

Utah Ethics Opinions

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36. USB EAOB Opinion No. 36

Utah State Bar

Ethics Advisory Opinion No. 36

Approved August 29, 1977

Summary: A lawyer may not distribute flyers with information about his fees, practices and philosophy in probate matters.

Comments: *But see, In re Utah State Bar Petition 647 P.2d 991 (1982) which may modify this opinion.*

Facts: You have inquired concerning the propriety of issuing a "flyer", a direct mailing or hand-out type announcement concerning your attorney fees in probate matters, comparing them to statutory fees and discussing your philosophy of probate proceedings and charges in connection therewith.

Presumably the "flyers" of which you have provided copies are intended for a general distribution to the public, either in mailings or direct delivery. This would appear to be the only purpose for such a "flyer." **Opinion:** There is nothing in the United States Supreme Court decision in *Bates* which speaks to the question of the type advertising you are proposing. That case involved only advertising in a newspaper of general circulation, and covered only the type advertising set forth therein. Elsewhere in this letter we have included an actual copy of the *Bates* advertisement for your information.

The Utah Supreme Court has approved an interim amendment to Canon 2 of the Rules of Professional Conduct embracing the *Bates* decision pending action of the ABA House of Delegates.

The amendment to Canon 2 makes the applicable portion of Canon 2 read as follows:

"(B) A lawyer shall not publicize himself, his partner, or associate as a lawyer through newspaper or magazine advertisements, radio or television announcements, display advertisements in city or telephone directories, or other names of commercial publicity, nor shall he authorize or permit others to do so in his behalf except as permitted under DR 2-103. This does not prohibit limited and dignified identification of a lawyer as a lawyer as well as by

name:

(1) In political advertisements when his professional status is germane to the political campaign or to a political issue.

(2) In public notices when the name and profession of a lawyer are required or authorized by law or are reasonably pertinent for a purpose other than the attraction of potential clients.

(3) In routine reports and announcements of a bona fide business, civic, professional, or political organization in which he serves as a director or officer.

(4) In and on legal documents prepared by him.

(5) In and on legal textbooks, treatises, and other legal publications, and in dignified advertisements thereof. Provided however, that a lawyer may advertise in a daily newspaper of general circulation in the area where the lawyer has his office, prices charged for uncontested divorces, simple adoptions, uncontested personal bankruptcies and change of name and charge for initial consultation. Such advertisements may include the lawyers name, address, telephone number and office hours. Such advertisement shall not make any claims relating to the quality of the legal services or the experience, training, competence of the lawyer, or his areas of concentration of practice or specialization, if any, except as herein provided. The lawyer shall not charge more for an advertised service than the advertised price regardless of the complexity of the problem or time involved.

Nothing in the Code of Professional Responsibility as adopted in Utah would authorize the use of hand bills or "flyers" or mailers of the type you have proposed.

Neither do the ABA amendments to Canon 2, recommended to the states, authorize such advertising method.

We conclude that the method of advertising which you seek to employ is improper in light of the Code of Professional Responsibility (Rule IV Revised Rules of Conduct of the Utah State Bar, as amended August 1977 by the Supreme Court). Because the method is deemed improper, we refrain from comment concerning the specific language proposed in your "flyers" one through eight. We note however, that much language therein would be objectionable.

Rule Cited:

Canon 2