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IN THE

Supreme Court of the United States

October Term, 1976
No. 76-316

JOHN R. BATES and VAN O'STEEN,

Appellants,

vs.

STATE BAR OF ARIZONA,

Appellee.

On Appeal From the Supreme Court of the State of Arizona.

Brief of Amici Curiae the Mountain Plains Congress of Senior Organizations, the National Association of State Units on Aging, the California State Office on Aging and the Gray Panthers.

Interest of Amicus.

This brief amicus curiae is filed without motion, as permitted by Rule 42, the prior consent of the parties having been obtained. See Exhibit "A", attached hereto.

Your amicus the National Association of State Units on Aging represents all state units on aging which are funded by the Administration on Aging of the Department of Health, Education and Welfare. The Administration on Aging has recently provided funds to the various state units on aging for the purpose of expanding access of the elderly to legal services.

Your amicus the California State Office on Aging is appearing individually and as a member of the National Association of State Units on Aging.

Your amicus the Mountain Plains Congress of Senior Organizations is funded by the Community Services Administration of the Department of Health, Education and Welfare and is a western, multistate organization.

Your amicus the Gray Panthers is a nonprofit organization with a nationwide membership.

Your amici share the common interest in providing for the advocacy and social service needs of the elderly. It has been their common experience that for low and moderate income elderly, legal services are generally inaccessible. In *Goldfarb v. Virginia State Bar Association,* 421 U.S. 773 (1975), this Court questioned whether the public service aspect of the legal profession should exempt some activities from the Sherman Act. A meaningful evaluation of the private bar's public service vis-a-vis the Sherman Act must be in the context of the need for access to legal services and the need for consumer information regarding legal services and not on a piecemeal basis which considers only the activities of a handful of isolated private attorneys or law firms.

Legal services are largely unavailable to low income persons. A 1975 study conducted for the Legal Services Corporation concluded that:

> ". . . [Legal Services] coverage of the legally eligible low income population is very largely nominal, or theoretical, not actual or effective." *The Legal Services Program: Resource Distribution and Low Income Population,* BUREAU OF SOCIAL SCIENCE RESEARCH, INC., 1975.

Regarding provision of legal services to low income persons, Thomas Ehrlich, President of the Legal Services Corporation has said:

> "Whatever our success over the next few years in gaining increased federal funding for legal assistance to the poor, the goal of equal access to justice cannot be met without substantially increased involvement of the private bar. . . ."[1]

For the elderly the problem is even greater; indeed, Congress recently enacted legislation which placed a special emphasis on providing legal services for the elderly.[2]

Recognition that the legal profession should endeavor to correct deficiencies in our legal system is embodied within Canon 8 of the ABA Code of Professional Responsibility which provides:

> "Changes in human affairs and imperfections in human institutions make necessary constant efforts to maintain and improve our legal system. This system should function in a manner that commands public respect and fosters the use of legal remedies to achieve redress of grievances. By reason of education and experience, lawyers are especially qualified to recognize deficiencies in the legal system and to initiate corrective measures therein.

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[1]Remarks of Thomas Ehrlich, President of the Legal Services Corporation, on "Justice for the Poor: Public and Private Responsibilities" before the Los Angeles County Bar Association, May 5, 1976.

[2]Older Americans Act Amendments of 1975, P.L. 94-135, 89 Stat. 713, 94th Cong. 1st Sess., 42 U.S.C. §3001 *et seq.*

> Thus, they should participate in proposing and supporting legislation and programs to improve the system, without regard to the general interests or desires of clients or former clients." (EC 8-1).

The little information available indicates that one of the most significant roadblocks to fixed income persons obtaining legal services is their lack of information regarding the cost and availability of such services. A recent study conducted in Cedar Rapids, Iowa, indicated that 20% of the elderly responding could not afford to hire an attorney (should a legal problem arise) and 37% did not know if they could afford an attorney.[3] Moreover, your amici believe, advertising is a necessary component of innovative service delivery systems designed to reduce costs, based upon volume and, *e.g.*, the use of paralegals in standardized and specialized tasks. Neither the public service activities of the private bar nor the presently constituted fee for service arrangements are sufficient to meet the need of low and fixed income persons.

Summary of Argument.

