCRA 293, 297-98, *citing Ex Parte* Barr 9 Wheat 529.

[79] Boden, *supra* note 45, at 569. See also discussion under Rationale of the Ban, note 7.

[80] Bates v. State Bar of Arizona, 433 U.S. 350, 371-72 (1977).

The legal profession must cease "thinking solely in terms of its own traditions and interest and began to address itself to the needs and desires of the people it should be serving"[81] if it is to continue to play a significant role in society.

Justice Blackmun, writing for the majority of the American Supreme Court in *Bates v. State of Bar of Arizona*,[82] averred that the legal profession is overstating its case by claiming that advertising would commercialize the profession and as a result sully its reputation:

> We find the postulated connections between advertising and the erosion of true professionalism to be severely strained. At its core, the argument presumed that attorneys must conceal from themselves and from their clients the real-life fact that lawyers earn their livelihood at the bar. We suspect that few attorneys engage in such self-deception.

Fundamentally, the legal profession should concentrate on meeting the needs and expectations of the public. Its image of integrity will then take care of itself.

Another argument on the adverse effect of lawyer advertising on professionalism is that advertising would "stir up" litigation and encourage frivolous law suits. Surely, however, these evils can be dealt with short of prohibiting all lawyer advertising. Indeed, lawyers are forbidden from stirring up litigation and/or engaging in frivolous suits independently of the advertising restrictions.[83] As a matter of practicality, the time and expense involved in litigation in Philippine courts seem sufficient to discourage the casual instigation of frivolous suits. Further, the medieval assumption that litigation is evil *per se*[84] has been rejected, as it is now recognized that litigation often serves vital social functions. Indeed, it is suspected that the unspoken reason for the resolution against stirring up litigation is the fear that some of the litigation stirred up will involve socially unpopular causes.[85] As Justice White put it in the case of *Zauderer v. Office of Disciplinary Counsel*:

> That our citizens have access to their civil courts is not an evil to be regretted; rather, it is an attribute of our system of justice in which we ought to take pride. The state is not entitled to interfere with that access by denying its citizens accurate information about their legal rights.[86]

It is true, as formerly stated in Canon 27 of the Canons of Professional Ethics and the writers agree, that "the most worthy and effective

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[81] Shupe, *supra* note 58, at 265.

[82] 433 U.S. 350, 368 (1977).

[83] CANONS OF PROFESSIONAL ETHICS, Canons 1, 28 and 30; RULES OF COURT, Rule 138 Sec. 20(c) and (g).

[84] *See* Notes, *supra* note 75, at 1188, *citing* Radin, *Maintenance by Champerty*, 24 CALIF. L. REV. (1935).

[85] *Id.* at 1189.

[86] No. 83-2166, June 1985, *cited in* Stewart, *supra* note 65.

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."

However, it would be wrong to put a narrow-minded construction thereon as an absolute prohibition of advertising. Lawyer advertising must also be viewed from the point of view of the exercise of the freedom of speech (as previously discussed), and the potential benefit to the public in terms of availability and accessibility of legal services, *inter alia.*

C. *Availability and Accessibility of Legal Services*

Every lawyer has the moral obligation to assist the legal profession in fulfilling its duty to make legal counsel available.[87] However, it is argued that prohibitive advertising rules impede lawyers from fulfilling this moral obligation.[88] The restraint on advertising denies an individual access to information which would facilitate the selection of a lawyer capable of serving that individual's particular needs.

Numerous benefits from lawyer advertising would accrue to the public. Lawyer advertising at its best can inform people about legal rights and services and help them make an informed choice of attorneys to exercise such rights. Increased utilization of legal services may result, to the advantage of the public and the bar.[89]

Expectedly, ignorance of the existence of legal rights and the benefits of representation tends to be greatest among the poor and least educated. Lawyer advertising would stimulate a substantial increase in demand for legal services from these groups in favor of small firms and solo practitioners.[90]

As was observed by an American federal district court in the case of *Durham v. Brock*:

> The large metropolitan firms tend to represent major corporations and wealthy individuals.... These firms do little, if any, work which is of the type sought after by the general public.... Hence, the firms which are the best known are of the least usefulness to the individual legal consumer.[91]

Furthermore, current restrictions appear to be implicitly based on an assumed mode of selecting counsel in which a potential client knows the reputation of the local lawyers for competence and integrity and acts accordingly. But this is not so, as observed by a well-established lawyer whom the writers interviewed: "The Filipino chooses a lawyer not on competence but on influence." By providing a direct link between client

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87 Boden, *supra* note 45, at 572.
88 Shupe, *supra* note 58, at 226.
89 Snowden, *supra* note 49, at 543.
90 AGPALO, *supra* note 23, at 111.
91 498 F. Supp. 213 (1980).

and lawyer, advertising can communicate those less tangible qualities which make a client more compatible with one lawyer rather than another. On a more profound level of communication, lawyer advertising can educate people about legal problems and help shape their attitudes toward the legal system. This may be particularly true of institutional advertising, as it can focus on public knowledge about legal problems.[92]

On the other hand, it is argued that lawyer advertising, especially price advertising of designated services is inherently misleading[93] and would encourage lawyers to engage in overreaching, overcharging, underrepresentation, and misrepresentation.[94]

Justice Blackmun, in the *Bates* case, eloquently responds to this argument, thus:

> [T]he argument assumes that the public is not sophisticated enough to realize that limitations of advertising, and that the public is better kept in ignorance than trusted with correct but incomplete information. We suspect the argument rests on an underestimation of the public. In any event, we view as dubious any justification that is based on the benefits of public ignorance.... [T]he preferred remedy is more disclosure, rather than less.[95]

This view is characterized by faith in the people to make the correct decision if they have access to the correct information. On the specific issue of the price advertising of designated services, The American Supreme Court, in the same case, stated that advertising is not misleading "so long as the attorney does the necessary work at the advertised price."[96] On the issues of overreaching, over charging, underrepresentation, and misrepresentation, the laws of fraud, together with civil liability for any failure by a lawyer to perform as advertised, offers substantial protection to the public against serious misstatements or misrepresentations.[95]

An additional concern is that the performance of the legal profession may be weakened by the tendency of the public to choose lawyers merely on the basis of advertisements rather than professional competence.[98] This does not really answer the expressed concern, but, it is not at all clear that people select their lawyers on the basis of competence or that they could without the information which is blocked by the current restrictions on lawyer advertising. Non-deceptive advertisements would at least increase this flow of information.

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92 Attanasio, *supra* note 10, at 522.

93 Comments, *Bates v. State Bar of Arizona: A Consumer's Rights Interpretation of the First Amendment Bars on Legal Advertising*, 55 DEN. L. J. 124 (1978).

94 *See* Notes, *supra* note 75, at 1184. "Overreaching" refers to aggressive competition among lawyers approaching clients at times when the clients are in no condition to properly consider retention of a lawyer, for example, immediately after accident.

95 Bates, *supra* note 80, at 374-75.

96 *Id.* at 372-73.

97 CIVIL CODE, Art. 1170.

98 *See* Notes, *supra* note 75, at 1184-85.

Critics generally worry about the dignity of the profession. Still, professional dignity is but one aspect of proper functioning of the judicial system. "Dignity pales against access: no justice at all is worse than undignified justice."[99]

D. *Economic and Qualitative Implications*

It is contended that advertising will increase the lawyer's overhead costs, and that this burden would inevitably fall on the consumer through an increase in the cost of legal services.[100] Advertising, however, may reduce the cost of legal services. It is claimed that advertising will improve consumer access to legal services and, therefore, the increased overhead will be offset by increased basis.[101] It is further claimed that advertising would stimulate price competition among lawyers and bring about a decrease in the cost of legal services.[102]

Although the effect of advertising on the price of services has not been demonstrated; with regard to products, where consumers have the benefit of price advertising, retail prices often are dramatically lower than they would be without advertising.[103] On the other hand it is contended that the demand for many services, which can be sufficiently standardized to enable price advertising, is inelastic and will not be influenced by price.

