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ARTICLES

LYING LAWYERS AND RECUMBENT REGULATORS

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INTRODUCTION

What happens when lawyers advertise the fees they charge for their services? Since *Bates v. State Bar of Arizona*[1] applied the First Amendment to lawyers' ads nearly forty years ago, people have hoped that price advertising would lead to greater availability of reasonably priced legal services.[2] A concomitant fear has been that it may be difficult to regulate the accuracy of lawyer price advertising because legal services may not be uniform enough to have prices that lawyers can advertise honestly.[3] This Article offers a way to evaluate these rival hopes and fears, to help to understand the strengths and weaknesses of lawyer advertising.

An empirical study of certain lawyers' price advertising and the fees their clients actually paid is the basis of this Article. Many bankruptcy lawyers advertise their fees, and all debtors are required to report lawyers' fees to the bankruptcy court.[4] Thus, we have data to show how advertised prices compare with prices actually charged. Sadly, the study shows that many lawyers charged many clients more than their advertised fees.[5] The following chart shows the percentage of clients who paid advertised fees and the percentage of clients who paid more than advertised fees to particular lawyers in each of four cities.[6] The

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1. 433 U.S. 350 (1977).

2. *See* Geoffrey C. Hazard et al., *Why Lawyers Should Be Allowed to Advertise: A Market Analysis of Legal Services*, 58 N.Y.U. L. REV. 1084, 1088-89 (1983).

3. *See generally* James P. Wallace, *Regulating Attorney Advertising*, 18 TEX. TECH L. REV. 761 (1987).

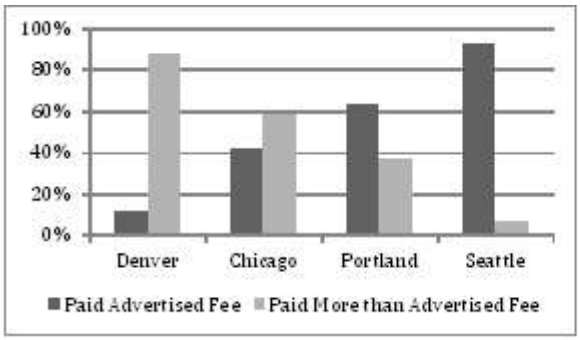
4. 11 U.S.C. § 329(a) (2012).

5. *See infra* Appendix.

6. The data support qualitative conclusions. They report fees charged by eight law firms or lawyers in 240 cases, but our sampling technique does not allow any quantitative projection for any individual city or any particular group of lawyers. Part III describes our methodology and the Appendix provides the text of the studied ads.

first bar for each city shows the percentage of clients who paid the advertised fee. The second bar for each city shows the percentage of clients who paid more than the advertised fee.

Percentages of Clients Paying Advertised Fees and More Than Advertised Fees



About 90% of the Denver clients paid more than the advertised fees. Close to half of the Chicago clients and about a third of the Portland clients paid more than the advertised fees. Yet almost all of the clients in Seattle paid the actual advertised fee. One of the firms in this study overcharged 100% of its clients.[7] Its advertised fee was $500, but the fees it charged in our sample of cases ranged from $800 to $1250, averaging $1017.[8] Overall, for the eight firms studied, seventy percent of the clients paid more than the advertised fee.[9] The data clearly show that false or misleading advertising by lawyers is a reality, not just a possibility.[10]

When lawyers advertise their fees, this should promote competition and bring down the cost of important legal services.[11] But contrary to that expectation, data presented in this Article show that, unfortunately, when lawyers advertise a service for a specific price, many of their ads are false or misleading.[12] This harms

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7. *See infra* Appendix.

8. *See infra* Appendix.

9. *See infra* Appendix.

10. As detailed below, the research is not representative of all advertising lawyers in any of the cities for which it reports findings. The data covered only thirty cases per lawyer. Additionally, the lawyers have not been asked to explain the apparent discrepancies between their promises and their performance.

11. *See* Nora Freeman Engstrom, *Attorney Advertising and the Contingency Fee Cost Paradox*, 65 STAN. L. REV. 633, 635-37 (2013) (reviewing the point of view of numerous scholars and public officials that lawyer advertising would likely lower the cost of legal services); *see also* Hazard et al., *supra* note 2, at 1109 (arguing that advertising for standardized legal services would lead to lower prices and higher quality); Timothy J. Muris & Fred S. McChesney, *Advertising and the Price and Quality of Legal Services: The Case for Legal Clinics*, 1979 AM. B. FOUND. RES. J. 179, 182 (arguing the same).

12. *See infra* Appendix.

competition instead of fostering it. And this bad conduct by lawyers is mirrored by bad conduct by regulators. They apparently have failed to curtail the deceptions, even though identifying these ads as false is extremely simple. If regulators do not deter these easy cases, their ability to control misconduct that is more complex or better hidden can be questioned.

The ads identified in this Article's study promised low fees for bankruptcy cases.[13] They imposed significant harms[14] on particularly vulnerable victims, since they were aimed at people who are suffering economic stress and probably suffering emotional stress as well.[15] These individuals are perhaps less likely than some other potential clients to have the time or knowledge that would enable them to find and employ an honest lawyer. It can even be suggested that lawyers who choose to use false or misleading advertising may be less skillful than lawyers who operate their practices in compliance with the law. For all these reasons, this deceptive advertising ought to be stopped and the lawyers who do it ought to be punished.

Considering this instance as an indication of weakness in lawyer regulation supports recommendations for supplementing bar discipline processes. Lawyers who overcharge clients should make restitution. Rules to facilitate identification of false price advertising should be adopted. Additionally, class action litigation on behalf of overcharged clients should be pursued under state consumer protection statutes.

I. EARLY IDENTIFICATION OF SIGNIFICANT LAWYER ADVERTISING ISSUES

All of the advertising by lawyers that is now so familiar in various media derives its legitimacy from the United States Supreme Court decision in *Bates v. State Bar of Arizona*.[16] That case held generally that the First Amendment applies to commercial speech by lawyers; it held specifically that a state could not prohibit price advertising by lawyers (a newspaper advertisement stating specific prices was the subject of the case).[17] The constitutional analysis in the *Bates* majority and dissenting opinions paid close attention to two aspects of price advertising by lawyers: First is a concern that price advertising is likely to be false or misleading because legal services are not uniform and therefore are

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13. *See infra* Appendix.

14. Bankruptcy lawyers in Chapter 7 cases typically require clients to pay them before the case is filed. This is the custom because a fee that had not been paid prior to the filing of the bankruptcy petition would be dischargeable just like most other debts (for example, credit card debts). This means that "extra" money paid to a bankruptcy lawyer for a fee that was higher than the advertised fee is money that is lost to the debtor that the debtor might otherwise have used to buy food, medicine, or anything else, or to pay debts that the pre-petition debtor owed. In theory, it may also decrease the amount of money available for paying creditors after the bankruptcy filing.

15. *See infra* Appendix.

16. 433 U.S. 350 (1977).

17. *Id.* at 383-84.

unlikely to be provided at uniform prices.[18] Second is a concern that identifying and controlling false claims would be difficult.[19]

The advertising studied for this Article may reflect both of these concerns.[20] This can hardly be expected to reverse the application of First Amendment protections to commercial speech by lawyers, but it shows that the world view of the 1977 *Bates* justices was both accurate and prescient. It also challenges the contemporary legal system to notice and respond to the current manifestations of these problems.

