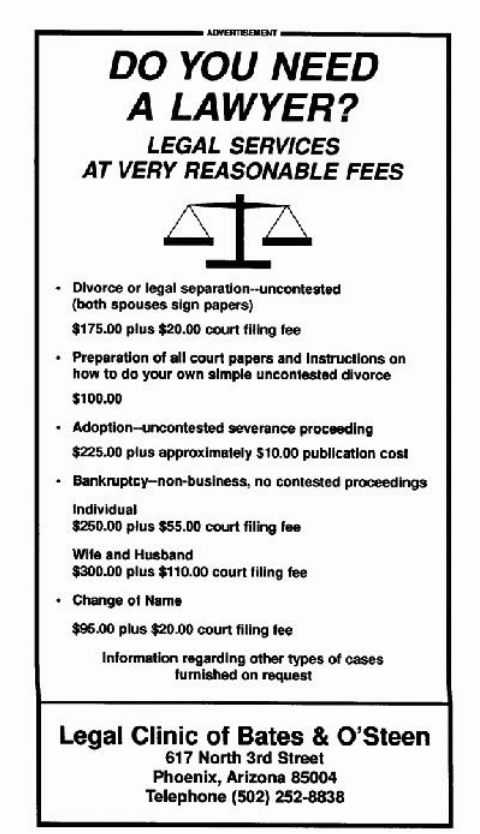
41 years ago- SCOTUS: Attorney Advertising is 1st Amendment Right

There was a time when, generally speaking, lawyers were not allowed to advertise. In my role as Marketing Director at Phillips Murrah, I refer to those days as “the dark ages.” This anachronistic tradition, a holdover from Great Britain, was a regulation enforced from within the legal industry via bar associations.

> *“Advertising, the traditional mechanism in a free market economy for a supplier to inform a potential purchaser of the availability and terms of exchange, may well benefit the administration of justice.” – U.S. Supreme Court holding in Bates v. State Bar of Arizona, 433 U.S. 350 (1977)*



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617 North 3rd Street
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Bates and O'Steen ad in Arizona Republic

On this particular day in history, Jun 27, 1977 to be specific, the U.S. Supreme Court decision in the case of *Bates v. State Bar of Arizona* marks an important development in the legal industry. The decision held that attorneys were to be permitted to inform the public about their legal practice through advertising.

The backstory of *Bates* began with two young lawyers, John Bates and Van O'Steen, who placed an advertisement in the Arizona Republic on February 22, 1976. In the ad, they informed the public that they offered "legal services at very reasonable fees," and included fees for various routine legal services such as uncontested divorce, personal bankruptcy and legal change of name.

The motivation for this business model was to serve people of moderate income. The profit return was low for such cases, so they depended on increased volume to remain viable in their legal endeavor. After a couple of years, they concluded that their practice would not survive without the benefit of advertising their services and fees. This act put them in violation of the conduct rules of the State Bar of Arizona.

Eventually, (see the many, many details here), the U.S. Supreme Court, decided that such prohibitions of the free flow of commercial speech was a First Amendment violation. For the purpose of highlighting some of the Court's opinion, delivered by Justice Harry Andrew Blackmun, I will copy excerpts below that I find to be personally valuable in finding satisfaction in my role at our modern, forward-thinking Firm:

- *The listener's interest is substantial: the consumer's concern for the free flow of commercial speech often may be far keener than his concern for urgent political dialogue. Moreover, significant societal interests are*

served by such speech. Advertising, though entirely commercial, may often carry information of import to significant issues of the day. And commercial 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.

- *The assertion that advertising will diminish the attorney's reputation in the community is open to question. Bankers and engineers advertise, and yet these professions are not regarded as undignified. In fact, it has been suggested that the failure of lawyers to advertise creates public disillusionment with the profession. The absence of advertising may be seen to reflect the profession's failure to reach out and serve the community: studies reveal 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. Indeed, cynicism with regard to the profession may be created by the fact that it long has publicly eschewed advertising, while condoning the actions of the attorney who structures his social or civic associations so as to provide contacts with potential clients.*

- *It appears that the ban on advertising originated as a rule of etiquette, and not as a rule of ethics. Early lawyers in Great Britain viewed the law as a form of public service, rather than as a means of earning a living, and they looked down on "trade" as unseemly. Eventually, the attitude toward advertising fostered by this view evolved into an aspect of the ethics of the profession. But habit and tradition are not, in themselves, an adequate answer to a constitutional*

> *challenge. In this day, we do not belittle the person who earns his living by the strength of his arm or the force of his mind. Since the belief that lawyers are somehow "above" trade has become an anachronism, the historical foundation for the advertising restraint has crumbled.*

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