Thus, advertising expenses may not be offset by an increase in business.[104] It is further contended that as legal services differ from consumer products in that they are rendered individually, standardization and mass production do not affect legal service.[105]

It is claimed that the additional cost of advertising will create a "substantial entry barrier," deterring or preventing young attorneys from penetrating the market and entrenching the position of the bar's established members. It is countered that "in the absence of advertising, an attorney must rely on his contacts to generate a flow of business."[106]

It is believed that advertising would result in an increase in poor work being done. One reason given is that interest in doing high quality work would be reduced due to any reduction in the cost of legal services as a result of advertising. The lawyer would tend to direct his attention to more remunerative clients.[107]

Another implication is that advertising may lower the quality of legal services by generating too much business for a firm to handle. An under-

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[99] Attanasio, *supra* note 10, at 271; MORGAN & ROTUNDA, PROFESSIONAL RESPONSIBILITY 189 (1981), [hereinafter cited as MORGAN & ROTUNDA].

[100] Shupe, *supra* note 58, at 271.

[101] *Ibid.*

[102] *Ibid.*

[103] MORGAN & ROTUNDA, *supra* note 99, at 189.

[104] *Ibid.*

[105] *Ibid.*

[106] *Ibid.*

[107] Shupe, *supra* note 58, at 272.

manned firm might resort to unduly prolonging on hastening the processing of a case. Quality would be sacrificed for quantity.[108] Some lawyers might provide advertised routine service regardless of the client's particular case.[109] Standardization permits a higher standard of quality in the aggregate, but also increases the potential to shortchange individuals whose problems stray far from the norm.[110]

On the other hand, restraints on advertising are an ineffective way of deterring shoddy work. An attorney who is inclined to cut quality will do so regardless of the rule on advertising.[111]

One justification for the prohibition of advertising is that advertising encourages litigations. However, such a justification rests on the questionable premises that litigation is an evil in itself and that discouraging all litigation helps to prevent frivolous lawsuits. The first premise reflects a discredited medieval view of litigation and the second implies that courts cannot distinguish meritorious from frivolous claims.[112]

Another reason given or advertising restrictions is the assertion that they prevent misrepresentation and overreaching by attorneys in their dealings with the public.[113] However, a victimized client has remedies for deceptive advertising in an action for breach of contract on fraud. These remedies are more direct and efficient methods of preventing misrepresentation and overreaching than is a ban on advertising.

E. *Undue Restraint on Competition*

There is a constitutional prohibition and a penal sanction against unfair competitions,[114] which in effect are the Philippine anti-trust laws. In the United States, the Supreme Court has declared the "rule of reason" to be the standard of construction in anti-trust (unfair competition) cases.[115] The test is whether the restraint merely regulates and thus enhances competition or whether it suppresses or destroys competition.[116] However, unfair competition considerations are not of themselves demonstrative of what is right and wrong in the complex issues of delivery of legal services.

The benefits and detriments of the bar's restrictions on lawyer advertising, which would be balanced under the rule of reason, have been defeated

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108 *Ibid.*
109 *Ibid.*
110 Attanasio, *supra* note 10, at 527.
111 Finnigan, *Arizona's Ban on Attorney Advertisements is Not Subject to Attack under the Sherman Act but Violates the First Amendment by Restraining Truthful Advertisements Regarding the Availabiiity and Terms of Positive Legal Services— Bates v. State Bar of Arizona, 433 U.S. 350 (1977)*, 46 UNIV. OF CIN. L. REV. No. 4 1034 (1977).
112 Snowden, *supra* note 49, at 541.
113 *Ibid.*
114 CONST., Art XIV, sec. 2; REVISED PENAL CODE, Art. 186.
115 Snowden, *supra* note 49, at 538.
116 *Ibid.*

at length.[117] Less restrictions on advertising may initiate price competition and encourage lawyers to make changes in the means through which legal services are performed. With a higher demand level, the economies of scale now unavailable to small firms and solo practitioners may be feasible. In turn, there may result reductions in prices and expanded supply of legal services to the public.[118]

Of primary importance to the contention of reduced prices is the hope that the means for communicating essential consumer information would be provided to make the legal services industry more productive.