A year before the *Bates* decision, the Court held that the First Amendment applied to commercial speech by pharmacists.[21] This meant that the *Bates* Court had to consider whether any differences between lawyers and pharmacists would support differences in First Amendment protections for commercial speech disseminated by members of the two professions.[22] For three dissenters, a major distinction between drugs and legal services was that drugs are uniform but legal services are varied.[23] For these dissenters, this meant that misleading or false advertising was much more likely to occur in lawyer advertising than in drug advertising.[24] The dissenters focused on price advertising and argued that honest descriptions of the prices for legal services are very difficult to provide, since the details of legal services are likely to vary a great deal depending on the circumstances of each client's needs.[25] The heightened risk of false claims in lawyer advertising, for these dissenters, justified withholding First Amendment protection from lawyer advertising even though it had been held applicable to drug advertising.[26]

On the question of whether the variability of legal services negates the possibility of honest advertising about them, Justice Blackmun writing for the majority stated:

> The only services that lend themselves to advertising are the routine ones: the uncontested divorce, the simple adoption, the uncontested personal bankruptcy, the change of name, and the like – the very services

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18. *Id.* at 366, 372-73, 383-85, 391-97.

19. *Id.* at 379, 395-97.

20. *See infra* Appendix.

21. Va. Pharmacy Bd. v. Va. Consumer Council, 425 U.S. 748 (1976).

22. Bates v. State Bar of Ariz., 433 U.S. 350, 357-58, 377, 390-91(1977).

23. *Id.* at 386 (Burger, C.J., concurring in part and dissenting in part) (arguing that identifying fungible legal services would be "difficult, if not impossible"). Chief Justice Burger's partial concurrence was in regard to the non-applicability of the Sherman Act, an issue that is not relevant to the First Amendment issues on which the case was decided and with regard to which Chief Justice Burger dissented; *id.* at 392 (Powell, J., concurring in part and dissenting in part) (criticizing the "facile assumptions" that legal services can be classified as routine or unique). Like Chief Justice Burger, Justices Powell also agreed that the Sherman Act did not apply to the case.

24. *Id.* at 386, 391.

25. *Id.* at 392-93.

26. *Id.* at 403-04.

> advertised by appellants. Although the precise service demanded in each task may vary slightly, and although legal services are not fungible, these facts do not make advertising misleading so long as the attorney does the necessary work at the advertised price.
> . . . Although the client may not know the detail involved in performing the task, he no doubt is able to identify the service he desires at the level of generality to which advertising lends itself.[27]

In a dissent, Chief Justice Burger wrote:

> [B]ecause legal services can rarely, if ever, be "standardized" and because potential clients rarely know in advance what services they do in fact need, price advertising can never give the public an accurate picture on which to base its selection of an attorney. Indeed, in the context of legal services, such incomplete information could be worse than no information at all. It could become a trap for the unwary.[28]

Justice Powell, joined by Justice Stewart, made a similar argument in a dissent, using divorce as an example of a legal service that might be advertised:

> The average lay person simply has no feeling for which services are included in the packaged divorce, and thus no capacity to judge the nature of the advertised product. As a result, the type of advertisement before us inescapably will mislead many who respond to it. In the end, it will promote distrust of lawyers and disrespect for our own system of justice.[29]

Separate from specific issues associated with price advertising, the majority and the dissenters also considered the general question of whether false advertisements would be likely to be identified and curtailed.[30] Justice Blackmun wrote for the majority:

> Although, of course, the bar retains the power to correct omissions that have the effect of presenting an inaccurate picture, the preferred remedy is more disclosure, rather than less. If the naiveté of the public will cause advertising by attorneys to be misleading, then it is the bar's role to assure that the populace is sufficiently informed as to enable it to place advertising in its proper perspective.[31]

He presented an optimistic view of the likely consequences of allowing price advertising:

> For every attorney who overreaches through advertising, there will be thousands of others who will be candid and honest and straightforward.

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27. *Id.* at 372-73 (footnote omitted).
28. *Id.* at 386-87 (Burger, C.J., concurring in part and dissenting in part).
29. *Id*. at 394 (Powell, J., concurring in part and dissenting in part).
30. *Id.* at 375, 379, 396-97.
31. *Id.* at 375.

> And, of course, it will be in the latter's interest, as in other cases of misconduct at the bar, to assist in weeding out those few who abuse their trust.
>
> In sum, we recognize that many of the problems in defining the boundary between deceptive and nondeceptive advertising remain to be resolved, and we expect that the bar will have a special role to play in assuring that advertising by attorneys flows both freely and cleanly.[32]

Justice Powell countered in his dissent:

> The Court seriously understates the difficulties, and overestimates the capabilities of the bar – or indeed of any agency public or private – to assure with a reasonable degree of effectiveness that price advertising can at the same time be both unrestrained and truthful . . . The very reasons that tend to make price advertising of services inherently deceptive make its policing wholly impractical. . . . Even if public agencies were established to oversee professional price advertising, adequate protection of the public from deception, and of ethical lawyers from unfair competition, could prove to be a wholly intractable problem.[33]

The following sections of this Article show that the *Bates* expectation that honest price advertising would increase the availability of reasonably priced legal services has been fulfilled only slightly. It appears that price advertising is used less often than advertising that focuses competition on factors different from price. And when lawyers do advertise prices, problems identified in *Bates* seem to be manifest — the prices advertised will often be different from the prices charged and there seems to be very little societal suppression of this improper conduct.[34]

II. EVOLUTION OF LAWYER ADVERTISING AND ITS REGULATION

In the decades since *Bates*, lawyer advertising has become widespread with lawyers devoting hundreds of millions of dollars to disseminating ads in a variety of media.[35] Price advertising, which was the focus of *Bates*, has been overshadowed by advertisements that promote personal injury and products

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32. *Id.* at 379.

33. *Id.* at 396-97 (Powell, J., concurring in part and dissenting in part).

34. *Id.* at 366, 372-73, 379, 383-85, 391-97.

35. *See* Michael P. Stone & Thomas J. Miceli, *Optimal Attorney Advertising*, 32 INT'L REV. L. & ECON. 329, 331 (2012) ("By the start of the 21st century, attorney television advertising outlays totaled approximately $236 million, and that number increased to approximately $493 million in 2009. In that same year, print media, including magazines and newspapers, accounted for approximately $102 million in advertising expenditures, while the Internet and radio accounted for roughly another $13 million."). Another estimate puts annual lawyer advertising expenditures at two billion dollars. *See* Engstrom, *supra* note 11, at 640 n.30.

liability lawyers that usually make no claims about fees but that suggest the prospect of large recoveries.[36]

As the volume of lawyer advertising has increased and its content has shifted away from price claims, scholarly attention has focused on concerns somewhat different from the most basic questions of protecting clients from blatantly false claims.[37] For example, authors have considered whether the lack of uniformity among jurisdictions' rules makes it difficult for lawyers to identify and comply with standards.[38] Attention has been given to the fairly narrow issue of whether self-laudatory claims should receive special regulatory attention.[39] Also, scholars

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36. *See* Engstrom, *supra* note 11, at 657-59.

37. *See infra* notes 44-47.

38. *See, e.g.*, Daniel Backer, *Choice of Law in Online Legal Ethics: Changing a Vague Standard for Attorney Advertising on the Internet*, 70 FORDHAM L. REV. 2409, 2434-35 (2002) (arguing that the disparity among states' rules for attorney advertising presents many problems for attorneys advertising on the Internet; the Model Rules' predominant effect test should be replaced by a different choice of law rule that would provide attorneys with clearer guidance on how to communicate information online); Emily M. Feuerborn, *What's Not So "Super" About Comparative Descriptions: The Need for Reform in Attorney Advertising*, 45 HOUS. L. REV. 189, 202-04 (2008) (arguing that the lack of clarity and consistency amongst jurisdictions with regard to what constitutes a "misleading" communication leaves attorneys without discernable guidance); Louise L. Hill, *Lawyer Communications on the Internet: Beginning the Millennium with Disparate Standards*, 75 WASH. L. REV. 785, 854-56 (2000) (arguing that with the advent and improvement of technology, state-by state regulation of attorney communications has become outdated; because of the global reach of the Internet and the fact that each state has such varying rules, standards, and interpretations, the Internet should be regulated by national standards and not controlled by individual state rules); Nia Marie Monroe, *The Need for Uniformity: Fifty Separate Voices Lead to Disunion in Attorney Internet Advertising*, 18 GEO. J. LEGAL ETHICS 1005, 1019 (2005) (arguing that because the Internet has no jurisdictional boundaries, there is a need for uniformity in the laws of the states governing Internet attorney advertising).

