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

May 15, 2018

Re: March 23, 2018 Draft of 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 March 23, 2018 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 noted in our prior letter, we agree with the SCEPC’s desire to modernize and simplify the Model Rules on lawyer advertising. But we also think it is important that the ABA maintain its other policy of ensuring that lawyer referral services provide sufficient safeguards for consumers.

The December 21, 2017 Draft of the proposed amendments related to lawyer referral services consisted 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 previously sent you a letter agreeing with the deletion of Comment 7 as superfluous, but requesting 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.

The March 23, 2018 Draft of the proposed amendments related to lawyer referral services still proposes to delete in Comment 6 reference to the ABA Model Supreme Court Rules Governing Lawyer Referral Services and some of the consumer-protection provisions therein. We continue to disagree with this and believe that the reference to the
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model rules on lawyer referral services as examples of “adequate protections for the public” is an important provision. As noted in our prior letter, the model rules on lawyer referral services have a long history in the ABA and represent important standards for lawyer referral services. Thus, we respectfully oppose the amendments as currently drafted.

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,

Stephen Steinberg, Chair