It appears likely that greater demand for legal services will generate structural changes, enlarging some firms, rooting out others, and encouraging the emergence of new types of firms. Lawyers may be able to charge less per unit of time if their workload is steady, due to a larger, diversified firm structure.[119]

Finally, permitting lawyer advertising may enable some lawyer to more effectively compete with "quasi-legal" competitors,[120] such as insurance companies, accountants, realtors and trust departments, the businesses of which overlap with the legal profession.

IV. Inquiry Into Lawyer Attitudes to Lawyer Advertising

Sixty-four lawyers in the Metro Manila area, most of whom belong to large law firms, were interviewed on their attitudes toward lawyer advertising. The questions were patterned after those used by Shupe. Although no claim is made that the results are representative of the position of the entire legal profession, the survey nonetheless presens an interesting reflection of lawyer attitudes.[121]

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117 *Id.* at 541.

118 *See* Notes, *supra* note 75, at 1205-05.

119 *Id.* at 1207.

120 *Id.* at 1205.

121 The questions asked with a sampling of the responses given:

1. Size of firms surveyed.

Size A	15 or more lawyers	39
Size B	4 to 14 lawyers	10
Size C	less than 4 lawyers	15

2. It is suggested that increased lawyer advertising is now both necessary and advisable because most potential clients no longer have access to basic informational data about lawyers (i.e., experience and reputation of lawyers, specialized areas of practice, price range, etc.) and are, therefore, unable to adequately select a lawyer capable of serving their particular needs. Lawyer advertising is to be taken to mean the seeking of business *without direct contact* with the prospective client, as by use of mass media.
Do you see this as being or as becoming a major problem in your practice?

	A	B	C
____ No	25	10	13
____ Not Sure	5	—	—
____ Yes	8	—	2

Comments:
"It will professionalize the business more, as clients can choose as many

the lawyer they desire."
"Tradition, dignity and public service are the reasons for lawyers looking down upon advertising so that only those who want to be known resort to advertising. Established and reputable lawyers do not and will not need advertising."
"...at least in the Philippines no lawyer or law firm can compete with our firm's resources, both human and non-human. Advertising, therefore, by others is not a threat to our practice. Besides, clients responding to lawyer's advertisements may not be the clients deserving our services."
"It is very insulting, unethical and insulting to one's conscience if not revolting especially more so for a fresh and young lawyer, knowing that as a young lawyer, he is almost an ignoramus of the intricacies of the law practice."
"The practice of law is not for purposes of earning money but to assist in administration of justice. The lawyer will starve without a secondary source of income."
"The lawyer and how he conducts himself is his best advertising. Clients will always find the good lawyer."
"A good lawyer is a good lawyer is a good lawyer. Quality speaks for itself."
"Trust and competence need not be advertised."
"It would reduce the practice of law to a merchandise."
"Can you imagine an advertising war between Atty. Pepsi and Atty. Coke?"

3. Would you be in favor of allowing "Price Advertising" in those areas of law where pricing could be standardized? (e.g., simple wills, real estate transfers, initial consultation fees, etc.)

	A	B	C
____ Yes	5	8	5
____ No	35	2	15

Comments:
"Allow price advertising in osder to give the public an idea of the cost of legal services within their means."
in harmony with business practices. But standardization should be selective
"I say yes because standardization will make the life of a lawyer more in application."
"Never, it all depends on capability of instrument because a lawyer can make defective docufents and can still charge a standardized price."
"In the office we have standard fees for routine legal work and standard rates on per hour basis. Clients are told of these at the onset."
"It's difficult to standardize prices. No two legal situations can exactly be the same."
"I believe billing should depend on the amount involved and in one's ability to pay."
"Clients could not be standardized."
"Sounds like a menu or quotation."
"...This method will tend to prejudice more the underprivileged and benefit more those who are in a position to pay more."