The Appellee, an integrated State Bar Association, is subject to Section 1 of the Sherman Anti-Trust Act. The purpose of the Act is to preserve a market system based upon the laws of supply and demand and, hence, to prevent combinations which inhibit the natural operation of those laws. While some combinations in restraint of trade are lawful because reasonably

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[3]C. GORDON, REPORT ON A MODEL PROJECT: AREA X AGENCY ON AGING LEGAL SERVICES PROGRAM, Kirkwood Community College, Cedar Rapids, Iowa.

related to proper social or economic objectives, others are unlawful *per se* because of their unequivocal and direct relationship to the suppression of competition. Among the latter is price fixing.

Price fixing includes any scheme which directly or indirectly has the effect of subjecting prices to artificial pressures unrelated to a free market. Unlawful price fixing does not depend upon the existence of a plan to peg prices at specified amounts or to relate them to particular formulas; it is only necessary that a degree of market stability be attained which, but for said plan, would not exist. Furthermore, the specific intent to fix prices is unnecessary, it being presumed that the parties to an agreement, the effect of which is to influence prices, intended the necessary and direct consequences of their acts.

Price competition and price advertising are inextricably related and the free operation of the former is dependent upon the freedom to do the latter. With respect to consumers, price advertising facilitates choice; with respect to sellers, price advertising encourages competition. Furthermore, the absence of price advertising, with its attendant shroud of secrecy, fosters a climate in which price fixing can be accomplished through the unspoken gentlemen's agreement. Accordingly, restrictions upon price advertising are, *ipso facto,* price fixing. To the extent the disciplinary rule at issue is designed to prevent unscrupulous practices, other means are available to accomplish that objective without the corollary effect of inhibiting price advertising.

ENFORCEMENT BY THE APPELLEE OF THE DISCIPLINARY RULE AT ISSUE IS A VIOLATION PER SE OF SECTION 1 OF THE SHERMAN ANTI-TRUST ACT.

I.

This Court Has Equated Restrictions on Price Advertising With Price Fixing.

An integrated state bar association is prohibited by Section 1 of the Sherman Act, 15 U.S.C. §1 (hereafter "§1"), from engaging in price fixing. *Goldfarb v. Virginia State Bar,* 421 U.S. 773 (1975) Price fixing, whatever its manifestation, is a violation *per se* of §1 and, hence, its underlying reasonableness, utility, or socio-economic rationale is immaterial. *United States v. Socony-Vacuum Oil Co.,* 310 U.S. 150 (1940); *United States v. Trenton Potteries Co.,* 273 U.S. 392 (1927). A scheme, the effect of which is to immunize prices, in whole or in part, from the free play of economic forces is unlawful regardless of the intent of the parties, *United States v. Masonite Corp.,* 316 U.S. 265 (1942); *United States v. Patten,* 226 U.S. 525 (1913); and the degree of market interference or its particular form is beside the point:

> ". . . Any combination which tampers with price structures is engaged in an unlawful activity. Even though the members of the price-fixing group were in no position to control the market, to the extent that they raised, lowered, or stabilized prices they would be directly interfering with the free play of market forces. The Act places all such schemes beyond the pale and protects that vital part of our economy against any degree of interference. . . ." *United States v. Socony-Vacuum Oil Co., supra,* 310 U.S. at 221.

Further elaboration of the above principles would be tautologous. Their specific application to the facts of the instant case has been established through decisions of this court and decisions of the lower courts. It might be thought that restrictions on advertising would be an unlikely subject for judicial scrutiny under §1; the usual motive of price fixers is to sell as much as possible and it is logical to suppose that the usual price-fixing combination would not be concerned with advertising inhibitions. Such was not the case, however, with the defendant in *United States v. Parke, Davis & Co.*, 362 U.S. 29 (1960), who undertook to discourage retailers of its pharmaceutical products from discount selling through the medium of commitments not to advertise:

> ". . . Its officials believed that the selling at discount prices would be deterred, and the effects minimized of any isolated instances of discount selling which might continue, if all advertising of such prices were discontinued. . . ." 362 U.S. at 35.

