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Lawyer Advertising of CLE Accomplishments: Toward an Optimum Level of Professionalism and Consumer Knowledge

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The CLE Journal and Register is proud to publish the following winning entry selected from its 1993 national essay contest for law students on the advisability of attorneys using their CLE accomplishments to promote their services to clients. The author, Phyllis W. Cheng, is a 1993 graduate of the Southwestern University School of Law in Los Angeles. Ms. Cheng received her prize of \$1,000 for this essay at ALI-ABA's Luncheon for Authors and Lecturers in August during the ABA Annual Meeting in New York.

I. INTRODUCTION

Lawyer advertising addresses the two seemingly divergent interests of legal professionalism and consumer knowledge. On the one hand, advertising must be restricted to maintain the historic professionalism of lawyers.¹ On the other hand, advertising must be expanded to provide consumer access to legal services in a market economy.²

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¹The ABA Commission on Professionalism, in its 1986 report, defined law as a "profession." ABA, Commission on Professionalism, ". . . In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism," 112 F.R.D. 243 (1986). The Commission recommended that all segments of the bar: (1) preserve and develop within the legal profession integrity, competence, fairness, independence, courage and a devotion to the public interest; (2) resolve to abide by higher standards of conduct than the minimum requirements of the ABA Code and Model Rules; (3) increase the participation of lawyers in pro bono activities and help lawyers recognize their obligation to participate; (4) refuse to make the acquisition of wealth a primary goal of law practice; (5) encourage innovative methods that simplify and reduce the costs of rendering of legal services; (6) educate the public about legal processes and the legal system; and (7) resolve to employ all the organizational resources necessary to assure that the legal profession is effectively self-regulating. *Id.* at 296-304. See also Jim Rossi & Mollie Weighner, *An Empirical Examination of the Iowa Bar's Approach to Regulating Lawyer Advertising*, 77 IOWA L.REV. 179 (1991).

²Consumers have consistently expressed a need for more information with which to select an attorney, finding inadequate the methods of word-of-mouth, attorney directories, referral services, and malpractice listings. See Linda Morton, *Finding a Suitable Lawyer: Why Consumers Can't Always Get What They Want and What the Legal Profession Should Do about It*, 25 U.C. DAVIS L.REV. 283 (1992).

According to the U.S. Department of Labor, the number of lawyers in the United States is expected to grow by one-third in the next decade, from 587,000 in 1990 to 1,181,000 in 2005.³ The demographics of a growing legal community signal a corresponding increase in the level of lawyer advertising, threatening the delicate balance between legal professionalism and consumer knowledge.

This paper sets forth the thesis that lawyer advertising of continuing legal education ("CLE") accomplishments will create an optimum level of both legal professionalism and consumer knowledge. The ensuing pages explore:

- The case law on lawyer advertising;
- The role of CLE within the legal profession;
- Policy considerations; and
- Recommendations for lawyer advertising of CLE accomplishments.

II. THE CASE LAW ON LAWYER ADVERTISING: BATES AND ITS PROGENY

Since 1977, courts have attempted to reconcile the interests of legal professionalism and consumer knowledge in lawyer advertising. In *Bates v. State Bar of Arizona*,⁴ the leading case which authorized lawyers' right to advertise, the Supreme Court extended first amendment⁵ protection to legal advertising under the commercial speech doctrine.⁶ The *Bates* court held that while a blanket ban on lawyer advertising is unconstitutional, states may continue to restrain false, deceptive, or misleading advertisements, and granted states the freedom to restrict the time, place and manner of legal advertising.⁷ The Court specifically rejected the argument that attorney advertising would adversely affect professionalism and the quality of legal services:

It is at least somewhat incongruous for the opponents of advertising to extol the virtues and altruism of the legal profession at one point, and, at another, to assert that its members will seize the opportunity to mislead and distort. We suspect that, with advertising, most lawyers will behave as they always have: They will abide by their solemn oaths to uphold the integrity and

³U.S. Department of Labor statistics. Search of Prodigy Services Company, Job Market 2000 (April 12, 1993).

⁴*Bates v. State Bar of Arizona*, 433 U.S. 350 (1977) (Lawyer may advertise prices of routine services, such as uncontested divorces, uncontested adoptions, simple personal bankruptcies, and change of name).

⁵The first amendment to the United States Constitution provides in pertinent part: "Congress shall make no law . . . abridging the freedom of speech, or of the press . . ." U.S. Const. amend. I. First amendment rights are applied to the states through the fourteenth amendment, which reads in pertinent part: "nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1, cl. 2.

