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Lawyer Advertising

Tim J. Filer

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LAWYER ADVERTISING

Since the Supreme Court ruled that commercial speech was entitled to first amendment protection,[1] the regulation of advertising by attorneys has been well-debated and much litigated.[2] Though not used extensively by a majority of attorneys,[3] it is clear that media advertising has become an effective tool for disseminating information about legal services.[4] However, state bar associations have generally balked at the increased use of advertising, and have loosened the traditional restrictions[5] only grudgingly.[6]

Washington's recently adopted Rules of Professional Conduct (RPC) regarding attorney advertising,[7] are practically identical to the Model Rules of Professional Responsibility (Model Rules)[8] adopted by the American Bar Association in 1983. The Rules of Professional Conduct maintain the unfortunate distinction between "advertising" and "solicitation"[9] but

1. *See* Virginia State Bd. of Pharmacy v. Virginia Citizens' Consumer Council, 425 U.S. 748, 769–70 (1976). The first amendment protection afforded commerial speech is derived from the public's right to know. *Id.* at 769–70. Protection of speech that does "no more than propose a commercial transaction" is essential to the operation of the marketplace of ideas. Whitman & Stoltenberg, *The Present Constitutional Status of Lawyer Advertising,* 57 ST. JOHN'S L. REV. 445, 453 (1983). The Supreme Court also recognized that consumers' interest in the free access to information about commercial transactions may be greater than their interest in the political events of the day. *Virginia Pharmacy,* 425 U.S. at 763–64.

2. *See, e.g.*, Zauderer v. Office of Disciplinary Counsel, 105 S. Ct. 2265 (1985); *In re* R.M.J., 455 U.S. 191 (1982); Bates v. State Bar of Arizona, 433 U.S. 350 (1977). *Cf.* The Florida Bar v. Schreiber, 407 So.2d 595 (Fla.1982) (letter to international trade company recommending attorney's services was direct solicitation and not protected); Allison v. Louisiana State Bar Ass'n, 362 So.2d 489 (La. 1978) (mailing description of prepaid legal services plan could be constitutionally prohibited). *See generally* Note, *Lawyer Communication with Prospective Clients: Ethics v. the First Amendment,* 61 U. DET. J. URB. L. 403 (1984) (discussion of various state cases).

3. Figa, *Lawyer Solicitation Today and Under The Proposed Model Rules of Professional Conduct,* 52 U. COLO. L. REV. 393, 393 n.2 (1981).

4. Whitman & Stoltenberg, *Direct Mail Advertising By Lawyers,* 45 U. PITT. L. REV. 381, 416–19 (1984). Direct mail advertising, for example, allows the advertising to be directed at a well defined audience, is flexible with regard to length, timing, and form, and permits faster and more accurate evaluation of effectiveness than do other forms of advertising. *Id. See also* Figa, *supra* note 3, at 393 n.3 ($1.00 spent on advertising yields $7.93 return in fees).

5. In *Bates,* the Court noted that the taboo on advertising by attorneys "originated as a rule of etiquette and not as a rule of ethics." *Bates,* 433 U.S. at 371.

6. Whitman & Stoltenberg, *supra* note 4, at 381–82 & n.5.

7. Washington Rules of Professional Conduct (RPC) Rules 7.1–7.5 (1985).

8. MODEL RULES OF PROFESSIONAL CONDUCT (Model Rules) Rules 7.1–7.5 (1983). For a discussion of the differences between the Model Rules and the RPC on advertising, see *infra* note 12 (discussing the specialty advertising rule), and notes 69–73 and accompanying text (discussing the RPC prohibiting the use of trade names except in limited circumstances).

9. According to one commentator, "to distinguish between advertising and solicitation by mail is to make a distinction without a difference." Thurman, *Direct Mail: Advertising or Solicitation? A Distinction Without a Difference,* 11 STETSON L. REV. 403, 427 (1982)).

generally represent an improvement over the previous Code of Professional Responsibility.[10] However, in light of the Supreme Court's decision in *Zauderer v. Office of Disciplinary Counsel*,[11] at least two of the Washington Rules appear to unconstitutionally restrict attorney advertising.[12]

This Survey Comment will give a brief synthesis of the constitutional law underlying the area of attorney advertising, and take a more detailed look at the *Zauderer* decision. While an overview of the Washington Rules has been given elsewhere in this issue,[13] the primary focus of this comment will be on how the rules meet, and fall short of, the constitutional standards clarified in *Zauderer*. In particular, the prohibition of direct mail contact with specific persons known to need legal services in a specific matter appears to be unconstitutional. Additionally, the Washington rule limiting the use of trade names may be invalid.

