



Missouri Broadcasters Association

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August 19, 2008

The Missouri Bar
Attn: Special Committee on Lawyer Advertising
326 Monroe Street
Jefferson City, Missouri 65102

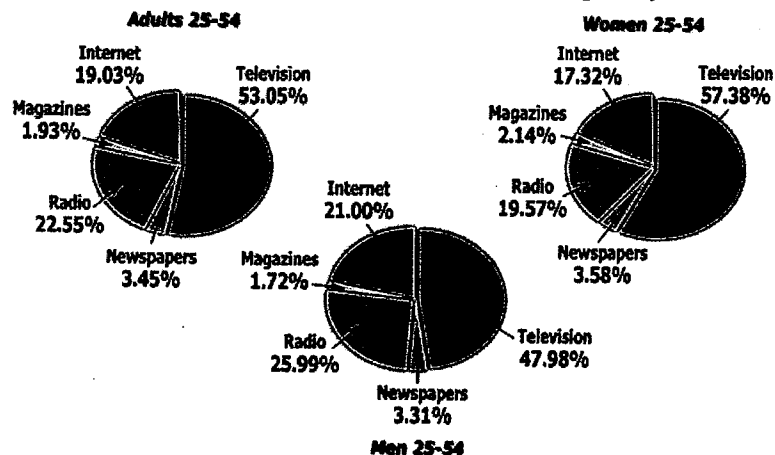
The Missouri Broadcasters Association submits these comments concerning the proposed changes to the Rules of Professional Conduct relating to lawyer advertising which were published in ESQ on August 8, 2008. The Missouri Broadcasters Association is a trade association which represents radio and television broadcasters in Missouri.

The Missouri Broadcasters Association strongly opposes the proposed new restrictions on legal advertising. We believe the proponents of these restrictions do not understand the importance of the broadcast media as the primary source for the public's news and information. The proposal at hand could significantly discourage and burden legal advertisements of great value to Missouri citizens.

Specifically, the imposition of lengthy and repetitive mandated legal disclaimers in broadcast advertisements would serve primarily to discourage advertising of legal services (because no advertiser wants to pay for costly broadcast messages that will be filled with legalistic material), and this in turn would result in many citizens being deprived of useful information about their legal needs, rights, and remedies.

Importance of Broadcast Media as Sources of News and Information

Television and radio are the primary means by which citizens in modern America obtain their news and information. In any given week, for example, 98% of adult citizens watch some television, and an only slightly smaller percentage listen to radio. The pie charts below, showing time spent with different media in the course of a day, highlight the importance of radio and television in contemporary life:



Television Bureau of Advertising, Inc., *2008 Media Comparison Study*. As this data show, the reach of other media, including newspapers, billboards and the Internet, is substantially weaker than that of broadcasting. In the course of an ordinary day, citizens on average spend 75% of their media time with broadcasting. Rules that burden and discourage legal advertising through the television and radio media will inevitably cut many Americans off from receiving important information.

Informative Value of Broadcast Legal Advertisements

Legal advertisements on television and radio serve a significant role in informing the public about legal rights and issues. Legal commercials on Missouri radio and television stations tell consumers about rights they did not know they had. They inform viewers and listeners about the legal process. They humanize the daunting prospect of seeing an attorney, providing approachable voices and faces of attorneys who are open to listening to and helping ordinary citizens.

Indeed, most attorneys who advertise on television and radio in Missouri market themselves by educating their audiences. We have attorneys in Missouri who sponsor driving safety commercials, who promote teenager awareness of drunk driving risks, who promote First Night events for high school seniors, and who advocate for legal knowledge and educate in legal rights in many different ways. Other lawyers have sponsored legal infomercials, help lines, legal “topics of the week,” and other informational commercials.

Broadcast radio and television, moreover, are local media—they directly connect Missouri lawyers with Missouri citizens who have legal needs in Missouri. Burdening or discouraging broadcast legal advertisements with repetitive legalistic disclaimers won’t benefit the citizens of Missouri; it will merely discourage such informative and educational commercials, and better connections between Missouri lawyers and Missouri citizens.

Need of Broadcast Audience for Legal Information

Television and radio are the ideal media for reaching ordinary citizens who may have—but who may not know much about—ordinary legal issues and needs. While affluent Americans may get personal attention from friends and associates who are lawyers, at country clubs, golf tournaments, and cocktail parties, ordinary citizens who are potential legal consumers need media advertisements to alert them to their legal rights and basic information about the legal process, including how to find lawyers who practice in the areas of their needs.

In one recent study, 30 percent of American adults said that they or someone in their household had looked for an attorney within the last two years. Another 11 percent said they had been in a situation in which they considered hiring an attorney, but did not because they didn’t know how to choose the right lawyer. (Ipsos survey commissioned by AVVO, Inc., 2007) These figures indicate a need to get *more* information about lawyers, not less, to members of general public who don’t have established relationships with lawyers.

Broadcasting makes legal information available to the citizens who are least likely to get information through one-on-one contact with attorneys. A large percentage of responses to television advertising comes from a generally blue collar audience, where the average educational background is a high school degree or less. Gregory Norton, Rainmaker Marketing, Inc., “Marketing Your Practice with Television.” That demographic group generally gets 90% of its current information from television, and hardly any from newspapers. *Id.* Thus, rules burdening and discouraging television advertising

will tend to deprive this group of essential information about legal services. If television legal ads are cut back, these viewers, who do not read or subscribe to the *Martindale-Hubbell* directory, the *National Law Journal*, or the *New York Times*, will not be getting the information they need.

