Lawyer Websites: Liberalizing the Rules on Legal Advertising in the Philippines

Maria Eloisa Imelda S. Singzon[*]

I. INTRODUCTION

The proscription against advertising in the legal profession is deeply rooted on etiquette.[1] The proscription originated in Great Britain where early lawyers — "sons of well-to-do parents who did not have to worry about earning a living"[2] — "viewed the law as a form of public service, rather than

* '12 J.D. cand., Ateneo de Manila University School of Law. Member, the Executive Committee and Board of Editors, *Ateneo Law Journal*. She was Associate Lead Editor of the third issue of the 54th volume, Lead Editor of the fourth issue of the 55th volume, and Co-Lead Editor of the 2011 special issue on the Legal Education Convocation. She previously co-wrote *The Prudence of Complying with Due Process Requirements and its Financial Consequences in Employee Termination*, 55 ATENEO L.J. 539 (2010) with Atty. Ernesto T. Caluya, Jr.; and *Testing Constitutional Waters II: Political and Social Legitimacy of Judicial Decisions*, 55 ATENEO L.J. 1 (2010) with Atty. Sedfrey M. Candelaria, Officer-in-Charge of the Ateneo de Manila University School of Law.

Cite as 56 ATENEO L.J. _ (2011).

1. Bates v. State Bar of Arizona, 433 U.S. 350, 371 (1977).
2. RUBEN E. AGPALO, COMMENTS ON THE CODE OF PROFESSIONAL RESPONSIBILITY AND THE CODE OF JUDICIAL CONDUCT 31 (2004 ed.) [hereinafter AGPALO, COMMENTS].

as a means of earning a living,"[3] and thus looked down on trade and competition.[4] In time, this attitude towards advertising evolved into an aspect of ethics of the legal profession[5] which was brought to the Philippines through the United States (U.S.).[6]

Since the adoption of the Canons of Professional Ethics[7] in 1917,[8] the Philippine legal profession has espoused a blanket prohibition against advertising, with a few exceptions.[9] As the Court explained:

> We repeat, the canon of the profession tell us 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. Good and efficient service to a client as well as to the community has a way of publicizing itself and catching public attention. That publicity is a normal by-product of effective service which is right and proper. A good and reputable lawyer needs no artificial stimulus to generate it and to magnify his success. He easily sees the difference between a normal by-product of able service and the unwholesome result of propaganda.[10]

As the Court emphasized, the profession of law should be practiced with candor and fidelity and dedicated in pursuit of public service.[11] In turn, lawyers are rewarded with a well-merited reputation.[12] This ideal situation, however, may not be as true today. In the advent of technological developments such as the Internet, lawyers are able to create a reputation for professional capacity, well-merited or not. For example, a new lawyer might opt to create a website regarding his qualifications and the field of law where he intends to practice, giving the new lawyer an unwarranted reputation that he has an established practice in that particular field of law. The problem of unwarranted reputation achieved through lawyer and law firm websites is further compounded by the fact that websites may as well be considered a form of commercial speech — i.e., a *marketing tool* that calls attention to a

---

3. *Bates*, 433 U.S. at 371 (citing HENRY S. DRINKER, LEGAL ETHICS 210-11 (1953 ed.)).
4. AGPALO, COMMENTS, *supra* note 2, at 31.
5. *Bates*, 433 U.S. at 371 (citing DRINKER, *supra* note 3, at 211).
6. AGPALO, COMMENTS, *supra* note 2, at 31.
7. CANONS OF PROF'L ETHICS (1917) [hereinafter 1917 CANONS].
8. Carmelo V. Sison, *Legal and Judicial Ethics*, 46 PHIL. L.J. 313, 313 (1971) (citing GEORGE ARTHUR MALCOLM, LEGAL AND JUDICIAL ETHICS 8 (1949)).
9. *See* Ulep v. Legal Clinic, Inc., 223 SCRA 378, 405-09 (1993); CANONS OF PROF'L ETHICS, canon 27 (1946) [hereinafter 1946 CANONS].
10. *Ulep*, 223 SCRA at 407 (citing RUBEN E. AGPALO, LEGAL ETHICS 79-80 (4th ed. 1989)).
11. *Id.*
12. *Id.*

lawyer or law firm's particular qualifications, specific fields of law practice, and information on their clientele.[13] On the one hand, one may argue that maintaining a lawyer or law firm website effectively commercializes the profession and thus *unethical* under the blanket prohibition against advertising. On the other hand, these websites may be considered permissible advertising and allowed under the ethical rules of the Philippine legal profession.

As internet usage in the Philippines continues to increase,[14] websites created by lawyers and law firms become a more effective tool to communicate with the Filipino public. And yet, the Philippine bar has not adequately addressed the issues related to lawyer and law firm websites. This Note will attempt to resolve the nature of lawyer and law firm websites and in doing so, determine if such websites violate Philippine legal ethics. In addressing these issues, the Author will refer to the legal ethics framework in the U.S. from which the Philippine legal ethics framework was patterned.

II. LAWYER AND LAW FIRM WEBSITES CONSTITUTE ADVERTISING

During a 1999 Symposium, lawyer and information technology expert J.T. Westermeier observed that "[m]ore and more lawyers are using the Web to promote their practices, disseminate information, communicate with clients and prospective clients, conduct legal research, and carry on the practice of law."[15] The strong attorney presence on the Internet is more evident today as evidenced by the increasing presence of attorneys in social networking[16] and "blawgs."[17] While there are four broad categories *viz*: "1.) accessing

13. *See generally* ABA Comm. On Ethics & Prof'l Responsibility, Formal Op. 10-457 (Aug. 5, 2010), *available at* http://www.americanbar.org/content/dam/aba/migrated/cpr/pdfs/10_457.authcheckdam.pdf (last accessed November 15, 2011) [hereinafter ABA Formal Op 10-457].

