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Lawyer Advertising in Oklahoma after *In Re R.M.J.*

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RECENT DEVELOPMENTS

LAWYER ADVERTISING IN OKLAHOMA AFTER *IN RE R.M.J.*

I. INTRODUCTION

The decision of the United States Supreme Court in *In re R.M.J.*,¹ during the past term, has again brought into question the extent to which a state may regulate lawyer advertising.² In a unanimous decision, the Court declared unconstitutional several provisions of the Missouri Code of Professional Responsibility³ which regulate the method and extent of lawyer advertising in Missouri. Because the Oklahoma rules on lawyer advertising are similar in nature to those of Missouri,⁴

1. 102 S. Ct. 929 (1982).

2. Each state adopts its own Code of Professional Responsibility to regulate attorney conduct. *See, e.g.*, OKLA. STAT. tit. 5, § 13 (1981). Prior to 1977, most states prohibited all forms of lawyer advertising. However, in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977) (5-4 decision), the United States Supreme Court ruled that states could not prohibit all lawyer advertising. *See infra* notes 8-10 and accompanying text.

3. MO. ANN. RULES Rule 4 (Vernon 1981). The specific sections of the Missouri Code of Professional Responsibility that were struck down are:

DR 2-101. Publicity

.....

(B) In order to facilitate the process of informed selection of a lawyer by potential consumers of legal services, a lawyer may publish, subject to DR 2-103, the following information . . . presented in a dignified manner:

.....

(2) One or more particular areas or fields of law in which the lawyer or law firm practices if authorized by and using designations and definitions authorized for that purpose by the Advisory Committee;

.....

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

(A) A lawyer or law firm shall not use 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:

.....

(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

Id.

4. Oklahoma Code of Professional Responsibility, OKLA. STAT. tit. 5, ch. 1, app. 3 (1981). The specific sections of the Oklahoma Code that are similar to Missouri are:

this decision could have a significant effect on the constitutionality of the Oklahoma provisions. In fact, the Oklahoma Supreme Court has taken notice of *In re R.M.J.* in its recent decision in *State ex rel. Oklahoma Bar Association v. Schaffer*.⁵ This Recent Development will discuss the probable effect of *In Re R.M.J.* on the extent to which a state may regulate lawyer advertising and will recommend steps Oklahoma should take to bring its rules into constitutional compliance.

II. HISTORY

The desirability and advisability of lawyer advertising has historically provoked a heated debate within the legal profession. On one end

DR 2-101. Publicity

.....

(B) In order to promote the process of informed selection of a lawyer by potential consumers of legal services, a lawyer may publish, subject to DR 2-103, the following information . . . in a professional and dignified manner:

.....

(8) until permitted by the rules of the Supreme Court of Oklahoma a lawyer shall not include in an advertisement

- (a) a statement of one or more fields of law in which the lawyer or law firm concentrates, or a statement that the practice is limited to one or more fields of law;
- (b) a statement that the lawyer or law firm engages in the general practice of law;
- (c) a statement indicating one or more fields of law in which the lawyer or law firm does not practice;
- (d) a statement that the lawyer or law firm specializes in a particular field of law practice. (See DR 2-105)

.....

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

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

.....

(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.

.....

DR 2-105. Limitation of Practice

(A) A lawyer shall not hold himself out publicly as a specialist as practicing in certain areas of law or as limiting his practice as permitted under DR 2-101(B) and DR 2-102(A), except as follows:

.....

(4) 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 Supreme Court of the State of Oklahoma.

Id.

5. 53 OKLA. B.J. 1761 (1982). For a discussion of this case, see *infra* notes 32-37 and accompanying text.

of the spectrum are members of the bar who argue that advertising by lawyers is not only an economic necessity for young lawyers,⁶ but also that the general public benefits from the advertising.⁷ In opposition, others assert that advertising is unnecessary and its use demeaning to the legal profession.⁸

These arguments remained theoretical until the 1977 Supreme Court decision in *Bates v. State Bar of Arizona*,⁹ which struck down the traditional ban¹⁰ on lawyer advertising.¹¹ Since the *Bates* decision made advertising constitutionally permissible, lawyers have begun to experiment in increasing numbers.¹² The American Bar Association responded to *Bates* by amending the Code of Professional Responsibility

6. See Andrews, *The Selling of a Precedent*, 10 STUDENT LAW., Mar. 1982, at 12. Many young lawyers fresh out of law school feel that the only way they can "hang their shingle" and be successful is to advertise. In California, for example, there is one lawyer for every 365 persons. *Id.* at 11. Nationwide, there are 129 schools of law graduating approximately 60,000 students yearly. *Id.* at 12. Oklahoma ranks sixth in the nation in lawyer-population ratio with one lawyer for every 322 persons. 68 A.B.A. J. 898 (1982).