39. *See, e.g.*, Wyn Bessent Ellis, *The Evolution of Lawyer Advertising: Will It Come Full Circle?*, 49 S.C. L. REV. 1237, 1244-48 (1998) (arguing that the prohibition on self-laudatory statements should narrowly apply to statements regarding the quality of legal services; where self-laudatory statements are verifiable facts without reference to the quality of legal services, they should not violate the rule); Linda Sorenson Ewald, *Content Regulation of Lawyer Advertising: An Era of Change*, 3 GEO. J. LEGAL ETHICS 429, 480-81 (1990) (arguing that absent a substantial interest, states cannot regulate self-laudatory claims that are truthful and are not misleading); Feuerborn, *supra* note 38, at 205 (arguing that states should place tighter restrictions on self-laudatory statements in order to preserve the dignity of the profession, to protect small firms from market exploitation, and to communicate to attorneys and the consuming public alike that ethical values are a top priority); Scott Makar, *Advertising Legal Services: The Case for Quality and Self-Laudatory Claims*, 37 U. FLA. L. REV. 969, 994 (1985) (arguing that restrictions on self-laudatory claims should be eliminated; permitting attorneys to make persuasive, yet truthful and non-deceptive claims about their services would allow for access to more "perfect" information); Frederick C. Moss, *The Ethics of Law Practice Marketing*, 61 NOTRE DAME L. REV. 601, 624 (1986) (arguing that restrictions on self-laudatory claims are overly paternalistic toward the lay

have weighed whether lawyers' ads affect the public perception of the profession.[40] There has also been consideration of whether television and Internet advertising raise unique issues because of attributes of those media.[41]

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public; the very nature of advertising may make self-laudation unavoidable and the prohibitions on such claims do not permit the dissemination of enough information to allow the public to differentiate between advertisers); Rodney Smolla, *Lawyer Advertising and the Dignity of the Profession*, 59 ARK. L. REV. 437, 460 (2006) (arguing that concerns with self-laudatory statements are in conflict with the essence of advertising; consumers are able to filter through the information disseminated and absorb what is most important).

40. *See, e.g.*, Warren E. Burger, *The Decline of Professionalism*, 63 FORDHAM L. REV. 949, 956 (1995) (arguing that the "sickening practice of huckster-shyster" attorney advertising and the organized Bar's failure to maintain high standards are one of the primary causes of the profession's extremely negative public image; attorney advertising is unprofessional and likely unnecessary); William E. Hornsby, Jr. & Kurt Schimmel, *Regulating Lawyer Advertising: Public Images and the Irresistible Aristotelian Impulse*, 9 GEO. J. LEGAL ETHICS 325, 338 (1996) (arguing that lawyer advertisements have little to no effect on the public's perception of the legal profession; however, because research indicates that there is a higher public image for lawyers who advertise in stylish ways, efforts to regulate lawyer advertising should permit and encourage stylish advertising); William G. Hyland, Jr., *Attorney Advertising and the Decline of the Legal Profession*, 35 J. LEGAL PROF. 339, 348 (2011) (arguing that attorney advertising has had a major detrimental effect on the negative reputation of lawyers; although appropriate lawyer advertising can serve the legitimate goal of providing the public with information, this must be balanced with the interest of protecting the public from misleading information that demeans the legal profession); Chester N. Mitchell, *The Impact, Regulation and Efficacy of Lawyer Advertising*, 20 OSGOODE HALL L.J. 119, 125 (1982) (arguing that legal advertising does not undermine the legal profession; studies show that people with previous experience with lawyers have a higher regard for them; for that reason, greater public contact with lawyers will predictably increase the overall public regard for the profession); Robert D. Peltz, *Legal Advertising-Opening Pandora's Box?*, 19 STETSON L. REV. 43, 114 (1989) (arguing that although there are many reasons for the legal profession's public image problem, attorney advertising has played a great role); Edward D. Re, *The Causes of Popular Dissatisfaction with the Legal Profession*, 68 ST. JOHN'S L. REV. 85, 100 (1994) (arguing that although lawyer advertising has contributed to the perceived commercialism of the legal profession, the connection between lawyer advertising and the erosion of the profession is weak; few attorneys engage in self-deception); Roy M. Sobelson, *The Ethics of Advertising by Georgia Lawyers: Survey and Analysis*, 6 GA. ST. U. L. REV. 23, 57 (1989) (arguing that lawyer advertising has little correlation with the public's negative perception of the profession; according to a comprehensive survey, lawyers are much more negative about advertising than consumers).

41. *See, e.g.*, J. Clayton Athey, *The Ethics of Attorney Web Sites: Updating the Model Rules to Better Deal with Emerging Technologies*, 13 GEO. J. LEGAL ETHICS 499, 501 (2000) (arguing that because of the quantity of information available with the Internet, traditional ethics rules are not suitable to govern communications made online; the Model Rules should be adjusted to specifically and clearly address legal services communications made via emerging technologies such as the Internet); Daniel Callender, *Attorney Advertising and the Use of Dramatization in Television Advertisements*, 9 UCLA ENT. L. REV. 89, 108 (2001) (arguing that there is nothing inherently false or misleading about an advertisement that employs dramatization and that

This Article is intended to contribute to the understanding of other aspects of lawyer advertising, to build on suggestions in the literature that: 1) the current system for enforcement is insufficient,[42] 2) frequent violations are evidence that

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television advertisements do not present the same problems as in-person solicitations; because the television audience tends to simply ignore boring commercials, television advertisements must be permitted to educate and simultaneously captivate); E. Vernon F. Glenn, *A Pox on Our House*, 79 A.B.A. J. 116, 116 (1993) (arguing that greater self-policing and control is needed for televised lawyer advertising; television and other mass media advertising by attorneys is simply a "search for the easy case and easy money" as such advertisements prey on the poor, uneducated, and ill-informed); Christopher Hurld, *Untangling the Wicked Web: The Marketing of Legal Services on the Internet and the Model Rules*, 17 GEO. J. LEGAL ETHICS 827, 841 (2004) (arguing that spam emails and keyword stuffing on the Internet present unique challenges for regulating attorney advertising; for that reason, the Internet deserves special attention with regard to advertising restrictions); Catherine J. Lanctot, *Attorney - Client Relationships in Cyberspace: The Peril and the Promise*, 49 DUKE L.J. 147, 193 (1999) (arguing that with recent technological advances, online exchanges between attorneys and laypeople in which specific legal advice is given likely inadvertently create attorney-client relationships; boilerplate disclaimers are not likely to protect against a claim for attorney negligence or incompetence); John J. Watkins, *Lawyer Advertising, The Electronic Media, and the First Amendment*, 49 ARK. L. Rev. 739, 781-82 (1997) (arguing that television advertisements are not unique enough to warrant special attention; television advertising should not be viewed as inherently manipulative or distasteful, as commercials by their very nature contain only a limited amount of information, are impersonal, and can be easily ignored); J. T. Westermeier, *Ethics and the Internet*, 17 GEO. J. LEGAL ETHICS 267, 270 (2004) (arguing that the world-wide accessibility of the Internet has created the unique issue of ethical rules with which a website must comply; an application of the predominant effect choice-of-law test is especially difficult with regard to Internet activity).

