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IN THE SUPREME COURT OF THE STATE OF UTAH

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IN RE:	)	
	)	
UTAH STATE BAR	)	PETITION TO REVISE UTAH
	)	RULES OF PROFESSIONAL
PETITIONER	)	CONDUCT FOR LAWYER
	)	ADVERTISING RULES
	)	

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THE UTAH STATE BAR ("Bar") files this Petition to Revise the Utah Rules of Professional Conduct for Lawyer Advertising Rules ("Petition") to more thoroughly address problems with misleading and inaccurate lawyer advertising, both potential and existing, in order to better protect the public. The changes were initiated after a 2010-11 Dan Jones Bar Member Survey which indicated one of the most important things the Bar could do was to monitor misleading lawyer advertising.

The proposed changes are designed to help lawyers comply with the new rules as they are more specific than current requirements, which have been viewed as unenforceable, and less onerous than those adopted by a number of other states. They are a reasonable step in the right direction to head off significant problems that have developed in other jurisdictions as Utah's lawyer

population grows and competition for legal services continues to increase. The basic components of the proposed rules provide fuller definitions of what constitutes false and misleading legal service communications. They also tie compliance requirements to the Bar's annual licensing renewal form for attorneys' convenience. The rule sets out specific requirements for submissions to the Bar for review. There is no requirement for prior review of any advertising. Specifically, the new rules would require lawyers to annually submit any Universal Resource Locator ("URL") they use in advertising, and to submit such advertising as mass mailings.

A separate Appendix contains information relating to what other states are doing in this field for comparison purposes, as well as other materials that may be helpful in assessing the proposed rule revisions. A brief discussion of that information is also included in this Petition. Copies of Utah's current lawyer advertising rules are attached at **Exhibits "1" and "2."** Copies of the redlined rules are attached at **Exhibits "3" and "4,"** and a set of "clean" or final rules are attached at **Exhibits "5" and "6."**

## **BACKGROUND**

Misleading, inaccurate and offensive lawyer advertising has been of historical concern to Bar leaders. More immediately, the genesis for these revised rules arose in early 2010 when a discussion of lawyer advertising took place at the annual Western States Bar Conference attended by members of the

Board of Bar Commissioners (“Commission”) Executive Committee.<sup>1</sup> After several members of the Commission’s Executive Committee became aware of the difficulties false and misleading lawyer advertising had posed in Florida, Texas and Nevada, the subject was included in the agenda at the Commission’s annual retreat.<sup>2</sup> Following that meeting the Bar engaged Dan Jones to conduct a survey of its members. That survey indicated that 58% of lawyers, a strong majority of those responding, felt that monitoring advertising to ensure compliance with the ethics rules was “important” or “very important.”

Although Utah had not been experiencing the degree of problems those states have had, Commissioners noted that due to its nature and the fact that no requirements are in place so that advertising can be monitored, nearly all of lawyers’ direct advertising fly under the radar. Currently, as stated in the Rules of Lawyer Discipline and Disability, a notarized complaint is generally required for the Bar’s Office of Professional Conduct to investigate an alleged violation. The

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<sup>1</sup> The Western States Bar is an organization began in 1949 to facilitate communication among the various western states to share problems, solutions, successes and failures. The meeting is held once a year at a 4 day conference and the ABA helps provide support for the meetings. The conference encompasses 17 jurisdictions including the Alaska Bar, the State Bars of Arizona and California, the Colorado Bar Association, the Hawaii State Bar Association, the Idaho State Bar, the State Bars of Montana, Nevada and New Mexico, the State Bar Association of North Dakota, the Oregon State Bar, the State Bars of South Dakota and Texas, the Utah State Bar, the Washington State Bar Association, and the Northern Mariana Islands Bar Association. The meetings serve to inform other jurisdictions as to current issues, help establish contacts for resource sharing, and generally provide its members with an opportunity to brainstorm administrative and substantive challenges facing them. Information relating to the Western States Bar Conference is attached as **Exhibit “7.”**

