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LETTERS TO OUTLOOK

Attorney Advertising's Pernicious Effects

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Judge Malott's March 7 column in the Albuquerque Journal responded to a reader's complaint about the barrage of lawyer advertising on TV. Judge Malott pointed out that in 1977 the U.S. Supreme Court ruled that attorney advertising was protected speech under the First Amendment to the Constitution.

Judge Malott is right. Attorney advertising is here to stay. But just because speech is protected doesn't mean: (a) that it is good; or (b) that hiring a lawyer should be done on a whim. Hiring an attorney is not like choosing which toothpaste to use. You are trusting a lawyer with your family's most important decisions.

First, when the Supreme Court says speech is "protected" it means that the speech enjoys the protection of the Constitution from undue interference by the government. For example, unlike other societies, we can stand up and criticize our politicians without fear of arrest.

But just because speech is protected does not mean that the speech is good or healthy or not subject to criticism. Just look, for example, at the recent U.S. Supreme Court decision in *Snyder v. Phelps*. In that case, the Supreme Court decided that protesters from the Westboro Baptist Church who hold up signs and shout slurs at soldier's funerals were protected under the First Amendment. Chief Justice Roberts ruled that such protests may "arouse contempt" but are protected by the Constitution.

The point is that simply because speech is protected, does not mean that the speech is good. The speech itself can be bad and subject to criticism and comment. That is nature of our free society.

Attorney advertising has diminished the respect people have for our profession. That is alluded to in Judge Malott's column. But from our perspective, attorney advertising has done something much more pernicious. It has allowed the worst in our profession to have direct access to the public.

We sue attorneys. In the past two decades, we have seen an increasing number of incompetent and dishonest attorneys who have, apparently for years, run successful practices off of their advertising budgets. These lawyers are almost impossible to catch because their clients are not trained in the legal profession and do not know when their lawyers are ripping them off. It is typically only by luck that people understand when their attorneys have taken advantage of them.

While attorney advertising is here to stay, it does not mean that because a lawyer advertises he/she is a good or bad lawyer. Clients – who are consumers of legal services – should not be afraid to ask the lawyers about their experience and background and what they are doing with their case.

Good questions to ask are:

- What is your experience in the area in which I am hiring you?
- How are you going to charge me?
- Will you let me take the fee agreement home for me to review?
- What happens if I am dissatisfied with your services? Are you going to charge me if I fire you?
- Have you ever had any complaints with the disciplinary board?
- Have you ever been sued?
- Have you ever been suspended or revoked from practicing law?
- What attorneys can I call that might recommend you?
- How are you going to keep me up to date on what is happening in my case?
- Do you have malpractice insurance?

Judge Malott wrote that if people do not like lawyer advertising on TV they can turn to another channel. We would add: Never select a lawyer based on his or her advertisement.