⁶Commercial speech, which serves individual and societal interests in assuring informed and reliable decisionmaking, is entitled to some first amendment protection. *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council*, 425 U.S. 748, 773 (1976) (Pharmacist may advertise prices of prescription drugs). See *infra* note 10.

⁷*Bates*, 433 U.S. at 383-384.

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.⁸

Bates and its progeny have gradually defined the scope of legal advertising, which continues to be regulated by state bars. In *In re R.M.J.*,⁹ the Court applied a four-part test first articulated in *Central Hudson Gas & Electric v. Public Service Commission*¹⁰ to analyze the constitutionality of restrictions on legal advertising:

- (1) Misleading advertisements can be banned entirely;
- (2) Potentially misleading advertisements are not subject to absolute prohibition if the information may be presented in a way that is not deceptive;
- (3) If the advertisement is not misleading, the state must assert a substantial interest to justify the interference with protected speech; and
- (4) The restrictions imposed must be no broader than necessary to prevent the deception and must be proportionate to the interests served.¹¹

Regulations Struck Down

The Supreme Court has subsequently struck down lawyer advertising regulations which do not meet the *Central Hudson* test. The Court held in *Ohralik v. Ohio State Bar*¹² and *In re Primus*¹³ that the state may regulate lawyer solicitation to protect the public from false or deceptive commercial practices only if the regulations are reasonable. Similarly, in *Zauderer v. Office of Disciplinary Counsel*,¹⁴ the Court struck

⁸*Id.* at 379.

⁹*In re R.M.J.*, 455 U.S. 191 (1982). (Lawyer may advertise that he was admitted to practice before the United States Supreme Court and describe his practice areas in language other than that prescribed by the state).

¹⁰Commercial speech must meet the four-part *Central Hudson* test. *Central Hudson Gas v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557 (1980). "[First], 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. [Second], we ask whether the asserted governmental interest is substantial. [Third, if] both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted. [And fourth], if the governmental interest could be served as well by a more limited restriction on commercial speech, the excessive restrictions cannot survive." *Id.* at 564-66.

¹¹*R.M.J.*, *supra* note 9, at 205-206.

¹²*Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447 (1978) (State may prohibit attorneys from soliciting clients in person for pecuniary gain).

¹³*In re Primus*, 436 U.S. 412 (1978) (Civil liberties lawyer may write letter to woman who had been sterilized as a condition of receiving public medical assistance).

¹⁴*Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985) (Lawyer may place two newspaper advertisements: one which offered to defend drunk drivers, promising refund of "full legal fee" if conviction resulted; another which was aimed at women injured by the Dalkon Shield intrauterine device with a drawing).

down as unconstitutional state prohibitions on solicitation through advertisements concerning specific legal problems and state restrictions on the use of illustrations on lawyer advertising.

In view of *Bates* and related cases, the American Bar Association amended the Model Code of Professional Responsibility in 1980, and adopted new Model Rules of Professional Conduct in 1983 to expand the parameters of lawyer advertising.¹⁵ The Model Rules of Professional Conduct prohibit only false, fraudulent, misleading, or deceptive advertisements, and permit truthful advertisements but not solicitation.¹⁶ The majority of states and the District of Columbia have adopted the Model Rules of Professional Conduct.¹⁷

Attorney Advertising and Specialization

Attorney advertising of specialization certification was at issue in the most recent line of decisions which sheds light upon the related question of advertising CLE accomplishments. In *Peel v. Attorney Registration and Disciplinary Commission of Illinois*,¹⁸ the Supreme Court considered whether a state violated the first amendment when it censured an attorney for stating on his professional letterhead that he was certified as a civil trial specialist by the National Board of Trial Advocacy ("NBTA"). In a five to four opinion written by Justice Stevens, the Court held that the attorney

¹⁵Rule 7.1 of the ABA Model Rules of Professional Conduct specifies that: "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: (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." Model Rules of Professional Conduct Rule 7.1 (1983); cf. Model Code of Professional Responsibility DR 2-101 (1980). Rule 7.2 of the ABA Model Rules of Professional Conduct specifies that: "(a) Subject to the requirements of Rules 7.1 and 7.3 [direct contact with prospective clients], a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio or television, or through written or recorded communication. (b) A copy or recording of an advertisement or communication shall be kept for two years after its last dissemination along with a record of when and where it was used. (c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable costs of advertisements or communications permitted by this Rule [and may] pay the usual charges of a not-for-profit lawyer referral service or legal service organization . . . (d) Any communication made pursuant to this rule shall include the name of at least one lawyer responsible for its content." Model Rules of Professional Conduct Rule 7.2 (1989); cf. Model Code of Professional Responsibility DR 2-101 and DR 2-103 (1980).