7. For example, advertising by a lawyer is said to reduce the cost of legal services due to increased volume. *News in Brief*, 49 U.S.L.W. 2285, 2286 (1980).

8. Stamper, *Remarks at Panel on Advertising*, 49 OKLA. B.J. 459 (1978).

I think the proper practice of the law is too personal, too important to those who need legal advice and representation, to be sold and dispensed like breakfast food and dry cleaning.

.....

May it be said of us, when we file our last briefs and go to the great Courtroom in the sky, that we did a lot of business, but that we loved our profession, and those who honorably practiced it, and didn't help the legal profession become the legal services industry.

We can alleviate any need for advertising if we follow, and Oklahoma is doing a splendid job, that portion of the Code of Professional Responsibility which says:

"We are to educate laymen to recognize their problems, to facilitate the intelligent selection of lawyers, and to assist in making legal services fully available."

Id. at 462. But see M. FREEDMAN, *LAWYERS' ETHICS IN AN ADVERSARY SYSTEM* (1975). Freedman takes issue with those who object that lawyer advertising would "degrade the profession." He asserts that, "A common justification for such rules is that advertising would lead to abuses such as false and misleading claims. Why lawyers would be more prone to engage in that kind of dishonesty, however, than are sellers of other services or commodities has never been articulated." *Id.* at 114.

9. 433 U.S. 350 (1977).

10. In *R.M.J.*, the Court noted that "many of the states, until the decision in *Bates*, . . . placed an absolute prohibition on advertising by lawyers." 102 S. Ct. at 932.

11. Because of the sharp division in the profession as to lawyer advertising, the decision in *Bates* sent shock waves through the legal community. See Stamper, *supra* note 8, at 459.

12. Andrews, *supra* note 6, at 12.

According to American Bar Association statistics, the number of lawyers who advertise has increased . . . since 1977. A 1978 survey of ABA attorneys . . . showed 3 percent of them advertised. The following year, a similar random survey found that figure to be 7 percent. In the most recent poll, reported in December 1981, 10 percent of ABA lawyers said they advertise.

Id.

ity to comply with the requirements set forth in the decision.¹³ Several states, including Missouri and Oklahoma, amended their Codes of Professional Responsibility in substantial conformity with the ABA amendments.¹⁴

As the states were re-writing their codes, the Supreme Court, in 1978, handed down two decisions which further insulated lawyer advertising from disciplinary action.¹⁵ *R.M.J.* may again require the states to reconsider their restrictions on lawyer advertising.

13. Prior to the *Bates* decision, the ABA created a Task Force on Lawyer Advertising which developed two proposals on lawyer advertising. The Task Force described the proposals as:

Proposal A may be described as "regulatory." It would specifically authorize certain prescribed forms of lawyer advertising if approved by state authorities. It would seek in advance to channel commercial announcements but would rely on "after the fact" enforcement to discipline persons violating the regulation . . .

In contrast, Proposal B may be termed "directive." It would allow publication of all information not "false, fraudulent, misleading or deceptive" and provides guidelines for determination of improper advertisements, which would be subject to "after the fact" discipline by state authorities.

Both proposals are constructive responses to the goal recognized by the Supreme Court of providing consumers with needed information about lawyer services and their costs.

63 A.B.A. J. 1234 (1977). The ABA Board of Governors recommended and the House of Delegates adopted Proposal A. *Id.*

14. In early 1978, "[o]n careful consideration of . . . *Bates*," the Oklahoma Supreme Court amended Canon 2 of the Oklahoma Code of Professional Responsibility. *In Re* the Adoption of Amendments to the Code of Professional Responsibility of the Oklahoma Bar Association, 49 OKLA. B.J. 130 (1978).