I. CONSTITUTIONAL BACKGROUND

A. *Advertising*

In *Bates v. State Bar of Arizona*,[14] the Supreme Court recognized an attorney's right to advertise the availability and prices of routine legal

10. *See* Washington Code of Professional Responsibility, Disciplinary Rules (DR) 2-101 to 105 (1984). For example, the RPC abandon the ambiguous requirement that advertisements be presented in a "dignified manner." Washington DR 2-101(B). It is certainly in the best interest of the attorney who chooses to advertise not to offend the audience of the advertisement. However, preserving the dignity of advertising is not a sufficient state interest to justify the restriction of constitutionally protected speech. *See infra* note 76 and accompanying text.

11. 105 S. Ct. 2265 (1985) (targeted newspaper advertisement with accurate and nonmisleading illustration and legal advice not grounds for imposing discipline).

12. *See infra* notes 48–68 and accompanying text (discussing RPC Rule 7.3); notes 69–73 and accompanying text (discussing RPC Rule 7.5). RPC Rule 7.4 allows attorneys to indicate which fields they do or do not practice in, but prohibits attorneys from indicating any specialty other than a certification to practice before the United States Patent and Trademark Office. At least one state supreme court has found truthful and nonmisleading advertising of specialized expertise to be constitutionally protected commercial speech, even in the absence of a state sponsored system of testing and certification. *In re* Johnson, 341 N.W.2d 282 (Minn. 1983). *But see* Note, In re Johnson: *A Lawyer's Right To Advertise Specialized Expertise*, 29 S.D.L. REV. 527, 537 (1984) (concluding that where state bar association has determined and documented its decision that a certification plan cannot be implemented immediately and that no less restrictive alternative for the regulation of specialty advertising is available, a ban on such advertising could be justified).

13. For a detailed discussion of the RPC, see Aronson, *An Overview of the Law of Professional Responsibility: The Rules of Professional Conduct Annotated and Analyzed*, 61 WASH. L. REV. 823 (1986).

14. 433 U.S. 350 (1977). Two Arizona attorneys placed an advertisement in a Phoenix newspaper, stating that their legal clinic would provide services at reasonable fees and listed several routine services with exact prices for each. *Id.* at 354. The attorneys conceded that the advertisement violated the applicable rule, but interposed the first amendment as their defense to the discipline imposed by the state. *Id.* at 356.

services.[15] Such advertisements could, however, be prohibited if they were false, misleading, or proposed unlawful activities.[16] The Court rejected the interests advanced by the state to justify the ban on nonmisleading advertisements regarding prices as not sufficient to allow an infringement on the freedom of commercial speech.[17] Unfortunately, state bar associations expanded their advertising rules to comply only with a narrow reading of the *Bates* decision.[18]

In *In re R.M.J.*,[19] the Court reinforced its message. It reiterated that misleading advertising could be entirely prohibited. However, advertising that was only potentially misleading, or that had not been shown to be misleading could only be regulated through narrowly crafted means.[20] Additionally, accurate advertising could only be regulated when the state could advance substantial interests and could show that the means chosen would directly advance those interests.[21] Thus, the attorney could not be disciplined for listing the courts in which he was admitted to practice,[22] for using designations for his areas of practice similar, but not identical to those listed in the Disciplinary Rules,[23] or for mailing announcement cards to persons other than family, friends, other attorneys, clients, and former clients.[24] In particular, the Court found that such a mailing could not be prohibited in the absence of an attempt to regulate along less restrictive lines.[25]

15. *Id.* at 384.

16. *Id.* at 383–84.

17. *Id.* at 368–69. The state advanced six interests to justify the regulation, including: (1) the adverse effect on professionalism, (2) the inherently misleading nature of attorney advertising, (3) the adverse effect on the administration of justice, (4) the undesirable economic effects of advertising, (5) the adverse effect of advertising on the quality of service, and (6) the difficulties of enforcement. *See generally* Recent Decisions, *Attorney Advertising—First Amendment*, 23 DUQ. L. REV. 305, 312–13 (1984) [hereinafter cited as *Recent Decisions*] (discussing the opinions of the justices in *Bates*).

18. *See supra* note 6.

19. 455 U.S. 191 (1982).

20. *R.M.J.*, 455 U.S. at 203–04.