4. Would you be in favor of allowing a lawyer to advertise his or selected or preferred areas of practice?

	A	B	C
____ Yes	4	—	7
____ Selected or Preferred Areas Only	9	4	
____ No	23	6	8

Comments:
"I am in favor in order to promote specialization."
"Yes, if done with propriety in consonance with the code of ethics."
"The possibility of "misrepresentation" could not be discounted. In which case, the problems raised in (question 2) may only be compounded."
"It is unfair and unethical. Other lawyers, specially the young ones should be given the chance to be exposed to all areas of practice."
"If you're working for a big law office, generally you cannot dictate your preferred field of practice. Designation to particular fields are made by 'Management' with particular emphasis on competence/expertise."
"No, but he may state his specialization in the yellow pages!"
"Lawyers sometimes place in their calling cards sucs things as corporate

lawyer, criminal lawyer, litigation lawyer, etc. This is good enough."

5. Do you think liberal advertising rules would likely enhance or weaken the legal profession's reputation among the public?

	A	B	C
____ Enhance	—	—	3
____ Weaken	30	6	12
____ Not sure	7	4	—

Comments:
"Liberal advertising would enhance the legal psofession because there will be more stiff competition and, therefore, more efficient service."
"In legal practice, there are so many gray areas or borderline cases and the advertising materials, by its nature, tend to be excessively window-dressed such that clients may simply be frustrated."
"Liberal advertising rules will make the profession like any business enterprise which is motivated only by the desire to make money."
"Surveys show that lawyers no longer the upper ranks in the profession ladder. Advertising will sink it some more."
"The traditional concept of the profession as part of the system of justice will disappear."
"Lawyering must never be equated with business. Lawyers owe a duty to the general public which involves moral responsibility which is generally not present in other professions."
"The legal profession will be likened to colas, cigarettes and detergents."

6. Do you think the present restrictions on advertising should be revamped to allow for increased advertising among lawyers?

	A	B	C
____ Yes	7	4	4
____ No	29	6	11

Comments:
"There must be proper safeguards on increased advertising to avoid indiscriminate ambulance chasing."
"Considering that lawyers can be presumed to be matured and decent individuals, they should be given a wider latitude insofar as advertising is concerned."
"Advertising involves money and only lawyers with money can advertise. The small and unknown and young law firms will never have an equal opportunity to be recognized."
"Yes, but should be subject to regulations on ethical and legal grounds."
"Advertising demeans the legal profession."

7. Of the following communication media, which should be used for lawyer advertising?

	A	B	C
____ Newspapers, Magazines and Journals	8	2	3
____ Phamphlets, Handbills	1		
____ Legal Directors	28	8	11
____ Telephone Directory Listing/Ads	16	6	3
____ Holiday Greeting Cards	10		1
____ Calling Cards	24	8	14
____ Stickers (e.g., car decals)	1	—	—
____ Ralio	—		—
____ Television	—	—	—
____ Billboards & Lighted Signs	1	—	—
____ Firm Name as Sponsor or Other Contributor Designation on Programs, Advertisements and Other Materials	9	—	—
____ Gift Giveaways with Firm Name (i.g., pens, ashtrays, etc.)	7	2	4

Comments:
On legal directory listing/ads — "in order to know location and not practice surreptitiously."
On gift giveaways — "Okay if affordable but no good if it will give a false impression to get clients."

8. Do you think lawyer advertising is unethical?

The inquiry shows that a majority of the members of the Philippine legal profession adhere to the traditionalist view that lawyer advertising is unethical. They continually invoke the cliché that lawyering is not a trade or a business but a profession with high ethical standards. It is the majority view that lawyer advertising, generally will demean legal profession.

It is especially evident that the size of the law firm does not affect the lack of interest in lawyer advertising. The general feeling that can be gleaned from the comments to the questions is adamantly anti-advertising. It should be noted, however, that the survey respondents were predominantly lawyers belonging to large institutionalized firms which need little advertising of any kind inasmuch as they already enjoy a wide reputation for competence.