42. *See, e.g.*, Robert Battey, *Loosening the Glue: Lawyer Advertising, Solicitation and Commercialism in 1995*, 9 GEO. J. LEGAL ETHICS 287, 320 (1995) (arguing that state and local bar associations should rigorously restrict and regulate attorney advertisements, expand the public outreach and educational services pertaining to consumers' legal rights and their search for personal attorneys, invest in and advertise a referral database that details informative and helpful facts about each attorney, and the ABA should produce informational, pro-consumer advertisements on how to best obtain affordable legal help); Burger, *supra* note 40, at 955 (arguing that the ABA's low professional standards and failure to discipline the frequent violations has compromised the legal profession's integrity; there should be a greater emphasis on pro bono work, local bar associations should provide lawyer referral services, and the ABA should severely heighten and enforce the professional standards); Wallace, *supra* note 3, at 782 (arguing that the frequency of violations demonstrates that self-regulation and voluntary compliance are inadequate enforcement mechanisms); Laura R. Champion & William M. Champion, *Television Advertising: Professionalism's Dilemma*, 23 ST. MARY'S L.J. 331, 361 (1991) (arguing that without judicial guidance, the efforts to control tasteless advertising must come from the profession itself; members of state bar associations should educate the rule makers on the dangers inherent in unrestrained advertising, provide better information to the consuming public about factors it should consider when selecting an attorney, and reprimand the crass and undignified advertisements); Fred C. Zacharias, *What Lawyers Do When Nobody's Watching: Legal Advertising as a Case Study of the*

attorneys care more about the potential money to be earned than the potential consequences they may face for violating the rules,[43] and 3) that bettering the legal profession's image would be a valuable effect of tightening control on advertising.[44]

In particular, a recent powerful analysis by Professor Nora Freeman Engstrom has identified the failure of lawyer advertising to reduce fees in the important category of personal injury litigation as a possible basis for reconsidering the application of the First Amendment to lawyer advertising in

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Impact of Underenforced Professional Rules, 87 IOWA L. REV. 971, 1006 (2002) (arguing that the under-enforcement of legal advertising rules is highly problematic as it produces a disrespect and disregard for professional regulation; the rule drafters should provide more incentives for voluntary compliance and should encourage more disciplinary action on behalf of bar authorities).

43. *See generally* John Caher, *New York Trial Lawyers' Bar Backs Tougher Rules for Attorney Ads*, 185 N.Y. L.J. 8 (2006) (discussing the fact that a major state bar association in New York welcomes tougher rules on advertising; noting the association's statement that "money is the root of the problem"; for some attorneys, there is "more to be gained and less to be lost by ignoring existing disciplinary rules"); *see, e.g.*, Melissa George, *Let Sleeping Plaintiffs Lie: Restricting Attorneys' Rights to Make Direct-Mail Solicitation*, 22 J. LEGAL PROF. 251, 265 (1998) (arguing that for some attorneys, the money to be earned is more compelling than compliance with the rules); Zacharias, *supra* note 42, at 1013 (arguing that many lawyers view the under-enforcement of the advertising rules as an invitation to defy them; where an attorney disapproves of a particular regulation and has strong personal or financial incentives to violate the rule, his behavior is unlikely to be constrained); John S. Dzienkowski, *Ethical Decisionmaking and the Design of Rules of Ethics*, 42 HOFSTRA L. REV. 55, 81 (2013) (arguing that most lawyers simply do not view violations of the rules as leading to any significant risk of discipline); Nikki A. Ott & Heather F. Newton, *A Current Look at Model Rule 8.3: How Is It Used and What Are Courts Doing About It?*, 16 GEO. J. LEGAL ETHICS 747, 753-54 (2003) (arguing that, under Model Rule 8.3, when faced with the potential personal and professional ruin for reporting another lawyer or the potential discipline for failing to report, most lawyers choose the latter; many lawyers assume that even if their failure to report is discovered, they will be able to avoid or mitigate sanctions).

44. *See, e.g.*, Battey, *supra* note 42, at 322 (arguing that tighter restrictions would help shape the public's perception of attorneys' and level of respect for the profession; consumers should see legal advertisements that are not designed to "start lawsuits, frighten people[,] or rake in business"); Faye M. Bracey, *Twenty-Five Years Later – for Better or Worse*, 25 ST. MARY'S L.J. 315, 325 (1993) (arguing that without effective self-regulation, the efforts of state bar authorities to strictly enforce the professional standards should enhance the reputation and image of lawyers); Ralph H. Brock, "*This Court Took A Wrong Turn with* Bates:" *Why the Supreme Court Should Revisit Lawyer Advertising*, 7 FIRST AMEND. L. REV. 145, 208 (2009) (arguing that with proper supporting evidence, states can assert a governmental interest so as to restrict quality of service claims, which reflect poorly on the legal profession); Feuerborn, *supra* note 38, at 206 (arguing that tighter regulation on qualitative or comparative designations is necessary in order to protect the legal profession's reputation); Hyland, *supra* note 40, at 381 (arguing that a uniform Rules of Professional Conduct with heightened restrictions that are systematically enforced would prevent the erosion of the public's confidence in the legal profession).

general.[45] Reinforcing that point of view, the study presented in this Article suggests that a basic attribute for the production of advertising's supposed benefits, the increased availability of accurate information about advertised services, may well be far less common than has been supposed in the abstract. It is certainly true that the lack of price advertising in personal injury lawyers' advertisements impairs the power of those ads to lower the cost of personal injury representation.[46] But it turns out that even if price advertising were present, its pro-competition effects might be frustrated because of the ease with which lawyers can make false representations about their fees.

III. METHODOLOGY FOR STUDYING LAWYER PRICE ADVERTISING

This study began with two observations that led to a simple inquiry. The observations were that 1) some bankruptcy lawyers use advertisements that name their prices and 2) federal law requires disclosure of lawyers' fees in bankruptcy cases.[47] These facts enable a basic query: Do the clients actually pay the advertised prices?

This research is meant only to identify issues and offer a qualitative view of the link between price claims and honesty, so a full-fledged national survey was not required. Also, for the purposes of this research, it is not necessary, and might even be unfair, to name the lawyers whose ads and practices the research evaluates. In the service of this impressionistic effort, we[48] began by finding some ads in our home city, Denver, and then used Internet searches to find similar ads in other cities. We then located records of thirty cases filed around the time the advertisements were disseminated and identified the lawyers' fees in those cases.

A. Summaries of Identified Ads

The ads that were studied for this research were used in four cities: Chicago, Denver, Portland, and Seattle. They advertised eight different lawyers or law firms. The Appendix provides full quotations of all the price claims in each ad.[49]

1. Chicago.—I found two law firms in Chicago with ads stating a specific price.[50] One used the expression "Only $99 to get started" and then stated that $99 was a down payment for the total cost of $1,335.00, including $991 in attorneys' fees.[51] The other firm's ad specified "$859 Chapter 7 Special for attorney fees."[52]

2. Denver.—I found four ads in the Denver market.[53] Two used the

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45. *See generally* Engstrom, *supra* note 11.

46. *Id.* at 661.

47. *See* FED. R. BANKR. P. 2016(b).

48. I identified the ads used in this study. The data collection was done under my supervision by my research assistant, Jennifer Barnes.

49. *See infra* Appendix.

50. *See infra* Appendix.

51. *See infra* Appendix.

52. *See infra* Appendix.