15. *Figa*, *Lawyer Solicitation Today and Under the Proposed Model Rules of Professional Conduct*, 52 U. COLO. L. REV. 393, 398 (1981). The two cases decided, *In re Primus*, 436 U.S. 412 (1978) and *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447 (1978), represented the extremes of solicitation by lawyers which the Supreme Court will sanction. Unfortunately, *Primus* and *Ohralik* were decided after Oklahoma and Missouri had adopted their new codes. Thus, the import of these decisions is not reflected in the codes.

In *Primus*, an ACLU attorney contacted a potential client by letter in an attempt to represent the client in an action against a doctor and the state. The potential client had agreed to a sterilization as a condition precedent to receiving Medicaid payments. The United States Supreme Court rescinded the public reprimand issued by the South Carolina Supreme Court on the basis that this was not an in-person solicitation for pecuniary gain. 436 U.S. at 422.

In *Ohralik*, the attorney made an in-person solicitation of two young women who had been involved in an automobile accident. One of the contacts was made while the woman was still in the hospital; the other took place in the home of the other woman the day she was released from the hospital. The Court affirmed the Ohio Supreme Court's indefinite suspension. 436 U.S. at 468.

In *R.M.J.*, the Court affirmed its holding in *Ohralik* stating:

[T]he Court has made clear in *Bates* and subsequent cases that regulation—and imposition of discipline—are permissible where the particular advertising is inherently likely to deceive or where the record indicates that a particular form or method of advertising has in fact been deceptive. In *Ohralik v. Ohio State Bar Ass'n*, . . . the Court held that the possibility of "fraud, undue influence, intimidation, overreaching, and other forms of 'vexatious conduct'" was so likely in the context of in-person solicitation, that such solicitation could be prohibited.

102 S. Ct. at 937.

III. AN ANALYSIS OF *IN RE R.M.J.*A. *The Facts*

R.M.J. graduated from law school and was admitted to the Missouri and Illinois bars in 1973. In April of 1977, R.M.J. moved his law practice to St. Louis, Missouri. To announce the opening of his office, R.M.J. advertised in several local papers and the yellow pages. In addition, he mailed professional announcement cards to a selected list of addresses.¹⁶ The contents of the advertisement, as well as the mailing, resulted in disbarment proceedings against R.M.J. by the Select Committee on Professional Ethics and Responsibility.¹⁷

The proceedings were based upon three violations of the Missouri Code of Professional Responsibility: (1) improper listing of areas of concentration; (2) impermissible listing of jurisdictions in which R.M.J. was licensed to practice; and (3) mailing office opening announcements to unauthorized persons.¹⁸ Of the areas listed by R.M.J. in his announcements, four conformed to the rules, eleven deviated from the rules, and eight areas were not expressly permitted by the rules.¹⁹ R.M.J. also advertised that he was licensed to practice in Missouri and Illinois and that he had been admitted to practice before the United States Supreme Court.²⁰ The violations were compounded by the fact that R.M.J. mailed announcements of the opening of his law office to persons other than lawyers, clients, former clients, personal friends, and relatives.²¹

The Supreme Court of Missouri found R.M.J. to be in violation of

16. *In re R.M.J.*, 102 S. Ct. at 934.

17. The Select Committee on Professional Ethics and Responsibility is charged with developing the areas of concentration as well as prosecuting disciplinary violations. See *In re R.M.J.*, 609 S.W.2d 411, 411 (Mo. 1980) and 102 S. Ct. at 933 & n.5.

18. MO. ANN. RULES Rule 4 (Vernon 1981).

19. *In re R.M.J.*, 102 S. Ct. at 933, 934 n.8. The four ads that conformed to the rules were: "bankruptcy," "anti-trust," "labor," and "criminal." The eleven areas that deviated from the rules were: "tax" instead of "taxation law"; "corporate" and "partnership" instead of "corporation law and business organizations"; "real estate" instead of "property law"; "probate" and "wills, estate planning" instead of "probate and trust law"; "personal injury" instead of "tort law"; "trials & appeals" instead of "trial practice" and "appellate practice"; "workmen's compensation" instead of "workers compensation law"; and "divorce-separation" and "custody-adoption" instead of "family law." The eight areas that were listed by R.M.J. but were not authorized by the Missouri Advisory Committee were: "contract," "aviation," "securities-bonds," "pension & profit sharing plans," "zoning and land use," "entertainment/sports," "food, drug and cosmetic," and "communication." *Id.*

20. Interpretation of the Missouri Advisory rules, MO. ANN. RULES Rule 4 (Vernon 1981), reveals that no advertising is permitted except that type which is specifically allowed. Listing of the states by which an attorney is licensed to practice is not included.