<sup>2</sup> The Commission generally schedules a one and a half day retreat in late July after the new Bar President is sworn in at the Summer Convention. The purpose

Commission also discussed the fact that when advertising issues eventually erupt, it would take the Bar several years to “catch-up” and address the problem, as was the case with other jurisdictions. As a practical matter, the Commission preferred to take a more proactive approach rather than waiting and reacting. Several Commissioners looked into the issue and began reviewing other state rules. Those findings were eventually presented at several Commission meetings. The Commission then appointed a small group to study lawyer advertising on a more in-depth basis. Other jurisdictions’ rules were more carefully reviewed, and a few members made a site visit to the Nevada Bar to ascertain what mechanisms were put into place in order to help address the problems upfront.

Commissioners learned that Florida had the most egregious advertising problems and, therefore, the most extreme rules and processes to address those issues. (A copy of the Florida rules is provided in the Appendix.) Commissioners also paid special attention to Texas. (A copy of the Texas rules is attached in the Appendix.) They studied the legal challenges that were launched by lawyers in those states (and other jurisdictions like Ohio), where objections were lodged against advertising rule requirements (see, e.g., *Ohralik v. Ohio State Bar Association*, 436 U.S. 447, 464 (1978)). Notably, they learned that the seminal case in the 11<sup>th</sup> Circuit upheld a prior publication restraint based on the holding

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of the retreat is to assess the Commission’s interests, set priorities, and put together a tentative agenda for the upcoming year.

that the Florida Bar had a legitimate interest in protecting the public from false and misleading lawyer advertising.<sup>3</sup>

Eventually, a committee began drafting new lawyer advertising provisions, a process which took nearly 2 years, as the rules were continually revised after many discussions and much feedback. Commissioners and committee members met with the Court's Advisory Committee on the Rules of Professional Conduct, the Utah Judicial Council, this Court, and other groups. It became apparent that while some wanted to regulate "bad taste" in advertising, that objective proved impractical due to vagueness which, in turn, made requirements vulnerable to legal challenge. The Committee's goal became to take the reasonable, middle-of-the-road approach adopted by Nevada, rather than the more complex and demanding Florida model. (A copy of the Nevada rules is attached in the Appendix.)

After several years of meetings, discussions, research,<sup>4</sup> repeated revisions, and intermediate voting, the Commission conducted its last vote on December 7, 2012, to approve the final rule proposals. We believe that the final revised rules result in a successful attempt to balance the public's interests against accommodating lawyers' compliance burdens, and takes into consideration a lawyer's first amendment rights and free speech. The revised rules are commensurate with other states' efforts to implement reasonable restrictions on lawyer advertising.

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<sup>3</sup> A copy of *Harrell v. The Florida Bar*, 608 F.3d 1241 (11<sup>th</sup> Cir. 2010) is attached at **Exhibit "8."**

## PROPOSED RULES

There are four (4) revised Utah Rules of Professional Conduct that the Bar is submitting with this Petition: Rule 7.1 (Communications Concerning a Lawyer's Services); Rule 7.2 (Advertising); Rule 7.2A (Filing Requirements for Public Advertisements and Written, Recorded, Electronic, or Other Digital Solicitations); and Rule 7.2B (Advertising Review Committee; Pre-Dissemination Review). In order to adopt a thorough yet measured approach to lawyer advertising rules, Rule 7.1 has been slightly revised while Rule 7.2 has been significantly changed. Both Rule 7.2A and Rule 7.3A are new. The proposed rules are attached as exhibits in both redlined and "clean" versions as noted below.

