March 12, 2018

Barbara S. Gillers, Chair
Standing Committee on Ethics and Professional Conduct
American Bar Association

Re: Proposed Amendments to ABA Model Rules of Professional Conduct on Lawyer Advertising

Dear Chair Gillers,

The ABA Standing Committee on Lawyer Referral and Information Service (“SCLRIS”) writes to provide comments on the December 21, 2017 draft of the Proposed Amendments to ABA Model Rules of Professional Conduct on Lawyer Advertising (the “Amendments”) prepared by the Standing Committee on Ethics and Professional Conduct (“SCEPC”), and more specifically, the proposed changes related to lawyer referral services in Rule 7.2.

As a preliminary matter, we agree with the SCEPC’s goal to modernize the Model Rules on lawyer advertising in recognition of the many ways in which consumers now learn about and seek to obtain legal services. We also agree with the SCEPC’s desire to simplify both the rules themselves and the accompanying comments. That being said, we also think it is important that the ABA maintain consistency with its other policy and goal of ensuring that certain kinds of organizations that help consumers find appropriate legal services, e.g. lawyer referral services, provide sufficient safeguards for consumers.

Lawyer referral services provide a crucial link between the public and local lawyers, and between the public and other pro bono/legal aid, government, and social services where appropriate. These programs serve over 1.5 million people nationwide every year, referring hundreds of thousands of them to lawyers, and hundreds of thousands more to other service organizations. Accordingly, the ABA Standing Committee on Lawyer Referral and Information Service has worked diligently to improve lawyer referral services and ensure that they operate in the public interest by encouraging regulatory authorities that oversee lawyer referral services, and local and state bar associations that operate lawyer referral services, to follow the ABA Model Supreme Court Rules Governing Lawyer Referral Services, which were adopted by the ABA House of Delegates in 1993. The model rules for lawyer referral services require that services provide certain protections for consumers, such as:
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- Verifying malpractice insurance coverage for all participating lawyers;
- Requiring and verifying a lawyer’s experience in particular practice areas;
- Screening clients to ensure that their legal needs are fully understood and that they are connected to lawyers with the appropriate experience;
- Monitoring client satisfaction to ensure quality of service, and take appropriate action regarding any complaints about lawyers; and
- Establishing clear requirements and procedures, including an appeal process, for the admission, suspension, and removal of lawyers.

The SCEPC’s proposed amendments related to lawyer referral services consist of the following:

a) In Comment 6, deleting reference to the ABA Model Supreme Court Rules Governing Lawyer Referral Services and some of the consumer-protection provisions therein; and

b) Deleting Comment 7 addressing a lawyer’s responsibility for the conduct of a lawyer referral service or legal services plan in which the lawyer participates.

We agree with the deletion of Comment 7 as superfluous, given that Rule 7.2 only allows lawyers to pay a “qualified lawyer referral service,” which is defined at “a lawyer referral service that has been approved by an appropriate regulatory authority.”

However, we respectfully request that the SCEPC maintain in Comment 6 the references to the ABA Model Supreme Court Rules Governing Lawyer Referral Services and the consumer-protection provisions therein as examples of “adequate protections for the public.” As noted above, the model rules on lawyer referral services have been part of the ABA’s policy concerning lawyer referral services for over 20 years, and they represent the gold standard for lawyer referral services, so we believe it is important to maintain reference to them. Moreover, as one of the goals of the proposed amendments to the Model Rules on lawyer advertising is wider adoption by regulatory authorities, we hope that such authorities might also be reminded to consider adopting the model rules on lawyer referral services to the extent they have not already done so.

We would be happy to speak with the SCEPC about these comments at a future meeting, and to further explain the importance of the model rules on lawyer referral services. Thank you for considering these comments.

Sincerely,

[Signature]

Stephen Steinberg, Chair