
E-83-3 Announcing hiring of lay person

Question

May a law firm mail formal announcements that a former official with the Wisconsin Department of Revenue has been retained by the firm as a “technical assistant in the area of state and local taxation,” with an asterisk, which will follow the description of his position with the firm, referring to a footnote specifically stating that he is not licensed to practice law?

Answer

Yes.

Opinion

In Formal Opinion E-80-15 relating to the propriety of a law firm’s mailing formal announcements of the hiring of a paralegal, legal assistant, or other lay person, the Professional Ethics Committee opined that Supreme Court Rule 20.08(7)(a) “does not by inference permit the advertisement of the employment of a ‘paralegal’ or legal assistant or other lay person” because such rule “specifically limits a lawyer’s advertising to ‘the lawyer’s availability to provide legal services.’”

In addition, the committee opined that SCR 20.08(1), which details the manner in which a lawyer or law firm may use professional cards, professional announcements, letterheads and the like, “cannot be construed to authorize the announcement of the hiring of a ‘paralegal,’ a legal assistant, or any other nonlawyer employee.” However, recent decisions of the U.S. Supreme Court and the Wisconsin Supreme Court rendered since the issuance of Formal Opinion E-80-15 raise serious questions as to the limits that may be imposed on lawyer advertising. It has been requested that the committee revise, withdraw, or distinguish its Formal Opinion E-80-15. Accordingly, any portion of Formal Opinion E-80-15 in conflict with this opinion is hereby withdrawn.

SCR 20.08(7)(a) expressly states that: “. . . A lawyer may advertise the lawyer’s availability to provide legal services except use of any advertisement which is false, misleading, deceptive or unfair is professional misconduct.”¹

In its order of April 30, 1979, adopting SCR 20.08(7)(a), the Wisconsin Supreme Court also adopted a comment which provides in pertinent part: “The rule permits the dissemination of objective, relevant information on which a person may base an informed selection of competent counsel.”

The employment by a law firm of paralegals, legal assistants, or other lay persons to assist its lawyers may be relevant to an informed decision regarding the selection of legal counsel. Moreover, the use of lay persons to assist lawyers is sanctioned and encouraged by SCR 20.17(6) which states that, subject to the supervisory and other requirements set forth therein, the performance of delegated work by lay persons “enables a lawyer to render legal services more economically and efficiently.” E.g., Committee Memorandum 1/78.

In view of the foregoing, the employment of a former Wisconsin Department of Revenue official to assist lawyers whose practices are limited to tax matters would constitute “objective, relevant information on which a person may base an informed selection of competent counsel” with respect to such matters. In addition, the announcement in question (with the appropriate disclaimer concerning the former official not being licensed to practice law) should not be misleading, and, therefore, its mailing would be permitted advertising under SCR 20.08(7)(a).

The committee believes that this opinion is in accord with the decisions of the U.S. Supreme Court in *Bates v. State Bar of Arizona*, 433 U.S. 350, *reh’g denied*, 434 U.S. 881 (1977), and *In Re R.M.J.*, 455 U.S. _____, 71 L. Ed. 64, 102 S. Ct. 929 (1982), wherein the court held that lawyer advertising (which the court found to be not misleading) constituted commercial speech entitled to First Amendment protection and that “advertising by attorneys may not be subjected to blanket suppression.” *Bates v. State Bar of Arizona*, 433 U.S. at 383. Writing for a unanimous Court in *R.M.J.* Justice Powell stated:

Commercial speech doctrine, in the context of advertising for professional services, may be summarized generally as follows: Truthful advertising related to lawful activities is entitled to the protections of the First Amendment. But when the particular content or method of the advertising suggests that it is inherently misleading or when experience has proven that in fact such advertising

is subject to abuse, the states may impose appropriate restrictions. Misleading advertising may be prohibited entirely. But the states may not place an absolute prohibition on certain types of potentially misleading information, e.g., a listing of areas of practice, if the information also may be presented in a way that is not deceptive.

Thus, the Court in *Bates* suggested that the remedy in the first instance is not necessarily a prohibition but preferably a requirement of disclaimers or explanation. 433 U.S. at 375.

Although the potential for deception and confusion is particularly strong in the context of advertising professional services, restrictions upon such advertising may be no broader than reasonably necessary to prevent the deception.” (Emphasis added.) *In Re R.M.J.*, 102 S. Ct. at 937.²

Interpreting SCR 20.08 as permitting the mailing of formal announcements of the hiring of a lay person to assist lawyers, provided there were an appropriate disclaimer concerning such person being licensed to practice law, comports with these decisions. In addition, such interpretation enables lawyers to meet their ethical obligation “to facilitate the process of intelligent selection of lawyers.” SCR 20.06(1). Such interpretation also serves consumer interests by providing consumers with additional relevant information in connection with their selection of suitable counsel. *See Bates v. State Bar of Arizona*, 433 U.S. at 374-77.

¹ SCR 20.08(7)(b) states that any provision of SCR Chapter 20 which conflicts with SCR 20.08(7) is suspended.

² *Bates* and *R.M.J.* were cited favorably by the Wisconsin Supreme Court in its recent decision, *In Re Marcus & Tepper*, 107 Wis. 2d 560, 320 N.W.2d 806 (1982), concerning lawyer advertising.