Although the majority view is generally, anti-advertising, there are also sentiments that lawyer advertising would be acceptable in certain forms. The attitudes lean towards the laundry-list type of regulation if ever lawyer advertising is allowed. The list suggested contains the common forms already existing, e.g., listings in legal directories, telephone directories and also calling cards. Aside from enumeration of permissible types of advertising, the contents and information disseminated should be controlled so as not to seem like a quality competition between two firms.

	A	B	C
____ Yes	24	2	11
____ No	2	8	4

Comments:
"Advertising is alright for as long as it is not vulgar."
"If limited, then the proper safeguards will avoid unethical charges."
"Advertising should be conservative and discreet."
"No, so long as within limits."
"No, but somehow downgrades the profession into a commercial or business concern."
"Advertising will likely exaggerate one's mental capability. Law practices will just be treated like an ordinary product."
"...The use of calling cards may even in some instances be unethical."
"Unless it's restricted, it could be unethical."
"If unethical it is contrary to the rule of ethics, it is under the present canons of professional ethics."

9. Do you think both lawyer advertising and/or solicitation should be allowed in the Philippines?

	A	B	C
____ Both	—	—	3
____ Lawyer Advertising Only	12	6	3
____ Solicitation Only	6	2	—
____ Neither	21	2	14

Comments:
"Yes it should be allowed considering that is now the trend in other countries, specifically the USA."
"Lawyer advertising only, but must be strictly regulated."
"Neither, getting and retaining clients is an art, not a business. A lot depends on the chemistry of lawyer-client."
"Neither, there are many ways of 'seeking' clients and/or business which are not necessarily covered by or referred to in questionnaire."
"As it is, lawyering is not looked upon with favor. To allow advertising and solicitation will worsen the situation."

Surprisingly, the lawyers interviewed confused advertising and solicitation. As pointed out in the introductory part, solicitation takes the form of direct contact with clients in influencing the latter while advertising does not. Thus, the answers which would obviously pertain to solicitation which is admittedly unethical have also been attributed to advertising. Maybe if the two concepts had not been confused, advertising would have been seen as more acceptable and ethical to the legal profession.

V. Application to the Philippine Setting

Instances of lawyer advertising in the Philippines, despite the strict restrictions, may reflect a perceived need for the same. The fact that the Supreme Court has ignored some flagrant violations of the ban may likewise reflect a recognition of the need for lawyer advertising, hence the reluctance to enforce the restrictions. Some illustrations will help show how some lawyers toe the line, sometimes resorting to subtle and ingenious methods of squeezing more mileage out of the ethically-approved forms of advertising, while others boldly cross the line into the field of ethically-proscribed advertising.

A recent three-square-inch notice in a major newspaper carried the following text: "THE SYQUIA LAW OFFICES ANNOUNCES THAT HON. AMELITO R. MUTUC HAS JOINED THE FIRM AS 'OF COUNSEL.'" The lower half of the box contained the location of the law offices, cable and telex addresses, and telephone numbers. This is a sample of lawyer advertising permitted by Canon 27 as a dignified legal notice.

On the other hand, in at least one Sunday newspaper, the following box notice was printed in bold letters:

> IMPORTANT NOTICE
> USERS OF BIRTH CONTROL DEVICES WHO
> SUFFERED INJURY MAY FILE DOLLAR
> CLAIM AGAINST MANUFACTURER ABROAD
> THRU ATTY. ..... P.O. BOX 1127
> MANILA, PHILIPPINES, TEL. 818-53-48; 815-82-41;
> 815-82-42

Insofar as the attorney concerned was using this advertisement to get clients, the notice might be said to violate Canon 27. A less clear-cut example involves a newspaper advertisement apparently placed by a foreign law firm through a local agent:

> DO YOU HAVE AN
> IMMIGRATION PROBLEM?
> *We specialize in U.S. Immigration Law —*
> *15 years experience*
> * Naturalization of Filipino World War II Veterans (USAFFE) including visa arrangements
> * Relative cases

* Treaty Traders & Investors (E-1 & E-2)
* Labor certifications if you have a job offer in the U.S.
* Working visa (H-1 & H-2)
* Student visa (F-1)
* Fiancee visa
* Deportation problems

Send your inquiry to the law offices of:

....., ... & .....
3345 Wilshire Blvd., Suite 318
Los Angeles 90010, California, U.S.A.
or
Contact: Mr. ....
Tel. 35-04-86

Strictly speaking, this should be contrary to Canon 27; otherwise, it would be a circumvention of the restriction, especially if the Philippine agent were himself a lawyer.