¹⁶See *supra* note 15.

¹⁷Jurisdictions which have adopted the Model Rules of Professional Conduct include: Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Washington, West Virginia, Wisconsin, and Wyoming. See State Ethics Rules, LAW MANUAL ON PROFESSIONAL CONDUCT (ABA/BNA) No. 120, at 01:3-4 (Jul. 15, 1992). States which have adopted portions of the Model Rules of Professional Conduct include: Illinois, New York, North Carolina, Oregon and Virginia. See *id.* California follows neither the Model Rules of Professional Conduct nor the Model Code of Professional Responsibility. See *id.*

¹⁸*Peel v. Attorney Registration & Disciplinary Comm's of Ill.*, 496 U.S. 91 (1990).

had a first amendment right, under standards applicable to commercial speech, to advertise his certification as a trial specialist by NBTA.¹⁹ Justice Marshall's concurrence, however, underscored that each state may still choose for itself, within first amendment constraints, the best regulatory method to protect against potentially misleading claims.²⁰ Like many CLE providers, NBTA is a private certification group founded to train and certify lawyers in a particular specialization — trial advocacy.²¹ By analogy then, the *Peel* decision has also opened the way for lawyer advertisements of CLE accomplishments.

III. ROLE OF CLE WITHIN THE LEGAL PROFESSION

Continuing legal education has long been a mission of the American Law Institute-American Bar Association Committee on Continuing Professional Education ("ALI-ABA") in its 46 years of existence.²² In 1958, pursuant to the call of the presidents of the American Law Institute ("ALI") and the American Bar Association ("ABA"), a National Conference for Continuing Education of the Bar first met at Arden House, Harriman, New York ("Arden House I"), to consider the need to improve professional competence and to achieve a greater sense of professional responsibility, as well as to determine the organizational structure required to promote these objectives.²³ Arden House II, which was convened in 1963, focused on CLE quality, implementation of educational programs for professional responsibility, and the continuing development of the organization and financing of CLE providers.²⁴ These and subsequent conferences addressing lawyer competence were instrumental in stimulating the organized bar to expand CLE nationally, and creating state-level CLE staff and independent organizations to develop and maintain effective CLE programs.²⁵ Arden House III, which was convened in 1987, considered lawyers' changing needs for CLE as the bar grew increasingly diverse and specialized.²⁶

ALI and ABA collaborate to advance the continuing education of the bar through the ALI-ABA Committee on Continuing Professional Education.²⁷ Among the objectives of the Committee are:

- (a) To promote post-admission legal education;

¹⁹*Id.*

²⁰*Id.* at 117 (Marshall, J., concurring).

²¹*Id.* at 94-95.

²²ALI-ABA COMMITTEE ON CONTINUING PROFESSIONAL EDUCATION, ANNUAL REPORT OF THE EXECUTIVE DIRECTOR, 1 (ALI-ABA, Philadelphia, 1992) ("Annual Report").

²³ALI-ABA COMMITTEE ON CONTINUING PROFESSIONAL EDUCATION, CLE AND THE LAWYER'S RESPONSIBILITIES IN AN EVOLVING PROFESSION: THE REPORT ON THE ARDEN HOUSE III CONFERENCE, 1 (ALI-ABA, Philadelphia, 1988).

²⁴CLE AND THE LAWYER'S RESPONSIBILITIES IN AN EVOLVING PROFESSION, *supra* note 23.

²⁵*Id.*

²⁶*Id.*

²⁷1974 Memorandum of Understanding Between The American Law Institute (ALI) and The American Bar Association (ABA). *See* Annual Report, *supra* note 22 at 171-74.

