

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 356

Amending the Code of
Professional Responsibility
Relating to Advertising:
DR 2-101, DR 2-102, DR 2-103,
DR 2-104, DR 2-105; EC 2-2,
EC 2-3, EC 2-4, EC 2-5,
EC 2-7, EC 2-8, EC 2-9,
EC 2-10, EC 2-11, EC 2-14.

IT IS ORDERED:

The Code of Professional Responsibility is amended as follows:

1. DR 2-101 is amended to read:

DR 2-101. Publicity.

(A) A lawyer shall not, on behalf of himself, his partner, associate or any other lawyer affiliated with him or his firm, use, or participate in the use of, any form of public communication containing a false, fraudulent, misleading, deceptive, self-laudatory or unfair statement or claim.

(B) In order to facilitate the process of informed selection of a lawyer by potential consumers of legal services, a lawyer may publish or broadcast, subject to DR 2-103, the following information in print media distributed or over radio broadcast in the geographic area or areas in which the lawyer resides or maintains offices or in which a significant part of the lawyer's clientele resides, provided that the information disclosed by the lawyer in such publication or broadcast complies with DR 2-101 (A), and is presented in a dignified manner:

(1) Name, including name of law firm and names of professional associates; addresses and telephone numbers;

(2) One or more fields of law in which the lawyer or law firm practices or a statement that the practice is limited to one or more fields of law, to the extent authorized under DR 2-105;

- (3) Date and place of birth;
- (4) Date and place of admission to the bar of state and federal courts;
- (5) Schools attended, with dates of graduation, degrees and other scholastic distinctions;
- (6) Public or quasi-public offices;
- (7) Military service;
- (8) Legal authorships;
- (9) Legal teaching position;
- (10) Memberships, offices, and committee assignments, in bar associations;
- (11) Membership and offices in legal fraternities and legal societies;
- (12) Technical and professional licenses;
- (13) Memberships in scientific, technical and professional associations and societies;
- (14) Foreign language ability;
- (15) Names and addresses of bank references;
- (16) With their written consent, names of clients regularly represented;
- (17) Prepaid or group legal services programs in which the lawyer participates;
- (18) Whether credit cards or other credit arrangements are accepted;
- (19) Office and telephone answering service hours;
- (20) Fee for an initial consultation;
- (21) Availability upon request of a written schedule of fees and/or an estimate of the fee to be charged for specific services;
- (22) Contingent fee rates subject to DR 2-106 (C), provided that the statement discloses whether percentages are computed before or after deduction of costs;
- (23) Range of fees for services, provided that the statement discloses that the specific fee within the range which will be charged will vary

depending upon the particular matter to be handled for each client and the client is entitled without obligation to an estimate of the fee within the range likely to be charged, in print size equivalent to the largest print used in setting forth the fee information;

(24) Hourly rate, provided that the statement discloses that the total fee charged will depend upon the number of hours which must be devoted to the particular matter to be handled for each client and the client is entitled without obligation to an estimate of the fee likely to be charged, in print size at least equivalent to the largest print used in setting forth the fee information; and

(25) Fixed fees for specific routine legal services, the description of which would not be misunderstood or be deceptive, provided that the statement discloses that the quoted fee will be available only to clients whose matters fall into the services described and that the client is entitled without obligation to a specific estimate of the fee likely to be charged, in print size at least equivalent to the largest print used in setting forth the fee information.

(C) Any person desiring to expand the information authorized for disclosure in DR 2-101(B), or to provide for its dissemination through other forums may apply to the Alaska Bar Association. Any such application shall be served upon the agencies having jurisdiction under state law over the regulation of the legal profession and consumer matters who shall be heard, together with the applicant, on the issue of whether the proposal is necessary in light of the existing provisions of the Code, accords with standards of accuracy, reliability and truthfulness, and would facilitate the process of informed selection of lawyers by potential consumers of legal services. The relief granted in response to any

such application shall be promulgated as an amendment to DR 2-101(B), universally applicable to all lawyers.

(D) If the advertisement is communicated to the public over radio, it shall be prerecorded, approved for broadcast by the lawyer, and a recording of the actual transmission shall be retained by the lawyer.

(E) If a lawyer advertises a fee for a service, the lawyer must render that service for no more than the fee advertised.