In some instances, lawyers have engaged in what amounts to advertising through newspaper announcements styled as news items. Under the heading "Legal help offered" published in a tabloid specializing in sensational crime stories, the Manila Bar Association was reported to be willing to give legal assistance to "deserving persons." The only other sentence gave the address of the law office serving as the temporary headquarters of the association. It should be noted that the advertisement was vague and ambiguous — as to who are entitled to assistance and the terms of the assistance given. Still another news bit found in a leading daily accompanied by a photograph of the subject lawyer appeared as follows:

US immigration lawyer due

Lawyer ....., the first Philippine-educated woman lawyer to be admitted to the State Bar of California (USA), is arriving today Aug. 17, for consultations with businessmen, veterans and professionals on US immigration laws and requirements.

A former judge pro tem in the municipal court of Angeles county and in private practice in the US since 1975, ... will advise in the US Filipinos desiring to work, invest and study in the legal manner to avoid the fear and embarrassment of being a TNT [illegal alien].

Canon 27 prohibits self-laudation by a lawyer through publication of articles on himself or herself. As earlier stated, unsolicited news items about a lawyer may be permissible, as distinguished from advertisements where the publication is paid for or initiated by the lawyer receiving the benefit.

Ever inventive, law firms have even stretched the permitted telephone directory listing. By placing the names of the various departments of the law firm in the yellow-page advertisement of its telephone numbers, a law firm may be able to advise prospective clients of the particular fields of law practice it specializes in.

Philippine constitutional law and jurisprudence lags behind that of America by at least a hundred and fifty years. Anent the freedom of speech, there has been little development what with the temperament of the last government administration to suppress constitutional freedoms and promote the police power of the State. Absent a change of such temperament, there is little hope to look towards the constitutional guarantee of freedom of speech to loosen or abolish present lawyer advertising restrictions. It may be more fruitful to look to the bar for reform.

It is a practical reality that large-firm lawyers are among the leaders of the bar and have been the guiding force for the canons. Certainly the present canons do not impede their practice, which involves business obtained in ways that are not currently proscribed. In addition, to the extent that the ban on lawyer advertising results in a failure on the part of some of the public to assert their legal rights, clients of established firms may benefit from the current rules.

Finally, large-firm lawyers, due to an established clientele, have little or no interest in lawyer advertising, and may even have an emotional commitment to the present canons, considering them important to their self-image. From the point of view of lawyers, lawyer advertising would be most significant to medium-sized firms and solo practitioners intent on expanding. From the point of view of the Integrated Bar of the Philippines (IBP), lawyer advertising, in terms of institutional advertising, would be significant in rehabilitating the public image of the legal profession and the judiciary. According to the 1985 opinion survey by the Bishops-Businessmen's Conference for Human Development (BBC) and the Philippine Bar Association (PA), "(t)he legal profession erstwhile considered as enviable, is now rated 'lamentable' . . . (and) it appears that a plurality of those sampled have a poor regard for lawyers in general . . . (and) we have lost our prestige before the bar of public opinion." As the IBP was constituted in 1971 for the purposes of promoting public interest, "raise the standards of the legal profession, improve the administration of justice, and enable the Bar to discharge its public responsibility more effectively,"[122] the IBP, to fulfill these purposes, must take the initiative to examine and reform the Canons of Professional Ethics in the light of political, social and economic developments.

