February 28, 2018

American Bar Association
Standing Committee on Ethics and Professional Responsibility
321 North Clark Street
Chicago, Illinois 60654

To the Committee:

The State Bar of Arizona (“SBA”) provides this comment to the American Bar Association (“ABA”) Standing Committee on Ethics and Professional Responsibility’s proposed amendments to the ABA Model Rules of Professional Conduct dealing with lawyer advertising.

In general, the SBA agrees that the Rules should be updated and streamlined to address the conduct that causes the most potential harm to consumers. Essentially, the Rules should focus on preventing false or misleading communications about a lawyer’s services. However, the SBA disagrees with the proposal to remove the labeling requirement from targeted, written solicitations.

Arizona is one of eighteen states that has retained a labeling requirement for written solicitations.1 The SBA believes that a consumer who receives a written communication from a lawyer, specifically addressing the consumer’s legal problem, may likely believe that it requires some action or response—regardless of the content of the communication. Such a targeted solicitation, without a minimal disclosure of its advertising nature, thereby creates a risk of misleading the consumer. This concern is heightened when dealing with certain populations, such as the 16.9% of Arizonans who are of age 65 and over.2

The SBA firmly believes that labeling targeted solicitations as “Advertising Material” furthers its mission to serve and protect the public with respect to the provision of legal services, while not imposing an undue burden on lawyers’ commercial speech. Thus, the SBA urges the Committee to retain the labeling requirement in ABA Model Rule 7.3(c).

Sincerely,

John F. Phelps
CEO/Executive Director

cc: Board of Governors, State Bar of Arizona

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1 American Bar Ass’n, Differences Between State Advertising and Solicitation Rules and the ABA Model Rules of Professional Conduct, at 68 (June 2, 2016).