14. According to a recent study conducted by TNS Digital Life 2012, 45% of Filipinos connect to the Internet. Tam Noda, *Internet usage overtakes radio, print media in Philippines*, PHIL. STAR, Jan. 31, 2012, *available at* http://www.philstar.com/nation/article.aspx?publicationsubcategoryid=200&articleid=773104 (last accessed Jan. 31, 2012).

15. J.T. Westermeier, *Ethical Issues for Lawyers on the Internet and the World Wide Web*, 6 RICH J.L. & TECH. 5, 1 (1999) [hereinafter Westermeier, *Ethical Issues for Lawyers on the Internet*].

16. *See, e.g.*, Steven C. Bennett, *Ethics of Lawyer Social Networking*, 73 ALB. L. REV. 113, 113-14 (2009).

17. *See* Justin Krypel, *A New Frontier or Merely a New Medium? An Analysis of the Ethics of Blawgs*, 14 MICH. TELECOMM. & TECH. L. REV. 457, 467-68 (2008); Sarah Hale, *Lawyers at the Keyboard: Is Blogging Advertising and if so, How Should it Be Regulated?*, 20 GEO. J. LEGAL ETHICS 669, 669-70 (2007); Connor Mullin,

legal research sources; 2.) participating in news groups, bulletin boards, discussion groups, chat groups, etc.; 3.) communicating with clients, potential clients, and other lawyers via email; and 4.) publishing web sites for individual lawyers or law firms,"[18] defining attorney usage of the Internet, majority of attorney presence is in the form of advertising[19] and mainly for the purpose of "marketing."[20]

Lawyer Paul F. Lewis explains that "many firms find that their websites assist them in selling themselves to prospective clients by providing inquiries and leads."[21] The information and materials available in lawyer and law firm websites, which range from minimal contact information to thorough explanations of areas of practice and listings of every attorney at the firm, and even interactive search capabilities and information on various topics of law, determine the websites' effectiveness as a marketing tool. As Lewis argues, "[i]f potential clients have been attracted to a website with good substantive content, the website can then be used to give them information about the firm and its attorneys that may help 'close the sale.'"[22]

Since one of the objectives of lawyer and law firm websites is marketing, should lawyer and law firm websites be considered a form of advertising? It is argued that they are.[23] First, as observed by Alan N. Greenspan, "the entire Internet may be considered as advertising."[24] Greenspan argues that:

Regulating Legal Advertising on the Internet: Blogs, Google & Super Lawyers, 20 GEO. J. LEGAL ETHICS 835, 837-38 (2007).

18. *See* Dean R. Dietrich, *Venturing onto the World Wide Web: Ethics Implications for Lawyers*, WIS. LAW., Feb. 1999, at 10-11.

19. Jesse H. Sweet, *Attorney Advertising on the Information Super-Highway: A Crash Course in Ethics*, 24 J. LEGAL PROF. 201, 205 (2000) (citing Dietrich, *supra* note 18, at 205).

20. Sweet, *supra* note 19, at 206 (citing Paul F. Lewis, *Building a Law Firm Website*, 27 U. COLO. L. REV. 33, 33 (1998)).

21. Lewis, *supra* note 20, at 33. "[According to a survey] ... 56 percent of the law firms with an Internet presence reported receiving business leads and inquiries from the website." *Id.* It is also argued that the fact that a lawyer or a law firm has not acquired a single client through its website does not make the website less of a marketing tool. *See* Sweet, *supra* note 19, at 206.

22. *Id.* at 34.

23. *See generally* Bennett, *supra* note 16, at 130; Susan Corts Hill, *Living in a Virtual World: Ethical Considerations for Attorneys Recruiting New Clients in Online Virtual Communities*, 21 GEO. J. LEGAL ETHICS 753, 756 (2008); Christopher Hurld, *Untangling the Wicked Web: The Marketing of Legal Services on the Internet and Model Rules*, 17 GEO. J. LEGAL ETHICS 827, 835 (2004); Vanessa S. Browne-Barbour, *Lawyer and Law Firm Web Pages as Advertising: Proposed Guidelines*, 28 RUTGERS COMPUTER & TECH. L.J. 275, 302 (2002); Kandi L. Birdsell & Joshua D. Janow, *Legal Advertising: Finding Timely Direction in the World of Direct*

> [I]t is no stretch to argue that *each and every website constitutes an advertisement in its own right*. Most websites promote a particular product or brand name and are designed to give the user more information about the owner of the website. *The website is perhaps the most obvious and prevalent form of Internet advertising.*[25]

Lawyer and law firm websites arguably fit well in this category: "[t]he 'brand name' that they promote is the name of the firm; the product that they promote is legal services."[26] Because such websites are designed to inform viewers about the lawyer or law firm, lawyer and law firm websites, at least implicitly, promotes the lawyer or law firm behind the site.[27]

Second, lawyer and law firm websites propose commercial transactions to prospective clients in most instances.[28] Thus:

> Commercial speech is speech seeking a commercial relationship. Commercial legal speech is speech seeking a legal relationship for profit. Hence, any ... publication which by its content or its context seeks to develop a legal relationship for profit ... is commercial speech that states constitutionally may regulate, and, for lawyers, have regulated in the codes of professional ethics for lawyers. Even if a website or publication is primarily informational, if the content or context indicates the solicitation for a commercial relationship, the website or publication is commercial speech subject to state regulation.[29]

Solicitation, Waiting Periods and Electronic Communication, 15 GEO. J. LEGAL ETHICS 671, 692 (2002); Westermeier, *Ethical Issues for Lawyers on the Internet*, *supra* note 15, at 5; Sweet, *supra* note 19, at 208.

24. Sweet, *supra* note 19, at 209 (citing Alan N. Greenspan, *Internet Advertising Laws and Regulations*, 547 PLI/PAT 325, 328 (1999). Advertising is defined as "the non-personal presentation or promotion by a firm of its products [and services] to its existing and potential clients." Laura Lake, Marketing vs. Advertising, What's the Difference?, *available at* http://marketing.about.com/cs/advertising/a/market vsad.htm (last accessed Nov. 15, 2011).