### RULE 7.1 (Communications Concerning a Lawyer's Services).

A copy of redlined Rule 7.1 is attached at **Exhibit "3"** and a "clean" copy may be found at **Exhibit "5."**

The current definition of what constitutes false or misleading communication about a lawyer and the lawyer's legal services is as follows: "A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading." While the definition is accurate, it is somewhat incomplete in light of current advertising trends that continue to push the ethical constraints of false and misleading communication. The proposed changes add several other criteria to help the lawyer avoid ethical pitfalls while protecting the

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<sup>4</sup> See copy of a research memorandum dated May 19, 2011, attached at Exhibit "9," which discusses the parameters of misleading advertising in the context of

public's perception as to what constitutes realistic legal service.

*New section (b)* adds that false or misleading advertising likely creates an unjustified or unreasonable expectation about legal results, or implies that a lawyer can achieve desirable results by violating Rules of Professional Conduct.

*Section (c)* states that lawyer advertising may not compare the lawyer's services to other lawyers' unless the comparison can be factually substantiated.

*Section (d)* states that testimonials or endorsements by others that violate these provisions and are also false and misleading are prohibited. Thus, the lawyer cannot avoid this prohibition by having others violate the rule on his or her behalf.

#### Rule 7.2 (Advertising).

A copy of the redlined Rule 7.2 is attached as **Exhibit "4"** and a "clean" copy of the same rule is attached as **Exhibit "6."**

Current Rule 7.2 has been substantially revised to more extensively outline what constitutes ethical advertising. Section (i), which appears with an asterisk below, is the most significant. Mostly, however, the current provisions in the rule have been strengthened and moved to other sections in the rule. Current Rule 7.2 (a) reads, "subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media." This section has been expanded to provide more updated examples of what may constitute "public media." Moreover, the term

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the court cases, the Federal Trade Commission findings, and the ABA.

“advertising” has now been defined in new section (a) (1) as “any communication made to induce persons to use a lawyer’s services.” Heretofore, advertising has not been defined in the existing rule. The remainder of sections (b) through (b) (4), which address what a lawyer can ethically expend funds on, have been picked up in new section (j). Dividing fees as currently permitted in Rule 1.5(c) remains in effect, although it is not specifically referenced in the new rule. Finally, current section (c) in Rule 7.2 stating that “...communications made pursuant to this Rule shall include the name and office address of at least one lawyer of the firm responsible for its content,” has been picked up in new sections (c) and (g) (1).

**What is new in the revised 7.2 is substantial and is follows:**

*Section (a) (2)* adds that if a lawyer is admitted elsewhere and advertises that jurisdiction, Utah advertising rules do not apply.

*Section (b)* adds that persons giving the impression that they are a Utah lawyer in the advertisement must indeed be so. A similar requirement is in place for those portraying a lawyer’s employee. Otherwise, the ad must disclose that actors are being used in these portrayals.

*Section (d)* explicitly adds that if an advertisement or communication indicates the areas of law in which the lawyer or a firm practices, the communication must conform to existing Rule 7.4 (Communication of Fields of Practice).

*Section (e)* adds that when the charging of a fee is contingent on the outcome of the case, or when the fee will be a percentage of the recovery, that fact must clearly set forth the client’s responsibility for the payment of costs.

*Section (f)* adds that if a specific fee or a range of fees is communicated to the client, it shall include all relevant charges and disclose the duration that such fees are in effect.

*Section (g)* sets forth a number of advertising exceptions that do not violate Rule 7.1 including, but not limited to, the lawyer's foreign language ability, the lawyer's acceptance or non-acceptance of credit cards, and referencing other states in which the lawyer may be licensed.

*Section (h)* clearly allows a lawyer to be listed in "law lists" and directories primarily intended for the use of the legal profession.

***\*Section (i) contains the most significant new change.*** It requires a lawyer to submit to the Bar advertising communications as more fully outlined in new Rule 7.2A. It also requires the lawyer to retain a record of the communication for 3 years, along with a written history of when and where it was used. A more complete description of this new submission requirement appears below in the discussion of new Rule 7.2A.

Rule 7.2A (Filing Requirements for Public Advertisements and Written, Recorded, Electronics, or Other Digital Solicitations).