The central issue in the case was whether the defendant transgressed beyond the grounds of *United States v. Colgate,* 250 U.S. 300 (1919), which sanctioned unilateral refusals to deal with retailers who failed to adhere to a pricing policy. In holding that it did, this court used the following language relative to advertising:

> ". . . With regard to the retailers suspension of advertising, Parke Davis did not rest with the simple announcement to the trade of its policy in that regard followed by a refusal to sell to the retailers who would not observe it. First it discussed the subject with Dart Drug. When Dart

> indicated willingness to go along the other retailers were approached and Dart's apparent willingness to cooperate was used as the lever to gain their acquiescence in the program. Having secured those acquiescences, Parke Davis returned to Dart Drug with the report of that accomplishment. Not until all this was done was the advertising suspended and sales to all the retailers resumed. . . . [I]f a manufacturer is unwilling to rely on individual self-interest to bring about general voluntary acquiescence *which has the collateral effect of eliminating price competition,* and takes affirmative action to achieve uniform adherence by inducing each customer to adhere to avoid such price competition, the customers' acquiescence is not then a matter of individual free choice prompted alone by the desirability of the product. The product then becomes packaged in a competition-free wrapping—a valuable factor in itself—by virtue of certed action induced by the manufacturer. . . ." 362 U.S. at 46-47 (Emphasis added).

It is submitted that *Parke, Davis* is directly in point. It necessarily holds that a policy of foreclosing advertising is a form of price fixing, since the tactic condemned permitted discount selling in conjunction with discontinuance of advertising. While the objective of *Parke, Davis* was to discourage such discount selling, the means used included the banning of advertising; if the latter had no effect upon the former, there would have been no factual basis for a finding of price-fixing.

Likewise in point is *United States v. General Motors,* 384 U.S. 127 (1966), a decision which found the

defendant guilty of violating §1 through concerted action by General Motors and various southern california Chevrolet dealers to discourage the practice by other dealers of marketing automobiles through "discounters" who advertised the availability of new cars for lower prices. The following statement represents this court's evaluation of the effect of advertising by the discounters:

> "We note, moreover, that inherent in the success of the combination in this case was a substantial restraint upon price competition—a goal unlawful *per se* when sought to be effected by combination or conspiracy. . . . And the *per se* rule applies even when the effect upon prices is indirect. . . .
>
> "There is in the record ample evidence that one of the purposes behind the concerted effort to eliminate sales of new Chevrolet cars by discounters was to protect franchised dealers from real or apparent price competition. The discounters advertised price savings. . . . Some purchasers found and others believed that discount prices were lower than those available through the franchised dealers. . . ." 384 U.S. at 147.

It is submitted that this Court's finding of "ample evidence" of a purpose "to protect franchised dealers from real or apparent price competition" is an explicit recognition of the correlation between price advertising and price competition. Below, your amicus will treat in detail *Schnapps Shop, Inc. v. H. W. Wright & Co., Ltd.*, 377 F.Supp. 570 (D. Md. 1973), but the following observation by the court is apropos here:

> ". . . When a retailer is free to advertise at any price, he alerts his competitors and his customers and often obliges his competitors to advertise

and sell at a price competitive with the advertised price. . . ." 377 F.Supp. at 581 (Emphasis the Court's).[4]

II.

The Prevailing Rule in the Lower Courts Is That Restrictions on Price Advertising Are Synonymous With Price Fixing.

The decisions of the lower courts appear to be unanimous in condemning bans on price advertising, or their equivalent, as synonymous with price fixing. In *United States v. Gasolene Retailers Assn., Inc.*, 285 F.2d 688 (7th Cir. 1961), the court read a *per se* violation of §1 into a series of collective bargaining agreements providing that retail gasoline service stations would not advertise prices, a device designed to prevent gas wars. In the language of the court:

> "In the Socony-Vacuum case the activities were not concerned with direct price fixing but were aimed rather at affecting the market price and the court was there condemning as price fixing any concerted scheme designed to affect prices. We are of the opinion that the agreement and the activities in the present case are a *per se* violation of the Sherman Act." 285 F.2d at 691.

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[4] *Cf. Samuelson,* ECONOMICS p. 43 (8th ed. 1970):

> "As we said earlier, one drawback to the picture of the price system as described above is the fact that, in the real world, competition is nowhere near 'perfect.' Firms do not know when consumer tastes will change; therefore they may overproduce in one field and underproduce in another. By the time they are ready to learn from experience, the situation may have changed again. Also, in a competitive system many producers simply do not know the methods of other producers, and costs do not fall to a minimum. In the competitive struggle one can sometimes succeed as much by *keeping knowledge scarce* as by keeping production high."