25. Sweet, *supra* note 19, at 210 (citing Greenspan, *supra* note 24, at 330-31) (emphasis supplied).

26. Sweet, *supra* note 19, at 210.

27. *Id.*

28. Browne-Barbour, *supra* note 23, at 302.

29. Sweet, *supra* note 19, at 210 (citing Drew L. Kershen, *Professional Legal Organization on the Internet: Websites and Ethics*, 4 DRAKE J. AGRIC. L. 141, 145 (1999)).

As noted by the American Bar Association (ABA) Standing Committee on Ethics and Professional Responsibility, "*websites also offer lawyers a twenty-four hour marketing tool.*"[30]

III. LEGAL ETHICS AND LEGAL ADVERTISING

A. Philippines: General Prohibition on Legal Advertising

Historically, the early lawyers in Great Britain regarded the practice of law primarily as a form of public service wherein remuneration was a secondary consideration.[31] Because of such regard for the legal profession, the profession "acquired a certain traditional dignity."[32] Advertising, a principal tool which shopkeepers used to sell his product or service, was considered an "undignified" activity in the profession.[33] The ban on advertising of legal services thus "originated as rule of etiquette and not as a rule of ethics."[34]

As the rule of etiquette became a recognized custom and tradition of the legal profession in the U.S., which was later on brought to the Philippines,[35] a lawyer's "well-merited reputation for professional capacity and fidelity to trust"[36] became the accepted norm for publicizing one's legal skills.[37]

The 1946 Canons of Professional Ethics (1946 Canons)[38] for lawyers in the Philippines were adopted from the ABA Canons of Professional Ethics of 1908. For the past 66 years, the Canons have provided the general framework on legal advertising in the Philippines. Canon 27 provides:

> It is unprofessional to solicit professional employment by circulars, advertisements, through touters, or by personal communications, or interviews not warranted by personal relations. Indirect advertisement for

---

30. ABA Formal Op. 10-457, *supra* note 14, at 1 (emphasis supplied). Most state bars in the U.S. have recognized lawyer and law firm websites are lawyer advertising and are thus governed by the their respective rules of professional conduct. J.T. Westermeier, *Ethics and the Internet*, 17 GEO. J. LEGAL ETHICS 267, 272 (2004). *See generally* Browne-Barbour, *supra* note 23, at 302-13; Sweet, *supra* note 19, at 211-17.

31. AGPALO, COMMENTS, *supra* note 2, at 31.

32. *Id.*

33. *Id.*

34. Browne-Barbour, *supra* note 23, at 283-84 (citing *Bates*, 433 U.S. at 371).

35. AGPALO, COMMENTS, *supra* note 2, at 31.

36. *Id.* at 32.

37. The adage states, "[T]he 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." *Ulep*, 223 SCRA at 407.

38. 1946 CANONS.

> professional employment such as furnishing or inspiring newspaper comments, or procuring his photograph to be published in connection with causes in which the lawyer has been or is engaged or concerning the manner of their conduct, the magnitude of the interest involved, the importance of a lawyer's position, and all other like-laudation, offend the traditions and lower the tone of our profession and are reprehensible; but the customary use of simple professional cards is not improper.
>
> Publication in reputable law lists in a manner consistent with the standards of conduct imposed by those canons of brief biographical and informative data is permissible. Such data must not be misleading and may include only a statement of the lawyer's name and the names of his professional associates; addresses, telephone numbers, cable addresses; branches of the profession practiced; date and place of birth and admission to the bar; schools attended; with dates of graduation, degrees and other educational distinctions; public or quasi-public offices; posts of honor; legal authorship; legal teaching passions; memberships and offices in bar associations and committees thereof, in legal and scientific societies and legal fraternities; the fact of references; and, with their written consent, the names of clients regularly represented. A certificate of compliance with the Rules and Standards issued by the Special Committee on Law Lists may be treated as evidence that such list is reputable.[39]

Under the 1946 Canons, advertising legal services is generally prohibited.[40] This proscription is rooted on the traditional notion that because the practice of law is a dignified profession, advertising legal services would necessarily erode such dignity.[41] Thus, "a lawyer cannot advertise his talent as a shopkeeper advertises his wares."[42] Since the legal profession is imbued with public interest,[43] a lawyer is radically different from a shopkeeper or a trader whose primary goal is private gain and whose principal tool in selling his product or service is advertising.[44] To rule otherwise and allow a lawyer to advertise his talent or skill would amount to commercializing the practice of law.[45]

The general rule prohibiting legal advertising is not absolute. Legal ethics expert Ruben E. Agpalo explains that "what makes advertising ... improper is the employment of such methods as are incompatible with the traditional

---

39. *Id.* canon 27.

40. *Id.*

41. AGPALO, COMMENTS, *supra* note 2, at 32.

42. *Id.* at 31.

43. "A lawyer is 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." *Id.*

44. *Id.*

45. *Id.* at 31-32.

dignity of a lawyer and the maintenance of correct professional standards, or the use of artificial means to augment the publicity that normally results from what a lawyer does."[46] The Canons enumerate exceptions to the rule against advertising and define the extent to which may be pursued. For example, publication of brief biological and informative data in reputable law lists in a manner consistent with the Canons[47] and the publication in a local legal journal of a brief and dignified announcement of a lawyer's availability to act as an associate of other lawyers in a specific branch of service[48] are permitted. By implication, the use of an ordinary simple professional card[49] containing "a statement of his name, the name of the law firm he is connected with, address, telephone number, and special branch of law practiced;"[50] the publication of a simple announcement of the opening of a law firm or changes in the firm name or office address;[51] and listing in a telephone directory[52] are permissible advertising.

