

Report of the Special Committee on Lawyer Advertising

The Special Committee on Lawyer Advertising last made a recommendation on revision of the Rules governing lawyer advertising in early 2005. The Board of Governors adopted that recommendation, as did the Missouri Supreme Court. Those Revised rules became effective on January 1, 2006.

At the time of the 2005 recommendations the Special Committee believed that since the scope of the changes were significant, it would likely be necessary to revisit the new Rules to determine if there were any unintended results, if the new rules were working and if any additional changes were necessary. Enforcement of the Supreme Court Rules was an issue that was considered initially, and has also been considered by the present Committee.

The Special Committee has now worked for about 1½ years and has taken comments from the Bar in general, and spoken with various interest groups such as representatives and counsels for several state bar associations, the ABA, the FTC, the ACLU, the OCDC, the Supreme Court Ethics Counsel, the Advisory Committee to the

Supreme Court and has had informal conversations with members of the Missouri Supreme Court.

The Committee is composed of seventeen (17) members including Constitutional Law Advisor Professor Alan Howard. The Committee is a diverse group in respect to type of trial practice, age, and geography. The Committee is composed of eleven (11) current or former members of the Board of Governors. Most of the members of the Committee utilize some form of advertising. The Committee was divided into four (4) Subcommittees: 1) Liaison, headed by Mark Levison to interface with OCDC and Supreme Court's Ethics Counsel Sara Rittman, 2) Public Outreach, headed by Suzanne Bradley to consider communications with the public, 3) Internal Communications, headed by Allan Seidel to consider communications with members of the Bar, and 4) Rules headed by Bill Lasley, to consider changes and enforcement of the Rules. Below are the Special Committee's suggestions.

- 1) The Bar should conduct a public outreach campaign to educate the public about lawyer advertising and picking lawyers. Part of the message of this campaign should include the fact that citizens need to know their rights, and that lawyer advertising

can provide that important function. The information campaign should also inform the public of various means to select lawyers.

2) The Bar should take a more active effort in educating its lawyers concerning the Rules and responsibilities governing lawyer advertising, as updated in 2006 and 2010 (if applicable), and should endeavor to enhance professionalism through lawyer advertising. Further, CLE's are suggested, as well as Bar articles and enhanced leadership in this area from the officers of the Missouri Bar.

3) About ten or twelve (depending on how one counts sub paragraphs or comments) rule changes are proposed and attached. These rules were generally proposed in order to address potentially misleading advertising and to clarify existing rules in order to facilitate compliance and enforcement. A provision was also added to address out of state lawyers who solicit business in Missouri.

4) Finally, the Special Committee considered enforcement issues. From the initial formation of the Committee, throughout all of the comment periods, enforcement has received significant commentary from the Members of The Bar. The Special Committee did not perceive that the former OCDC counsel had much concern about

lawyer advertising, whereas the current OCDC counsel has made it clear to the Committee that he is more than willing to enforce the Supreme Court Rules regarding lawyer advertising, once violations are reported. Many of the comments that have been received through the years have complained about a lack of enforcement. The Committee considered three enforcement options, however, since there was no clear majority on the Committee in favor of any one option, the Committee thought it best to leave the enforcement option up to the Board of Governors. The enforcement options are as follows:

Option 1: New Employee

This option would place an employee inside the office of OCDC to monitor lawyer advertising. It is not believed that this person would need to be a lawyer, but funding would have to be provided.

Option 2: New Committee

The Board of Governors would appoint a statewide committee to monitor lawyer advertising. This committee would report perceived violations of the Supreme Court rules to the OCDC. The suggested structure of the committee is three members from the

Eastern District, three from the Southern District, and three from the Western District. A Chair could be appointed by the Board of Governors. The initial Committee would be charged with the task of setting up procedures and forms to do its job. The Committee and/or the Board of Governors could determine whether a majority or super majority would be required to report a perceived violation of the Rules to the OCDC.

Option 3: Self Reporting

The Missouri Bar would attempt to distribute additional information to the legal community concerning the substance of the Rules, their importance and procedures for individual lawyers to report perceived violations to the OCDC. This option could include CLE's.

Respectfully Submitted, July 1, 2009