A copy of redlined Rule 7.2A is attached at **Exhibit "4"** and a "clean" copy is attached at **Exhibit "6."**

This rule is entirely new, and there is no counterpart in the ABA Model Rules of Professional Conduct.<sup>5</sup> The proposed rule brings Utah more current with

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<sup>5</sup> The last entry, designated as [7b] in the comment section following the rule, indicates that there is no corresponding provision in the ABA Model Rules.

many other jurisdictions and their advertising rules. As discussed above, it is designed to more thoroughly address problems with misleading and inaccurate lawyer advertising, both potential and existing, in order to better protect the public. The proposed changes are intended to help lawyers comply with the new rules, and they are less demanding than some of those requirements which other states have adopted. They are a reasonable step in the right direction to head off significant problems that have developed in other jurisdictions, as Utah's lawyer population and competition for legal services grow.

While each new section in Rule 7.2A will be discussed separately below, in summary, the rule creates a new requirement that lawyers annually submit on the Bar's licensing renewal form the URL of any websites the lawyer uses in practice. Of particular significance, it also creates a new Bar Advertising Review Committee ("Committee") to review, no later than the first dissemination, the lawyer's advertising. There is no fee to comply with this new requirement.

A lawyer also may request an Advance Advisory Opinion for pre-approval of the proposed advertising ("a Request for Pre-approval") no fewer than 30 days prior to the date of the advertisement's first dissemination. Such pre-approval is not required, but there is an accompanying fee to obtain a decision. The Committee's finding of the lawyer's noncompliance is not binding on the Office of Profession Conduct ("OPC"), but a finding of compliance is. In other words, OPC is prohibited, subject to some extenuating provisions, from prosecuting a lawyer for advertising that is in compliance with an Advance Advisory Opinion. No court is bound by the Advertising Review Committee's findings, and OPC may request

this Court to review, affirm, reverse or otherwise modify an Advance Advisory Opinion.

The remainder of Rule 7.2A (section (e) (1) through (e) (23)) contains a laundry list of exceptions of what the lawyer is required to submit to the Bar for vetting. Such things as advertising the lawyer's foreign language ability, listing technical and professional licenses, or providing dates of admission are not covered by the submission requirement. Finally, section (f) requires a lawyer to promptly submit information underlying the advertisement if requested to do so by the Advertising Review Committee. Specific content of each new section follows:

*Section (a)* contains the new general rule. It requires lawyers to file designated communications to the Bar's Advertising Review Committee no later than the first dissemination of the advertising. Thus, under this provision, there is no prior restraint imposed on lawyers' ability to advertise which should help avoid constitutional challenges.

*Section (a) (1)* adds the requirement that if the communication is being sent to prospective clients for the purpose of obtaining professional employment, a copy of the communication, together with a representative sample of the envelope (or other packaging), must be submitted to the Advertising Review Committee.

*Section (a) (2)* adds that the advertising must be accompanied by an advertising and solicitation communications application form which will be provided by the Bar.

*Section (b)* imposes the new requirement that any website URL the lawyer uses in advertising must be submitted annually on the Bar's annual licensing renewal form. This condition requires only annual submission because of the fast changing pace of internet advertising. To require submission every time a lawyer tweaks a website would be onerous and an impractical imposition on the lawyer as well as the Committee.

*Section (c)* adds more specific information relating to a Pre-Approval Request and Advance Advisory Opinions. Although not required, a lawyer who wishes to submit contemplated advertising for evaluation well *before* it is disseminated may do so via a Request for Pre-Approval. The request, along with materials outlined in section (a) (1), are submitted to the Advertising Review Committee no fewer than 30 days prior to the date of first dissemination. Most of the content in this section addresses the format of the required documentation. This section also, however, requires a fee to be included with the application form. This fee is to help offset the costs associated with the administrative tasks necessary to the evaluation process in order to issue a timely response within a short time frame. At this point, the fee has not been determined, but typically other states have set it rather low, for example \$150, to partially offset costs.

