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November 26, 2008

Missouri Bar Association  
Board of Governors:

**RE: Special Ad Committee  
Proposed Rule Changes to 4-7.2**

**1. An Audible Disclosure is not Necessary**

- The current rule requires only a visual disclaimer. The new rule requires an additional verbal disclosure, “The choice of a lawyer is an important decision and should not be based solely upon advertisements.”
- Absolutely no statistical data has been offered by anyone that any written or oral disclosure is needed to protect the public and there is no evidence that the current written disclosure has failed to properly inform consumers of the importance of the decision in hiring a lawyer. Let’s ask ourselves this question: Does anyone really believe that the Missouri public is unaware that hiring a lawyer is an important decision? There is no need for any type of disclosure. The written disclosure we have now, which says nothing, should not be expanded. To additionally require a verbal disclosure amounts to unreasonable regulation and violates constitutional protections.

**2. We oppose the proposed rule changes to 4-7.2 and specifically the portion requiring an oral disclaimer**

- We do not believe any disclaimer is needed, particularly a disclaimer that tells the public that a choice of a lawyer is important. Such a disclaimer serves no reasonable purpose in assisting the public in retaining qualified legal representation.
- There is no public demand or outcry whatsoever and no one has produced any facts that lawyers who advertise on radio, t.v., newspapers, yellow pages or internet are doing anything to mislead the public into obtaining unwanted or unneeded legal services.
- Certain members of the Special Ad Committee have stated publicly that there are no studies or empirical facts whatsoever to support their personal recommendations for this disclaimer.
- OCDC reports very few complaints on lawyer advertising and there does not seem to be any outcry from them in favor of this rule.
- The general assembly has no desire to regulate lawyer advertising and only got into it last spring because they were asked to do so by lawyers, and then rejected the idea when asked to do so by those same anti-advertising lawyers.

### **3. Unreasonable Regulation Violates Commercial Free Speech.**

- Current law permits commercial free speech that is not misleading or false but certain members of the Special Ad Committee want to eliminate and destroy t.v. advertising because of their own personal beliefs and agendas even though it is not supported by law or facts. It is unreasonable to allow these individuals to cause a great disruption without any statistical data or facts and when their recommendations are clearly contrary to existing law. For example, the verbal disclosure takes six to seven seconds which effectively destroys any t.v. ad of five seconds, 15 seconds, or 30 seconds and destroys all radio advertising. The only radio and t.v. ads that would be viable would be 60 second ads and then, 23% of those 60 second ads would be taken by the verbal disclosure requirement telling people that choosing a lawyer is important.
- We believe this is an unreasonable regulation violative of several current federal decisions and would not withstand any lawsuit concerning this issue. The current rules should be enforced. If certain members of the Special Ad Committee are unhappy with the

current law they should then work to change the law and not try to take people's rights through the subterfuge of these proposed rules.

**4. Any Rules on Lawyer Advertising Should Apply to all Forms of Advertising Including the Internet.**

- In the very near future there will be no distinction between the internet and broadcast television. Therefore, any proposed rules should be inclusive of all forms of lawyer advertising including print, yellow page, radio, t.v. and the internet. It is unfair to require a very constrictive rule for t.v. ads and not apply the same requirement to the internet. We believe the committee should restudy this area. Why do we want to warn the public that watches t.v. and not warn the millions of users of the internet about the alleged evils of lawyer advertising.
- In summary, we vigorously oppose the proposed rule change and, specifically 4-7.2(g)...requiring the addition of the verbal disclosure. Let us enforce the current rules. If someone violates those rules then there should be a complaint filed and an investigation concluded.
- We thank all of the members of the Board of Governors for their hard work and ask that they base their decisions on statistical and objective facts and follow the law as we, as lawyers, have sworn to do.

Thank you very much.

Sincerely;

RON NETEMEYER

MILT HARPER