21. *In re R.M.J.*, 102 S. Ct. at 938.

the rules and chose to issue a private reprimand to R.M.J.²² R.M.J. had urged the Missouri Court to apply the *Central Hudson*²³ four-part commercial speech test to lawyer advertising;²⁴ however, the Missouri Supreme Court, in deciding not to apply the test, stated:

We are urged now by respondent to follow the *Central Hudson* model. We respectfully decline to enter the thicket of attempting to anticipate and to satisfy the *subjective ad hoc* judgments of a majority of the justices of the United States Supreme Court. . . .

We recognize respondent's right to press on in the courts authorized by Article III of the United States Constitution. If he exercises that right and obtains a favorable result there, we can *then* decide whether we will honor our duty to exercise "superintending control over all courts" in Missouri . . . or will order DR 2-101 excised from Rule 4 of this Court.

We are aware, of course, that this is a "test" case and that respondent's violation of Missouri's Code of Professional Responsibility is minimal.²⁵

Because the Missouri court recognized this as a test case, the justices were unwilling to change their advertising guidelines until the Supreme Court provided more guidance.²⁶ Since the violation was minimal, R.M.J. was privately reprimanded.

B. R.M.J. in the United States Supreme Court

In delivering the opinion for a unanimous Court, Justice Powell found the advertisements by R.M.J. to be commercial speech and applied the *Central Hudson* test.²⁷ He emphasized that, under this commercial speech doctrine, "the States retain the authority to regulate

22. *In re R.M.J.*, 609 S.W.2d 411, 412 (Mo. 1980).

23. *Central Hudson Gas & Elec. Corp. v. Public Service Comm'n*, 447 U.S. 557 (1980).

24. The Court set forth the test:

In commercial speech cases, then, a four-part analysis has developed. At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

Id. at 566.

25. *In re R.M.J.*, 609 S.W.2d at 412 (emphasis in original).

26. Although lawyer advertising is regulated by each respective state, the regulations are subject to constitutional limitations as interpreted by the United States Supreme Court. *See supra* note 2 and accompanying text.

27. 102 S. Ct. at 937-38 & nn.15-16.

advertising that is inherently misleading or that has proven to be misleading in practice. There may be other substantial state interests as well that will support carefully drawn restrictions."²⁸

The Court first addressed the listing of areas of concentration by R.M.J. None of the areas listed by R.M.J., including the deviations and the prohibited listings, were found to be misleading. Nor did the record reflect the promotion of any substantial state interest in restricting the specialty listings. Thus the Court concluded "that this portion of [the rule] is an invalid restriction upon speech."²⁹ The same was true of the prohibition against the listing of the jurisdictions in which a lawyer is licensed to practice.³⁰

Turning to the problem of mailing "office opening announcements" to unauthorized persons, the Court admitted that this type of advertising may be more difficult to supervise. However, the Court dealt "with a silent record. There is no indication that an inability to supervise is the reason the state restricts the potential audience of announcement cards. Nor is it clear that an absolute prohibition is the only solution."³¹ Thus, the United States Supreme Court specifically invalidated three controls on lawyer advertising that had been adopted by Missouri.

IV. THE EFFECT IN OKLAHOMA

On July 14, 1982, the Oklahoma Supreme Court decided *State ex rel. Oklahoma Bar Association v. Schaffer*.³² Peter K. Schaffer's legal clinics had made two advertisements upon which the Oklahoma Bar Association based its complaint.³³ The Oklahoma Court, having the

28. *Id.* at 939.

29. *Id.* at 938.

30. *Id.* at 938-39. The Court did find troubling the statement, in large boldface type, that R.M.J. was a member of the bar of the United States Supreme Court. "The emphasis of this relatively uninformative fact is at least bad taste. Indeed, such a statement could be misleading to the general public unfamiliar with the requirements of admission to the bar of this Court. Yet there is no finding to this effect by the Missouri Supreme Court." *Id.* at 939.