Complementing the 1946 Canons is the Code of Professional Responsibility (Code)[53] promulgated in 1988. Specifically, Canon 3 of the Code, which governs the communication of a lawyer's legal services, provides that "[a] lawyer in making known his legal services shall use only true, honest, fair, dignified[,] and objective information or statement of facts."[54] Thus, "[a] lawyer shall not use or permit the use of any false, fraudulent, misleading, deceptive, undignified, self-laudatory[,] or unfair statement or claim regarding his qualifications or legal services"[55] nor shall "a lawyer ... pay or give anything of value to representatives of mass media in anticipation of, or in return for, publicity to attract legal services."[56]

---

46. *Id.* at 32.

47. 1946 CANONS, canon 27.

48. *Id.* canon 46.

49. *Ulep*, 223 SCRA at 408; AGPALO, COMMENTS, *supra* note 2, at 34 (citing ABA Op. 11 (1927)).

50. *Id.*

51. *Ulep*, 223 SCRA at 408; AGPALO, COMMENTS, *supra* note 2, at 34 (citing ABA Op. 24 (1930)).

52. *Ulep*, 223 SCRA at 408; AGPALO, COMMENTS, *supra* note 2, at 34 (citing ABA Ops. 53 (1931); 123 (1934); 220 (1941); 241 (1942); 284 (1951)). Note that the listing in a telephone directory should not be "under a designation of special branch of law." AGPALO, COMMENTS, *supra* note 2, at 34 (citing ABA Op. 286 (1952)).

53. CODE OF PROF'L RESPONSIBILITY (1988).

54. *Id.* canon 3.

55. *Id.* canon 3, rule 3.01.

56. *Id.* canon 3, rule 3.04.

Following these guidelines, the Court has found the following instances as constituting improper advertising:

(1) An advertisement which read,

SECRET MARRIAGE?
P560.00 for a valid marriage.
Info on DIVORCE. ABSENCE,
ANNULMENT. VISA.

THE	Please call: 521-0767
LEGAL	5217232, 5222041
CLINIC, INC.	8:30 am — 6:00 pm
	7-Flr. Victoria Bldg., UN Ave., Mla.

Also,

GUAM DIVORCE.
DON ARKINSON

an Attorney in Guam, is giving FREE BOOKS on Guam Divorce through The Legal Clinic beginning Monday to Friday office hours.

Guam divorce. Annulment of Marriage. Immigration Problems, Visa Ext. Quota/Non-quota Res. & Special Retiree's Visa. Declaration of Absence. Remarriage to Filipina Fiancees. Adoption. Investment in the Phil. US/Foreign Visa for Filipina Spouse/Children. Call Marivic.

THE	7F Victoria Bldg., 429 UN Ave.,
LEGAL	Ermita, Manila nr. US Embassy
CLINIC, INC.	Tel. 521-7232; 521-7251;
	522-2041; 521-0767.[57]

(2) A paid advertisement which appeared in the Philippine Daily Inquirer which read, "ANNULMENT OF MARRIAGE Specialist 532-4333/521-2667."[58]

Subject to recognized exceptions — whether implicit or expressly provided for in the Canons — the Supreme Court, as the regulatory body of the legal profession, has remained steadfast in its condemnation of a lawyer's advertisement of his talents.

B. United States: Advertising is Protected Speech

In an effort to regulate the significant increase in legal advertising in the U.S., the ABA adopted the Canons of Professional Ethics (ABA Canons)[59]

57. *Ulep*, 223 SCRA at 381-82.

58. Khan, Jr. v. Simbillo, 409 SCRA 299, 300 (2003).

59. CANONS OF PROF'L ETHICS (1908) (U.S.).

in 1908, expressly prohibiting legal advertising and solicitation.[60] The ABA Canons were replaced with the Model Code of Professional Responsibility (Model Code),[61] which "completely proscribed lawyer advertising ... and any form of 'undignified' advertising."[62] Adopting the U.S. Supreme Court decision in *Bates v. State Bar of Arizona,*[63] the blanket proscription on legal advertising and solicitation were relaxed by the adoption of the Model Rules of Professional Conduct (Model Rules).[64] While the Model Code initially proscribed lawyer advertising on television and any form of "undignified" advertising, amendments to the Model Rules have allowed permissible categories of information that lawyers could include in written advertisements concerning the lawyers' services such as the lawyer's name, fields of practice, dates and admission to state and federal bars, and range of fees for services.[65]

The general prohibition against legal advertising was lifted in the landmark case *Bates.*[66] In this case, the U.S. Supreme Court held that advertising by licensed lawyers was protected by the First Amendment as commercial speech.[67] The U.S. Supreme Court emphasized that while advertising by attorneys may be regulated, "[it] may not be subjected to blanket suppression."[68] Consequently, "truthful advertisement concerning the availability and terms of routine legal services ... may not be restrained."[69]

---

60. Browne-Barbour, *supra* note 23, at 284-85 (citing Louise L. Hill, Lawyer Communications on the Internet: Beginning the Millennium with Disparate Standards, 75 WASH. L. REV. 785, 791 (2000); ABA Comm'n on Advertising, White Paper, A Re-Examination of the ABA Model Rules of Professional Conduct Pertaining to Client Development in Light of Emerging Technologies, at 2 (1998), *available at* http://www.americanbar.org/groups/professional_responsibility/resources/professionalism/professionalism_ethics_in_lawyer_advertising/ethicswhitepaper.html (last accessed Nov. 15, 2011) [hereinafter ABA White Paper]) .

61. MODEL CODE OF PROF'L RESPONSIBILITY (1980) (U.S.).

62. Browne-Barbour, *supra* note 23, at 285 (citing Hill, *supra* note 60, at 793-97; ABA White Paper, *supra* note 60, at 3).

63. *Bates*, 433 U.S. at 350.

64. MODEL RULES OF PROF'L CONDUCT (1983) (U.S.) [hereinafter MODEL RULES].

65. ABA Formal Op. 10-457, *supra* note 14, at 1-2.

66. *Bates*, 433 U.S. at 350.