As earlier discussed, the IBP has already submitted to the Supreme Court for approval a Proposed Code of Professional Responsibility. Although the IBP submitted a code with a liberal attitude to lawyer advertising, there were apparent conflicts between its provisions with respect to lawyer advertising. While allowing a lawyer to make known his legal services, through "advertisements", it prohibits him or her from paying mass media repre-

[122] Speech delivered by Justice Jose B. L. Reyes at the U.P. College of Law Commencement Exercises (April 22, 1972).

sentatives for publicity. Paid advertisements, e.g., in newspapers, containing "true, honest, fair, dignified and objective information or statement of facts" even though allowed by Canon 3 of the Proposed Code would be prohibited by Rule 3.04 of the same canon. If as according to Chairman Cortes, the IBP Committee had opted for a general provision which emphasizes truth in advertising,[123] then there was no intention at all to prohibit advertising through Rule 3.04.

VI. CONCLUSIONS AND RECOMMENDATIONS

Some seventy years ago, the Philippine Bar Association officially adopted verbatim as its own the Canons of Professional Ethics codified in 1908 by the American Bar Association. The present rule on lawyer advertising, much more on the Canons on Professional Ethics, could hardly be considered as formulated with the Filipino lawyer within the Philippine environment in mind. It must be noted that the IBP Proposed Code of Professional Responsibility took "into account the environment of the legal profession in the Philippines."[124] However, the aforementioned conflicts remain.

Constitutional guarantees of freedom of speech, the right to counsel and free access to the courts should be given full recognition by the Supreme Court. The freedom of speech is the basis for numerous United States cases regarding the lawyer's right to advertise his profession. American decisions upholding the constitutionality and validity of lawyer's advertisements are unquestionably of such persuasive force and effect in this jurisdiction that they may correctly be relied upon by Philippine Courts in the determination of the validity of the prohibition of lawyer advertisements. Lawyers must realize that they can no longer keep basic information about the qualifications of lawyers from the general public. The public has a right of information about lawyers: their backgrounds, their skills, and their special interests.

But immediately discarding the existing prohibition and permitting all lawyers to engage in advertising is not the proper remedy. The extremely liberal American rules adopted by the IBP Committee, do not apply to the Philippines in view of the less developed freedom of speech and the lack of a machinery for regulation and enforcement of the rules. Thus, the course to be taken must not be so restrictive as to prohibit all advertising or so permissive as to allow all advertising.

A truly Filipino rule on lawyer advertising, if not a truly Filipino code of ethics should be written based on the following guidelines:

> a) The standards should give due consideration to the professional environment, customs, traditions, and practices in Philippine jurisdiction;
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> b) The norms of conduct should be concrete and readily applicable to day to day problems beyond a mere statement of general principles;

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123 Cortes, *supra* note 15, at 165.
124 *Id.* at 164.

c) As has been done in the New ABA Code of Ethics, the standards should indicate those which shall form a basis for the disciplinary proceedings and those which are merely idealist and aspirational in character;
d) New standards for new areas of law should be set.[125]

Considering the degree of development of the Philippine constitutional freedom of speech, the machinery to regulate Philippine lawyer advertising and the relative lack of sophistication and naiveté of the typical Filipino which makes him or her more susceptible to advertising, the "laundry list"[126] mode of regulation would be better suited to the Philippine setting. This would take the form of defining and listing the specific advertising to be permitted.

The Supreme Court should permit, as a start, limited advertising and specialty designation in the yellow pages of the telephone directory and in consumer-sponsored directories. The Integrated Bar of the Philippines should, before as well as after the issuance of such permit, carefully study and monitor the social, legal, and economic impact of such new rule on lawyer advertising and of developments in other countries.

The yellow pages provide a universally accessible list of practicing lawyers. Telephone book advertisements will help the small firm and solo practitioner compete with large firms, which they would not be able to do with general media advertisement. The publication of legal directories by bar associations, consumer groups, labor unions, and social organizations should also be permitted.

Any advertising permitted must be in good taste and not of such a character as many may reasonably regard as likely to bring the legal profession into disrepute. The canons should be designed to restrain advertising that exploits individuals by appealing to their emotions. Ideally, legal action should be a reasoned response to a human condition. Lawyers who desire to advertise will, of necessity, need to be conservative in style. Advertising should be regulated so that it furthers, rather than hinders, a reasoned response.

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125 Cruz, *supra* note 2, at 319.
126 *See also* Boden, *supra* note 45.