21. *Id. See generally* Whitman & Stoltenberg, *supra* note 4, at 397–99 & n.82 (noting that the court is essentially applying the four-part test announced in Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York, 447 U.S. 557, 563–64 (1980)).

22. *R.M.J.*, 455 U.S. at 205.

23. *Id.*

24. *Id. See generally* Note, In re Utah Bar Petition: *Pursuing a Chimeric and Ultimately Unconstitutional Goal*, 11 J. CONTEMP. L. 547, 550–53 (1985).

25. *R.M.J.*, 455 U.S. at 206.

B. *Solicitation*

The companion cases of *Ohralik v. Ohio State Bar Association*[26] and *In re Primus*[27] represented "opposite end[s] of the solicitation scale."[28] Together they held that when in-person solicitation of employment by an attorney is done for pecuniary gain alone it may be prohibited,[29] but it may be permissible when the solicitation is motivated by a desire to exercise constitutionally protected freedoms such as speech and assembly.[30] The dangers of a trained advocate exerting undue influence on a potentially vulnerable client, and especially the pressure to make a hasty, ill-considered and uninformed decision about the representation were strong enough to persuade the Court that in-person solicitation for monetary gain could be completely banned.[31]

C. *Zauderer*

In the *Zauderer* decision,[32] the Supreme Court held that an "attorney may not be disciplined for soliciting legal business through printed advertising containing truthful and nondeceptive information and advice regarding the legal rights of potential clients" in a specific legal problem.[33] Attorney Zauderer had placed advertisements in thirty-six newspapers. The ads were targeted towards Dalkon Shield users, and offered to represent them in suits against the manufacturer on a contingent fee basis.[34]

26. 436 U.S. 447 (1978).

27. 436 U.S. 412 (1978).

28. *Recent Decisions*, *supra* note 17, at 314–15.

29. *Ohralik*, 436 U.S. at 449. Ohralik went to the home of a driver shortly after learning that she had been in an accident, and later obtained her signature on a contingent fee agreement before she left the hospital. Ohralik also approached the passenger in the car, having learned in his visit with the driver's parents that the insurance policy contained an uninsured motorist clause that would pay out $12,500. Both driver and passenger eventually dismissed Ohralik, although the driver was forced to pay one-third of her eventual recovery to settle the breach of contract claim. *Id.* at 449–52.

30. *Primus*, 436 U.S. at 437–38. Primus, an ACLU attorney, contacted by letter a woman she thought wanted to file suit for being required to undergo sterilization as a condition to the continued receipt of Medicaid benefits. After the doctor who had sterilized the woman obtained a copy of the letter and shared the letter with his lawyer, Primus was charged with unethical solicitation. *Primus*, 436 U.S. at 414–17. Finding that the letter came within first amendment protections for speech and associational activity for political purposes, the court ruled that Primus could not be disciplined. *Id.* at 438–39. *See generally* Note, *Direct-Mail Solicitation By Attorneys:* Bates *to* R.M.J., 33 SYRACRUSE L. REV. 1041, 1049–51 (1982) (discussing *Primus* and *Ohralik*).

31. *Ohralik*, 436 U.S. at 464–67. *But cf.* Figa, *supra* note 3, at 402–08 & nn. 30–35 (concluding that Proposed Rule 9.2, 1980 Discussion Draft of ABA Model Rules of Professional Conduct, allowing attorneys to initiate contact with prospective clients in certain circumstances, was "sensitive to the constitutional issues, yet go[es] beyond the . . . constitutional minimums for advertising and solicitation.").

32. Zauderer v. Office of Disciplinary Counsel, 105 S. Ct. 2265 (1985).

33. *Zauderer*, 105 S. Ct. at 2280.

34. *Id.* at 2272. The Court upheld Zauderer's discipline on the matter that his advertisement did not

Zauderer's advertisement was controversial in three respects. First, it contained an illustration accurately depicting the Dalkon Shield.[35] Second, it was targeted toward specific clients, arguably making it solicitation.[36] Third, it contained legal advice, since it informed readers that they should not assume their claims were time barred.[37] The Court found that none of these factors made Zauderer subject to discipline.[38]

Additionally, the dangers that caused in-person solicitation to be disciplined in *Ohralik* were not sufficiently strong in the targeted advertising in *Zauderer.* There was no problem of overreaching or invasion of privacy since the advocate was not personally present and pressing for an immediate answer.[39] Finally, the Court found that the advertisement did not act to "stir up" litigation, rather it informed potential clients of their rights.[40]

Since the advertisement was not false or misleading, the burden was on the state to show the necessity for an absolute prohibition of targeted advertising.[41] Without a showing of a substantial state interest in prohibiting this kind of speech, and since the state was unable to show that narrower

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divulge the liability for costs, regardless of the outcome of the Dalkon Shield suit. *Id.* at 2282–83. Additionally, the Court upheld his discipline in so far as it was based on an advertisement offering to refund legal fees if the client was convicted of drunk driving. *Id.* at 2284. The advertisement had been found misleading because it failed to inform readers of the possibility of plea bargaining. *Id.* at 2273.