(F) Unless otherwise specified in the advertisement if a lawyer publishes any fee information authorized under DR 2-101(B) in a publication that is published more frequently than one time per month, the lawyer shall be bound by any representation made therein for a period of not less than 30 days after such publication. If a lawyer publishes any fee information authorized under DR 2-101(B) in a publication that is published once a month or less frequently, he shall be bound by any representation made therein until the publication of the succeeding issue. If a lawyer publishes any fee information authorized under DR 2-101(B) in a publication which has no fixed date for publication of a succeeding issue, the lawyer shall be bound by any representation made therein for a reasonable period of time after publication but in no event less than one year.

(G) Unless otherwise specified, if a lawyer broadcasts any fee information authorized under DR 2-101(B), the lawyer shall be bound by any representation made therein for a period of not less than 30 days after such broadcast.

(H) This rule 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.

(I) A lawyer shall not compensate or give any thing of value to representatives of press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item.

2. DR 2-102 is amended to read:

DR 2-102. Professional Notices, Letterheads and Offices.

(A) A lawyer or law firm shall not use or participate in the use of professional cards, professional announcement cards, office signs, letterheads, or similar professional notices or devices, except that the following may be used if they are in dignified form:

(1) A professional card of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, and any information permitted under DR 2-105. A professional card of a law firm may also give the names of members and associates. Such cards may be used for identification.

(2) A brief professional announcement card stating new or changed associations or addresses,

change of firm name, or similar matters pertaining to the professional offices of a lawyer or law firm, which may be mailed to lawyers, clients, former clients, personal friends, and relatives. It shall not state biographical data except to the extent reasonably necessary to identify the lawyer or to explain the change in his association, but it may state the immediate past position of the lawyer. It may give the names and dates of predecessor firms in a continuing line of succession. It shall not state the nature of the practice except as permitted under DR 2-105.

(3) A sign on or near the door of the office and in the building directory identifying the law office. The sign shall not state the nature of the practice, except as permitted under DR 2-105.

(4) A letterhead of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, associates and any information permitted under DR 2-105. A letterhead of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members. A lawyer may be designated "Of Counsel" on a letterhead if he has a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated as "General Counsel" or by similar professional reference on stationery of a client if he or the firm devotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.

(B) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing

under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation or professional association may contain "P.C." or "P.A." or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. A lawyer who assumes a judicial, legislative, or public executive or administrative post or office shall not permit his name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which he is not actively and regularly practicing law as a member of the firm, and during such period other members of the firm shall not use his name in the firm name or in professional notices of the firm.

(C) A lawyer shall not hold himself out as having a partnership with one or more other lawyers unless they are in fact partners.

(D) A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction.

(E) A lawyer who is engaged in both the practice of law and another profession or business shall not so indicate on his letterhead, office sign, or professional card, nor shall he identify himself as a lawyer in any publication in connection with his other profession or business.

(F) Nothing contained herein shall prohibit a lawyer from using or permitting the use of, in connection with his name, an earned degree or title derived therefrom indicating his training in the law.

3. DR 2-103 is amended to read:

DR 2-103. Recommendation of Professional Employment.

(A) A lawyer shall not, except as authorized in DR 2-101(B), recommend employment as a private practitioner, of himself, his partner, or associate to a layperson who has not sought his advice regarding employment of a lawyer.

(B) A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client, or as a reward for having made a recommendation resulting in his employment by a client, except that he may pay the usual and reasonable fees or dues charged by any of the organizations listed in DR 2-103(D).

(C) A lawyer shall not request a person or organization to recommend or promote the use of his services or those of his partner or associate, or any other lawyer affiliated with him or his firm, as a private practitioner, except as authorized in DR 2-101, and except that

(1) He may request referrals from a lawyer referral service operated, sponsored, or approved by a bar association and may pay its fees incident thereto.

(2) He may cooperate with the legal service activities of any of the offices or organizations enumerated in DR 2-103(D)(1) through (4) and may perform legal services for those to whom he was recommended by it to do such work if:

(a) The person to whom the recommendation is made is a member or beneficiary of such office or organization; and

(b) The lawyer remains free to exercise

his independent professional judgment on behalf of his client.

(D) A lawyer or his partner or associate or any other lawyer affiliated with him or his firm may be recommended, employed or paid by, or cooperate with, one of the following offices or organizations that promote the use of his services or those of his partner or associate or any other lawyer affiliated with him or his firm if there is no interference with the exercise of independent professional judgment in behalf of his client:

(1) A legal aid office or public defender office:

(a) Operated or sponsored by a duly accredited law school.