31. *Id.* The Court suggested that one alternative would be to require "a filing with the Advisory Committee of a copy of all general mailings, [so] the State may be able to exercise reasonable supervision over such mailings." *Id.* The Court also recognized another alternative proposed by the Model Rules of Professional Conduct of the American Bar Association, Rule 7.2(b) wherein, "[a] copy or recording of an advertisement or written communication shall be kept for one year after its dissemination." *Id.* at 939 n.19.

32. 53 OKLA. B.J. 1761 (1982).

33. *Id.* at 1762. These ads stated:

Advertisement #1:

"adopt: to love and cherish as your very own. Perhaps you already love and cherish your step-child . . . Even so, he may be losing certain benefits. A legal adoption may

benefit of *R.M.J.*, stated that,

Under *R.M.J.*'s teaching lawyer advertising may be divided into these categories: (1) inherently misleading or proven to be misleading in practice, (2) potentially misleading or (3) not misleading. The first category may warrant absolute state prohibition. As to the second, the regulatory device, as suggested in *Bates*, is not necessarily a total ban but rather a required disclaimer or explanation. The restriction on potentially misleading advertising may be no broader than reasonably necessary to prevent specific deception. Regulation of the third category must be justified by a showing of substantial state interest.³⁴

In dismissing the disciplinary proceeding against Schaffer, the Oklahoma Supreme Court held that the advertisements were not misleading and that the State had failed to show a substantial state interest served by restriction of the advertisements.³⁵ Thus, in Oklahoma, "*R.M.J.* gives a broad sweep of protection to the exercise of commercial speech by lawyers."³⁶

Because the *Schaffer* court did not deal directly with the constitutionality of the Oklahoma Bar rules,³⁷ and the advertising by Schaffer differed from that by *R.M.J.*, the total effect of *R.M.J.* on the Oklahoma Code of Professional Responsibility is yet to be felt. A comparison of the Oklahoma and Missouri Codes reveals that several of the Oklahoma provisions could be unconstitutional.

The Oklahoma Code expressly prohibits the inclusion in an advertisement of areas of concentration and areas in which the firm does or does not practice.³⁸ These restrictions are more stringent than the Missouri restrictions which the Supreme Court ruled unconstitutional.³⁹

give your step-child many of these benefits while telling your step-child you want him as your very own."

Advertisement #2:

"Need a lawyer? 5 days—or free. Within 5 working days after you provide us with the information we need, we will file the necessary court documents, or if filing is not appropriate, begin providing legal services—or our services are free. Good for 30 days. DIVORCE NAME CHANGE WILLS INCORPORATION ADOPTION."

Id.

34. *Id.* at 1763.

35. *Id.* at 1764.

36. *Id.* at 1763.

37. *Id.* at 1765 n.8.

38. OKLA. STAT. tit. 5, ch. 1, app. 3, DR 2-101(B)(8)(a)-(d), DR 2-105(4) (1981); see *supra* note 4.

39. Compare MO. ANN. RULES Rule 4 (Vernon 1981), which is quoted in note 3 *supra*, with OKLA. STAT. tit. 5, ch. 1, app. 3 (1981), which is quoted in note 4 *supra*.

Missouri allowed a firm the choice of indicating that it was in general practice or of specifying any number of approved areas of concentration. The United States Supreme Court, in dealing with the listing of areas of concentration, stated: "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."⁴⁰ Thus, it would seem that Oklahoma's prohibition of the listing of areas of concentration is an invalid restriction as long as the information and areas listed are not deceptive.

Oklahoma does not expressly prohibit the listing in an advertisement of the jurisdictions in which a lawyer is licensed to practice. Nor does Oklahoma expressly allow such information to be contained in any advertisement. The Court held in *R.M.J.* that "such information is not misleading on its face."⁴¹ Thus, if this particular information is not misleading in the context in which it is used, then it appears that Oklahoma may not prohibit this type of information in an advertisement.