Schnapps Shop, Inc., v. H. W. Wright & Co., Ltd., supra, 377 F.Supp. 570 (D. Md. 1973), found a *per se* violation of §1 in an enforced policy against advertising below suggested retail prices of liquor, relying heavily upon *General Motors* and *Parke, Davis:*

> "Because they only sought to affect advertised prices, and not retailers in-store prices, both defendants contend they did not run afoul of Sherman §1. Defendants cite no cases to support that distinction, and with good reason, for the argument is misconceived. . . . [quoting from Parke, Davis] . . . In these two cases, the inference is also irresistible that combining to prevent advertising below suggested retail price, or below any price, will have an impact on price competition. When a retailer is free to advertise at any price, he alerts his competitors and his customers and often obliges his competitors to advertise *and sell* at a price competitive with the advertised price. . . .
>
> "Defendants can find no comfort in arguing that preventing advertising at low prices has only an indirect effect on the prices themselves. . . . It is a basic tenet of antitrust law that any conspiracy which has an impact on the price structure is illegal. . . ." 377 F.Supp. at 580-581.

In *United States v. National Society of Professional Engineers,* 389 F.Supp. 1193 (D. D.C. 1974), the court, relying upon *Socony-Vacuum,* held the defendant guilty of price fixing through adherence of its members to an ethical canon designed to prevent competitive bidding; competitive bidding was defined as follows:

> ". . . [T]he formal or informal submission, or receipt, or verbal or written estimates of cost

> or proposals in terms of dollars, man days of work required, percentage of construction cost, or any other measure of compensation whereby the prospective client may compare engineering services on a price basis prior to the time that one engineer . . . has been selected for negotiations. . . ." 389 F.Supp. at 1195 n. 1.

Oakland-Alameda County Builders Exchange v. F. P. Lathrop Construction Co., 4 Cal.3d 354, 482 P.2d 226 (1971), likewise emphasized the price-fixing characteristics of a scheme calculated to shroud competitive bidding in secrecy. (California has adopted the *per se* rule with respect to price fixing.) At issue was a procedure the effect of which was to preserve secrecy concerning the amount of subcontractors' bids before the award of general construction contracts; the purpose was to discourage general contractors from playing subcontractors off against each other. In holding the practice added up to price-fixing the California Supreme Court stated:

> ". . . It should be apparent that the 'economic forces of supply and demand' can have little impact on a bidding system which is conducted in secrecy and which leaves general contractors no alternative but to accept the lowest bids submitted through the Depository or withdraw from the bidding. . . .
>
> ". . . In the instant action, participants in the Depository impose a rule of silence no less stifling to open price competition than the agreement not to advertise, and they do so in the guise of preventing the competitive evil of 'bid peddling.' As in *Gasolene Retailers,* the sellers (subcontractors) agree not to publicize their prices (bids) and the buyers (general contractors) are

deprived of the benefit of purchasing at the lowest price available in a free enterprise system of open price competition." 4 Cal.3d at 363-364; 482 P.2d at 232.

III.

The Intent Underlying the Disciplinary Rule Is Immaterial.

That the disciplinary rule at issue was perhaps not inspired by a desire to curtail price competition is immaterial.[5] In *United States v. Patten, supra,* 226 U.S. 525 (1913), a price-fixing case, though decided before the *per se* rule was enunciated specifically, see

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[5]DR 2-101(B), quoted at page 2 of the lower court's opinion, was borrowed from DR 2-101(B) of the Code of Professional Responsibility suggested by the American Bar Association. That disciplinary rule, in turn, implements Canon 2, EC 2-9, which provides:

> "The traditional ban against advertising by lawyers, which is subject to certain limited exceptions, is rooted in the public interest. Competitive advertising would encourage extravagent, artful, self-laudatory brashness in seeking business and thus could mislead the layman. Furthermore, it would inevitably produce unrealistic expectations in particular cases and bring about distrust of the law and lawyers. Thus, public confidence in our legal system would be impaired by such advertisements of professional services. The attorney-client relationship is personal and unique and should not be established as the result of pressures and deceptions. History has demonstrated that public confidence in the legal system is best preserved by strict, self-imposed controls over, rather than by unlimited, advertising."

The succeeding paragraph of the Canon, EC 2-10, provides: "Methods of advertising that are subject to the objections stated above should be and are prohibited. . . ." The instant case is concerned with only an objective listing of fees for specified services and would not seem "subject to the objections stated above" because there is no element of deception involved. While the Arizona Supreme Court's interpretation of its own rules is a *fait accompli* for present purposes, the validity of that interpretation is, it is submitted, highly questionable.