53. *See infra* Appendix.

representation "$500 Bankruptcy."[54] One stated, "The following rates are for full bankruptcy representation and are available to all Colorado residents! $499.00."[55] Another stated, "Chapter 7 Bankruptcy, from $500!"[56]

3. Portland.—An advertisement for a Portland lawyer stated, "The attorney fees for most Chapter 7 Cases are $500 – call for a quote."[57]

4. Seattle.—An advertisement for a Seattle lawyer stated that "For a Chapter 7 bankruptcy, we charge: SINGLE = $500 legal [and costs different from lawyers' fees] MARRIED = $500 legal [and costs different from lawyer's fees]."[58]

B. Data Collection

Federal law requires an attorney representing a debtor in a bankruptcy case to file a statement of the compensation paid or agreed to be paid for his or her work in a bankruptcy case.[59] This requirement applies to any payment or agreement that was made up to one year before the date of the filing of the bankruptcy petition and continues to include all subsequent payments.[60] The debtor's attorney must sign the disclosure statement, file it with the court, and transmit it to the United States trustee within fourteen days after the order for relief or at such other time as the court may direct.[61] Additionally, if any further payments or agreements are made, the attorney must also disclose those and file a statement within fourteen days after such payments or agreements are made.[62]

This attention to lawyers' fees is meant to prevent a debtor from depriving creditors of potential assets by transferring property to the attorney before filing.[63] It enables potentially disadvantaged creditors to review the transactions and to seek, if necessary, the return of excessive payments made by a distressed debtor to an attorney.[64] The disclosure requirement was developed also because of a belief that a debtor may be tempted "to deal too liberally with his property in employing counsel to protect him in view of financial reverses and probable failure."[65] The failure to comply with the disclosure requirements under the Code and Bankruptcy Rules can result in denial of compensation and disgorgement of compensation previously received.[66]

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54. *See infra* Appendix.
55. *See infra* Appendix.
56. *See infra* Appendix.
57. *See infra* Appendix.
58. *See infra* Appendix.
59. 11 U.S.C. § 329(a) (2012).
60. *Id.*
61. FED. R. BANKR. P. 2016(b).
62. *Id.*
63. 9 AM. JUR. 2D BANKRUPTCY § 233 (2015).
64. *Id.*; *see also* 11 U.S.C. § 329(b).
65. FED. R. BANKR. P. 2017 advisory committee's note (citing *In re* Wood & Henderson, 210 U.S. 246, 253 (1908)).
66. 11 U.S.C. § 329(b). *See In re* CVC, Inc., 120 B.R. 874, 877 (Bankr. N.D. Oh. 1990)

The disclosure of compensation forms are a matter of public record, available through Public Access to Court Electronic Records (PACER).[67] PACER is an electronic public access service that allows users to obtain case and docket information from federal courts including bankruptcy courts.[68] The PACER system is operated by the Administrative Office of the United States Courts.[69]

Using the time each studied advertisement was published, we found the actual compensation amount that was disclosed by each lawyer's or law firm's clients to the court for Chapter 7 bankruptcy cases. Chapter 7 is the most common form of bankruptcy.[70] Businesses or individuals who reside, have a place of business, or own property in the United States may file for bankruptcy in Chapter 7 ("straight bankruptcy" or liquidation).[71] We attempted to find thirty cases for each lawyer or law firm covered in the study. To do this we identified a month close to the time the ad was published or retrieved on the Internet. We put the first thirty cases from that month into our database. If that month had fewer than thirty cases, we added cases from the previous month or months to reach the total of thirty, again taking cases in order from the beginning of the month.

IV. EMPIRICAL FINDINGS

Of the 240 cases for which we collected data, there were seventy-three in which the client paid the advertised fee or less and 167 in which the client paid more than the advertised fee.[72] Among the 167 cases of overcharging, there were thirty-seven with relatively small overcharges where the client's fee was within 10% of the advertised fee.[73] In 130 cases, the overcharged clients paid fees more

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(accountant failed to disclose third party source); *In re* Western Office Partners Ltd., 105 B.R. 631, 637 (Bankr. D. Colo. 1989) (third party source).

67. *See* PACER, https://www.pacer.gov [http://perma.cc/WW8F-NZ2U] (last visited Aug. 26, 2015).

68. *Id.*

69. *Id.*

70. *See* Michael D. Sousa, *Just Punch My Bankruptcy Ticket: A Qualitative Study of Mandatory Debtor Financial Education*, 97 MARQ. L. REV. 391, 402 n.45 (2013); *see also Table f-2 Bankruptcy Filings (Dec. 31, 2011)*, U.S. CTS., http://www.uscourts.gov/uscourts/Statistics/BankruptcyStatistics/BankruptcyFilings/2011/1211_f2.pdf [http://perma.cc/L9LT-ARAD] (last visited, July 27, 2015).

71. 11 U.S.C. § 109(b) (2012).

72. Consistent with basic principles of advertising regulation, this Article takes a pro-consumer stance in defining what claim an advertisement conveys. As will be shown in Part VI, literal truthfulness may not prevent an advertisement from being misleading or false under advertising regulation statutes, rules and precedents. An ad that states that $500 is the fee for "most" bankruptcy cases or that the fee for bankruptcy is "from $500" may be literally true, but may fairly be characterized as conveying the representation that $500 is the price for which the service is offered. Despite the use of disclaimers or modifiers such as "from" or "most," the impression an ad would likely give a typical consumer is the representation that must be accurate.

73. *See infra* Appendix.

than 10% higher than their lawyers' advertised fees.[74] The data show a range of styles of conduct in the context of price advertising.[75] The Appendix shows the fees charged by each firm for each of the cases in the study sample.[76]

A. Routine Large Overcharges

An example of this pattern is a Denver law practice, Firm *A* in our study, in which one 100% of the clients paid overcharges of 10% or more.[77] A law firm in this category could be described as having no excuse and inflicting significant harms. By "no excuse," I mean that there could be no good faith belief on the part of the advertiser that the advertisement fairly or honestly describes what the advertiser actually provides.

A similar pattern was presented by Firm *B* in our study.[78] About a quarter of its clients paid the advertised $500 fee.[79] But the remaining clients were charged a variety of fees, such as $600, $700, $750, $799, $1100, and more.[80] This firm fulfilled its promise in many cases by charging only the advertised fee that presumably attracts its clients.[81] However, it did overcharge a significant portion of its clients.[82] A lawyer whose practice fits this pattern might be tempted to argue that his or her advertising is truthful because the service advertised actually is a service that the lawyer does provide in many cases. However, as will be seen below, that argument fails to recognize two basic aspects of advertising regulation. Advertisements must be more than literally true; if a reasonable member of the audience to which they are addressed would infer a particular meaning from them, then that meaning must correspond accurately to the service that is offered.[83] Also, it is ordinarily illegal to use "bait and switch" advertising.[84] A bait and switch ad uses a low price to attract customers who are then advised to spend more on something different from the advertised product or service.[85]

B. Routine Small and Large Overcharges

An example of this pattern is a Chicago firm in which 93% of clients paid overcharges: for 67% of the firm's clients, the overcharges were 10% or less.[86]

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74. *See infra* Appendix.
75. *See infra* Appendix.
76. *See infra* Appendix.
77. *See infra* Appendix.
78. *See infra* Appendix.
79. *See infra* Appendix.
80. *See infra* Appendix.
81. *See infra* Appendix.
82. *See infra* Appendix, p. 30.
83. *See infra* notes 131-32 and accompanying text.
84. *See infra* notes 143-45 and accompanying text.
85. *See infra* notes 143-45 and accompanying text.
86. *See infra* Appendix, p. 34.

For 27% of the firm's clients, the overcharges were 10% or higher.[87] A law firm in this category could be described as having no excuse and inflicting mostly moderate harms.

C. Occasional Large Overcharges

An example of this pattern is a Portland practice which charged 63% of its clients the advertised fee or less.[88] But 37% of its clients paid fees that were on average about 41% higher than the advertised price.[89] While the firm's advertised price was $500, the average fee paid by clients who were overcharged was $709.[90]

D. Occasional Small Overcharges

No firm in this study fits this description, but the analysis of such a pattern would be similar to the analysis for a firm that manifests occasional large overcharges, except that the magnitude of harm inflicted would be less.

E. Rare Overcharges

One firm in this study charged its advertised fee in 93% of its cases.[91] In the remaining cases, the fee charged was 11% higher than the advertised fee.[92]

F. Patterns of Compliance and Non-Compliance

The following chart illustrates the distribution of fees charged by each of the eight law practices in this study. For the firms, labeled as *A* through *H*,[93] the portion of the bar on the chart that is shown with vertical lines represents the percentage of its cases in which clients were charged 10% or more above the advertised price. The portion of the bar that is shown with a checkerboard pattern represents the percentage of its cases in which clients were overcharged in amounts up to 10% above the advertised price. The portion of the bar that is shown with horizontal lines represents the percentage of its cases in which clients were charged no more than the advertised fee.

