

The Burger Court Opinion Writing Database

Ohralik v. Ohio State Bar Association

436 U.S. 447 (1978)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 6, 1978

Dear Lewis:

Re: 76-1650 Ohralik v. Ohio State Bar Association

I join.

Regards,



Mr. Justice Powell

cc: The Conference

✓

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 1, 1978

Re: No. 76-1650, Ohralik v. Ohio State Bar Assn.

Dear Lewis,

I am glad to join your opinion for the Court
in this case.

Sincerely yours,

P.S.
/

Mr. Justice Powell

Copies to the Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 9, 1978

Re: No. 76-1650, Ohralik v. Ohio State Bar

Dear Lewis,

Although not unalterably opposed, I would prefer that your suggested substitute for note 15 not be made. If you do include it, I would suggest that the language be changed so as not to imply that the Argersinger case requires the appointment of counsel whenever there is a "likelihood of any imprisonment." Argersinger, as I understand it, requires only that a convicted defendant cannot be imprisoned if he did not have counsel.

Sincerely yours,

P.S.
/

Mr. Justice Powell

Copies to The Chief Justice
Mr. Justice White
Mr. Justice Stevens

Supreme Court of the United States
Washington, D. C. 20543

C-44 MEMBERS OF
JUSTICE BYRON R. WHITE

May 1, 1978

Re: 76-1650 - Orvalik v. Ohio State
Bar Association

Dear Lewis,

I agree.

Sincerely yours,



Mr. Justice Powell

Copies to the Conference

✓

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 9, 1978

}
Re: 76-1650 - Ohralik v. Ohio State Bar

Dear Lewis,

I don't object to your suggested substitute for footnote 15, although you should bring up to date the funding for the Legal Services Corporation. It is now much larger and going up.

Sincerely yours,



Mr. Justice Powell

Copies to the Conference

16 MAY 1978

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 76-1650 AND 77-56

Albert Ohralik, Appellant,
76-1650 v. } On Appeal from the Supreme
Ohio State Bar Association. } Court of Ohio.

In re Edna Smith Primus, } On Appeal from the Supreme
Appellant. } Court of South Carolina.

[May —, 1978]

MR. JUSTICE MARSHALL, concurring in part and concurring in the judgments.

I agree with the majority that the factual circumstances presented by appellant Ohralik's conduct "pose dangers that the State has a right to prevent," *ante*, at 1, and accordingly that he may constitutionally be disciplined by the Ohio State Bar Association. I further agree that appellant Primus' activity in advising a Medicaid patient who had been sterilized that the American Civil Liberties Union (ACLU) would be willing to represent her without fee in a lawsuit against the doctor and the hospital was constitutionally protected and could not form the basis for disciplinary proceedings. I write separately to highlight what I believe these cases do and do not decide, and to express my concern that disciplinary rules not be utilized to obstruct the distribution of legal services to all those in need of them.

I

While both of these cases involve application of rules prohibiting attorneys from soliciting business, they could hardly have arisen in more disparate factual settings. The circumstances in which appellant Ohralik initially approached his two clients provide classic examples of "ambulance chasing," fraught with obvious potential for misrepresentation and

Stylistic changes -
5, 8

24 MAY 1978

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 76-1650 AND 77-56

Albert Ohralik, Appellant,
76-1650 v. } On Appeal from the Supreme
Ohio State Bar Association. } Court of Ohio.

In re Edna Smith Primus, } On Appeal from the Supreme
Appellant. } Court of South Carolina.

[May —, 1978]

MR. JUSTICE MARSHALL, concurring in part and concurring in the judgments.

I agree with the majority that the factual circumstances presented by appellant Ohralik's conduct "pose dangers that the State has a right to prevent." *ante*, at 1, and accordingly that he may constitutionally be disciplined by the Ohio State Bar Association. I further agree that appellant Primus' activity in advising a Medicaid patient who had been sterilized that the American Civil Liberties Union (ACLU) would be willing to represent her without fee in a lawsuit against the doctor and the hospital was constitutionally protected and could not form the basis for disciplinary proceedings. I write separately to highlight what I believe these cases do and do not decide, and to express my concern that disciplinary rules not be utilized to obstruct the distribution of legal services to all those in need of them.

I

While both of these cases involve application of rules prohibiting attorneys from soliciting business, they could hardly have arisen in more disparate factual settings. The circumstances in which appellant Ohralik initially approached his two clients provide classic examples of "ambulance chasing," fraught with obvious potential for misrepresentation and

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SUPREME COURT OF THE UNITED STATES

Nos. 76-1650 AND 77-56

Albert Ohralik, Appellant,
76-1650 v. } On Appeal from the Supreme
Ohio State Bar Association. } Court of Ohio.