35. *Id.* at 2271. It thus violated Ohio Disciplinary Rule (DR) 2-101(B), which prohibited the use of illustrations in attorney advertising. The Court found that the illustration accurately depicted the Dalkon Shield, and rejected the state's assertion that the use of illustrations could be completely banned due to their inherent potential to mislead or manipulate consumers. *Zauderer,* 105 S. Ct. at 2280–81.

36. *Zauderer,* 105 S. Ct. at 2274.

37. *Id.* at 2271. By taking employment from responses to the advertisements, Zauderer violated DR 2-104(A), which prohibited attorneys from accepting clients as a result of unsolicited legal advice. However, the Court found the advice was "completely unobjectionable" since the Ohio Supreme Court had adopted the "discovery rule" for when a cause of action accrues for statute of limitations purposes. *Zauderer,* 105 S. Ct. at 2276–77. It was therefore up to the state to show a substantial state interest in prohibiting such speech. *Id.* at 2277. The Court saw the information as doing no more than providing citizens with accurate information about their legal rights. *Id.* at 2278.

38. *Id.* at 2284. The Court drew on the experience of the Federal Trade Commission and found that there was no qualitative difference between assessing the accuracy of advertising for consumer goods and for professional services. *Id.* at 2279. This settled a question left open in the *Bates* decision. Bates v. State Bar of Arizona, 433 U.S. at 372–74. The dissenters in *Zauderer* took strong exception with this point. They maintained that there was a qualitative difference since, compared with advertising for consumer goods, advertising for legal services posed an increased risk of consumer confusion and deception. *Zauderer,* 105 S. Ct. at 2295–96 (O'Connor, J., dissenting). Additionally, the dissent argued that an inevitable conflict of interest existed between the potential client's right to unbiased legal advice and the attorney's pecuniary interests. Together, these factors were enough to persuade the dissenters (O'Connor, Rehnquist, and Berger) to defer to the state's judgment that legal advice in advertising should be completely banned. *Id.* at 2296–97 (O'Connor, J., dissenting).

39. *Zauderer,* 105 S. Ct. at 2277.

40. *Id.* at 2278.

41. *Id.* at 2277.

means of regulation were not available, Zauderer could not be disciplined.[42] The accuracy and validity of Zauderer's statements could be assessed, and the assessment was not so difficult as to justify an absolute prohibition.[43]

II. WASHINGTON RULES

As discussed earlier,[44] the Washington RPC are practically identical to the Model Rules. The rules as adopted are much more restrictive than the discussion draft of the Model Rules that was circulated in 1980,[45] or the proposed final draft in 1982.[46] Restricting advertisement as much as possible has been a consistent tactic of the bar.[47]

The Washington RPC regarding attorney advertising comport with constitutional standards regarding false, misleading, or unlawful advertising in that such advertising is prohibited.[48] The RPC also impose certain record-keeping requirements on attorneys and require disclosure of at least one attorney who is responsible for the advertisement's content.[49] These rules are beneficial because they will facilitate disciplinary action when it becomes necessary.

While authorizing "advertising" in all public media,[50] the RPC prohibit "solicitation."[51] As defined, solicitation properly includes in-person and telephone contact of prospective clients.[52] Excluded from the definition are generally addressed mailings or circulars to groups who might find legal services helpful, but are not known to need assistance in a particular matter.[53] Thus, the RPC follow *In re R.M.J.* to the extent that accurate, nonmisleading direct mailings are not totally prohibited.[54]

The rules do, however, prohibit the use of mailings directed to specific persons known to need particular legal services.[55] The comments to Model