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87. *See infra* Appendix, p. 34 (sixty-seven and twenty seven add up to ninety-four, rather than the 93% total stated because of rounding).

88. *See infra* Appendix, p. 35.

89. *See infra* Appendix, p. 35.

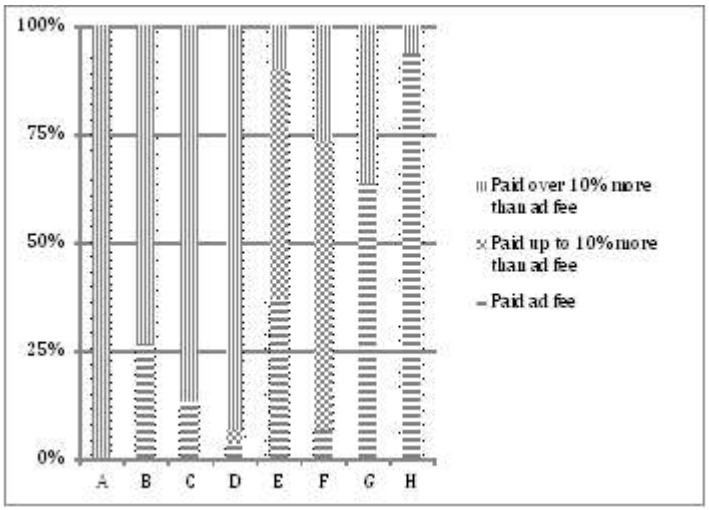
90. *See infra* Appendix, p. 35.

91. *See infra* Appendix, p. 36.

92. *See infra* Appendix, p. 36.

93. The labels *A* through *H* correspond to the labels used in the Appendix and the presentation there of the precise fee charged in each case in our sample.

Individual Law Practice Distributions of Clients Paying Advertised Fee, Up to 10% More than Advertised Fee, and Over 10% More than Advertised Fee



Firm *A* was the worst in this study, with all of its clients paying more than 10% above the advertised fee.[94] Firm *H* was the best, with the vast majority of its clients paying no more than the advertised price (although 7% of its clients paid fees that were more than 10% above the advertised fee).[95] Firm *E* represents a middle ground, with 90% of its clients paying either the advertised fee or a fee no more than 10% higher than the advertised fee.[96]

V. LEGAL STANDARDS FOR ADVERTISING

A. Regulatory Regimes and Basic Patterns of Analysis

Advertising by lawyers is required, like any other advertising, to comply with applicable federal, state, and local laws.[97] Advertising that is false or misleading is usually subject to sanction under the Federal Trade Commission Act and under various state consumer protection acts, most of which are interpreted to incorporate FTC standards.[98] Advertising by lawyers is also subject to professional ethics rules, usually adapted from the Model Rules of Professional Conduct.[99] The federal statute applies only to actors in interstate commerce,

94. *See infra* Appendix, p. 29.

95. *See infra* Appendix, p. 36.

96. *See infra* Appendix, p. 33.

97. *See generally* Arthur Best, *Controlling False Advertising: A Comparative Study of Public Regulation, Industry Self-Policing, and Private Litigation*, 20 GA. L. REV. 1 (1985).

98. *See id.*; *see also* 15 U.S.C. § 52 (2012).

99. *See, e.g.*, MODEL RULES OF PROF'L CONDUCT R. 7.1 (2015).

which might preclude its application to most advertising by lawyers.[100] On the other hand, it provides persuasive authority, so it makes a good starting place for understanding the legal context for evaluating lawyer advertising.[101]

Under all regimes of advertising regulation, two determinations are needed.[102] First, the content of the ad claim must be specified.[103] Second, the claim must be compared with what the seller actually provides to see if the claim and the advertised product or service match up well enough for the claim to be characterized as truthful.[104] Each of these determinations can sometimes be clear and sometimes be vague.

The two aspects of analyzing ads can be illustrated with the ads in this study. The most straightforward circumstance is an ad that stated simply "$500 bankruptcy."[105] There is no difficulty in characterizing the message conveyed by this advertisement. It represents that the firm will take care of a client's bankruptcy needs for a fee of $500. One firm that used this representation actually charged more than $500 in every case in our sample.[106] This pattern of business is easy to compare with the advertiser's claim. A major discrepancy is apparent between what the advertiser claimed and what the advertiser provided.

Different from an instance with a clear representation and a pattern of business that fails to match up with the representation would be an advertiser whose representations are ambiguous or somewhat vague and whose pattern of business includes a variety of fees paid by clients. For example, one firm in this study used an ad that stated "the attorney fees for most Chapter 7 Cases are $500 – call for a quote."[107] The overall impression conveyed by the ad may well be that $500 is a typical fee. The modifying word "most" might be taken in by members of the ad's audience as meaning just a bare majority. Alternatively, members of the ad's audience may infer that the $500 price is typical, usual, ordinary, and that only in unusual cases will the fee be higher than the advertised amount. The emphasis of a low price and the failure to specify other (higher) prices might lead a typical consumer to anticipate that the advertised price would be the one that was charged.[108] Another example of an ambiguous representation is the expression "from $500" used in one of the advertisements in this study.[109] An individual who is the target of that advertisement's representation might well

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100. 15 U.S.C. § 45 (2012).

101. *Id*.

102. *See* Kraft, Inc. v. Fed. Trade Comm'n, 970 F.2d 311, 314 (7th Cir. 1992).

103. *Id*.

104. *Id*.

105. *See infra* Appendix, p. 29.

106. *See infra* Appendix, p. 29.

107. *See infra* Appendix, p. 35.

108. The business practice of attracting customers with a reference to a low price, but then routinely steering them to a service provided at a higher price is ordinarily called "bait and switch" and is subject to regulations and judicial precedents discussed below; *see infra* notes 143-44 and accompanying text.

109. *See infra* Appendix, p. 32.

come away from the ad with the impression that $500 will be the cost of bankruptcy representation because the advertiser has highlighted that price and chosen to be silent about any other possible specific prices.

The firm that used the "most . . . are $500" representation charged many clients the advertised $500 fee, but charged higher fees in about a third of its cases.[110] Whether this pattern of business is one in which "most" clients paid only $500 would depend on the interpretation of "most." Using a literal interpretation for both the claim and the business practice would support a conclusion that the ad was truthful. Taking "most" as implying that the usual or highly common fee is $500 would support a conclusion that the ad was deceptive or misleading.

B. Applying Legal Standards to Archetypal Ads

The two advertisements just described can be referred to as "$500 bankruptcy" and "most are $500" ads.[111] They represent how a price claim can be express and clear ("$500 bankruptcy") or subject to interpretation ("most are $500").[112] The business practices that the advertisers used also represent clarity (all clients paid more than $500) and ambiguity (about a third of clients paid more than $500).[113] These two ads represent the range of combinations of claims and practices price-advertising lawyers can use.[114] They can be evaluated under the legal standards used in various regulatory regimes.

The Federal Trade Commission Act prohibits "unfair or deceptive acts or practices in or affecting commerce."[115] It has been held that an advertisement is deceptive if it contains a misrepresentation likely to mislead consumers who are acting reasonably.[116]

This straightforward concept can be applied easily to the first of our two advertisements. The "$500 bankruptcy" representation is an explicit representation that bankruptcy services will be provided for $500 and the advertiser who used that claim failed to provide services for that price.[117] It is reasonable for a person who sees that ad to rely on it and anticipate the provision of services for the advertised price. An individual who then purchases services for a higher price has been harmed.