United States v. Trenton Potteries Co., supra, 273 U.S. 392 (1927), this court stated:

> ". . . And that there is no allegation of a specific intent to restrain such trade or commerce does not make against this conclusion, for, as is shown by prior decisions of this court, the conspirators must be held to have intended the necessary and direct consequences of their acts and cannot be heard to say to the contrary. In other words, by purposely engaging in a conspiracy which necessarily and directly produces the result which the statute is designed to prevent, they are, in legal contemplation, chargeable with intending that result. . . ." 226 U.S. at 543.

The "objective" test of intent was reaffirmed in *United States v. Masonite Corp.,* 316 U.S. 265 at 275 (1942), a price-fixing case decided after the *per se* rule became crystalized, see *United States v. Socony-Vacuum Oil Co., supra,* 310 U.S. 150 (1940). In short, ". . . any combination which tampers with price structures is engaged in an unlawful activity. . . ." *Socony-Vacuum,* 310 U.S. at 221.

Given the existence of price fixing, the avowed purpose of the ethical canon underlying the disciplinary rule to prevent deceitful practices, see note 1, *supra,* is immaterial. In the language of the court in *American Medical Ass'n v. United States,* 130 F.2d 233 (D.C. Cir. 1942) aff'd 317 U.S. 519 (1943):

> ". . . Neither the fact that the conspiracy may be intended to promote the public welfare, or that of the industry, nor the fact that it is designed to eliminate unfair, fraudulent and unlawful practices, is sufficient to avoid the penalties of the Sherman act." 130 F.2d at 249.

The Sherman Act ". . . has no more allowed genuine or fancied competitive abuses as a legal justification for such schemes than it has the good intentions of the members of the combination. . . ." *Socony-Vacuum,* 310 U.S. at 222.

IV.

Reversal of the Lower Court's Decision Will Not Impinge Upon Arizona's Interest in Regulating Its Legal Profession.

Of course, as this court noted in *Goldfarb,* the states, through integrated bar associations and otherwise, have a legitimate interest in regulating other professions. Unquestionably, reasonable limitations can be imposed upon advertising methods designed by professionals ". . . to lure the credulous and ignorant members of the public to their offices for the purpose of fleecing them. . . ." *Semler v. Oregon State Board of Dental Examiners,* 294 U.S. 608 at 612 (1935). However, as stated above, otherwise laudable objectives are impermissible if in conflict with the *per se* rule flowing from §1. Actually, if the disciplinary rule were limited to the spirit and intent of the canon it implements ("extravagant, artful, self-laudatory brashness in seeking business"), no problems would exist. The issue in this case involves price competition in its purest form, *i.e.,* the objective and unembellished presentation to the public of a list of services the appellants propose to offer at objectively stated prices.[6]

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[6]Implicit in the above paragraph are two perspectives from which advertising may be viewed. Puffery, brashness, and artfulness are calculated to mislead the consumer while pure price advertising is calculated to inform the consumer. The following quote illustrates the distinction:

(This footnote is continued on next page)

V.

Reversal of the Lower Court's Decision Is Required to Give Goldfarb Practical Significance.

Because price advertising is an essential component of price competition, it is apparent the effect of the lower court's decision is to emasculate *Goldfarb* in the state of Arizona. Ingrained within the legal profession, and quite properly so, is a spirit of camaraderie and mutual dependence. For example, the American Bar Association Code of Professional Responsibility provides, in Canon 2, EC 2-18:

> ". . . It is a commendable and long-standing tradition of the bar that special consideration is

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"The crucial difference between the two views of the role of advertising is that in the change-in-taste approach, advertising increases product differentiation, makes demand curves *less* elastic, and leads to higher prices; while in the information approach advertising makes demand curves *more* elastic and leads to *lower* prices. According to Nelson, the costs of obtaining and the costs of supplying information are both greater than zero, so consumers will rationally make decisions with less than total information. His basic point is that consumers lack of information produces less elastic demand curves, because elasticity of demand is a function of *known* alternatives, not the number of brands in existence. Therefore, it is not the existence of close substitutes that is important, but the probability that the consumer will find them. Consumers' lack of information is the primary determinant of monopoly power, which is measured by the price elasticity of demand. The essence of his analysis is that advertising, by providing information about brand qualities, *increases* elasticities of demand curves and *reduces* monopoly power over price." *Ferguson,* ADVERTISING & COMPETITION; Theory, Measurement, Fact 5 (1974) (Ballinger Publishing Co., Cambridge, Mass.).

