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April 13, 2000

## ABA ADOPTS WLF PROPOSED REFORMS OF ATTORNEY ADVERTISING

An American Bar Association (ABA) commission has proposed revisions to the ethics rules governing attorney advertising that mirror many of the reforms that the Washington Legal Foundation (WLF) has been advocating on a state-by-state basis for the past eight years. In its proposal, the ABA's Commission on Evaluation of the Rules of Professional Conduct agrees with WLF that strict controls are necessary in order to ensure that consumers are protected against misleading and fraudulent attorney advertising and solicitation.

The ABA proposed revisions were issued last month by the ABA's Commission on Evaluation of the Rules of Professional Conduct. WLF is filing comments on the proposed revisions this week, praising the Commission for its strong stand against misleading attorney advertising but urging the Commission to go farther in ensuring that consumers are protected from unscrupulous lawyers.

As part of its SCALES project ("Stop the Collapse of America's Legal Ethics"), a nationwide movement to eliminate abuse in America's civil justice system, WLF has filed petitions in all fifty states and the District of Columbia, seeking tighter controls on misleading attorney advertising. At least six states have adopted substantial portions of the reforms recommended by WLF. The ABA proposal is an important part of the reform effort because the ABA's Model Rules of Professional Conduct are often highly influential in states' decisions to amend their legal ethics rules.

A key provision of the ABA proposal is the prohibition of all client solicitation "by in-person, live telephone or real-time electronic contact." A prohibition of such direct solicitation has been the centerpiece of WLF's reform efforts. A number of jurisdictions -- most prominently, the District of Columbia -- do not ban direct client solicitation. WLF has argued (and the ABA Commission agreed) that direct solicitation poses too great a risk of attorney overreaching, undue influence, and intimidation; and that a ban still leaves lawyers with numerous other methods (such as direct mail, and television and newspaper ads) by which to advertise their services.

Another WLF proposal endorsed by the ABA Commission is a requirement that all written solicitations to prospective clients include the words "Advertising Materials" on

the outside of the envelope. WLF has long argued that letters sent by lawyers to prospective clients too often are phrased so that it appears that the lawyer is providing disinterested legal advice solely for the purpose of assisting the recipient in asserting legal rights -- when, in fact, the primary purpose in writing is to snare an additional client. Requiring all advertising material to be labeled as such will go a long way in eliminating this problem.

Yet another WLF proposal endorsed by the ABA Commission is a relaxation of the current rules that discourage attorneys from comparing their fees and services to those of other attorneys. WLF has long argued that consumers benefit from receiving such comparison information, so long as it is not presented in a misleading way. The ABA Commission proposes allowing advertisement containing comparison information, unless the comparison cannot be substantiated *and* it is presented with such specificity that a reasonable consumer would conclude that the comparison claim *can* be substantiated.

The ABA Commission rejected one of WLF's reform proposals: that in personal injury/wrongful death cases, attorneys be prohibited from contacting the parties involved for a period of 30 days so as to ensure that any employment of an attorney arises from an exercise of reasonable judgment. WLF has argued that it is during periods immediately following an injury or death that prospective clients are least able to exercise reasonable judgment in employing a lawyer. WLF also argues that nothing demeans the legal profession more than scenes of ambulance-chasing lawyers descending on the scene within hours after a major accident. In its comments filed this week, WLF has asked the ABA Commission to reconsider its position on this issue.

"We are grateful that WLF's efforts to reform attorney advertising rules are continuing to bear fruit," said WLF Chief Counsel Richard Samp after filing WLF's comments with the ABA Commission. "The mantle of legal authority that society wraps around lawyers makes it difficult for the average consumer to evaluate solicitations they get from a lawyer. That is why government supervision is required, to ensure that lawyers do not take advantage of the situation," Samp said.

The Washington Legal Foundation is a public-interest law and policy foundation with members in all fifty states. It devotes a substantial portion of its resources to efforts to reform the legal system.

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