

Office of Policy Planning
Bureau of Competition
Bureau of Consumer Protection
Bureau of Economics

January 24, 2013

Michael W. Catalano, Clerk
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

Re: Request for Public Comment, Docket No. M2012-01129SC-RL1-RL

Dear Mr. Catalano:

The staff of the Office of Policy Planning, Bureau of Competition, Bureau of Consumer Protection, and Bureau of Economics appreciate

While unfair or deceptive advertising by lawyers should be prohibited, restrictions on advertising should be specifically tailored to prevent deceptive claims and should not unnecessarily restrict the dissemination of truthful and non-misleading information. Imposing overly broad restrictions prevents the communication of truthful and non-misleading information that some consumers may value, which is likely to inhibit competition and frustrate informed consumer choice. Research indicates that overly broad restrictions also may adversely affect the prices consumers pay, as well as the scope and quality of services that they receive.¹⁰

Some of the proposed regulations, such as the prohibition on using actors/models (TAJ Petition, Rule 7.1(D)) generally recognizable spokespersons (Hardin Petition, Rule 7.7(b)(1)(B)) and certain background sources (Hardin Petition, Rule 7.7(b)(1)(C)) do not on their face target deception. Because these common advertising methods are not inherently deceptive, more narrowly tailored rules would better address the concerns underlying the proposed regulations. For example, requiring a clear and prominent disclosure that actors are portraying clients would be a less restrictive way to alleviate any concern about potential deception in the event the Court decides this is a concern worth addressing.

Likewise, it is not necessarily deceptive to use a spokesperson who purports to speak in the place of and on behalf of a lawyer or law firm. The risk of deception may increase, however, when that individual is a celebrity who is offering an endorsement. In those cases, requiring the celebrity to express

Given the potential burden on competition and consumers, FTC staff recommends that the Court forego the filing and pre-screening components of the Proposed Rules. Instead, the Court should continue to enforce the general prohibition against deceptive and misleading claims through sanctions for violations. If the Court nevertheless believes, based on credible evidence, that pre-screening is necessary to prevent harm to reasonable consumers, the Court should be mindful of the federal and state antitrust laws that would apply to the review committee as a whole and its members individually.¹⁴

Both the TAJ Petition and the Hardin Petition propose rules prohibiting advertising in the state of Tennessee by individual lawyers or lawyers for firms without a bona fide office in the state (TAJ Petition, Rule 7.2(1); Hardin Petition, Rule 7.0(c)).¹⁵ § 3 E R Q D I L G H R I I L F H ' L V G H I L Q H G D V 3 D S K \ V L F D O O R F D W L R Q < reasonably expects to furnish legal services in a substantial way on a regular and F R Q W L Q X L Q J E D V L V The Tennessee Rules of Professional Conduct do

Charles A Harwood, Acting Director
Bureau of Consumer Protection

Howard Shelanski, Director
Bureau of Economics

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