(b) Operated or sponsored by a bona fide non-profit community organization.

(c) Operated or sponsored by a governmental agency.

(d) Operated, sponsored, or approved by a bar association.

(2) A military legal assistance office.

(3) A lawyer referral service operated, sponsored, or approved by a bar association.

(4) Any bona fide organization that recommends, furnishes or pays for legal services to its members or beneficiaries provided the following conditions are satisfied:

(a) Such organization, including any affiliate, is so organized and operated that no profit is derived by it from the rendition of legal services by lawyers, and that, if the organization is organized for profit, the legal services are not rendered by lawyers employed, directed, supervised or selected by it except in connection with matters where such organization bears ultimate liability of its members or beneficiary.

(b) Neither the lawyer, nor his partner, nor associate, nor any other lawyer affiliated with him or his firm, nor any non-lawyer, shall have initiated or promoted such organization for the primary purpose of providing financial or other benefit to such lawyer, partner, associate or affiliated lawyer.

(c) Such organization is not operated for the purpose of procuring legal work or financial benefit for any lawyer as a private practitioner outside of the legal services program of the organization.

(d) The member or beneficiary to whom the legal services are furnished, and not such organization, is recognized as the client of the lawyer in the matter.

(e) Any member or beneficiary who is entitled to have legal services furnished or paid for by the organization may, if such member or beneficiary so desires, select counsel other than that furnished, selected or approved by the organization for the particular matter involved; and the legal service plan of such organization provides appropriate relief for any member or beneficiary who asserts a claim that representation by counsel furnished, selected or approved would be unethical, improper or inadequate under the circumstances of the matter involved and the plan provides an appropriate procedure for seeking such relief.

(f) The lawyer does not know or have cause to know that such organization is in violation of applicable laws, rules of court and other legal requirements that govern its legal service operations.

(g) Such organization has filed with the appropriate disciplinary authority at least annually a report with respect to its legal service plan, if any, showing its terms, its schedule of

benefits, its subscription charges, agreements with counsel, and financial results of its legal service activities or, if it has failed to do so, the lawyer does not know or have cause to know of such failure.

(E) A lawyer shall not accept employment when he knows or it is obvious that the person who seeks his services does so as a result of conduct prohibited under this Disciplinary Rule.

4. DR 2-104 is amended to read:

DR 2-104 Suggestion of Need of Legal Services.

(A) A lawyer who has given in-person unsolicited advice to a layperson that he should obtain counsel or take legal action shall not accept employment resulting from that advice, except that:

(1) A lawyer may accept employment by a close friend, relative, former client (if the advice is germane to the former employment), or one whom the lawyer reasonably believes to be a client.

(2) A lawyer may accept employment that results from his participation in activities designed to educate laypersons to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services if such activities are conducted or sponsored by a qualified legal assistance organization.

(3) A lawyer who is recommended, furnished or paid by a qualified legal assistance organization enumerated in DR 2-103(D)(1) through (4) may represent a member or beneficiary thereof, to the extent and under the conditions prescribed therein.

(4) Without affecting his right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as he does not emphasize his own professional experience or reputation and does not undertake to give individual advice.

(5) If success in asserting rights or defenses of his client in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept, but shall not seek, employment from those contacted for the purpose of obtaining their joinder.

5. DR 2-105 is amended to read:

DR 2-105 Limitation of Practice.

A lawyer shall not hold himself out publicly as a specialist, as practicing in certain areas of law or as limiting his practice permitted under DR 2-101 (B), except that

(1) a lawyer admitted to practice before the United States Patent and Trademark Office may use the designation "Patents," "Patent Attorney," "Patent Lawyer," or "Registered Patent Attorney" or any combination of those terms, on his letterhead and office sign.

(2) A lawyer who publicly discloses fields of law in which the lawyer or the law firm practices or states that his practice is limited to one or more fields of law shall do so by using designations and definitions authorized and approved by the Board of Governors. Such disclosures and statements shall include the following statement: "The Alaska Bar Association does not certify that any attorney possesses specialized training or skill in a particular field of law."