The second advertisement presents a more complex case. The "most . . . are $500" representation may convey to its audience the idea that it is typical or easy to obtain the $500 service from that advertiser. If that belief is compared with the reality that about one-third of this advertiser's clients are charged more than the

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110. *See infra* Appendix, p. 35.

111. *See infra* Appendix, pp. 29-30, 35.

112. *See infra* Appendix, pp. 29-30, 35.

113. *See infra* Appendix, pp. 29-30, 35.

114. *See infra* Appendix, pp. 29-30, 35.

115. 15 U.S.C. § 45 (2012).

116. Kraft, Inc. v. Fed. Trade Comm'n, 970 F.2d 311, 314 (7th Cir. 1992) (citing *In re* Cliffdale Assocs., Inc., 103 F.T.C. 110, 174 (1984)).

117. *See infra* Appendix, pp. 29-30.

advertised price, then the ad would properly be characterized as deceptive.[118] The FTC is permitted to draw conclusions about the implied promises based on its own experience and its own interpretation of the advertising.[119] In doing so it is not required to use the kind of technical analysis that might make sense in interpreting a contract or the terms of a patent.[120] As the D.C. Circuit stated:

> The tendency of a particular advertisement to deceive is determined by the net impression it is likely to make upon the viewing public. Consequently, literally true statements may nonetheless be found deceptive. . . even though other, non-misleading interpretations may also be possible.[121]

Another important principle is that an unsophisticated consumer is ordinarily the hypothesized recipient of advertising messages.[122] The Fifth Circuit stated:

> Advertisements having a capacity to deceive may be prohibited. The 'law is not made for the protection of experts, but for the public – that vast multitude which includes the ignorant, the unthinking and the credulous, who, in making purchases, do not stop to analyze but are governed by appearances and general impressions.'[123]

The Supreme Court expressed this idea in connection with a marketing plan that described books as free but provided them only in connection with the purchase of update pages:

> The fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced. There is no duty resting upon a citizen to suspect the honesty of those with whom he transacts business. Laws are made to protect the trusting as well as the suspicious. The best element of business has long since decided that honesty should govern

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118. *See* Helbros Watch Co. v. Fed. Trade Comm'n, 310 F.2d 868, 870 (D.C. Cir. 1962), *cert. denied*, 372 U.S. 976 (1963) (deciding that where only about 60% of a product's sales were made at the advertised price, the advertised price was "fictitious" and could properly be characterized as deceptive).

119. Thompson Med. Co. v. Fed. Trade Comm'n, 791 F.2d 189, 193 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987).

120. *See Kraft, Inc.*, 970 F.2d at 316.

121. *Thompson Med. Co.*, 791 F.2d at 197 (quoting Brief for Respondent, at 49-50; internal footnotes omitted by source).

122. Gulf Oil Corp. v. Fed. Trade Comm'n, 150 F.2d 106, 109 (5th Cir. 1945); *see also* Charles of the Ritz Distribs. Corp. v. Fed. Trade Comm'n, 143 F.2d 676, 679 (2d Cir. 1944) ("There is no merit to petitioner's argument that, since no straight-thinking person could believe that its cream would actually rejuvenate, there could be no deception. Such a view results from a grave misconception of the purposes of the Federal Trade Commission Act.").

123. *Gulf Oil Corp.*, 150 F.2d at 109 (quoting Florence Mfg. Co. v. J.C. Dowd & Co. 178 F. 73, 75 (2d Cir. 1910)).

> competitive enterprises, and that the rule of caveat emptor should not be relied upon to reward fraud and deception.[124]

Against this background, particularly because the "most . . . are $500" ad does not disclose the higher prices some of its clients pay and does not disclose what proportion of its clients obtain the advertised service for $500, a regulator could properly conclude that the advertisement conveys to a typical member of its audience that it is highly likely that $500 will be the amount that client would be charged. This is misleading or deceptive because there is a significant likelihood (a one-third chance) that the client will be charged more.

An advertiser of this type might contend that it *would* have provided bankruptcy services for $500 if a client's case had been appropriate for that fee. In other words, the claim would be that the lawyer provided services priced higher than the advertised price because the "bankruptcy" service meant to be provided for $500 would not have served the client's needs. This presents the precise problem highlighted in *Bates* in the debate among the justices about whether the variability of legal needs might essentially make honest price advertising impossible.[125] It is likely that the results of this Article's study support a conclusion that lawyers who advertise a service like bankruptcy by making a single price representation have found that they would prefer to offer bankruptcy services for a range of prices. If a lawyer chooses to advertise a single price for services that the lawyer would like to provide for a range of prices, the most sensible response would be to characterize a single-price ad as deceptive.

If it is not possible to describe the service offered with specificity, then the risk of "misunderstanding" should be placed on the advertiser, not the consumer. The lawyer who chooses the power and clarity of a single price claim for a generally described service should be required to provide full service to any client who is attracted by the ad. The generally understood meaning of the type of service referred to in the ad should define the service the lawyer would be required to provide. If the complexity of a field of law does not permit honest use of single price ads, then the lawyer's response should be to choose a clear type of advertising claim.

For a "most . . . are $500" claim that is treated as conveying that a typical client will pay only $500 and for a "$500 bankruptcy" claim that should be interpreted the same way, the law of bait and switch advertising is pertinent.[126] The FTC has ruled that it violates the FTC Act to offer a product in circumstances that make it likely that customers attracted by that offer will be diverted to the purchase of another more expensive product.[127] The Commission's guidelines state:

> Bait advertising is an alluring but insincere offer to sell a product or

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124. Fed. Trade Comm'n v. Standard Educ. Soc'y, 302 U.S. 112, 116 (1937).

125. *See generally* Bates v. State Bar of Ariz., 433 U.S. 350 (1977).

126. *See generally* 16 C.F.R. § 238 (2015).

127. *See generally* Thompson Med. Co. v. Fed. Trade Comm'n, 791 F.2d 189, 193 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987).

> service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised merchandise, in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying merchandise of the type so advertised.[128]

This kind of bait advertising is prohibited by the FTC's rules.[129] A note to 16 C.F.R. § 238.4, which covers "unselling" or the practice of delivering advertised goods and then seeking to reverse the transaction, states:

> Note: Sales of advertised merchandise. Sales of the advertised merchandise do not preclude the existence of a bait and switch scheme. It has been determined that, on occasions, this is a mere incidental byproduct of the fundamental plan and is intended to provide an aura of legitimacy to the overall operation.[130]

Thus, a law firm that sometimes provides its advertised service at the advertised price but often switches clients to a higher fee service would not be protected from a finding that its advertising is improper under the FTC Act or under any other regulatory regime that treats FTC jurisprudence as persuasive authority.[131] This outcome would resolve the problem noted in *Bates* concerning the difficulty in characterizing legal services as uniform.[132] A lawyer could provide many different styles of service to his or her clients, but if the lawyer promoted those services with a single-price representation, the lawyer would be

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128. 16 C.F.R. § 238.0 (2015) (defining bait advertisement).

129. *See* 16 C.F.R. § 238.1 (2015) ("No advertisement containing an offer to sell a product should be published when the offer is not a bona fide effort to sell the advertised product."); *see also* 16 C.F.R. § 238.2 (2015) ("(a) No statement or illustration should be used in any advertisement which creates a false impression of the grade, quality, make, value, currency of model, size, color, usability, or origin of the product offered, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, the purchaser may be switched from the advertised product to another. (b) Even though the true facts are subsequently made known to the buyer, the law is violated if the first contact or interview is secured by deception."); 16 C.F.R. § 238.3 (2015) (" No act or practice should be engaged in by an advertiser to discourage the purchase of the advertised merchandise as part of a bait scheme to sell other merchandise. Among acts or practices which will be considered in determining if an advertisement is a bona fide offer are: (a) The refusal to show, demonstrate, or sell the product offered in accordance with the terms of the offer, (b) The disparagement by acts or words of the advertised product or the disparagement of the guarantee, credit terms, availability of service, repairs or parts, or in any other respect, in connection with it . . . (e) The showing or demonstrating of a product which is defective, unusable or impractical for the purpose represented or implied in the advertisement . . . .").