The fee would also be a mechanism to reduce the volume of requests so that it encourages lawyers to exercise good judgment about the proposed advertising before requesting an opinion. Otherwise, the Committee would be inundated with an overwhelming number of requests to vet borderline and questionable advertising materials which the lawyer should realize is problematic.

Nevertheless, this safe harbor is offered for those seeking one in close-call situations.

*Section (d)* discusses the binding and non-binding effect of Advance Advisory Opinions, as is appropriate with safe harbors. A finding of noncompliance in the pre-approval process is not binding in a disciplinary proceeding. A finding of compliance, however, is binding on OPC as long as the materials submitted for pre-approval are true and not misleading. Under this rule, OPC is prohibited from prosecuting a lawyer under these circumstances which fulfills the promise of a safe harbor. There are other provisions related to this rule as set forth in (d) (1) and (d) (2), indicated below:

*Section (d) (1)* adds that no court is bound by the Advertising Review Committee's interpretation of the Utah Rules of Professional Conduct. Moreover, the OPC at any time may request the Committee to review, modify or withdraw a decision of pre-approval. This helps insure that the Committee has access to other perspectives and more complete information related to the issue.

*Section (d) (2)* adds that OPC may request this Court to review, affirm, reverse, or otherwise modify pre-approval decision on an advertisement. Under this provision, the Committee's finding of compliance constitutes admissible evidence if offered by a party.

*Section (e)* adds a long list of exceptions to the advertising filing requirements provided by the general rule at sections (a) and (b). As long as advertisements comply with other applicable Utah Rules of Professional Conduct, and contain only such permissible things as the particular areas of law in which the lawyer practices, the date of the lawyer's admission to the Bar, the

identification of a prepaid or group legal service plans in which the lawyer participates, the initial consultation fee, and the like, this type of public media material does not need to be submitted to the Bar.

Beginning with *section (e) (17)*, more exceptions to the filing requirement are set forth. Such things as a lawyer listing in a regularly published “list of lawyers” or directory, an announcement card of opening a practice, a communication sent to existing or former clients, communications sent to other lawyers or professionals and the like are exempt. These exceptions make it easier for a lawyer to conduct regular business without the requirement of submission, based on the underlying premise that the public will not be confused by false or misleading representations contained in the enumerated exceptions.

Rule 7.2B (Volunteer Advisory Committee; Pre-dissemination Review).

A redlined copy of Rule 7.2B is attached at **Exhibit “4”** and a “clean” copy at **Exhibit “6.”**

Many of the same reasons underlying proposed Rule 7.2A apply to this new rule, which contains the “nuts and bolts” and the mechanism by which the new requirements are implemented. Generally, Rule 7.2B addresses the composition of the new Advisory Review Committee and how members are appointed. It also lays out the Committee members’ duties. The last comment, [7b], which appears in the comment section following this rule, indicates that there are no corresponding provisions in the ABA Model Rules on Professional Conduct. More specific explanations of the rule’s sections follow:

*Section (a)* adds that the Commission will create the new Advisory Review Committee.

*Section (b)* allows the Commission to promulgate rules of procedure and set a reasonable fee (as yet undetermined) for Advance Advisory Opinions in order to offset the administrative costs of handling these requests.

*Section (c)* addresses the composition of the new Committee. It is patterned somewhat after OPC screening panel set forth in the Rules of Lawyer Discipline and Disability. The Committee will have a minimum of 5 volunteer members, 4 of whom shall be members of the Bar. Five members will also be appointed to serve as *ad hoc* or conflict replacements as needed.

*Section (c) (1)* provides that Committee members shall be appointed by the Commission to serve 2-year terms, and will subject to re-appointment at the Commission's discretion. No member, however, will be allowed to serve more than a total of 12 years, and members may be removed for cause.