6. EC 2-2 is amended to read:

EC 2-2 The legal profession should assist laypersons to recognize legal problems because such problems may not be self-revealing and often are not timely noticed. Therefore, lawyers should encourage and participate in educational and public relations programs concerning our legal system with particular reference to legal problems that frequently arise.

Preparation of advertisements and professional articles for lay publications and participation in seminars, lectures, and civic programs should be motivated by a desire to educate the public to an awareness of legal needs and to provide information relevant to the selection of the most appropriate counsel rather than to obtain publicity for particular lawyers. The problems of advertising on television require special consideration, due to the style, cost, and transitory nature of such media. If the interests of laypersons in receiving relevant lawyer advertising are not adequately served by print media and radio advertising, and if adequate safeguards to protect the public can reasonably be formulated, television advertising may serve a public interest.

7. EC 2-3 is amended to read:

EC 2-3 Whether a lawyer acts properly in volunteering in-person advice to a layperson to seek legal services depends upon the circumstances. The giving of advice that one should take legal action could well be in fulfillment of the duty of the legal profession to assist laypersons in recognizing legal problems. The advice is proper only if motivated by a desire to protect one who does not recognize that he may have legal problems or who is ignorant of his legal rights or obligations. It is improper if motivated by a desire to obtain personal benefit, secure personal publicity, or cause legal action to be taken merely to harass or injure another. A lawyer should not initiate an in-person contact with a non-client, personally or through a representative, for the purpose of being retained to represent him for compensation.

8. EC 2-4 is amended to read:

EC 2-4 Since motivation is subjective and often difficult to judge, the motives of a lawyer who volunteers in-person advice likely to produce legal

controversy may well be suspect if he receives professional employment or other benefits as a result. A lawyer who volunteers in-person advice that one should obtain the services of a lawyer generally should not himself accept employment, compensation, or other benefit in connection with that matter. However, it is not improper for a lawyer to volunteer such advice and render resulting legal services to close friends, relatives, former clients (in regard to matters germane to former employment), and regular clients.

9. EC 2-5 is amended to read:

EC 2-5 A lawyer who writes or speaks for the purpose of educating members of the public to recognize their legal problems should carefully refrain from giving or appearing to give a general solution applicable to all apparently similar individual problems, since slight changes in fact situations may require a material variance in the applicable advice; otherwise, the public may be misled and misadvised. Talks and writings by lawyers for laypersons should caution them not to attempt to solve individual problems upon the basis of the information contained therein.

10. The heading preceding EC 2-6 is amended to read:

Selection of a Lawyer

11. EC 2-7 is amended to read:

EC 2-7 Changed conditions, however, have seriously restricted the effectiveness of the traditional selection process. Often the reputations of lawyers are not sufficiently known to enable laypersons to make intelligent choices. The law has become increasingly complex and specialized. Few lawyers are willing and competent to deal with every kind of legal matter, and many laypersons have difficulty in determining the competence of lawyers to render different types of legal services. The selection of legal counsel is particularly difficult

for transients, persons moving into new areas, persons of limited education or means, and others who have little or no contact with lawyers.

12. EC 2-8 is amended to read:

EC 2-8 Selection of a lawyer by a layperson should be made on an informed basis. Advice and recommendation of third parties -- relatives, friends, acquaintances, business associates, or other lawyers -- and disclosure of relevant information about the lawyer and his practice may be helpful. A layperson is best served if the recommendation is disinterested and informed. In order that the recommendation be disinterested, a lawyer should not seek to influence another to recommend his employment. A lawyer should not compensate another person for recommending him, for influencing a prospective client to employ him, or to encourage future recommendations. Advertisements and public communications, whether in law lists, telephone directories, newspapers, other forms of print media or radio, should be formulated to convey only information that is necessary to make an appropriate selection. Such information includes: (1) office information such as, name, including name of law firm and names of professional associates; addresses; telephone numbers; credit card acceptability; fluency in foreign languages; and office hours; (2) relevant biographical information; (3) description of the practice, but only by using designations and definitions authorized by the Board of Governors, for example, one or more fields of law in which the lawyer or law firm practices, and/or a statement that practice is limited to one or more fields of law; (4) permitted fee information. Self-laudation should be avoided.

