IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR RE: PETITION TO AMEND RULES REGULATING THE FLORIDA BAR – SUBCHAPTER 4-7, LAWYER ADVERTISING RULES
_____ /

CASE NO. SC 11-1327

COMMENTS OF 1-800-411-PAIN REFERRAL SERVICE, LLC IN RESPONSE TO THE FLORIDA BAR'S AMENDMENTS TO THE PENDING ADVERTISING RULE PROPOSALS

COMES NOW 1-800-411-PAIN Referral Service, LLC (the "Service"), represented by Florida Bar member Timothy P. Chinaris, who has previously appeared in this case, and the law firm of Broad and Cassel, and files the following comments regarding The Florida Bar's newly proposed amendments to the advertising rules that have been pending before this Court since July 5, 2011.

These comments are filed in response to The Florida Bar's Motion to Amend Pending Proposed Amendments, which was granted by this Court on February 14, 2012.

On February 21, 2012, the Service filed with the Court its Motion for Leave to File Comments in Response to Amendments to Pending Advertising Rule Proposals. Although the Court has not ruled on the Service's motion, the Service is filing these comments as a contingency in view of the thirty-day comment period that ordinarily applies in Bar rules cases, *see* rule 1-12.1(g), R. Regulating Fla. Bar,

and because the Service's motion would not toll the running of such time period, *see* rule 9.300(d)(10), Fla.R.App.P. No party has objected to the Service's motion for leave to file comments, and the Bar has orally represented that it has no objection to the motion.

INTRODUCTION

The newly proposed amendments added to this case by this Court's order of February 14, 2012, revise two of the Bar's proposed lawyer advertising rules: rule 4-7.3, Deceptive and Inherently Misleading Advertisements; and rule 4-7.5, Unduly Manipulative or Intrusive Advertisements. If adopted, these proposed rules would prohibit advertisers from using an actor portraying "an authority figure such as a judge or law enforcement officer" in an advertisement to endorse or recommend a lawyer.

The Service operates as a lawyer referral service pursuant to rule 4-7.10, R. Regulating Fla. Bar. It regularly runs advertisements, which comply with the existing Rules Regulating The Florida Bar as required by rule 4-7.10(a)(1). Some of the Service's Bar-approved advertisements, however, contain features that would be prohibited if this Court approves the Bar's proposed amendments. Specifically, the Service has run Bar-approved advertisements containing actors costumed as police officers. These ads include disclaimers identifying the actors as actors. The typical disclaimer in the Service's television ads states: "Paid

Actor. Not a Testimonial." *See* copy of a screen shot from one television advertisement at Appendix "A"; copies of DVDs containing two (2) Bar-approved television ads (filed with the Court on DVD as part of this filing).

BACKGROUND

The Service was founded by a chiropractic professional who established and advertised a medical referral service as a way for injured persons to conveniently obtain chiropractic or other medical services. Experience showed that many injured persons are concerned about legal issues and ask for a recommendation for a lawyer who can advise on or help with those matters. The Service informally recommended lawyers in response to these requests. As is usually the case with recommendations, the Service recommended lawyers with whom the Service was familiar. The Florida Bar subsequently notified the Service that it was considered a "lawyer referral service" under rule 4-7.10. The Service registered with the Bar as a lawyer referral service and brought its ads into compliance with the lawyer advertising rules.

The Bar has permitted and regulated lawyer referral services under rule 4-7.10 and predecessor rules since at least 1986. *See The Florida Bar re Rules Regulating The Florida Bar*, 494 So. 2d 977, 1075 (Fla. 1986), opinion corrected by *The Florida Bar re Rules Regulating The Florida Bar*, 507 So. 2d 1366 (Fla.

1987). Private referral services have operated in Florida largely without incident, but recently began to attract attention from competing law firms.

The Florida Bar has approved advertisements containing actors dressed in various occupational garb, including that of police officers, since at least 2005. The history of the Bar's approval of these ads is detailed in the undersigned's letter of January 4, 2012, to the Bar's Board of Governors. *See* Attachment 1 to the Bar's Motion to Amend The Pending Proposed Amendments to the advertising rules, and copy appended to these Comments as Appendix "B".