- (b) To stress the responsibility of the profession to provide such education;
- (c) To encourage and assist the organized bar and educational institutions to develop, conduct, and participate in effective high-quality post-admission legal education programs;
- (d) To encourage and assist in the organization of regional, state, and local agencies to engage in post-admission educational activities and, when desired, aid in their operation;
- (e) To engage in relevant research and experimentation in educational techniques and methods likely to be useful in continuing legal education, including the methods of teaching and developing a sense of professional responsibility;
- (f) To conduct conferences of all agencies engaged or interested in continuing legal education activities with a view to coordinating, expanding, and improving such activities, and to encourage cooperation among such groups;
- (g) To maintain and expand a publications program of post-admission legal education audio-visual material and texts, handbooks, study outlines, and periodicals and other material designed to further the objectives of the Committee;
- (h) To organize and conduct post-admission legal education courses of study;
- (i) To take such other actions as may be proper and necessary to achieve programs of post-admission legal education of high quality for all lawyers that will meet the needs of the bar in discharging its public and professional responsibilities.²⁸

Growth of CLE

CLE has become widely accepted as an integral part of the continuum of legal training to be undertaken by all members of the profession.²⁹ More than half the states have adopted mandatory CLE.³⁰ The number of CLE providers has proliferated and now includes for-profit and non-profit entities.³¹ A significant number of law schools offer CLE programs.³² Many law firms are developing extensive, formal in-

²⁸Annual Report, *supra* note 22, at 171-172.

²⁹*Id.* at 2.

³⁰CLE AND THE LAWYER'S RESPONSIBILITIES IN AN EVOLVING PROFESSION, *supra* note 23. Mandatory CLE ("MCLE") jurisdictions include: Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming. Annual Report, *supra* note 22, at 153. Administrators have organized the Association of Mandatory Continuing Legal Education Administrators ("AMCLEA") for MCLE efforts. *Id.* at 11.

³¹CLE AND THE LAWYER'S RESPONSIBILITIES IN AN EVOLVING PROFESSION, *supra* note 23. More than 3,700 CLE programs were offered by state agencies, ABA, ALI-ABA, non-profit and for-profit entities from May, 1991, to March, 1992. 1992 Annual Report, *supra* note 23, at 166-167. The Association of Continuing Legal Education Administrators ("ACLEA") now has 175 members responsible for conducting post-admission legal education for city and state bar groups, law schools, national bar groups, and regional organizations. *Id.* at 11.

³²CLE AND THE LAWYER'S RESPONSIBILITIES IN AN EVOLVING PROFESSION, *supra* note 23.

house CLE programs.³³ To ensure high quality in CLE programs, the ABA adopted the Model Rule for Minimum Continuing Legal Education, which delineates such guidelines as individual course approval, in-office CLE, and self-study.³⁴ In addition, ALI-ABA publishes recommended standards for quality and methods of evaluation.³⁵

CLE courses are diverse and reflect the changing needs of legal practitioners.³⁶ In addition to video and audiocassette programs, the American Law Network, books, publications, and computer assisted instruction, ALI-ABA offers over 100 programs of oral instruction.³⁷ These have included innovative courses on the Uniform Commercial Code, computer law, atomic energy law, environmental law, museum law, real estate law, bankruptcy, space law, computer and biotechnology law, as well as courses on legislative and judicial actions.³⁸

Over the years these CLE programs, offered to and by lawyers, have been the primary vehicle for enhancing the professionalism of the legal community in post-admission education. Therefore, the recognition of CLE accomplishments in lawyer advertising is warranted.

IV. POLICY CONSIDERATIONS FOR LAWYER ADVERTISING OF CLE ACCOMPLISHMENTS

Lawyers can and should publicize their CLE accomplishments in advertising, because:

- (1) Legal and ethical considerations support such advertising;
- (2) Promoting CLE accomplishments furthers professionalism in CLE organizations; and
- (3) Advertising CLE credentials in mandatory CLE ("MCLE") jurisdictions leads to an optimal level of legal professionalism and consumer knowledge.

³³*Id.* ALI-ABA created the American Institute for Law Training within the Office ("AILTO") to organize and conduct in-house training for law firms. Annual Report, *supra* note 22, at 10. AILTO has a membership of 163 law offices or firms, 20 corporate law departments, eight government agencies, and two public service organizations. *Id.* It publishes newsletters, performs training needs assessments, conducts in-house training programs, and maintains a list of trainers in a broad spectrum of subjects. *Id.* Those responsible for continuing education in law firms have formed the Professional Development Consortium, which has a membership of 75. *Id.* at 11.

³⁴Model Rule for Minimum Continuing Education, §§ 7-9 (ABA, Chicago, 1988).

