



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of Policy Planning
Bureau of Consumer Protection
Bureau of Economics

March 1, 2006

Committee on Attorney Advertising
Supreme Court of New Jersey
Attn: Committee Secretary, Professional Services
Richard J. Hughes Justice Complex
P.O. Box 037
Trenton, NJ 08625-0037

Re: Proposed Attorney Advertising Guideline 4

Dear Committee Secretary:

The staff of the Federal Trade Commission's ("FTC" or "Commission") Office of Policy Planning, Bureau of Consumer Protection, and Bureau of Economics¹ is pleased to submit these comments on Proposed Attorney Advertising Guideline 4 ("Proposed Guideline"),² which addresses the use by lawyers or law firms of endorsements or testimonials from clients. This letter briefly summarizes the Commission's interest and experience in the regulation of attorney advertising and provides the staff's opinion regarding the anticipated effects on consumers and competition of the Proposed Guideline. The FTC staff believes that, while 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.

The FTC enforces laws prohibiting unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.³ Pursuant to this statutory mandate, the Commission encourages competition in the licensed professions, including the legal profession, to the

¹ This letter expresses the views of the Federal Trade Commission's Office of Policy Planning, Bureau of Consumer Protection, and Bureau of Economics. The letter does not necessarily represent the views of the Federal Trade Commission or of any individual Commissioner. The Commission has, however, voted to authorize us to submit these comments.

² The Proposed Guideline is available at <http://www.judiciary.state.nj.us/notices/reports/ProposedCAAGuideline4.pdf>.

³ Federal Trade Commission Act, 15 U.S.C. § 45.

maximum extent compatible with other state and federal goals. In particular, the Commission seeks to identify and prevent, where possible, business practices and regulations that impede competition without offering countervailing benefits to consumers.⁴ The Commission and its staff have had a long-standing interest in the effects on consumers and competition arising from the regulation of lawyer advertising.⁵

Debate about attorney advertising involves important policy concerns, such as preventing statements that would mislead lay people and thereby undermine public trust in lawyers and the legal system. The FTC staff's view is that consumers are better off if concerns about potentially misleading advertising are addressed through the adoption of advertising restrictions that are narrowly tailored to prevent deceptive claims. By contrast, imposing overly broad restrictions that prevent the communication of truthful and non-misleading information is likely to inhibit competition and to frustrate informed consumer choice. In addition, research has indicated that overly broad restrictions on truthful advertising may adversely affect prices paid by consumers, especially for relatively routine legal services.⁶

The Proposed Guideline would prohibit truthful, non-misleading claims about the nature of legal services,⁷ the quality of legal services,⁸ and comparisons between providers of legal services,⁹ if such claims are made through a client endorsement or testimonial. Because these types of claims can convey valuable information to consumers and help spur competition, the staff recommends that they be prohibited only if the endorsement or testimonial itself deceives

⁴ Specific statutory authority for the FTC's advocacy program is found in Section 6 of the FTC Act, under which Congress authorized the FTC "[t]o gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce," and "[t]o make public from time to time such portions of the information obtained by it hereunder as are in the public interest." *Id.* § 46(a), (f).

⁵ *See, e.g.*, Letter from FTC Staff to Robert G. Esdale, Clerk of the Alabama Supreme Court (Sept. 30, 2002), available at <http://www.ftc.gov/be/v020023.pdf>. The staff, on November 9, 1987, filed comments with the Supreme Court of New Jersey on a previous proposal to regulate attorney advertising. In addition, the staff has provided its comments on such proposals to, among other entities, the Supreme Court of Mississippi (Jan. 14, 1994); the Supreme Court of New Mexico (July 29, 1991); the State Bar of Arizona (Apr. 17, 1990); the Ohio State Bar Association (Nov. 3, 1989); the Florida Bar Board of Governors (July 17, 1989); and the State Bar of Georgia (Mar. 31, 1987). *See also* Submission of the Staff of the Federal Trade Commission to the American Bar Association Commission on Advertising (June 24, 1994) (available as attachment to Sept. 30, 2002 Letter to Alabama Supreme Court *supra*).

⁶ *See, e.g., id.* at 5-6.

⁷ This would include basic information that would provide some context for the endorsement or testimonial, such as a client's general description of the nature of the legal services that the attorney or law firm provided.

⁸ The Proposed Guideline would prohibit, for example, claims that convey the importance that an attorney or firm places on aggressiveness or innovation in the delivery of legal services.

⁹ For example, comparative claims regarding aspects of the service provided by an attorney or firm, such as claims that one lawyer returns calls more promptly than another lawyer or is more professional than another lawyer, would be prohibited under the Proposed Guideline.

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consumers. For example, as explained in the FTC's Endorsement Guides,¹⁰ a consumer testimonial is likely to be deceptive if the experience described is not the consumer's actual experience or is not representative of what consumers generally experience.¹¹

In conclusion, the FTC staff believes that, while deceptive advertising by lawyers should be prohibited, restrictions on advertising that are specifically tailored to prevent deceptive claims provide the optimal level of protection for consumers. Consumers benefit from robust competition among attorneys and from important price and quality information that advertising can provide. Rules that unnecessarily restrict that competition or the dissemination of truthful and non-misleading information are likely to harm consumers of legal services in the state of New Jersey.

Respectfully submitted,

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Lydia B. Parnes, Director
Bureau of Consumer Protection

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Bureau of Economics

¹⁰ See generally Federal Trade Commission, Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. Part 255. The Commission's regulatory review of its Endorsement Guides is pending.

¹¹ We would note that the lawyer (as the advertiser) should have a reasonable basis (apart from the endorsement) to support the claim that the experience depicted in a client endorsement is representative.