The Bar's proposed new amendments would completely reverse its 2005-2011 practice of approving properly-disclaimed advertisements containing actors playing police officers. In its original rules proposals filed with this Court in July 2011, *the Bar even asked the Court to codify approval of this position in the rules*. *See* rule 4-7.3(b)(6) as originally proposed by the Bar.[1] The Bar's about-face

[1] As originally proposed, rule 4-7.3(b)(6) stated:

> A lawyer may not engage in deceptive or inherently misleading advertising. . . . (b) Examples of Deceptive and Inherently Misleading Advertisements. Deceptive or inherently misleading advertisements include, but are not limited to advertisements that contain: . . . (6) a dramatization of an actual or fictitious event unless the dramatization contains the following prominently displayed notice: 'DRAMATIZATION. NOT AN ACTUAL EVENT.' When an advertisement includes an actor acting as a spokesperson for the lawyer or law firm purporting to be engaged in a particular profession or occupation, the advertisement must include the following prominently displayed notice: 'ACTOR. NOT ACTUAL […..DOCTOR, LAWYER, POLICE OFFICER, ETC……]'[.]

occurred despite the fact that nothing has changed since July 2011 that would warrant this action. Everything known to the Bar today was known in July 2011 and before.[2]

RESPONSE TO THE BAR'S PURPORTED JUSTIFICATIONS FOR THE AMENDMENTS

The Bar's Motion to Amend offered no evidence that properly-disclaimed advertisements using actors portraying police officers or other "authority figures" are likely to cause harm to viewers. The Bar's motion, p. 2, states that the Bar "believes" the state has a substantial interest in prohibiting such advertisements for three reasons. A regulating agency's bare "belief" is not a basis to prohibit commercial speech; rather, the agency must support its belief with facts. Under the framework in *State v. Bradford*, 787 So. 2d 811 (Fla. 2001), this Court does not supplant precise interests put forward by the State with other suppositions, *id*. at 820, nor allow the State to base its regulation on speculation without showing that the recited harm is real and that the restriction on commercial speech will in fact alleviate it in a material way, *id*. at 821.

[2] The Bar's abrupt, unexplained reversal of position also demonstrates why this Court should reject the Bar's proposed rule 4-7.9(f). If approved, this rule would give the Bar "a right to change its finding of compliance" after such a finding has been made and communicated to the filing lawyer, even if there has been no misrepresentation by the filer and even if the underlying rules have not changed. This Court should reject proposed rule 4-7.9(f) for the reasons previously filed by Timothy P. Chinaris in his individual capacity.

The Bar has shown no basis to believe that its 2005-2011 practice of permitting actors to dress as police officers in ads harmed the public. Nor has the Bar shown that the proposed changes are needed to alleviate public harm in a direct and material way.

The Bar's Motion to Amend offers three reasons why the Bar believes new amendments are needed. These statements, however, are mere conclusions without supporting facts. The Bar's purported reasons are reproduced in italics and discussed below with responsive comments.

(1) The advertisement is misleading because it suggests law enforcement officers endorse particular lawyers while engaged in official functions.

There is no factual support for this conclusion. The Service's ads contain clear disclaimers informing the viewer that the costumed spokespersons are paid actors rather than real police officers. Furthermore, in some of the Service's ads the actors dressed as police officers do not purport to engage in "official functions." In one of the Bar-approved ads, "Café" (*see* copy on DVD filed with the Court), the actors dressed as officers are eating lunch – hardly an "official function."[3] The Bar presents no evidence that viewers have been misled, and thus no evidence to support a new prohibition on such ads.

[3] Notably, the Bar has not contended, nor can it contend, that there is a legal prohibition against ads using actors dressed in police uniforms with proper disclaimers. For example, Fla. Stat. § 112.313(6), which prohibits the misuse of a

(*2) The advertisements are unduly manipulative, because studies indicate that people are more likely to follow instructions from persons clothed with the indicia of authority without questioning the motives of such persons.*

This also is an unsupported assumption. The Bar did not cite, much less include in its motion, any "studies" to support its belief. Reference to unidentified studies is not factual support. Without seeing these "studies," it is impossible to know their content or methodology, or whether the studied ads contained disclaimers indicating that the characters were actors.

The Bar believes that viewers may follow "instructions" in an advertisement just because the speaker is dressed as a police officer, even though the disclaimer states that he is an actor and *not* a police officer. Again, there is no support for this belief. There is no reason to assume that viewers do not see or understand the disclaimer.