While the foregoing quote was focused upon "providing information about brand qualities," in which event it may be viewed in two modes, *i.e.,* either information or "change-in-taste," it is relevant to the point made above; pure, unembellished price advertising is necessarily of only the informative variety.

> given in the fixing of any fee for services rendered a brother lawyer or a member of his immediate family."

Canon 1, EC 1-6, which prescribes the duty of lawyers with respect to fellow lawyers disqualified from practice because of mental or emotional instability, provides in part:

> ". . . In like manner, when the disqualification has terminated, members of the bar should assist such person in being licensed, or, if licensed, in being restored to his full right to practice."

In *United States v. Container Corporation of America,* 393 U.S. 333 (1969), this court found a *per se* violation of §1 in the exchange of price information among competitors in an industry where ". . . The demand is inelastic, as buyers place orders only for immediate, short run needs. . . ." 393 U.S. at 337:

> ". . . The inferences are irresistible that the exchange of price information has had an anti-competitive effect in the industry, chilling the vigor of price competition. . . .
>
> "Price is too critical, too sensitive a control to allow it to be used even in an informal manner to restrain competition." 393 U.S. at 337-338.

Indeed, in *Goldfarb* this court recognized the competitive restraint implicit in the fact that ". . . the motivation to conform was reinforced by the assurance that other lawyers would not compete by underbidding. . . ." 421 U.S. at ...., 95 S.Ct. at 2010. See also *United States v. Parke, Davis & Co., supra,* 362 U.S. at 46, 47.

Because minimum fee schedules were common prior to *Goldfarb* it is obvious they were favored by at least a substantial number of practicing attorneys. See *Goldfarb,* 421 U.S. at .... n. 16, 95 S.Ct. at 2013 n. 16. Tied as many of such minimum fees were to the application of arithmetic to objective criteria, *e.g.,* in mortgage foreclosures, real estate transactions and probates, it is reasonable to suppose that the effects of *Goldfarb* will be minimal without more. Given the traditional spirit of mutual cooperation existing within the legal profession (viewed as an organized group as distinguished from adversaries among themselves representing clients) and the historical disfavor of price competition, the result is predictable unless the windows are thrown open and the light of true, informative price information permitted to shine. In addition to the fact the existing shroud of secrecy almost certainly discourages price competition, in the case of the legal profession it conceals it because of the attorney-client privilege.

Conclusion.

At issue in the instant case is an advertisement listing four uncomplicated legal tasks and the sum, expressed in dollars, for which the appellants will perform each of them. There is nothing in the advertisement which would mislead anybody; on the contrary, while it may be inspired by the profit motive, from the standpoint of the potential consumer its sole office is education. Price competition presupposes choice by informed consumers and the function of the advertisement at issue is precisely that.

Because price advertising is inherent in price competition, restrictions upon the former are a form of fixing

the latter. Reasonable limitations upon advertising in general can be legally justified as a means of protecting the public from misrepresentation, deceit, and, in the case of the legal profession, inflated expectations and other forms of misapprehension. This value is, however, unrelated to an advertisement which objectively states a fixed sum in return for a specified service. As a necessary corollary to *Goldfarb,* the decision of the lower court should be reversed. The nature of the legal profession provides a particularly strong reason for that conclusion, but it would follow regardless of the occupation or commercial activity involved.

PHILIP L. GOAR, Esq.,
Attorney for Amici Curiae.

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Of Counsel.

EXHIBIT A.

Dear Mr. Cohen:

In answer to your request, appellant hereby gives its consent to the filing of an *amicus* brief on behalf of the Mountain Plains Congress of Senior Organizations, the National Association of State Units on Aging, the California State Office on Aging, and the Gray Panthers.

William C. Canby, Jr.
Attorney for Appellants

Dear Mr. Cohen

In answer to your request, appellee hereby gives its consent to the filing of an *amicus* brief on behalf of the Mountain Plains Congress of Senior Organizations, the National Association of State Units on Aging, the California State Office on Aging, and the Gray Panthers.

John P. Frank
Attorney for Appellee