In re Edna Smith Primus, } On Appeal from the Supreme
Appellant. } Court of South Carolina.

[May 30, 1978]

MR. JUSTICE MARSHALL, concurring in part and concurring in the judgments.

I agree with the majority that the factual circumstances presented by appellant Ohralik's conduct "pose dangers that the State has a right to prevent." *ante*, at 1. and accordingly that he may constitutionally be disciplined by the Ohio State Bar Association. I further agree that appellant Primus' activity in advising a Medicaid patient who had been sterilized that the American Civil Liberties Union (ACLU) would be willing to represent her without fee in a lawsuit against the doctor and the hospital was constitutionally protected and could not form the basis for disciplinary proceedings. I write separately to highlight what I believe these cases do and do not decide, and to express my concern that disciplinary rules not be utilized to obstruct the distribution of legal services to all those in need of them.

I

While both of these cases involve application of rules prohibiting attorneys from soliciting business, they could hardly have arisen in more disparate factual settings. The circumstances in which appellant Ohralik initially approached his two clients provide classic examples of "ambulance chasing," fraught with obvious potential for misrepresentation and

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 12, 1978

Re: No. 76-1650 - Ohralik v. Ohio State Bar Ass'n

Dear Lewis:

I read your opinion as centering between the more extreme views expressed at the conference of January 18. Although it does not express my precise position, any more than it does the positions of some of the others, it is a good middle-of-the-road opinion that resolves this case and lends at least some guidance for the future. I therefore join it.

Sincerely,



Mr. Justice Powell

cc: The Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: 87 APR 1978

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1650

Albert Ohralik, Appellant, }
v. } On Appeal from the Supreme
Ohio State Bar Association. } Court of Ohio.

[April —, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

In *Bates v. State Bar of Arizona*, 433 U. S. 350 (1977), this Court held that truthful advertising of "routine" legal services is protected by the First and Fourteenth Amendments against blanket prohibition by a State. The Court expressly reserved the question of the permissible scope of regulation of "in-person solicitation of clients—at the hospital room or the accident site, or in any other situation that breeds undue influence—by attorneys or their agents or 'runners.'" Today we answer part of the question so reserved, and hold that the Bar—acting with state authorization—constitutionally may discipline a lawyer for soliciting clients in person under circumstances likely to pose dangers that the State has a right to prevent.

I

Appellant, a member of the Ohio Bar, lives in Montville, Ohio. Until recently he practiced law in Montville and Cleveland. On February 13, 1974, while picking up his mail at the Montville Post Office, appellant learned from the postmaster's brother about an automobile accident that had taken place on February 2 in which Carol McClintock, a young woman with whom appellant was casually acquainted, had been injured. Appellant made a telephone call to Ms. McClintock's parents, who informed him that their daughter was in the hospital.

May 8, 1978

No. 76-1650 Ohralik v. Ohio State Bar

Dear Chief, Potter, Byron and John:

I enclose a draft of a possible substitute for note 15, page 10, of the opinion you have been good enough to join.

The relevancy of the note is that it is a partial response to petitioner's argument that he was rendering a public service by advising his solicitees of the availability of needed legal services. There is truth to the view that people at the poverty level, and those in the lower income brackets, often have difficulty in obtaining legal services or knowing where to go for legal help. But the thrust of our opinion is that the answer is not "one on one" personal solicitation. The proposed note goes beyond a negative response to petitioner's argument, and indicates that positive efforts are being made to lessen the extent of the problem.

I would appreciate your advice as to whether the note, in substantially this form would be acceptable. It is not necessary to the opinion, and if there is a negative reaction I will not add it.

Sincerely,

The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Stevens

lfp/ss

10-12, 15-16

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1650

Albert Ohralik, Appellant, }
v. } On Appeal from the Supreme
Ohio State Bar Association. } Court of Ohio.

[April —, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

In *Bates v. State Bar of Arizona*, 433 U. S. 350 (1977), this Court held that truthful advertising of "routine" legal services is protected by the First and Fourteenth Amendments against blanket prohibition by a State. The Court expressly reserved the question of the permissible scope of regulation of "in-person solicitation of clients—at the hospital room or the accident site, or in any other situation that breeds undue influence—by attorneys or their agents or 'runners.'" Today we answer part of the question so reserved, and hold that the Bar—acting with state authorization—constitutionally may discipline a lawyer for soliciting clients in person under circumstances likely to pose dangers that the State has a right to prevent.