67. *Id.* at 382.

68. *Id.* at 383.

69. *Id.* at 384.

Relying on its previous decision in *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*,[70] the U.S. Supreme Court in *Bates* reiterated the principle behind protecting commercial speech and the importance of free flowing information to society, thus: "[C]ommercial speech serves to inform the public of the availability, nature, and prices of products and services, and thus performs an indispensable role in the allocation of resources in a free enterprise system ... *such speech serves individual and societal interests in assuring informed and reliable decision-making.*"[71] Supporting such societal interests, the U.S. Supreme Court found the six arguments wanting — the adverse effect on professionalism;[72] the inherently misleading nature of attorney advertising;[73] the adverse effect of advertising on the administration of justice;[74] the undesirable economic effects of advertising;[75] the adverse effect of advertising on the quality of service;[76] and the difficulties of enforcement[77] — which the State Bar of Arizona proffered to justify its restrictions on price advertising. The six arguments were considered as follows:

(1) The adverse effect on professionalism

According to the State Bar of Arizona, "the key to professionalism [in the legal profession] is the sense of pride that the involvement in the discipline generates."[78] It argued that price advertising would lead to the commercialization of the profession, effectively undermining the lawyer's sense of self-worth and tarnishing the dignified public image of the profession.[79] In rejecting this argument, the U.S. Supreme Court found that "the postulated connection between advertising and the erosion of true professionalism to be severely strained"[80] on three grounds. First, the U.S. Court found it inconsistent to condemn the revelation of the commercial basis, i.e. the basis of the fee charges to be made, of the client-attorney relationship before the client employs the attorney when prompt disclosure

70. Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976) (emphasis supplied).

71. *Bates*, 433 U.S. at 364 (citing *Virginia*, 425 U.S. at 761-65; FTC v. Procter & Gamble Co., 386 U.S. 568, 603-04 (1967)).

72. *Id.* at 368.

73. *Id.* at 372.

74. *Id.* at 375.

75. *Id.* at 377.

76. *Id.* at 378.

77. *Bates*, 433 U.S. at 379.

78. *Id.* at 368.

79. *Id.*

80. *Id.*

of the same information "[a]s soon as feasible after a lawyer has been employed"[81] is encouraged.[82] Second, professions where advertising is permitted were not regarded as undignified by the public.[83] Furthermore, "the absence of advertising may be seen to reflect the profession's failure to reach out and serve the community."[84] Third, the U.S. Supreme Court dispelled the historical underpinnings of the ban on advertising in the legal profession and emphasized that "the belief that lawyers are somehow 'above' trade has become an anachronism."[85]

(2) The inherently misleading nature of attorney advertising

Among the three alleged components of the inherently misleading nature of legal advertising, the U.S. Supreme Court found merit, albeit insufficient, on the third: "advertising by attorneys will highlight irrelevant factors and fail to show the relevant factor of skill."[86] Thus, although "advertising does not provide a complete foundation on which to select an attorney,"[87] prohibiting advertising would only serve to impede the free flow of information to consumers.[88] In espousing more disclosure of information, the U.S. Supreme Court emphasized that "it is the bar's role to assure that the [public] is sufficiently informed as to enable it to place advertising in its proper perspective."[89]

(3) The adverse effect of advertising on the administration of justice

The U.S. Supreme Court rejected the argument that advertising would have the undesirable effect of encouraging unfounded litigation.[90] On the contrary, advertising may offer great benefits such as resolving the problem on the underutilization of legal services.[91] Because "advertising is the traditional mechanism in a free market economy for a supplier to inform a

81. *Id.* (citing MODEL CODE OF PROF'L RESPONSIBILITY EC 19 (1976)).

82. *Bates*, 433 U.S. at 368.

83. *Id.* at 369-70.

84. *Id.* at 370. The U.S. Supreme Court pointed to studies which revealed that "many persons do not obtain counsel, even when they perceive a need, because of the feared price of services or because of an inability to locate a competent attorney." *Id.*

85. *Id.* at 371-72.

86. *Id.* at 372.

87. *Id.* at 351.

88. *Bates*, 433 U.S. at 351.

89. *Id.* at 375.

90. *Id.* at 376.

91. *Id.*

potential purchaser of the availability and terms of exchange,"[92] advertising can resolve this problem by promoting access to legal services.[93]

(4) The undesirable economic effects of advertising

The arguments that (a) advertising will increase overhead costs which will then be passed on to the consumers in the form of increased legal fees and that (b) the additional cost of practice will be a considerable barrier to entry that will preclude young attorneys from entering the market, were adjudged dubious, at best.[94]

(5) The adverse effect of advertising on the quality of service

The argument that an attorney who advertises a given "package" of service at a set price would be inclined to cut the quality of legal service provided by the attorney was unpersuasive.[95] As the U.S. Supreme Court explained, "[r]estraints 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."[96]

(6) The difficulties of enforcement

In dispelling the last argument, the U.S. Supreme Court noted that if advertising were allowed, the members of the bar would naturally and logically regulate itself. Thus,

---

92. *Id.*

93. *Bates*, 433 U.S. at 376-77.

94. *Id.* at 377. In rejecting the fourth argument, the U.S. Supreme Court found the issue irrelevant to the issue of the case, i.e. entitlement of legal price advertising to the First Amendment protection. *Id.*

In further dispelling the adverse economic claims of the State Bar of Arizona, the Court said:

> *The ban on advertising serves to increase the difficulty of discovering the lowest cost seller of acceptable ability.* As a result, to this extent attorneys are isolated from competition, and the incentive to price competitively is reduced ... It is entirely possible that advertising will serve to reduce, not advance, the cost of legal services to the consumer.
>
> The entry barrier argument is equally unpersuasive. In the absence of advertising, an attorney must rely on his contacts with the community to generate a flow of business. In view of the time necessary to develop such contacts, the ban in fact serves to perpetuate the market position of established attorneys. Consideration of entry barrier problems would urge that advertising be allowed so as to aid the new competitor in penetrating the market.