42. *Id.* at 2280.
43. *Id.* at 2279.
44. *See supra* notes 7–8 and accompanying text.
45. *See generally* Figa, *supra* note 3, at 402–408.
46. The Model Rules, as adopted, were intended to be much stricter than the proposed final draft. Franck, *The Proposed Model Rules: Solicitation,* 62 MICH. B. J. 386, 386–87. *See generally* Note, *supra* note 29, at 1067–72 (discussing the proposed final draft of the Model Rules).
47. *See supra* note 6 and accompanying text.
48. RPC Rule 7.1.
49. RPC Rule 7.2.
50. RPC Rule 7.2(a).
51. RPC Rule 7.3.
52. RPC Rule 7.3. *See generally* Whitman & Stoltenberg, *supra* note 4, at 416 n.160 (it is likely that use of telephone solicitation is subject to prohibition under *Ohralik*).
53. RPC Rule 7.3.
54. *See generally* Note, *supra* note 30, at 1061–67.
55. RPC Rule 7.3.

Rule 7.3[56] make clear that the American Bar Association adopted the same position as the dissenters in *Zauderer:* that specifically addressed direct mail communication to persons known to need legal services would present the same dangers as in-person solicitation, i.e., invasion of privacy, overreaching, and coercion; that the use of such mailings creates an impermissible conflict of interest between the attorney's pecuniary interest and the client's interest in unbiased information; and that no reasonably effective and less restrictive means of regulating these mailings can be devised.[57]

The prohibition created by the rule completely contradicts the principles that support advertising by attorneys. Commercial speech is protected because of the public's right to know the information it needs to make important decisions.[58] By not allowing direct mail contact with persons with known legal needs, the rule denies attorneys an effective method of disseminating their information to those consumers with the most immediate need for it.

Equating the use of mail to contact specific persons with the in-person solicitation in *Ohralik* is an improper analogy. Although a letter from an attorney might be considered more important than other kinds of "junk" mail,[59] any coercive impact would be greatly decreased by the less restrictive alternative of stamping "THIS IS AN ADVERTISEMENT" on the envelopes and letters.[60] Additionally, a requirement that such mailings be filed with the state bar associations[61] along with the record-keeping requirements in the rules would ease the problem of proving the fraudulent or misleading nature of an advertisement. The ad must not be false or misleading within the meaning of RPC Rule 7.1, or it will be subject to discipline in any event.[62] Finally, the letter does not pack the same coercive punch as the actual presence of an attorney; the consumer may simply throw it away.[63]

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56. Model Rule 7.3 comment. Unfortunately, the Washington Supreme Court failed to adopt the Commentary to the Model Rules, and provided none of its own. However, where the rules are identical, the commentary should be used to shed light on the meaning of the rules. *See* Aronson, *supra* note 13, at 827–28.

57. *See supra* note 38; Model Rule 7.3 comment.

58. *Zauderer,* 105 S. Ct. at 2279–80; *see supra* note 1.

59. *See* Florida Bar v. Schreiber, 407 So.2d 595, 598–99 (Fla. 1981); *see generally* Whitman & Stoltenberg, *supra* note 4, at 407–10 (principal trait of state court decisions prohibiting direct mail advertising is their emphasis on the solicitation aspects of the mailings).

60. *See R.M.J.,* 455 U.S. at 206 n.20 (labeling letter as advertisement would decrease the "frightening" effect of receiving a letter from a lawyer).

61. *R.M.J.,* 455 U.S. at 206. *Cf.* Model Rule 7.3 comment (state lawyer discipline agencies struggle for enough manpower to investigate complaints; screening of letters would be impossible).

62. *See* RPC Rule 7.1.

63. *See Recent Decisions, supra* note 17, at 309–10 n.40 (citing Spencer v. The Honorable Justices of the Supreme Court of Pennsylvania, 579 F. Supp. 880, 890 (E.D. Pa. 1984); forces of in-person solicitation not present in direct mail solicitation because recipient not under pressure and had time for reflection).

The argument that mailings to persons with known legal needs will draw unsuspecting potential clients into the office where the dangers of in-person solicitation arise assumes too much.[64] The danger for overreaching exists in any attorney-client encounter. If the advertisement is properly written, it will provide the potential clients with important information that may allow the choice of a competent, willing, and available attorney. If the advertisement is fraudulent or misleading, the client will have tort or contract remedies. Additionally, discipline will be available against the attorney both for the advertisement and for the improper influencing of a client.[65]

RPC Rule 7.3's prohibition is improper for one additional reason: the state has not made any attempt to use less restrictive means to regulate these mailings.[66] Absent a showing that such mailings are misleading or false, the state is required to show a substantial state interest and a narrowly crafted means of regulation, directly advancing that interest.[67] Labeling and registration, along with individual investigations, should be tried before imposing an absolute ban. If these methods prove unworkable, then a ban could be imposed to protect potentially vulnerable consumers.