I

Appellant, a member of the Ohio Bar, lives in Montville, Ohio. Until recently he practiced law in Montville and Cleveland. On February 13, 1974, while picking up his mail at the Montville Post Office, appellant learned from the postmaster's brother about an automobile accident that had taken place on February 2 in which Carol McClintock, a young woman with whom appellant was casually acquainted, had been injured. Appellant made a telephone call to Ms. McClintock's parents, who informed him that their daughter was in the hospital.

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See pp. 5, 7, 8, 14

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: _____

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1650

Albert Ohralik, Appellant, }
v. } On Appeal from the Supreme
Ohio State Bar Association. } Court of Ohio.

[April —, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

In *Bates v. State Bar of Arizona*, 433 U. S. 350 (1977), this Court held that truthful advertising of "routine" legal services is protected by the First and Fourteenth Amendments against blanket prohibition by a State. The Court expressly reserved the question of the permissible scope of regulation of "in-person solicitation of clients—at the hospital room or the accident site, or in any other situation that breeds undue influence—by attorneys or their agents or 'runners.'" Today we answer part of the question so reserved, and hold that the Bar—acting with state authorization—constitutionally may discipline a lawyer for soliciting clients in person under circumstances likely to pose dangers that the State has a right to prevent.

I

Appellant, a member of the Ohio Bar, lives in Montville, Ohio. Until recently he practiced law in Montville and Cleveland. On February 13, 1974, while picking up his mail at the Montville Post Office, appellant learned from the postmaster's brother about an automobile accident that had taken place on February 2 in which Carol McClintock, a young woman with whom appellant was casually acquainted, had been injured. Appellant made a telephone call to Ms. McClintock's parents, who informed him that their daughter was in the hospital.

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June 6, 1978

MEMORANDUM TO THE CONFERENCE:

Cases held for No. 76-1650, Ohralik v. Ohio
State Bar Ass'n

1. No. D-95, In the Matter of Disbarment of Albert Ohralik. After resp had been indefinitely suspended from the practice of law by the Ohio S. Ct., this Court issued an order to show cause why he should not be disbarred from the practice of law in this Court. Resp filed a response, but consideration of the matter was deferred pending his appeal.

Resp argued that he could not be disbarred because the Ohio proceedings were constitutionally defective in two respects: they denied him due process and they violated the First Amendment. The latter contention has been disposed of by this Court's decision of May 30. The due process contention included allegations that the two Disciplinary Rules at issue were impermissibly vague; that the findings and conclusions of the Board of Commissioners and the Ohio S. Ct. discussed matters impugning resp's character but which were not charged; that resp was denied a hearing in the Ohio S. Ct.; and that the State did not prove that solicitation occurred. These due process contentions were not pressed in this Court; they therefore are not open now as reasons for not giving effect to the Ohio S. Ct. suspension.

The only question is whether resp should be disbarred from the practice of law in this Court, or whether we simply should continue his suspension. In several recent disbarment proceedings, we have suspended lawyers from the practice of law in this Court pending completion of disbarment proceedings in state courts. D-123, In the Matter of the Disbarment of Jerry Chvosta (Ohio); D-111, In the Matter of the Disbarment of Gerald Chapman (Ill.); D-102, In the Matter of the Disbarment of

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Supreme Court of the United States
Washington, D. C. 20543

CLERKS OF
JUSTICE WILLIAM H. REHNQUIST

May 1, 1978

Re: No. 76-1650 - Ohralik v. Ohio State Bar Association

Dear Lewis:

I anticipate circulating a concurrence in this case.

Sincerely,
W. H. R.

Mr. Justice Powell

Copies to the Conference

✓

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: MAY 2 1978

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1650

Albert Ohralik, Appellant, }
 v. } On Appeal from the Supreme
Ohio State Bar Association. } } Court of Ohio.

[May —, 1978]

MR. JUSTICE REHNQUIST, concurring in the judgment.

For the reasons stated in my dissenting opinion in No. 77-56, *In re Primus*, I concur in the affirmance of the judgment of the Supreme Court of Ohio.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

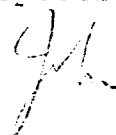
May 1, 1978

Re: 76-1650 - Ohralik v. Ohio State Bar Association

Dear Lewis:

Please join me.

Respectfully,



Mr. Justice Powell

Copies to the Conference

P.S. As I indicated on the telephone, I would be even happier with your fine opinion if you could omit most of footnote 20 which suggests that overbreadth analysis may sometimes be appropriate in commercial speech cases.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 10, 1978

Re: 76-1650 - Ohralik v. Ohio State Bar

Dear Lewis:

With respect to note 15, you have my proxy.

Respectfully,



Mr. Justice Powell

cc: The Chief Justice
Mr. Justice Stewart
Mr. Justice White