The disciplinary rules relating to the mailing of professional announcements in Oklahoma are identical to those in Missouri.⁴² While the Court was dealing with a silent record, the indication seemed to be that this type of restriction on lawyer advertising is invalid since it is not inherently misleading. However, the Court may have left the states an opening to regulate this area; if a state can show that this type of restriction is necessary to protect against misleading advertisements, such announcements may be subject to regulation. The state would have to prove that it had tried other methods and that they had failed.⁴³

Oklahoma and the ABA are in the process of revising their advertising regulations.⁴⁴ While Model Rules⁴⁵ have been proposed for several years, revision of the advertising portion of the current Code would seem to be made imperative as a result of *In re R.M.J.* To avoid

40. *In re R.M.J.*, 102 S. Ct. at 937.

41. *Id.* at 938.

42. Compare MO. ANN. RULES Rule 4, DR 2-102(A)(2) (Vernon 1981), which is quoted in note 3 *supra*, with OKLA. STAT. tit. 5, ch. 1, app. 3, DR 2-102(A)(2) (1981), which is quoted in note 4 *supra*.

43. *In re R.M.J.*, 102 S. Ct. at 939.

44. Telephone interview with Dean David Swank, Chairman, Oklahoma Lawyer Advertising Committee (July 22, 1982).

45. For a discussion of the effects of the Model Rules on lawyer advertising, see Andrews, *The Model Rules and Advertising*, 68 A.B.A. J. 808 (1982).

potential litigation in this area, the decision in *R.M.J.* must be considered to be an indication from the United States Supreme Court that only misleading advertising may be regulated.

In rewriting the lawyer advertising regulations to conform to the constitutional standard, the ABA and Oklahoma should consider a more generalized type of regulation of permissible advertising, similar to that of the Model Rules of Professional Responsibility,⁴⁶ as opposed to the current "shopping list" of permissible advertising. This type of regulation, drafted in accordance with the Supreme Court's language in *R.M.J.*, should reduce the need for future redrafting. Such drafting would permit those lawyers who desire to advertise to do so, while allowing the states to maintain some control over the advertising.

V. CONCLUSION

Controversy has already surfaced concerning the scope of *R.M.J.* Some have argued that the broad language of the Court will force all states to rewrite their lawyer advertising rules so as to prohibit only "misleading" advertisements.⁴⁷ Others assert that the decision was a narrow one in that it is limited to the specific facts with which the Court dealt.⁴⁸ The question as to what extent a lawyer may constitutionally advertise remains unanswered. While the Oklahoma Supreme Court

46. 67 A.B.A. J. (Pullout Supplement, p. 28) (Oct. 1981). Rule 7.1 Communications Concerning a Lawyer's Services

A Lawyer shall not make any false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the rules of professional conduct or other law; or

(c) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

47. Young, *Lawyer advertising may not be restricted unless "misleading,"* 68 A.B.A. J. 342 (1982). "The Court's unanimous holding on January 25 that advertising by lawyers may be prohibited only when it is misleading appears to have invalidated many state revisions of the Code of Professional Responsibility that attempted to steer a course between prohibition of any ads by lawyers and unlimited professional advertising." *Id.* at 342. See also Appleson, *Lawyer Ad Decision Raising More Questions*, 68 A.B.A. J. 407 (1982).

The Supreme Court's ruling is nothing new, said Frank Easterbrook, professor at University of Chicago Law School. "It's what the Supreme Court has been saying ever since *Bigelow* [*Bigelow v. Virginia*, 421 U.S. 809 (1973)], in which the Court upheld the constitutional right of commercial free speech]. How long will the ABA and others resist what the Court is saying?"

Id. at 408.

48. Appleson, *supra* note 47, at 407.

appears to interpret *R.M.J.* broadly,⁴⁹ the specific areas addressed by *R.M.J.* need to be revised in the Oklahoma Code.

As the ABA and the states attempt to reconcile their regulations with the Supreme Court decisions, the theoretical debate over lawyer advertising continues. Even if advertising is constitutionally permissible, some lawyers will never advertise;⁵⁰ others will exercise their full constitutional rights. Since the decision in *R.M.J.* has not answered the question definitively, it is probable that this is not the Supreme Court's last word on lawyer advertising.⁵¹

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49. See *supra* note 36 and accompanying text.

50. See Stamper, *supra* note 8.

51. Andrews, *supra* note 6, at 49. "In an area as hotly debated as this one, the case of *In re R.M.J.* may not be the Supreme Court's last word on lawyer advertising." *Id.*