Two commentators have provided the following guidelines that will be useful in developing direct mail advertising that will comport with RPC Rule 7.3 as it now stands.[68] First, the content of the mailings should be carefully reviewed to prevent it from being false or misleading; accuracy and clarity are essential. Second, mailings should be written with an information-giving tone; any language that could be viewed as direct solicitation should be avoided. Third, care must be exercised in the targeting of the mailings; since the rules allow only general mailings, the attorney must balance the benefits of increased specificity with the danger of being subjected to sanctions for using specifically addressed mailings. Writing direct-mail advertisements with these guidelines in mind should enable attorneys to utilize this mode of communication without violating ethical rules.

III. TRADE NAMES

RPC Rule 7.5 prohibits the use of trade names by lawyers or law firms, with the exception of the term "legal clinic" preceded by the lawyers name

64. *But see Zauderer,* 105 S. Ct. at 2296 (O'Connor, J., dissenting) (a printed advertisement, while presenting lesser danger of overreaching, is only one step removed from a personal encounter).

65. *See* RPC Rule 7.1.

66. *R.M.J.*, 455 U.S. at 206–07 (absolute ban on mailing of announcement cards outside of limited audience not allowable without showing that inability to supervise was reason. "There is no indication in the record of a failed effort to proceed along such a less restrictive path.").

67. *Zauderer,* 105 S. Ct. at 2275; *Central Hudson,* 447 U.S. at 566.

68. Whitman & Stoltenberg, *supra* note 4, at 416–20.

or a geographic location. This prohibition also impermissibly infringes upon the first amendment freedom of attorneys to alert the public to their availability. Model Rule 7.5 prohibits the use of trade names only when their use would violate Model Rule 7.1, that is, when the trade name would be false or misleading.[69] This is more in line with constitutional principles and Model Rule 7.5 should have been adopted without amendment.

It is clear that the misleading use of a trade name by attorneys is prohibited,[70] and that the states may prohibit the misleading use of trade names in professional practices.[71] However, Model Rule 7.5 properly recognizes that there is no need to prohibit such use so long as no connection with a government agency or a public or charitable legal services organization is implied.[72] The comments to Model Rule 7.5 acknowledge that the use of deceased firm members names in a firm name is technically a trade name.[73] Nonetheless, such designations have proved useful ways of identifying firms to the public. Other trade names, while distasteful to some lawyers, would provide easy and less intimidating access to law firms.

The recent case of *Matter of Von Weigan,*[74] recognizes the usefulness of trade names. No discipline was imposed on an attorney using the monicker of "The Country Lawyer" in his advertisements.[75] The court read the New York prohibition on trade names narrowly, and, in light of its purpose of preventing deception and confusion among consumers, found that the trade name did not merit discipline. Matters of taste and dignity simply do not constitute the substantial state interests necessary to prohibit nonmisleading commercial speech.[76]

IV. CONCLUSION

Commercial speech, including attorney advertising, is protected under the first amendment. While representing an improvement over prior rules, Washington's Rules of Professional Conduct impermissibly restrict advertising in at least two areas. Direct mail contact with persons known to need

69. Model Rule 7.5(a).
70. *Zauderer,* 105 S. Ct. at 2275; RPC Rule 7.1.
71. *See* Friedman v. Rogers, 440 U.S. 1 (1979).
72. Model Rule 7.5 comment.
73. *Id.*
74. 63 N.Y.2d 163, 470 N.E.2d 838, 481 N.Y.S. 2d 40, *cert. denied,* 105 S. Ct. 2701 (1985).
75. 470 N.E.2d at 845.
76. *Id.* at 844. *See also Zauderer,* 105 S. Ct. at 2280 (Court was "unsure" that state's interest in the dignity of attorney's communications with the public was substantial enough interest to justify abridgment of first amendment); *R.M.J.,* 455 U.S. at 205–06 (in absence of finding that mentioning attorney was admitted to the United States Supreme Court Bar was misleading, discipline was improper, even though the emphasis of such information was in bad taste).

legal services should not have been completely banned, since such mailings can provide important information to consumers with an immediate need for that information, and since labeling and filing requirements are less restrictive alternatives for regulation. Likewise, the permissible uses of trade names should be expanded. Nonmisleading trade names provide an easy and nonintimidating method of identifying law firms to the public, thereby encouraging better access to legal services.

Tim J. Filer