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public position by a public official, is inapplicable. The actors in the Service's ads are not police officers, so by its terms this law does not apply. Furthermore, for a violation of § 112.313(6) to occur, it must be proved that a public official (1) used or attempted to use his official position (2) to secure a special privilege, benefit or exemption for himself or another, and (3) acted "corruptly" in doing so. *Siplin v. Comm'n on Ethics*, 59 So. 3d 150, 151 (Fla. 5th DCA 2011). None of these elements is present in the Service's advertising. Similarly, § 843.08, prohibiting persons from falsely impersonating law enforcement officers, is inapplicable. No "impersonation" occurs when an *actor* is clearly identified as such. Furthermore, the law is violated only when a person "falsely assumes or pretends" to be a law enforcement officer "*and* takes it upon himself or herself to act as such, or to require any other person to aid or assist him or her in a matter pertaining to the duty of such officer." (Emphasis supplied.) Again, none of this is present in the Service's ads.

Moreover, this objection fails to consider the actual content and context of a particular advertisement. As shown in the Service's advertisements filed with the Court in this case, the actors portraying police officers in the Bar-approved advertisements are not giving "instructions" to the viewer, or acting in any threatening or authoritative way. On the contrary, the ads impliedly recognize that the viewer has free choice in whether to hire a lawyer. The Bar's Motion to Amend and attached materials do not show that it considered such approved advertisements with no objectionable "instructions."

(3) The advertisements create a risk of causing the public to lose confidence in our system of justice by suggesting that lawyers and law enforcement officers are influenced by the identity of the lawyer representing a client.

This statement of belief suffers from the same defects discussed above. It is not based on evidence that the advertisements lead reasonable viewers to believe that a lawyer improperly influences other lawyers or police officers. Rule 4-7.2(c)(1)(H) already prohibits advertising that states or implies the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law. The Bar does not suggest that the Service's ads using a properly-disclaimed image of a police officer violate this rule, or that this existing rule is inadequate.

The Bar's reasoning is troubling for another reason. It suggests, contrary to common experience, that a lawyer's identity should have no influence at all on the

decision to hire a lawyer. In reality, the lawyer's identity or reputation is a factor that affects how other lawyers, public officials, and the general public perceive the merits of the represented client's position and the prospects for success. The lawyer's identity clearly is a factor in how disputes get resolved. The Bar allows lawyers to advertise their AV ratings, board certifications, or selection as "Superlawyers" in order to let everyone know that they are considered particularly experienced and trustworthy. If the Bar's reason is taken at face value, then none of this advertising should be allowed either, for fear that a viewer might think that the lawyer's identity matters. There is no valid purpose for the Bar to prohibit messages reflecting that the identity of the lawyer selected is important, as somehow necessary to avoid loss of public confidence in the justice system.

THIS COURT SHOULD REJECT PROPOSED RULES 4-7.3 AND 4-7.5 BECAUSE THERE IS NO EVIDENCE THAT AN ADVERTISEMENT WITH AN ACTOR PORTRAYING A POLICE OFFICER, WITH A PROPER DISCLAIMER, IS LIKELY TO MISLEAD THE PUBLIC

Commercial speech is protected by the First and Fourteenth Amendments and Fla. Const. Art. I § 4. The state may regulate speech that relates to unlawful activities or is likely to deceive the public. If speech does not relate to unlawful activities and is not likely to deceive, then the state must justify its regulation under a three part test by showing that (1) it has a substantial interest to support the restriction, (2) the restriction directly and materially advances such interest, and (3) the restriction is narrowly tailored to that purpose. *Central Hudson Gas & Elec.*

Corp. v. Public Service Comm'n, 447 U.S. 557, 563-64 (1980); *Bradford*, 787 So. 2d at 820.

The Bar does not appear to contend that the advertisements in question relate to unlawful activities, but states a belief that the advertisements may deceive the public. The Bar has the burden to support its belief with facts to show how a disclaimer is inadequate to prevent deception. In *Amendments to Rules Regulating the Fla. Bar-Advertising Rules*, 762 So. 2d 392, 400 (Fla. 1999), this Court concluded that, when an actor appearing in an advertisement might be mistaken for the lawyer whose services are advertised, a disclosure cures any misleading effect:

> We find these comments to be persuasive . . . . Therefore, we . . . modify [proposed rule 4-7.5(b)] . . . to allow a spokesperson with an appropriate spoken disclosure to speak or appear in a lawyer referral service television or radio advertisement on behalf of the participating attorneys. *See Bates*, 433 U.S. at 384 ('We do not foreclose the possibility that some limited supplementation, by way of warning or disclaimer or the like, might be required of [attorney advertising] . . . so as to assure that the consumer is not misled.').

