



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 Economics<sup>1</sup> is pleased to submit these comments on Proposed Attorney Advertising Guideline 4 ("Proposed Guideline"),<sup>2</sup> 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.<sup>3</sup> Pursuant to this statutory mandate, the Commission encourages competition in the licensed professions, including the legal profession, to the

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<sup>1</sup> 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.

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

<sup>3</sup> Federal Trade Commission Act, 15 U.S.C. § 45.

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<sup>4</sup> 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 inform

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consumers. For example, as explained in the FTC's Endorsement Guides,<sup>10</sup> 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.<sup>11</sup>

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,

Maureen K. Ohlhausen, Director  
Office of Policy Planning

Lydia B. Parnes, Director  
Bureau of Consumer Protection

Michael A. Salinger, Director  
Bureau of Economics

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<sup>10</sup> 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.

<sup>11</sup> 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.