

December 19, 2012

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Michael W. Catalano, Clerk  
State Appellate Court  
100 Supreme Court Building  
401 Seventh Avenue North  
Nashville, TN 37219-1407

Re: Docket No. M2012-01129-SC-RL1-RL

Dear Mr. Catalano:

I have reviewed the materials submitted by the Tennessee Association for Justice, of which I am not a member, filed in support of its petition to amend the Rules of Professional Conduct relating to attorney advertising. I write in support of the proposal.

By way of history, for the last 15 years, I have been actively involved in representing pharmaceutical companies in mass tort litigation. In the course of that practice I have been amazed at the number of Tennesseans, many disabled and poorly educated, who have responded to television and less frequently internet ads run by out of state lawyers and law firms. Those individuals respond to those ads by calling an 800 number and sign up to be represented by those firms or lawyers. The intent of that massive advertising program is merely to obtain a critical mass of clients for the purpose of attempting to obtain a global settlement for the benefit, primarily, of the lawyers. It is purely a business model.

The problem with that business model for the Tennessee residents who sign up is that, in my experience, the clients do not end up with a lawyer who is interested in their individual interest. Those client never meet a lawyer, or even a paralegal, unless the defendant notices the plaintiff's deposition. When that occurs, typically an associate with the law firm will fly in to meet with the client for an hour or so before the deposition.

Typically, the Court will order the plaintiffs to provide a document known as either a Plaintiff Profile Form or a Plaintiff Fact Sheet which the law firm will send to the client for the client to fill out. The law firms seldom provide assistance to the client in completing the document. Pursuant to court order, the plaintiff will be asked to sign a medical release for the defendant to collect the plaintiff's medical records. As a result, it is typical for the defendant to know more about each of the individual plaintiffs than their own lawyers know unless that plaintiff becomes the focus of a group of Bellwether plaintiffs for which the court orders discovery.

While it can be said that the business model adopted by those firms benefits all of the plaintiffs by forcing a global settlement with some return to each of the clients, in my experience the lawyers never do a proper investigation to determine whether in fact the plaintiffs who call their 800 number have a legitimate claim which they then pursue with vigor.

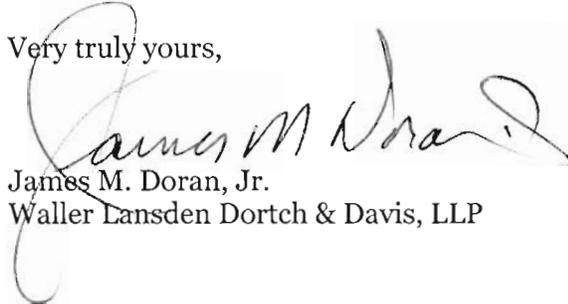
December 19, 2012

Page 2

I have served as national settlement counsel for a pharmaceutical company in its effort to resolve mass tort litigation. In many instances I met with lawyers who simply knew nothing about their individual clients and insisted upon trying to settle their clients' cases as a group.

The one disadvantage of the proposal by the Tennessee Association for Justice is that it might cause some citizens to be unaware that they have a potential law suit. However it is my view that that disadvantage is outweighed by those individuals being represented by instate lawyers who are more likely to view them as an individual client, investigate their cause of action and pursue their claim vigorously if it is meritorious.

Very truly yours,

A handwritten signature in black ink, appearing to read "James M. Doran, Jr.", written over a light gray rectangular background.

James M. Doran, Jr.  
Waller Lansden Dortch & Davis, LLP

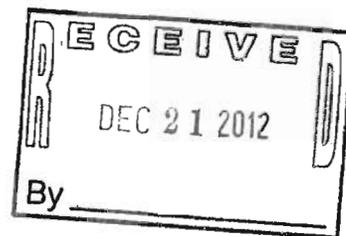
JMD:ecm

## PUBLIC CITIZEN LITIGATION GROUP

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202/588-1000 • www.citizen.org

December 17, 2012

Michael W. Catalano, Clerk  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7th Avenue North  
Nashville, TN 37219-1407



Re: *In re Petition To Adopt Changes to Rules of Professional Conduct on  
Lawyer Advertising*, No. M2012-01129-SC-RL1-RL

Dear Mr. Catalano:

On November 26, the Supreme Court of Tennessee issued an order soliciting comments by January 25, 2013, regarding the above-referenced petition to change the professional conduct rules of Tennessee. On behalf of the national non-profit organization Public Citizen, Inc., I am writing respectfully to request that the deadline for accepting comments be extended for two weeks, to and including February 8, 2013.

Public Citizen is an organization with a longstanding interest in freedom of speech, in particular as it affects the opportunity of consumers, including our 925 members in Tennessee, to receive information about products and services. Public Citizen litigated one of the seminal Supreme Court commercial-speech cases, *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976). Public Citizen also regularly litigates First Amendment challenges to attorney advertising restrictions, as in *Alexander v. Cahill*, 598 F.3d 79 (2d Cir. 2010); *Harrell v. The Florida Bar*, 608 F.3d 1241 (11th Cir. 2010); and *Public Citizen Inc. v. Louisiana Attorney Disciplinary Board*, 632 F.3d 212 (5th Cir. 2011).

We wish to comment on the proposed rule changes in Tennessee and the constitutional issues they raise. We have commented on similar proposals in other states, including Louisiana and New York. Because of the press of business, including three briefs due in the next seven weeks, and a prepaid family vacation, an extra two weeks would allow me the time necessary to prepare thorough comments that adequately addresses the issues implicated by the petitions for rule changes.

For these reasons, I ask that a two-week extension be granted. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Michelman".

Scott Michelman

Cc: Matthew C. Hardin, Petitioner  
Tennessee Association for Justice, Petitioner