Id. at 377-78 (emphasis supplied).

95. *Id.* at 378.

96. *Id.*

> with advertising, most lawyers will behave as they always have: they will abide by their solemn oaths to uphold the integrity and honor of their profession and of the legal system. For every attorney who overreaches through advertising, there will be thousands of others who will be candid and honest and straightforward. And, of course, it will be in the latter's interest, as in other cases of misconduct at the bar, to assist in weeding out those few who abuse their trust.[97]

Following the pronouncement in *Bates*, the ABA replaced the Model Code with Model Rules in 1983.[98] With the development of the Internet and an increase in Internet-based lawyer advertising, the ABA formed Ethics 2000 in 1997 to provide changes to the advertising and solicitation provisions of the Model Rules.[99] Because the changes made by Ethics 2000 merely "analogized Internet-based marketing with that done through other types of media,"[100] writers have described the changes as "cosmetic" and inadequate to address problems certain aspects of the internet present.[101] As amended, Rule 7.2 of the Model Rules expressly permits a lawyer to "advertise services through written, recorded or electronic communication, including public media"[102] but subject to the requirements of Rule 7.1[103] which prohibits a lawyer from making false or misleading communication about the lawyer or the lawyer's services, and Rule 7.3[104] which prohibits solicitation for professional employment.

---

97. *Bates*, 433 U.S. at 379.

98. Browne-Barbour, *supra* note 23, at 290.

99. Hurld, *supra* note 23, at 827.

100. *Id.* at 838.

101. *See* Hurld, *supra* note 23, at 831-38 where the Author emphasized that unique nature of the Internet creates unique challenges and calls for a mixture of traditional methods of regulating legal advertising and understanding of such challenges. *See also* J. Clayton Athey, *The Ethics of Attorney Web Sites: Updating the Model Rules to Better Deal with Emerging Technologies*, 13 GEO. J. LEGAL ETHICS 499 (2000) where the Author concluded that the Model Rules (prior Ethics 2000 amendments) provided vague guidelines and as such, "attorney Web sites [would] pose a substantial danger to the public, due to the quantities of information available and the corresponding increased risk of that information being false or misleading." *Id.* at 519.

102. MODEL RULES, rule 7.2 (a).

103. *Id.* rule 7.1. This Rule provides: "A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading." *Id.*

104. *Id.* rule 7.3.

IV. LAWYER WEBSITES IN THE PHILIPPINES: ETHICAL OR NOT?

As argued in Part II of this Note, because lawyer and law firm websites effectively market a lawyer or law firm's services, they should be considered a form of advertising. However, under the general proscription against legal advertising, it would be unethical for a lawyer or law firm to maintain a website. Applying the standard "a lawyer cannot advertise his talent as a shopkeeper advertises his wares," lawyer and law firm websites should be prohibited since they effectively market legal services akin to how a businessman's website would advertise his goods or services. To illustrate, a businessman, a new entrant in the business of retailing jewelry, creates a website containing only the address of his store and a list of jewelry he sells. The website, at the very least, constitutes advertising since it tends to propose a commercial transaction.[105] Notwithstanding the fact that the website merely provides information without an express invitation to purchase any jewelry, it suffices that a proposal to enter into a commercial transaction can be inferred from the information provided. In the same way, a lawyer or law firm website which merely provides information on the qualifications of a lawyer or a law firm and the fields of law wherein they specialize would also tend to propose a commercial transaction in the same manner as the businessman. The utilization of websites by lawyer or law firm as a communication tool to the public effectively "commercializes" the legal profession.

Even considering the rules on permissible advertising, maintaining lawyer and law firm websites would still be unethical. Lawyer and law firm websites do not qualify under any of the two broad categories recognized in *Ulep,* taking into account the Court's strict dictum that "an exception to the general rule ... can be made only if and when the [C]anons provide for such an exception. Otherwise, the prohibition stands."[106]

With respect to the first category, websites are not expressly permitted by the Canons. Particularly, a website is not the same as a "reputable law list."[107] Unlike a law list which provides general information about various lawyers and law firms, a lawyer or law firm website is tailor-fitted to the requirements of the lawyer or law firm and provides specific information about them.

As to the second category, websites are not impliedly exempted by the restrictions on advertising. For example, a lawyer or law firm website is not

105. The U.S. Supreme Court has defined commercial speech as "speech that does no more than propose a commercial transaction." United States v. United Foods, Inc., 533 U.S. 405, 409 (2001) (citing *Virginia*, 425 U.S. at 762).

106. *Ulep*, 223 SCRA at 409.

107. *See* 1946 CANONS, canon 27.

similar to a "simple announcement of the *opening* of a law firm"[108] in view of the following: (1) more often than not, established lawyers and law firms maintain websites and (2) a website is not merely an announcement but a continuous publication accessible 24 hours a day to anyone with Internet access. Likewise, a lawyer or law firm website is not akin to "ordinary simple professional cards," which are impliedly allowed by the Canons.[109] Websites provide information indiscriminately, i.e. to anyone with access to the Internet, while professional cards are traditionally "shared during formal introductions as a convenience and memory aid."[110]

Considering the foregoing discussion, maintaining a lawyer or law firm website is not permitted under the present ethical rules of the Philippine legal profession.

V. THE NEED TO REVISIT THE RULE PROSCRIBING LEGAL ADVERTISING: LIBERALIZING THE RULES

Because of the continuing increase in the presence of lawyer and law firm websites on the Internet, there is an evident need to revisit and revise the present ethical rules governing legal advertising. Particularly, two issues must be addressed: (1) the liberalization on the ban against legal advertising and (2) the sufficiency and adequacy of the rules to effectively regulate lawyer communication on the internet.

