

The Burger Court Opinion Writing Database

In re R. M. J.

455 U.S. 191 (1982)

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

January 22, 1982

Re: No. 80-1431 - In the Matter of R_____ M. J_____

Dear Lewis:

I join.

Regards,

Justice Powell

Copies to the Conference

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

January 11, 1982

RE: No. 80-1431 In the Matter of R--- M.J.-----

Dear Lewis:

I agree.

Sincerely,

A handwritten signature in cursive script, appearing to read "Powell", written in dark ink.

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 5, 1982

Re: 80-1431 - In the Matter of R M. J,
Appellant

Dear Lewis,

Please join me.

Sincerely,



Justice Powell

Copies to the Conference

bkh

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 12, 1982

Re: No. 80-1431 - In The Matter of R--- M.J---

Dear Lewis:

Please join me.

Sincerely,



T.M.

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 20, 1982

Re: No. 80-1431 - In the Matter of R--- M.-- J---

Dear Lewis:

You may join me in your opinion.

I like your complimentary remarks in footnote 9 about Chief Justice Bardgett's and Judge Seiler's respective dissenting opinions. I only wish that you had seen fit to set forth, at least by way of footnote, the majority's childish and petulant paragraph, see 609 S.W.2d, at 412, so that the real character of that opinion would be revealed.

I have the following suggestions for your consideration:

1. For purposes of the Reporter and the reader, should not the citation of the case below be set forth somewhere in the opinion?

2. I would feel somewhat happier if footnotes 11 and 14 were dropped. As to note 11, the issue of the Bar's designation of services that are "routine" is really not in the case, for the appellant here advertised neither particular routine services nor prices for services. Note 14 concerns the ABA's proposed Model Rules and you quote extensively from them there. I gain the impression that the Court is giving its advance approval to those Rules. Should we be so advisory at this point?

3. The disclaimer situation leaves me a little troubled, but perhaps you have handled it as well as it can be handled on this record. There is nothing in the Missouri majority opinion that indicates that the disclaimer issue was not considered by that court, and Bob Seiler's dissent seems to me to reveal that the disciplinary action was based in part on the failure to include a disclaimer. You really recognize as much in your note 18. And it seems a little curious to me that Missouri sets up this disclaimer provision even though that court and its integrated bar have no system for certification.

As I have stated above, these comments are only for your consideration. I have joined your opinion.

Sincerely,

Justice Powell
cc: The Conference



To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: DEC 28 1981

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1431

IN THE MATTER OF R___ M. J___, APPELLANT
ON APPEAL FROM THE SUPREME COURT OF MISSOURI

Join

[December —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

The Court's decision in *Bates v. State Bar of Arizona*, 433 U. S. 350 (1977), required a re-examination of long held perceptions as to "advertising" by lawyers. This appeal presents the question whether certain aspects of the revised ethical rules of the Supreme Court of Missouri regulating lawyer advertising conform to the requirements of *Bates*.

I

As with many of the states, until the decision in *Bates*, Missouri placed an absolute prohibition on advertising by lawyers.¹ After the Court's invalidation of just such a prohibition in *Bates*, the Committee on Professional Ethics and Responsibility of the Supreme Court of Missouri revised that

¹ Prior to the 1977 revision, Rule 4 provided, in pertinent part:
"(A) A lawyer shall not prepare, cause to be prepared, use, or participate in the use of, any form of public communication that contains professionally self-laudatory statements calculated to attract lay clients; as used herein, 'public communication' includes, but is not limited to, communication by means of television, radio, motion picture, newspaper, magazine, or book.
"(B) A lawyer shall not publicize himself, his partner, or associate as a lawyer through newspaper or magazine advertisements, radio or television announcements, display advertisements in city or telephone directories, or other means of commercial publicity, nor shall he authorize or permit others to do so in his behalf . . ." Vernon's Ann. Mo. Rules, Rule 4, at 63 (1981) (historical note).

Stylistic Changes Throughout

Stylistic Changes At 2, 5, 6, 8, 11, 16

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall ✓
 Justice Blackmun
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: Justice Powell

Circulated: _____

Recirculated: DEC 30 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1431

IN THE MATTER OF R. M. J., APPELLANT

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

[December —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

The Court's decision in *Bates v. State Bar of Arizona*, 433 U. S. 350 (1977), required a re-examination of long held perceptions as to "advertising" by lawyers. This appeal presents the question whether certain aspects of the revised ethical rules of the Supreme Court of Missouri regulating lawyer advertising conform to the requirements of *Bates*.

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Changes at 2, 7, 8, 12, 13, 16

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: _____

Recirculated: JAN 8 1982

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1431

IN THE MATTER OF R___ M. J___, APPELLANT
ON APPEAL FROM THE SUPREME COURT OF MISSOURI

[January —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

The Court's decision in *Bates v. State Bar of Arizona*, 433 U. S. 350 (1977), required a re-examination of long held perceptions as to "advertising" by lawyers. This appeal presents the question whether certain aspects of the revised ethical rules of the Supreme Court of Missouri regulating lawyer advertising conform to the requirements of *Bates*.

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— pgs 6, 10 ✓

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circular: _____

Redistributed: JAN 21 1982

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1431

IN THE MATTER OF R___ M. J___, APPELLANT

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

[January —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

The Court's decision in *Bates v. State Bar of Arizona*, 433 U. S. 350 (1977), required a re-examination of long held perceptions as to "advertising" by lawyers. This appeal presents the question whether certain aspects of the revised ethical rules of the Supreme Court of Missouri regulating lawyer advertising conform to the requirements of *Bates*.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

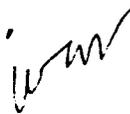
January 13, 1982

Re: No. 80-1431 In the Matter of R M.J.

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 4, 1982

Re: 80-1431 - In The Matter of R--M.J

Dear Lewis:

Your footnote 19 on page 13 troubles me. Although you say that we do not consider whether listing an area of practice in which a young lawyer has had no actual experience is misleading, the very fact that you put the footnote in the opinion implies that you think it may well be. It seems to me that the opinion would not be harmed by simply omitting that footnote. If you could do so, I would be happy to join your opinion.

Respectfully,



Justice Powell

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 7, 1982

Re: 80-1431 - In the Matter of R-M-J

Dear Lewis:

Please join me.

Respectfully,



Justice Powell

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

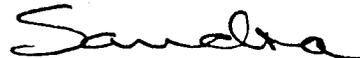
January 4, 1982

No. 80-1431 In the Matter of R__ M. J__

Dear Lewis,

Please join me in your opinion in the referenced case. You appear to have pointed the way toward appropriate limitations on commercial advertising by members of professions.

Sincerely,



Justice Powell

Copies to the Conference