Many Americans need basic legal help and information. Fifty-eight percent of Americans lack a basic will, according to a lawyers.com survey. “Many Americans Leave Loved Ones Vulnerable,” Lawyers.com News Release, 5/24/2004. An even greater number, 69%, have no living will or medical directive. Just 27% have created owners of attorney for healthcare and even fewer (26%) have powers of attorney for finances. Minorities are disproportionately represented among those with unmet estate planning needs. Similarly, due to the current housing and mortgage crisis, many home and mortgage customers could use legal advice, and many of these persons, particularly young adults buying their first homes, look to television and radio as their primary source of information.

The basic unmet legal needs of many ordinary Americans, and the demographics of the broadcast audience, certainly do not suggest any need to *discourage* providing television viewers and radio listeners (*i.e.*, ordinary Americans) with information about their legal rights and needs. Rather, they show the opposite—a compelling need for getting *more* legal information to ordinary Americans. (Neither the organized bar nor non-advertising lawyers are currently meeting that need.)

Effort to Restrict Legal Advertisements

The current proposal to restrict legal advertising in Missouri appears to be connected to several other recent plans, pushed by a small but determined group of non-advertising lawyers, to disadvantage lawyers who advertise and to effectively ban or severely burden use of the media and the mail to reach ordinary citizens who do not have connections with lawyers.

The first round of this effort resulted in a set of recommendations in August 2004, suggesting radical and extreme limits and burdens on lawyer advertising, most of which were clearly ill advised and/or unconstitutional. After extensive comments and work at several levels, a significantly limited proposal (though one that still burdened and limited legal advertising) was enacted by the Missouri Supreme Court in October 2005. This year, the same group of anti-advertising lawyers sought to impose a whole new set of restrictions on legal advertising—including restrictions that would effectively prohibit all 10, 15, 20 and 30 second television commercials—through the Missouri Legislature. That proposal, S. 1143, was also severely flawed and unconstitutional, and it was eventually withdrawn. The effort of this small faction of anti-advertising lawyers now continues through the current proposal.

To our knowledge, no consumers or consumer advocates have asked for these regulations. Missouri’s 347 radio and television stations broadcast scores of legal advertisements every week, and receive very few complaints from listeners and viewers.

Effect of Proposed Regulations

The proposal at hand, set forth in the link in the August 8, 2008 ESQ newsletter, would especially burden television commercials, by requiring that the ubiquitous mandated disclaimer/warning (that “the choice of a lawyer is an important matter that should not be based solely upon advertisements”) be set forth twice, both in writing and audibly, on television commercials. That is, the proposal does not allow television ads to display this disclaimer once (even though the disclaimer is already so ubiquitous that no one searching for a lawyer could miss it), but rather it requires the disclaimer to be made *twice*, both audibly and in text. And the proposal specifies that the disclaimer must be read in a way (slowly)

and visibly displayed in a way (larger type than most disclaimers) that will maximize the costs of the advertisement and the time taken up by the disclaimer, thereby minimizing the time and space for the lawyer's message, and increasing the effective message cost.

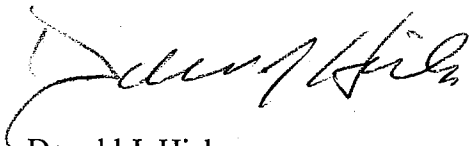
Notably, the warning/disclaimer at issue is already set forth repeatedly in the Yellow Pages and on practically every piece of lawyer advertising in Missouri except "tombstone" ads. And of course the disclaimer merely states a truism—even the bluest of blue-collar consumers already understands that neither legal services nor Veg-a-matics should be purchased solely based on advertisements (though, of course, the costs and risks of doing so for Veg-a-matics may induce one to ignore that rule, once). The real message conveyed by the disclaimer wording—a message magnified in the new proposal, which would give the disclaimer more prominence—is the implicit suggestion that any attorney who has to be required to give the disclaimer must be suspect, and unworthy. "Disclosure obligations may also discourage advertising if advertisers believe consumers will take the disclosure to reflect negatively on the advertiser, regardless of whether that imputation is justified." FTC Staff, Submission of the Staff of FTC to ABA Commission on Advertising, at 12 (June 24, 1994).

The intent of the current proposal with respect to broadcast advertising is clear, and improper: to make the disclaimer so prominent, so repetitive, and so costly (taking up costly broadcast time and space), as it conveys a subliminal message of disapproval of the advertising lawyer, that lawyers will be discouraged from conducting broadcast advertising.

Lawyers are not going to improve their profession's public image, or better connect to the public's unmet legal needs, by refusing to tell their story, to reveal their personalities, or to tell of their talents, services and successes, using the primary information media of the Twenty-first Century, radio and television. No less than Daniel Webster's speeches at New Hampshire town meetings and Abraham Lincoln's talks to Springfield, Illinois civic groups, use by lawyers today of our customary media, especially radio and television, is an appropriate means for reaching the community.

Consumers would not be helped by less legal advertising. Rather, a cutback in legal ads would only hurt the consumers who most need information about legal rights and the legal process. Only lawyers who feel competitive pressure from their colleagues who have been using broadcast advertising would be helped by this burdensome proposed regulation. We hope and trust that the organized bar will not put the interests of a small segment of its membership above the interests of Missouri citizens in receiving important information about their legal needs and rights.

Respectfully submitted,



Donald J. Hicks
President/CEO
Missouri Broadcasters Association