13. EC 2-9 is amended to read:

Selection of a Lawyer: Lawyer Advertising

EC 2-9 The importance of the interests affected by the choice of a lawyer and prior experience with

unrestricted lawyer advertising requires that special care be taken by lawyers to avoid misleading the public and to assure that the information set forth in any advertising is relevant to the selection of a lawyer. The lawyer must be mindful that the benefits of lawyer advertising depend upon its reliability and accuracy. Examples of information in law advertising that would be deceptive include misstatements of fact, suggestions that the ingenuity or prior record of a lawyer rather than the justice of the claim are the principal factors likely to determine the result, inclusion of information irrelevant to selecting a lawyer, and representations concerning the quality of service. Since lawyer advertising is calculated and not spontaneous, reasonable regulation of lawyer advertising designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public.

14. EC 2-10 is amended to read:

EC 2-10 A lawyer should ensure that the information contained in any advertising which the lawyer publishes, broadcasts or causes to be published or broadcasted is relevant, is disseminated in an objective and understandable fashion, and would facilitate the prospective client's ability to compare the qualifications of the lawyers available to represent him. A lawyer should strive to communicate such information without undue emphasis upon style and advertising strategems which serve to hinder rather than to facilitate intelligent selection of counsel. Because technological change is a recurrent feature of communications forms, and because perceptions of what is relevant in lawyer selection may change, lawyer advertising regulations should not be cast in rigid, unchangeable terms. Machinery is therefore available to advertisers and consumers for prompt consideration

of proposals to change the rules governing lawyer advertising. The determination of any request for such change should depend upon whether the proposal is necessary in light of existing Code provisions, whether the proposal accords with standards of accuracy, reliability and truthfulness, and whether the proposal would facilitate informed selection of lawyers by potential consumers of legal services. Representatives of lawyers and consumers should be heard in addition to the applicant concerning any proposed change. Any change which is approved should be promulgated in the form of an amendment to the Code so that all lawyers practicing in the jurisdiction may avail themselves of its provisions.

15. EC 2-11 is amended to read:

EC 2-11 The name under which a lawyer conducts his practice may be a factor in the selection process. The use of a trade name or an assumed name could mislead laypersons concerning the identity, responsibility, and status of those practicing thereunder. Accordingly, a lawyer in private practice should practice only under a designation containing his own name, the name of a lawyer employing him, the name of one or more of the lawyers practicing in a partnership, or, if permitted by law, in the name of a professional legal corporation, which should be clearly designated as such. For many years some law firms have used a firm name retaining one or more names of deceased or retired partners and such practice is not improper if the firm is a bona fide successor of a firm in which the deceased or retired person was a member, if the use of the name is authorized by law or by contract, and if the public is not misled thereby. However, the name of a partner who withdraws from a firm but continues to practice law should be omitted from the firm name in order to avoid misleading the public.

16. EC 2-14 is amended to read:

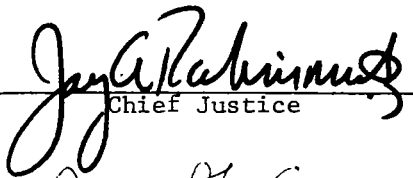
EC 2-14 In some instances a lawyer confines his practice to a particular field of law. In the absence of state controls to insure the existence of special competence, a lawyer should not be permitted to hold himself out as a specialist or as having official recognition as a specialist, other than in the fields of admiralty, trademark, and patent law where a holding out as a specialist historically has been permitted. A lawyer may, however, indicate in permitted advertising, if it is factual, a limitation of his practice or one or more particular areas or fields of law in which he practices using designations and definitions authorized for that purpose by the Board of Governors.

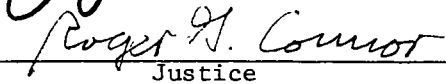
DATED: January 25, 1979

EFFECTIVE DATE: April 1, 1979

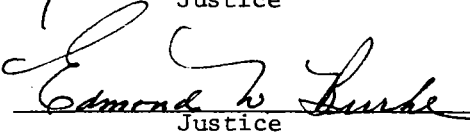
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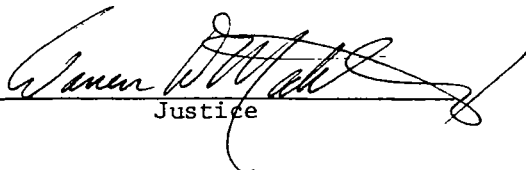
SC Justices
Sup/Ct Judges
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Chief Justice


Justice


Justice


Justice


Justice