³⁵*See, e.g.*, FELIX STUMPF, REP., ATTAINING EXCELLENCE IN CLE: STANDARDS FOR QUALITY AND METHODS FOR EVALUATION (ALI-ABA, Philadelphia, Official Draft 1991); DOUGLAS E. ROSENTHAL, REP., A MODEL PEER REVIEW SYSTEM (ALI-ABA, Philadelphia, Discussion Draft 1980); MARYLAND STATE BAR ASSOCIATION, LAW PRACTICE QUALITY GUIDELINES (ALI-ABA Philadelphia, 1985); NANCY J. MOORE & MICHELE S. G. HERMANN, REPS., A PRACTICAL GUIDE TO ACHIEVING EXCELLENCE IN THE PRACTICE OF THE LAW: STANDARDS, METHODS, AND SELF-EVALUATION (ALI-ABA, Philadelphia 1992 & Self-Evaluation Checklist Supp. 1992).

³⁶Annual Report, *supra* note 22, at 5.

³⁷*Id.* at 1-7.

³⁸*Id.* at 5-6.

A. Legal and Ethical Considerations Support Lawyer Advertising of CLE Accomplishments

Lawyer advertising of CLE accomplishments, both as students and teachers, is supported by legal and ethical considerations.

Legally, pursuant to *Bates* and the ABA model regulations, lawyer advertisements can only be restrained if they are false or misleading.³⁹ Factual statements regarding CLE courses taken or taught, if accurate, are not false or misleading, because material misrepresentations or omissions are absent,⁴⁰ unjustified expectations are not raised,⁴¹ and unsubstantiated comparisons are inapplicable.⁴² A lawyer's CLE record "is a verifiable fact."⁴³ "[H]ours of continuing education, like information about what schools the lawyer attended or his or her bar activities, are facts about a lawyer's training and practice."⁴⁴ A claim of CLE courses taken or taught is "not an unverifiable opinion of the ultimate quality of a lawyer's work or a promise of success . . . but is simply a fact, albeit one with multiple predicates, from which a consumer may or may not draw an inference of the likely quality of an attorney's work in a given area of practice."⁴⁵

Advertising CLE accomplishments is so similar to the specialization certification upheld in *Peel*⁴⁶ that such advertising should be protected under the commercial speech doctrine of the first amendment.⁴⁷ To selectively permit advertisements of specialization certification and not other CLE accomplishments would likely be held unconstitutional under *In re R.M.J.*,⁴⁸ and create disparity in CLE advertising opportunities between fields of law which do and do not provide specialization certification.

Advertisement of CLE accomplishments is further supported by the ethical consideration that consumers need greater access to legal services. Survey research has

³⁹See *Bates v. State Bar of Arizona*, *supra* note 4; Model Rules of Professional Conduct Rule 7.1 (1983); Model Code of Professional Responsibility DR 2-101 (1980).

⁴⁰See Model Rules of Professional Conduct Rule 7.1(a) (1983); *Zauderer*, *supra* note 14.

⁴¹A statement which is likely to create an unjustified expectation about the results a lawyer can achieve, or implies that a lawyer can achieve results using methods that violate the rules of professional conduct is false or misleading within the general rule. Model Rules of Professional Conduct Rule 7.1(b) (1983). Examples of such statements include advertisements: (a) about results obtained for other clients; (b) about the lawyer's record in obtaining favorable verdicts; or (c) containing specific client endorsements, because these might cause others to believe that the lawyer could obtain similar results for them without reference to their specific circumstances. Model Rules of Professional Conduct Rule 7.1 cmt. (1983).

⁴²A statement which compares the lawyer's services to other lawyers' services is false and misleading unless the comparison can be factually substantiated. Model Rules of Professional Conduct Rule 7.1(c) (1983).

⁴³*Peel*, *supra* note 18.

⁴⁴*Id.*

⁴⁵*Id.*

⁴⁶*Peel*, *supra* note 18.

⁴⁷See *supra* notes 6 & 10.

⁴⁸*R.M.J.*, *supra* note 9.

found that consumers need more information with which to select an attorney.⁴⁹ In choosing a lawyer, the public is primarily concerned with the "integrity" of the lawyer and the "quality" of the lawyer's services, yet only 20 per cent of those surveyed actually used those factors in choosing a lawyer because of lack of information.⁵⁰ Over 90 per cent used the factors of "personal acquaintance" or "recommendation by a friend" to choose their attorney.⁵¹

The disclosure of CLE records in lawyer advertising would contribute to consumer knowledge in seeking legal assistance. In addition, disclosure of CLE information may help to equalize access to legal services for lower income consumers, expand legal services, reduce legal costs, and improve the legal profession's public image.⁵²

Thus, both legal and ethical considerations support lawyer advertisement of CLE accomplishments.

B. Lawyer Advertising of CLE Accomplishments Furthers Professionalism in CLE Organizations

Legal advertisements of CLE courses taken and taught have the potential of furthering professionalism in CLE organizations.

