

Written Testimony Before the Senate Judiciary Committee Regarding Senate Bill 467
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Testimony Submitted by:
Stanton A. Hazlett
Disciplinary Administrator
701 Southwest Jackson Street, First Floor
Topeka, Kansas 66603
785-296-2486
shazlett@kscourts.org

I would like to thank Senator King for allowing this office to provide input with respect to Senate Bill 467. Lawyer advertising has been a hot ethics topic for years. When I first started practicing law, there was an absolute prohibition on lawyer advertising. However, in 1977, the United States Supreme Court, in the case of *Bates v. Arizona*, determined that there was a First Amendment issue involved in states trying to prohibit lawyer advertising. Specifically, the court held that lawyer advertising was commercial speech entitled to protection under the First Amendment. The court stated that it was still permissible to regulate lawyer advertising. For instance the court held that misleading advertising or advertising that created unjustified expectations could and should be regulated by disciplinary authorities. I do not believe, that in 1977, the Supreme Court envisioned the nationwide advertising that we are experiencing now. Senate Bill 467 appears to be an attempt to prohibit lawyers who are not licensed in Kansas from soliciting Kansas clients. I am in agreement with that goal, but believe that our disciplinary system is presently equipped to address that problem. In addition, it appears that there are some flaws in Senate Bill 467 which would make it impossible to enforce.

Section 1 of Senate Bill 467 would prohibit a non-Kansas lawyer from engaging in advertising "directed at Kansas citizens for the purpose of soliciting clients for commencement of any civil action that has been, or could be, commenced in this state..." It is not possible or legal to prevent lawyers from advertising with respect to every civil action which could potentially be filed in the State of Kansas. Literally thousands of cases each year could be filed either in Kansas or in many other jurisdictions. For instance, a Kansas resident may be injured in Kansas as a result of a defective product produced in another state or states. Under those facts, a civil action could be filed in Kansas or any jurisdiction where the defective product was produced. Another example would be class action litigation. Typically, in this sort of litigation, there may be thousands of victims from every state in the country. The litigation might be filed in Kansas or in any other state. Under the circumstances, it is entirely appropriate for a

non-Kansas lawyer to direct advertising material to a Kansas resident. The fact that the case could have been brought in Kansas cannot be a prohibition on this sort of advertising under the First Amendment.

I am also concerned about section (c)(1) of Senate Bill 467. That section would permit this office to take disciplinary action against any attorney who violates the statute. Essentially, this section would authorize the disciplinary administrator's office to take action against any lawyer from any jurisdiction in the event that that lawyer violates the provisions of Senate Bill 467. This office only has jurisdiction over Kansas licensed lawyers or lawyers from out-of-state who have properly sought admission to the Kansas Bar. I do not believe that this legislation would provide this office with jurisdiction over lawyers that we do not otherwise have.

Finally, I firmly believe that our disciplinary system and the lawyer disciplinary systems in other states can address this problem without the statute. It is important for the judiciary committee to know that we receive very few complaints about lawyer advertising. The ones we do receive are typically from other lawyers. When this office receives a complaint about lawyer advertising that has merit and the lawyer responsible for the advertisement does not have a Kansas license, this office refers that complaint to the appropriate jurisdiction. Senate Bill 467 authorizes this office to file a complaint with the appropriate jurisdiction, but that happens under our present system as a matter of course. In my conversation with Sen. King the other day, he brought up a very troubling practice. Apparently, there are instances of out-of-state lawyers or their employees making "cold calls" to Kansas residents for the purpose of soliciting clients. We have not received any complaints of such practices. However, I can unequivocally assure the committee that this office would act swiftly to notify the jurisdiction where a lawyer engaging in that practice is licensed. In person solicitation or solicitation on the phone by a lawyer is a serious violation of the ethical rules governing lawyers. I am confident that such a practice would be dealt with promptly by any jurisdiction.

I appreciate the opportunity to provide you this information. Please feel free to call this office if you have any questions.