A. Liberalizing the Rules on Legal Advertising

In liberalizing the rule against legal advertising, *Bates* provides two compelling reasons: (1) legal advertising is protected speech that cannot be subjected to "blanket" prohibition and (2) advertising encourages the free flow of information allowing consumers to make more informed choices when availing legal services.[111]

In 1993, the Philippine Supreme Court refused to adopt *Bates* on factual grounds[112] and emphasized that allowing legal advertising during that time

108. *See Ulep*, 223 SCRA at 408.

109. *Id.*

110. Dustin Betonio, 35 Creative Examples of Red Business Card Design, *available at* http://www.tripwiremagazine.com/2011/07/business-card-design.html (last accessed Nov. 15, 2011).

111. *Bates*, 433 U.S. at 377.

112. *Ulep*, 223 SCRA at 408-09. The Court noted that:

> The ruling in the case of *Bates, et al. vs. State Bar of Arizona*, which is repeatedly invoked and constitutes the justification relied upon by respondent, is obviously not applicable to the case at bar. Foremost is the fact that the disciplinary rule involved in said case explicitly allows a lawyer, as an exception to the prohibition against advertisements by

would serve to aggravate the deteriorating public opinion of the legal profession.[113] While the Court's justification may have been proper then, the milieu of our present times calls for a different understanding of the nature of advertising. This is made more imperative by the fact that at least 45 per cent of Filipinos connect to the Internet.[114] As the U.S. Supreme Court emphasized, "allowing restrained advertising would be in accord with the bar's obligation to 'facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available.'"[115]

Moreover, liberalizing the proscription against legal advertising finds support in our 1987 Constitution.[116] In particular, Sections 4 and 7 of Article III respectively provide:

> *No law shall be passed abridging the freedom of speech,* of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.[117]

> *The right of the people to information on matters of public concern shall be recognized.* Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to limitations as ay be provided by law.[118]

These two provisions, taken together, afford limited protection to commercial speech such as legal advertising. As Chief Justice Reynato S. Puno explained, "advertising ... falls within the ambit of the term of *commercial speech* ... a separate category of speech which is not accorded the same level of protection as that given to other constitutionally guaranteed

---

> lawyers, to publish a statement of legal fees for an initial consultation or the availability upon request of a written schedule of fees or an estimate of the fee to be charged for the specific services. No such exception is provided for, expressly or impliedly, whether in our former Canons of Professional Ethics or the present Code of Professional Responsibility ... an exception to the general rule, such as that being invoked by herein respondent, can be made only if and when the canons expressly provide for such an exception. Otherwise, the prohibition stands, as in the case at bar.

Id (citing *Bates*, 433 U.S. 350).

113. At that time, the legal profession's integrity was "consistently [ ] under attack [ ] by media and the community in general." *Ulep*, 223 SCRA at 409.

114. Noda, *supra* note 13.

115. *Bates*, 433 U.S. at 377.

116. PHIL. CONST.

117. PHIL. CONST. art. 3, § 4 (emphasis supplied).

118. PHIL. CONST. art. 3, § 7 (emphasis supplied).

forms of expression but *is nonetheless entitled to protection.*"[119] Thus, an absolute ban on advertising would be unduly restrictive and more than necessary to further the bar's interest in protecting the public from "false and misleading communication."[120] Moreover, liberalizing the proscription against legal advertising would afford society more protection by permitting the free flow of information. In doing so, the public is allowed to make more informed decisions when procuring legal services. Considering the societal benefits advertising can bring, the argument that legal advertising would erode the dignity and respect of the legal profession does not justify the absolute ban on legal advertising. As emphasized in *Bates*, "[t]he choice between the dangers of suppressing information and the dangers arising from its free flow [is] precisely the choice 'that [the guarantee of freedom of speech] makes for us.'"[121] In the context of the legal profession, "[a] rule allowing restrained advertising would be in accord with the bar's obligation to 'facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available.'"[122]

B. Amending the Rules Towards Effective Regulation of Lawyer Websites

Concomitant with liberalizing the proscription against legal advertising is the duty of the bar to amend the present legal ethics rules to assure effective regulation. After all, advertising, without regulation, could lead to undesirable effects. As noted in *Bates*, "it is the bar's role to assure that the populace is sufficiently informed as to enable it to place advertising in its proper perspective."[123]

A review of the U.S. experience would show that the current Philippine rules that govern lawyer communication are clearly inadequate to effectively regulate lawyer and law firm websites.[124] As earlier discussed, Rule 3.01 of the Code on Professional Responsibility prohibits a lawyer from using any "false, fraudulent, misleading, deceptive, undignified, self-laudatory, or unfair statement or claim regarding his qualifications or legal services."[125] As applied to lawyer and law firm websites, a lawyer or law firm may include accurate information that is not misleading about the lawyer or the law firm. These websites may contain biological information about the lawyer or the

---

119. Pharmaceutical and Health Care Association of the Philippines v. Duque III, 535 SCRA 265, 344 (2007) (C.J. Puno, concurring opinion) (emphasis supplied).

120. *See Pharmaceutical and Health Care Association of the Philippines*, 535 SCRA at 346.

121. *Bates*, 433 U.S. at 365 (citing *Virginia State Bd. of Pharmacy*, 425 U.S. at 770).

122. *Id.* at 377.

123. *Id.* at 375.

124. *See generally* ABA White Paper, *supra* note 60.