The Bar offers no evidence that a similar disclosure for an actor portraying a police officer would not prevent possible viewer confusion. When the Bar repeatedly reviewed and approved these ads over the past six years, it had every opportunity to assemble evidence to show harm to consumers, *if* such harm existed.

Courts frequently hold restrictions on speech are unconstitutional when the state does not produce supporting evidence to justify the restriction. *See Bradford; Edenfield v. Fane*, 507 U.S. 761, 770 (1993) (Florida did not carry its burden to

justify regulating speech when it presented no studies or anecdotal evidence, and relied on affidavit that was just a series of conclusions); *Mason v. Florida Bar,* 208 F.3d 952, 957 (11th Cir. 2000) (Bar produced no evidence that lawyer's truthful self-laudatory ad harmed the public so as to justify prohibition).

In deciding what is deceptive or not, the Court may consider the Federal Trade Commission's Policy Statement on Deception, copy appended to *Cliffdale Assocs., Inc*., 103 F.T.C. 110, 174 (1983). *See* Appendix "C". Florida follows FTC policy in the Florida Unfair and Deceptive Trade Practices Act (Ch. 501, Part II, Fla. Stat.). *See* Federbush, "Obtaining Relief for Deceptive Practices under FDUTPA" 75 Fla. Bar J. 22 (Nov. 2001). While the FDUTPA concerns "trade or commerce" and does not purport to regulate the Bar or other learned professions, the FTC's general guidance may be helpful in analyzing what is deceptive.

The FTC's standard can be summarized from its Statement as follows: "[T]here is a representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, and that is material in affecting the consumer's conduct to his/her detriment." Parsing this standard, one who asserts that the advertisement is deceptive must show that:

(1) it is "likely" (meaning probable, not just possible)

(2) to "mislead" (meaning to misinform by false impression, considering the whole advertisement or transaction, including the disclaimer)

(3) the "consumer acting reasonably in the circumstances" (meaning not the most gullible consumer); *see Rosenberg v. Dep't of Prof'l Regulation*, 488 So. 2d 153, 154 (Fla. 3d DCA 1986) (ad protected by First Amendment because "ordinary people would not be misled" by it)

(4) to "the consumer's detriment" (meaning deception must be material; and considering only detriment to the consumer, not competitors or adverse parties).

The FTC Policy Statement explains, at Point II, states that:

> The entire advertisement, transaction or course of dealing will be considered . . . .
> Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading. (Footnotes omitted.)

The FTC Policy Statement continues, at Point III:

> An advertiser cannot be charged with liability with respect to every conceivable misconception, however outlandish, to which his representations might be subject among the foolish or feeble-minded . . . . A representation does not become 'false and deceptive' merely because it will be unreasonably misunderstood by an insignificant and unrepresentative segment of the class of persons to whom the representation is addressed. [Citation omitted.]

The Service's Bar-approved advertisements are not deceptive under this standard. The advertisements inform consumers of a telephone number that they can call in order to have an opportunity to talk to a lawyer who practices in the area of personal injury law. The core message of the ads is truthful and not misleading: that persons who want to talk to a lawyer about a personal injury claim can reach

such a lawyer through this phone number. The consumer is not under pressure and can freely elect whether to make a call or not, and if one initiates a call, he or she is free to hire or not to hire any lawyer. The Bar has made no showing that reasonable consumers are likely to be deceived as to a material matter, or have suffered detriment because they saw or responded to this ad.

The disclaimer that the actor is not an actual law enforcement officer avoids deception of a reasonable consumer. *See Amendments to Rules Regulating the Fla. Bar-Advertising Rules*, 762 So. 2d at 400; and *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 651 (1985), which held:

> [I]n virtually all of our commercial speech decisions to date, we have emphasized that because disclosure requirements trench much more narrowly on an advertiser's interests than do flat prohibitions on speech, '[warnings] or [disclaimers] might be appropriately required … in order to dissipate the possibility of consumer confusion or deception' [citing cases].