*Section (c) (2)* lays out the Committee members' minimum duties. The Committee shall meet at least monthly on a pre-determined date, and more often if necessary. Advance Advisory Opinions shall be released within 30 days of submission of the request, and requests to expedite the opinion shall be granted when feasible. An additional fee also may be charged for expedited requests under this provision.

*Section (d)* allows the Committee to issue an Advance Advisory Opinion on any advertisement submitted to it in the regular course of business whether or not the submitting lawyers asks for it. The Committee may also issue an opinion and provide it to OPC within 30 days of the opinion's release date. Advance

Advisory Opinions must include the basis for the Committee's finding of non-compliance and a recommendation that OPC issue a notice to the lawyer or law firm that requests withdrawal or correction of the advertisement.

*Section (d) (1)* adds that if OPC issues the notice in section (d), the lawyer or firm has 30 days to respond to OPC. OPC may initiate appropriate disciplinary action if the advertising is deemed problematic and the lawyer or firm fails to file a timely response.

*Section (d) (2)* adds that the Committee is authorized to monitor all advertising whether it was submitted to the Committee by the lawyer or firm, a member of the public, or is personally observed. The Committee is also authorized to file a complaint with OPC. The complaint constitutes a valid written complaint as required by Rule 14-510 of the Utah Rules of Lawyer Discipline and Disability.

## **LAWYER ADVERTISING RULES IN OTHER JURISDICTIONS**

Many states have modified their lawyer advertising rules to better address the problems that have arisen in an increasingly competitive legal services market. While the parameters of restrictions vary, a growing number of jurisdictions have recognized that the practice of law has changed over the years, and with it, the type of advertising that lawyers increasingly use. Instead of stark formal announcements, more and more lawyer advertising resembles the overblown pitches used to sell household products to consumers. Generally, states have expanded the definition of "false and misleading" advertising to include such things as testimonials and endorsements, unsubstantiated claims of

past successes, or promises of future results. In order to better regulate false or misleading communications, 28 states now require lawyers to retain a copy of their advertisements and/or publication and distribution lists. What follows is an abbreviated description of the differences between the ABA Model Rules related to advertising and corresponding state rules. More detailed information can be located in the Appendix as noted.

ABA Model Rule 7.1 (Communications Concerning a Lawyer's Services) is bare bones and consists of two sentences. Utah's current Rule 7.1 is identical. See **Exhibit "1."** A number of states have modified ABA Model Rule 7.1 to amplify what constitutes false and misleading advertising in order to extend more protection for the public and make it clearer to the advertising lawyer as what is prohibited. For instance, Ohio has added the phrase, "A lawyer shall not make or use a false, misleading *or nonverifiable* communication...." The Arkansas, Florida Indiana, Nevada, Pennsylvania, South Carolina and the Wyoming rule state that a lawyer's communication is false and misleading if it contains a testimonial or an endorsement. In another example, Florida mandates that no lawyer's communication may include any celebrities' voice or image if it is recognizable to the public. More detailed information regarding the differences between the ABA Model Rule 7.1 and the corresponding state versions is attached in the **Appendix** at "**A**"

The ABA Model Rule 7.2 regarding advertising is much like Utah's current corresponding rule with a minor difference.<sup>6</sup> (See **Exhibit "1"** for Utah's current

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<sup>6</sup> Comment [7a] appended to Utah's rule states that section 7.2 (b)(2) differs from the ABA Model Rule by permitting a lawyer to "pay the usual charges of any legal

rule.) As noted above, a number of states now require lawyers to retain copies of their ads,<sup>7</sup> just as Utah is proposing. Under Rule 7.2, a number of states also require submission of lawyer advertising and provide for pre-dissemination optional advisory opinions, just as Utah is proposing. In fact, everything new that the Bar is asking this Court to approve can be found in another state's advertising rules. A copy of the ABA Model Rule 7.2 comparing the differences in state advertising rules is attached in the **Appendix at "B."**

Finally, an ABA-prepared chart dated January 1, 2013, entitled "*Differences Between State Advertising and Solicitation Rules and the ABA Model Rules of Professional Conduct*", which provides a bullet point summary of the primary aspects of all jurisdictions' versions of Rule 7.1 and 7.2, is attached in the **Appendix at "C."**

Utah's proposed revisions can readily be compared against other states' versions referencing the materials in the Appendix. However, attached to this Petition are copies of several selected state rules, which reflect that Utah's changes are middle-of-the road and a reasonable compromise balancing the public's interest and the burden on lawyers.