125. CODE OF PROF'L RESPONSIBILITY, canon 3, rule 3.01.

lawyers of the law firm, including their educational background, experience, area of practice, and contact information. The website may even disclose the names of clients they regularly represent, provided said client give their written consent.[126]

The Rule, however, fails to address certain problems such as instances where the lawyer or law firm website provides information about the law practice.[127] Legal information[128] such as information on the prevailing law, updates on amendments to the law, case summaries, and court decisions are not included in "statement[s] or claim[s] regarding [a lawyer's] qualifications or legal services."[129] This problem is compounded in light of the rapid developments in the law making legal information, which was initially accurate, become erroneous and misleading to website viewers. Moreover, legal information provided in websites may be perceived by the viewers as legal advice. As noted by the ABA, "no exact line can be drawn between legal information and legal advice."[130] In this situation, the information provided may mislead the viewer into "believ[ing] that they can rely on general legal information to solve their specific problem."[131]

Other problem areas that are unique to websites are the use of repetitive phrases, meta tags, and invisible ink. These areas are explained in the ABA White Paper on Emerging Technologies:

> [W]eb site designers can take measures to create a priority placement on search engines through the use of repetitive phrases, meta tags[,] and invisible ink. When a consumer attempts to locate a lawyer through the

126. 1946 CANONS, canon 27.

127. *See, e.g.*, http://www.chanrobles.com (last accessed Nov. 15, 2011); http://www.attorneylaserna.blogspot.com (last accessed Nov. 15, 2011).

128. *See generally* ABA Formal Opinion 10-457, *supra* note 14, at 2-3.

129. CODE OF PROF'L RESPONSIBILITY, canon 3, rule 3.01. Unlike Rule 3.01 of the Code of Professional Responsibility, legal information available in lawyer websites is expressly covered by Rule 7.01 of the Model Rules, which extends to "truthful statements that are misleading ... A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion ... for which there is no reasonable factual foundation." *See* THE CENTER FOR PROFESSIONAL RESPONSIBILITY, MODEL RULES OF PROFESSIONAL CONDUCT 136 (2010 ed.).

130. ABA Formal Opinion 10-457, *supra* note 14, at 2.

131. ABA Formal Opinion 10-457, *supra* note 14, at 3. This would be a clear violation of the lawyer's obligation to give candid legal advice after a full consideration of all relevant information. *See* CODE OF PROF'L RESPONSIBILITY, canon 15, rule. 15.05. Rule 15.05 of Canon 15 provides: "Rule 15.05 — A lawyer, when advising his client, shall give a candid and honest opinion on the merits and probable results of the client's case, neither overstating nor understating the prospects of the case." *Id.*

Internet and does not know a firm's URL, he or she will most likely go to one of several search engines that are designed to perform key word searches of all those pages of the Internet that are registered with that search engine. Although a search may result in tens of thousands or even hundreds of thousands of sources which match to the key words, the screen will typically only show ten or so at a time. The consumer can go forward to additional screens, but will generally proceed from the beginning of the listing, much like consumers do when faced with a list of lawyers in the yellow pages. As with yellow pages, a lawyer with a home page that appears at the beginning of the list from a search engine's search has a competitive advantage.

Search engines identify sites mechanically by the words that appear in the html language used to code the contents of the site. Consequently, if a lawyer's [website] has repetitive words or phrases that correspond to those words or phrases used by the consumer to do a search, that web site will appear at or near the top of the resulting search. Potential clients may search common phrases such as 'drunk driving' or 'car accident' as well as simple, legal terms such as 'divorce' or 'bankruptcy.' Words or phrases such as these can be embedded into the html language in one of three ways. The words can be within the site itself, interspersed as part of the text or, sometimes, listed as a block at the end of the page. This latter technique is confusing to viewers, looks out of place and is seldom used in sites promoting legal services.

Secondly, the words and phrases can be embedded as meta tags. Meta tags are the words and phrases that are inserted into the coded html language in a way that does not make them appear on the home page itself. While not visually appearing on the home page, meta tags key search engines to include the page for searches having those words. Meta tags can be seen by calling up the html language. A viewer can click on 'view' and then click on 'source.' An example of meta tags is found at the home page of the highly regarded law firm Kutak Rock. Go to http://www.kutakrock.com. Go to 'view' and then 'source.' The html language appears, showing meta tags for words including 'law,' 'legal,' 'intellectual,' 'property,' 'blue,' 'sky,' 'litigation,' and 'tax.'

[Even though] meta tags are not readily seen ... they do nothing more than compete for search engine placement. As a result, their propriety should be determined on their content and consequence. [On one hand], if a potential client does not know a firm's URL and might search for it by the firm's name, there is no reason to ban that firm from using its own name in meta tags that will help give it priority when the potential client seeks it out through a search engine. Neither the content of using your own name nor the consequence of having your firm emerge at the top of a search would be improper ... On the other hand, if a law firm were to create meta tags with the name of another law firm that may be used as key words in a search or lists practice areas in which it is not competent in its meta tags, those communications would probably be deemed false or misleading. It is not, however, the hidden nature of meta tags that create a misleading

> representation, it is the content of those words and phrases within the context of the law practice.
>
> Invisible ink is more problematic than either listing key words [or] phrases visibly on the site or using meta tags, which are revealed through its source code. Invisible ink is the placement of words on a background with the same color as the background so that they are not visible. The effect of creating priorities from key word searches on search engines is the same as having visible words or meta tags. However, the words can only be viewed by an examination of the html coded language. These codes are more difficult to find within that language than meta tags, although they can be seen.[132]

Accordingly, through the use of repetitive phrases, meta tags, and invisible ink, lawyers or law firms who would like to benefit their position may use misleading representations in the development of their websites.[133]

The unique nature of websites highlights the difficulty of enforcing violations on misleading representations. Evidently, lawyer and law firm websites call for a different regulatory need.

VI. CONCLUSION

Websites have become a common and effective tool for lawyers to communicate with the public. Under the present rules on legal ethics, lawyers and law firms should not be allowed to maintain websites. However, because lawyer and law firm websites (1) aid making legal services fully available and (2) facilitate access to legal information, the proscription against legal advertising should be liberalized. In the same vein, there is a need to revisit and revise existing rules so as to provide an effective regulation of lawyer and law firm websites. If the current rules are left in place, lawyer and law firm websites will continue to pose a danger to the public considering the quantities of information available and the increased risk of the information to be misleading or false.

132. ABA White Paper, *supra* note 60.

133. *Id.*