The Bar's argument confuses advertising that is "misleading" with advertising that contains an attention-getting feature. This distinction, however, clearly is recognized in case law. *See Alexander v. Cahill*, 598 F.3d 79, 92-94 (2d Cir. 2010), cert. den., 131 S. Ct. 820 (2010), in which the court considered whether New York could regulate attorney advertising containing attention getting features. The court rejected the state's argument that portrayal of a judge in the lawyer's advertising was inherently misleading and must be prohibited, and also rejected the state's argument that any attention-getting features were inherently misleading.

Accord, Public Citizen, Inc. v. La. Atty. Disciplinary Bd., 632 F.3d 212, 219 (5th Cir. 2011) (following *Alexander* to allow actors portraying a judge in Louisiana lawyer advertising).[4]

Alexander relied on *Zauderer* in discussing the use of attention-getting techniques:

> A rule barring irrelevant advertising components certainly advances an interest in keeping attorney advertising factual and relevant. But this interest is quite different from an interest in preventing misleading advertising. Like Defendants' claim that the First Amendment does not protect irrelevant and unverifiable components in advertising, Defendants here appear to conflate *irrelevant* components of advertising with *misleading* advertising. These are not one and the same. Questions of taste or effectiveness in advertising are generally matters of subjective judgment.
>
> Defendants have introduced no evidence that the sorts of irrelevant advertising components proscribed by [the challenged rule] are, in fact, misleading and so subject to proscription . . . .
>
> Moreover, the sorts of gimmicks that this rule appears designed to reach – such as Alexander & Catalano's wisps of smoke, blue electrical currents, and special effects – do not actually seem likely to mislead. It is true that Alexander and his partner are not giants towering above local buildings; they cannot run to a client's house so quickly that they appear as blurs; and they do not actually provide legal assistance to space aliens. But given the prevalence of these and other kinds of special effects in advertising and entertainment, we cannot seriously believe – purely as a matter of 'common sense' – that ordinary individuals are likely to be misled into thinking that

[4] Although *Alexander* and *Public Citizen* concluded that a state could not ban as inherently misleading an advertisement portraying a judge, the Service emphasizes that it takes no position on the merits of the Bar's proposal to ban the portrayal of judges in Florida lawyer advertisements. The Service would merely note that, unlike every other "authority figure," *judges are unique in that they are the decision-makers* in cases brought before the courts.

> these advertisements depict true characteristics. Indeed, some of these gimmicks, while seemingly irrelevant, may actually serve 'important communicative functions: [they] attract[ ] the attention of the audience to the advertiser's message, and [they] may also serve to impart information directly.' *Zauderer*, 471 U.S. at 647. Plaintiffs assert that they use attention-getting techniques to 'communicate ideas in an easy-to-understand form, to attract viewer interest, to give emphasis, and to make information more memorable.' (Appellees' Br. 36). Defendants provide no evidence to the contrary; nor do they provide evidence that consumers have, in fact, been misled by these or similar advertisements. Absent such, or similar, evidence, Defendants cannot meet their burden for sustaining [the challenged rule]'s prohibition under *Central Hudson*.

The Bar's materials do not address, or even indicate that the Bar considered, this significant distinction between "misleading" features and "attention-getting" features. The Bar should at least investigate this distinction before forming a "belief" that the portrayal of police officers in advertisements, with appropriate disclaimers, is inherently deceptive.

The purpose of advertising is to attract attention to the sponsor's message. Seeking attention from the intended audience of injured persons is a legitimate purpose. If such advertising could not get the intended audience's attention, then insurance adjustors who clamor for the injured person's attention would have the field to themselves. Some images may attract more viewer attention than others. Viewers may be more likely to watch ads featuring physically attractive persons, but such ads are not prohibited as deceptive or unduly manipulative. Under the Bar's apparent standard, advertisements that succeed in their purpose to attract attention can be deemed "unduly manipulative." This apparently is a different

standard from "deceptive" and can be used to prohibit ads that are not deceptive.

