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August 29, 2008

Via U.S. Mail and fax to (573) 635-2811
The Missouri Bar
ATTN: Special Committee on Lawyer Advertising
326 Monroe St.
Jefferson City, MO 65102

RE: Comments to Proposed Rule Changes Governing Lawyer Advertising

Ladies and Gentlemen:

Please accept this letter as our comments regarding the recently proposed rule changes governing lawyer advertising. We anticipate comments will be submitted on a number of fronts so will restrict ours in the interest of brevity. However, we note we likely concur with a number of lawyers and others who already have or will be submitting their own comments on other issues not mentioned herein.

Of General Concern

With all due respect to the Committee, whose past work in regard to this issue we praised in comments submitted earlier this year to the Missouri Senate, when will we put the issue of lawyer advertising to bed and apply our energy to enforcement of the existing rules? When will we have given enough ear to the small, but apparently determined, special interest group within The Missouri Bar championing tradition over function and attempting to deprive the citizenry of its right to information and choice? Frankly, the published history of Rule 4-7.2 says it all very concisely:

Adopted August 7, 1985, effective January 1, 1986.
Amended June 21, 1994, effective January 1, 1995.
Amended December 1, 1994, effective July 1, 1995.
Amended August 1, 1995, effective January 1, 1996.
Amended November 25, 2003, effective January 1, 2004.
Amended September 19, 2005, effective January 1, 2006.
Revised July 1, 2007.

The proposed "Preamble," though eloquently drafted, simply does not disguise what has already occurred. There is history here that can no longer be denied. These proposed changes are **not** intended to benefit the general public. They are the latest

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Special Committee on Lawyer Advertising
August 29, 2008

2

effort to discourage the advertising members of The Missouri Bar from participating in constitutionally protected First Amendment activity and thus strip average citizens of information and the benefit of public service performed by members of The Missouri Bar, most notably those in private practice. We strongly encourage the Committee to put a stop to this activity and allow self regulation to occur as it should within the profession. No meaningful enforcement activity can realistically occur as long as the rules are a moving target. For example, how are today's publication decisions to be made when there are multiple books with differing copy deadlines that are significantly in advance of publication?

Of Specific Concern

Proposed Rule 4-7.1(n) should not be included in any changes to the lawyer advertising rules. While we concur that lawyer advertising must be tasteful and must attempt to promote the impression of our profession with the general public, the proposed rule would have a chilling effect upon lawyers who are seeking to curb genuine abuses occurring in the marketplace by educating the public. Professionalism should not be interpreted as "doormat" and silence within the marketplace regarding known abuses is already interpreted by members of the public as acquiescence by lawyers in such activities. Discouraging lawyers from speaking out will not improve our reputation as a profession. Indeed, the failure of lawyers to speak out tarnishes our reputation and fosters distrust of lawyers by the general public. Surely, the existing rules have enough "teeth" to regulate negative advertising that is both misleading and distasteful without discouraging lawyers further from speaking out in the marketplace.

Proposed Rule 4-7.2(c) is duplicative of the advertisement retention rule already present in existing Rule 4-7.2(b). By definition, advertisements in the public media such as television and radio are generally and publicly available to all as it stands. This proposed additional requirement is unduly burdensome, duplicative, and has no rational relationship to the regulation of the profession on its face as it states the Office of Chief Disciplinary Counsel has no obligation to do anything other than make advertisements available for public inspection, which inspection the public can already make upon the airwaves.

Proposed Rule 4-7.2(e) needs to clearly and unequivocally allow an exception for attorney public service and community education activities. Many members of the private sector with working relationships in the broadcast media donate time, expertise, and airtime for any number of public service and community education activities. Many of these activities have nothing to do with the practice area in which the lawyer normally works, but instead foster a positive image of attorneys within the community. For example, our firm sponsors live closed captioning for KY3 in our market area. The segments associated with this activity seek to educate the public regarding closed captioning services to the deaf. It is counterintuitive to expect these

Special Committee on Lawyer Advertising

August 29, 2008

3

segments should then be cluttered with disclaimers regarding attorney advertising. Community service by all members of The Missouri Bar, including private sector attorneys who advertise their services, must be encouraged if we truly intend to promote the image of lawyers with the general public.

Proposed Rule 4-7.2(g)(iii) is objectionable on two grounds. First, it creates a redundancy in regards to the disclaimer. In visual media such as television, visual appearance of the disclaimer should suffice. Second, the requirement suggested creatively limits advertisements to longer durations, when media spots may be purchased in various shorter lengths, sometimes as short as five (5) seconds. The disclaimer requirement of oral reading itself would take the entire time allotted in such an advertisement and effectively bans their use.

Proposed Rule 4-7.2(j) should be deleted. What perceived abuses among private sector lawyers are not equally threatening to the public perception of the profession if they should originate from a "Legal Services Corporation," "pro bono services provided by a not-for-profit organization, a court annexed program, a bar association or an accredited law school"? If, indeed, the proposed rule changes are necessary to regulate lawyer advertising activity, then regulate lawyer advertising activity. It is lawyers doing the decision making in the other organizations, we must regulate uniformly. If Rule 4-7.2(e) makes a clear exception for public service and community education activities, such an exception would apply across the board to both private and "non profit" activity on behalf of the general public. We further note that some so-called "non profit" organizations are simply "storefronts" for referrals into the private sector in exchange for support from the private sector. Advertising activity by such organizations must be regulated within the profession to prevent potential abuses.

Conclusion

Tasteful marketing activity, public service and community education improve the image of lawyers. These activities educate citizens regarding their rights, accessing the Court system, and promote competition. Competition improves service for clients, and provides representation options. The proposed rule changes enhance none of these benefits to consumers and we respectfully request they not be presented to the Board of Governors for approval and submission to the Missouri Supreme Court. We would be happy to discuss these or other issues regarding lawyer advertising with you at your convenience.

Special Committee on Lawyer Advertising
August 29, 2008

4

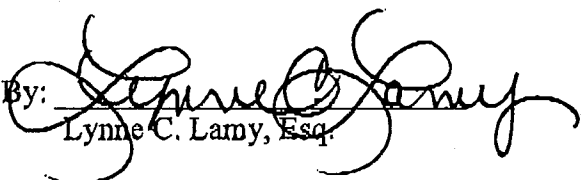
Sincerely,

AARON SACHS & ASSOCIATES, P.C.

By:


Aaron Sachs, Esq.

By:


Lynne C. Lamy, Esq.