As mentioned before, Florida found itself in the midst of a rapidly deteriorating lawyer advertising situation. With nearly 100,000 licensed attorneys,

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service plan or a lawyer-referral service. The ABA Model Rule contains this language which does not appear Utah's current rule version: "this is not limited to not-for-profit services", and "the legal service referral service has been approved by an appropriate regulatory authority."

<sup>7</sup> Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Mississippi, Missouri,

and a significant population of elderly and English-as-a-second-language residents, competition to provide legal services was fierce. Those lawyers seeking their market share became more aggressive and their advertising reflected that fact. While Florida's rules are lengthy, key aspects are similar to the more moderate requirements Utah is proposing. For instance, Florida lawyers must retain copies of their submitted advertising materials for 3 years. Advance Advisory Opinions are available and certain types of advertising are exempt. As Utah's proposed rules provide, attorneys can rely on a notice of compliance after the advertisement has been evaluated. The Florida rules also contain differences. For example, while print media can be submitted to the Florida Bar either prior to dissemination or at the time of dissemination, television and radio materials must be submitted prior to airing at least 20 days in advance. Florida also places restrictions on lawyer advertising that features an area of legal practice and prohibits the use of certain sounds in television and radio ads. A copy of the Florida advertising rules is attached in the **Appendix at "D."**

The Nevada model is much closer to the proposed rules in Utah than is Florida's set of rules. Nevada's process is not as demanding and complex as Florida's. Moreover, while Nevada had been experiencing an uptick in false and misleading advertising, with a population of 9,000 lawyers, the problems had not grown to Florida's proportions. Nevada also charges for advance opinions (between \$250-\$3,000). All advertising is required to be submitted within 15 days of first dissemination. Nevada also provides for a general disclaimer as to the

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Nevada, New Mexico, New York, North Dakota, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, West Virginia, and Wyoming.

quality of the lawyer's proposed legal services. A copy of the Nevada advertising rules is attached in the **Appendix at "E."**

Texas' advertising problems were not as significant as Florida's, but had been growing. With 90,000 lawyers, however, that state decided to add requirements to keep the issue from getting out of hand. Advance advisory opinions are available to Texas lawyers and regular advertising submissions are required. Of note, both Texas and Florida place restrictions on one lawyer paying for another lawyer's advertising. Texas, Nevada and Florida all require a lawyer to retain copies of advertising for a period of time as do 24 other jurisdictions. A copy of the Texas advertising rules is attached in the **Appendix at "F."**

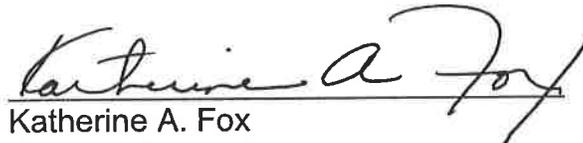
The State of Washington has taken a very small step toward regulating lawyer advertising. With nearly 34,000 licensed attorneys, nevertheless, that group seems to be more homogeneous and the competition is not nearly as fierce there as some other states. A copy of the State of Washington's rules is attached in the **Appendix at "G"** for comparison purposes.

## CONCLUSION

Towards the end of establishing new requirements related to lawyer advertising to protect the public and proactively anticipate the potential of problems, the Commission respectfully requests that the Court adopt the proposed rule revisions.

Dated this 12<sup>th</sup> day of February, 2013.

UTAH STATE BAR

  
Katherine A. Fox  
General Counsel