The use of the "manipulative" standard to regulate lawyer advertisements, however, was struck down as unconstitutionally vague in *Harrell v Florida Bar*, No. 3:08-cv-15-J-34TEM (M.D. Fla. Sept. 30, 2011), [5] slip op. at 20-22, Final Judgment and Permanent Injunction dated Oct. 4, 2011, on remand from the Eleventh Circuit, *Harrell v. Florida Bar*, 608 F.3d 1241 (11th Cir. 2010). The Bar's proposed "unduly manipulative" standard does not provide fair notice of what is permissible and should fare no better than the unconstitutionally vague "manipulative" standard.

Because an advertisement using actors playing police officers is not inherently misleading, the Bar must show that there is a substantial state interest at stake, that the prohibition directly and materially furthers that interest, and that the prohibition is narrowly tailored. *Central Hudson*; *Bradford*. For the reasons discussed above, the Bar's Motion to Amend and supporting materials offer no evidence to satisfy this required three-part test.

There are other interests (not consumers) who dislike these advertisements. Competing law firms that also advertise for personal injury actions believe that

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[5] Available at <http://www.citizen.org/documents/Harrell_v_Florida_Bar_District_Court_Order.pdf>, last visited March 3, 2012. *See also* Final Judgment and Permanent Injunction dated Oct. 4, 2011, copy at Appendix "D".

these advertisements diminish their business. It is not a substantial state interest for the Bar's regulation to assist some firms' competitive advantage over others, where the challenged ads are not deceptive to consumers.

THIS COURT SHOULD REJECT PROPOSED RULES 4-7.3 AND 4-7.5 BECAUSE THE TERM "AUTHORITY FIGURE" IS VAGUE AND FAILS TO GIVE FAIR NOTICE OF PROHIBITED SPEECH

Proposed rules 4-7.3 and 4-7.5 would prohibit advertisers from using an actor portraying "an authority figure such as a judge or law enforcement officer" in an advertisement to endorse or recommend a lawyer. While the proposed rules give two examples of "authority figures" (i.e., judges and police officers), the Bar does not define "authority figure" in the proposed rules or comments.

"The traditional test for whether a statute or regulation is void on its face is if it is so vague that 'persons of common intelligence must necessarily guess at its meaning and differ as it its application.'" *DA Mortg., Inc. v. City of Miami Beach*, 486 F.3d 1254, 1271 (11th Cir. 2007) (quoting *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926)). See also *Mason*, 208 F.3d at 958 ("Vagueness arises when a statute is so unclear as to what conduct is applicable that persons of common intelligence must necessarily guess at its meaning and differ as to its application."). The proposed prohibition on the use of actors costumed as "authority figures" acting as spokespersons in lawyer ads – even with a clear disclaimer – is a classic example of a regulation that is unconstitutionally vague.

With no definition of "authority figure" in the proposed rules, an advertiser is left to guess at what the Bar will or will not permit. While judges or police officers may be considered examples of "authority figures," where is the line to be drawn? Doctors may be considered "authority figures" by some. So might certain military officers or government officials. But what about coaches? Sports officials? Clergy? A teacher certainly could be an "authority figure" to students. A mother is an "authority figure" to her child, as is an older person to a younger one. Ironically, *a lawyer* may be considered an "authority figure" by some people. Does that mean that an actor cannot portray a lawyer in a lawyer's advertisement? These examples demonstrate the complete lack of guidance contained within proposed rules 4-7.3 and 4-7.5.

The existence of the Bar's advisory opinion process cannot cure this fatal defect because the proposed rules give no guidance to the authors of Bar advisory opinions. See *Harrell v. Florida Bar*, No. 3:08-cv-15-J-34TEM (M.D. Fla. Sept. 30, 2011), slip op. at 21-22 (availability of advisory opinions does not ameliorate vagueness problem rules prohibiting "manipulative" ads because that standard lacks any "'core' meaning").[6] The "authority figure" standard is equally vague and should not be adopted by this Court.

[6] Additionally, by asking this Court to approve an "oops-we-changed-our-mind" rule, with no requirement of showing changed circumstances, the Bar undermines the reliability of its advisory opinions. *See* note 2, *supra*.

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, the Service respectfully requests that this Court decline to approve proposed rules 4-7.3 and 4-7.5.

Respectfully submitted this 12th day of March, 2012.

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CERTIFICATE OF TYPE SIZE AND STYLE

I HEREBY CERTIFY that this document is typed in 14 point Times New Roman Regular type.

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