Like specialization certification, the strength of CLE accomplishments "is measured by the quality of the organization" sponsoring those accomplishments.⁵³ ALL-ABA-sponsored CLE courses, as well as those sponsored by other providers which follow the Model Rule for Minimum Continuing Legal Education,⁵⁴ will meet a high standard of quality. The growing cadre of CLE administrators⁵⁵ for local and state bar groups, law schools, national bar groups, and regional organizations provide the necessary human resources to maintain a high degree of professionalism in CLE courses.

Moreover, advertising of CLE accomplishments has the potential to spur heightened professionalism among CLE organizations, since it will be in these groups' economic interests to weed out the less and replicate the more laudatory programs. Adequate evaluation of CLE offerings will further increase public confidence in the legal professional.⁵⁶ The public will perceive that practitioners are professionally competent and trustworthy as the result of credible and worthy educational opportunities.⁵⁷

⁴⁹See Robert E. Smith & Tiffany S. Meyer, *Attorney Advertising: A Consumer Perspective*, J. MARKETING, Spring 1980, at 56, 60. See *supra* note 2.

⁵⁰Smith et al., *supra* note 49, at 60.

⁵¹*Id.* at 61.

⁵²See *supra* note 2.

⁵³*Pecl.*, *supra* note 18.

⁵⁴See *supra* note 34.

⁵⁵See *supra* notes 30 & 31.

⁵⁶ATTAINING EXCELLENCE IN CLE: STANDARDS FOR QUALITY AND METHODS FOR EVALUATION, *supra* note 35, at 9.

⁵⁷*Id.*

Therefore, advertising CLE accomplishments will inspire greater professionalism in CLE organizations.

C. Lawyer Promotion of CLE Credentials in MCLE Jurisdictions Advances Professionalism and Consumer Knowledge

Lawyer advertisement of CLE credentials within MCLE jurisdictions can potentially advance to an optimum degree the interests of professionalism and consumer knowledge.

In the 38 jurisdictions which have adopted MCLE,⁵⁸ a core group of MCLE administrators has organized to provide CLE.⁵⁹ Like the CLE administrators in non-mandatory CLE jurisdictions, lawyer advertising of CLE coursework will, for the same reasons as apply in non-MCLE jurisdictions, likely heighten professionalism among MCLE administrators and create greater consumer awareness of available legal assistance.

Because of the large volume of lawyers involved in MCLE training, the effects of lawyer advertising will *a fortiori* promote professionalism and consumer information. However, the large volume of lawyers in these jurisdictions also tends to dilute whatever advantage such advertisements may provide in seeking clients, since every lawyer in the jurisdiction must undergo training. When CLE training is no longer unique, MCLE trainers will gain prominence over students, leading to greater professionalism within the MCLE program.

Although lawyer advertising of CLE achievements may become a common denominator in MCLE jurisdictions, it has the advantage of promoting legal professionalism and consumer information at a more rapid pace.

V. CONCLUSIONS AND RECOMMENDATIONS

Lawyers can and should publicize their CLE accomplishments in legal advertising.

Bates and its progeny provide that truthful legal advertising, including post-admission CLE achievements, is protected under the first amendment doctrine of commercial speech.⁶⁰ Because institutional providers of CLE, such as ALI-ABA, have been the primary vehicle for enhancing the professionalism of the legal community, recognition of CLE in lawyer advertising is warranted. Moreover, truthful advertising of CLE accomplishments leads to an optimal level of legal professionalism and consumer knowledge.

To effectively facilitate lawyer advertising of CLE accomplishments, bar associations should work with CLE providers to:

- Identify models of presenting lawyer advertisements regarding CLE accomplishments;

⁵⁸See *supra* note 30.

⁵⁹*Id.*

⁶⁰*Bates, supra* note 4; see also *Zauderer, supra* note 14; *In re R.M.J., supra* note 9; *Pccl, supra* note 18.

- Develop systems to verify the truthfulness of lawyer advertisements of CLE accomplishments;
- Refer instances of abuse to appropriate disciplinary committees;
- Identify and recognize attorneys whose advertising activities reflect the highest standards of the profession;
- Develop CLE programs to guide lawyers in effective advertising of CLE coursework which fall within the parameters of commercial speech; and
- Develop programs to educate and inform consumers on effective access to and evaluation of legal assistance.

In conclusion, lawyer advertising of CLE accomplishments will serve the dual purposes of promoting professionalism in the legal community and increasing consumer knowledge.