130. 16 C.F.R. § 238.4 (2015).

131. *Id.*

132. Bates v. State Bar of Ariz., 433 U.S. 350, 366-67 (1977).

obligated to provide all of those services for that one identified price.[133]

These conclusions about application of the FTC Act to our archetype ads would be paralleled in application of various state Unfair and Deceptive Trade Practices Acts.[134] An example of a state "Little FTC Act" is the Colorado Consumer Protection Act.[135] It prohibits deceptive trade practices and states:

> A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person: . . . (e) Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith;[136]

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133. *See generally id.*

134. *See* Marshall A. Leaffer & Michael H. Lipson, *Consumer Actions Against Unfair or Deceptive Acts or Practices: The Private Uses of Federal Trade Commission Jurisprudence*, 48 GEO. WASH. L. REV. 521, 521 (1980) ("[M]ost states enacted consumer protection legislation designed to parallel and supplement the Federal Trade Commission Act."); *see also* Henry N. Butler & Joshua D. Wright, *Are State Consumer Protection Acts Really Little-FTC Acts?*, 63 FLA. L. REV. 163 (2011) (providing history of these acts and reporting a study evaluating whether their coverage typically corresponds with coverage of the federal FTC statute).

135. COLO. REV. STAT. § 6-1-105(1) (2014).

136. *Id.* For similar statutes, *see* NEV. REV. STAT. §§ 598.0915-598.0925 (2014) (prohibiting false representations for services); ME. REV. STAT. tit 10 §§ 1212 (2014) (prohibiting representations that goods or services have characteristics that they do not have); Alabama Deceptive Trade Practices Act, ALA. CODE §§ 8-19-1 to -15 (2015); Alaska Unfair Trade Practices and Consumer Protection Act, ALASKA STAT. §§ 45.50.471-561 (2015); Arkansas Deceptive Trade Practices Act, ARK. CODE ANN. §§ 4-88-101 to -115 (2015); California Consumer Legal Remedies Act, CAL. CIV. CODE §§ 1750-1757 (2015); California's Unfair Competition Law, CAL. BUS. & PROF. CODE §§ 17200-17210 (2015); Connecticut Unfair Trade Practices Act, CONN. GEN. STAT §§ 42-110a to -110q (2014); Delaware Deceptive Trade Practices Act, DEL. CODE ANN. tit. 6, §§ 2511-2527 (2015); District of Columbia Consumer Protection Procedures Act, D.C. CODE §§ 28-3901 to -3913 (2015); Florida Deceptive and Unfair Trade Practices Act, FLA. STAT. §§ 501.201-.23 (2014); Georgia Fair Business Practices Act, GA. CODE ANN. §§ 10-1-390 to -408 (2015); Hawaii Unfair and Deceptive Practices Act, HAW. REV. STAT. §§ 480-1 to -37 (2014) and Hawaii Uniform Deceptive Trade Practices Act, HAW. REV. STAT. §§ 481a-l to -5 (2014); Idaho Consumer Protection Act, IDAHO CODE ANN. §§ 48-601 to -619 (2015); Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILL. COMP. STAT. 505/1-12 (2014); Kansas Consumer Protection Act, KAN. STAT. ANN. §§ 50-623 to -643 (2014); Kentucky Consumer Protection Act, KY. REV. STAT. ANN. §§ 367.110-360 (2015) and the Kentucky Unfair Trade Practices Act, KY. REV. STAT. ANN. §§ 365.020-090 (2015); Louisiana Unfair Trade Practices and Consumer Protection Law, LA. REV. STAT. ANN. §§ 51:1401-1430 (2015); Maine Unfair Trade Practices Act, ME. REV. STAT. tit. 5, §§ 205a-214 (2015) and Maine Uniform Deceptive Trade Practices Act, ME. REV. STAT. ANN. 10, §§ 1211-1216 (2015); Massachusetts Unfair and Deceptive Practices Act, MASS. GEN. LAWS ch. 93A §§ 1-11 (2015); Michigan Consumer Protection Act, MICH. COMP. LAWS §§ 445.901-922 (2015); Minnesota Prevention of Consumer Fraud Act, MINN. STAT. §§

That state's supreme court has interpreted the statute as barring acts that "have a tendency or capacity to attract customers through deceptive trade practices."[137] It should be noted, however, that some state consumer protection statutes preclude application to professionals such as lawyers.[138]

Under a typical statute consumer protection statute, the "$500 bankruptcy" ad would clearly be found to be a basis for relief, since the claim is express and its falsity is clear-cut.[139] The "most are $500" ad would also likely be found to violate the statutes, since they ordinarily proscribe misleading as well as false statements.[140]

Under the Model Rules of Professional Conduct, state regulators would

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325F.68-695 (2014) and Minnesota Uniform Deceptive Trade Practices Act, MINN. STAT. §§ 325D.43-48 (2014); Mississippi Consumer Protection Act, MISS. CODE ANN. §§ 75-24-1 to -29 (2015); Missouri Merchandising Practices Act, MO. REV. STAT. §§ 407.010-1610 (2014); Montana Unfair Trade Practices and Consumer Protection Act, MONT. CODE ANN. §§ 30-14-101 to -157 (2014); Nebraska Consumer Protection Act, NEB. REV. STAT. §§ 59-1601 to -1623 (2014) and Nebraska Uniform Deceptive Trade Practices Act, NEB. REV. STAT. §§ 87-301 to -306 (2014); Nevada Trade Regulation and Practices Act, NEV. REV. STAT. §§ 598.0903-0999 (2014); New Hampshire Consumer Protection Act, N.H. REV. STAT. ANN. §§ 358-a:1-13 (2015); New Jersey Consumer Fraud Act, N.J. STAT. ANN. §§ 56:8-1 to -195 (2015); New Mexico Unfair Practices Act, N.M. STAT. ANN. §§ 57-12-1 to -26 (2014); North Dakota Consumer Fraud Act, N.D. CENT. CODE §§ 51-15-01 to -11 (2015); OHIO REV. CODE ANN. §§ 1345.02 , 1345.03 (2015) and OHIO ADMIN. CODE §§ 109:4-3-02, 109:4-3-03, 109:4-3-10 (2015); Oklahoma Consumer Protection Act, OKLA. STAT. tit. 15, §§ 751-765 (2015); Oregon Unfair Trade Practices Act, ORE. REV. STAT. § 646.608 (2014); Rhode Island Unfair Trade Practices and Consumer Protection Act, R.I. GEN. LAWS §§ 6-13.1-1 to -29 (2015); South Carolina Unfair Trade Practices Act, S.C. CODE ANN. §§ 39-5-10 to -180 (2014); South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. CODIFIED LAWS §§ 37-24-1 to -56 (2015); Tennessee Consumer Protection Act, TENN. CODE ANN. §§ 47-18-101 to -130 (2015); Vermont Consumer Fraud Act, VT. STAT. ANN. tit. 9, §§ 2451-2466a (2015); Washington Consumer Fraud Act, WASH. REV. CODE §§ 19.86.010-920 (2015); West Virginia Consumer Credit and Protection Act, W. VA. CODE §§ 46A-6-101 to -110 (2015); Wisconsin Deceptive Trade Practices Act, WIS. STAT. §§ 100.18-65 (2014).

137. People *ex rel.* Dunbar v. Gym of Am., Inc., 493 P.2d. 660, 668 (Colo. 1972) (holding that the statute's coverage extends to professionals); *see also* Crowe v. Tull, 1256 P.3d 196, 209 (Colo. 2006) (holding that misleading lawyer advertising could support a claim under the statute where it potentially affects the public via various advertising media with broad exposure).

138. *See generally* Mark D. Bauer, *The Licensed Professional Exemption in Consumer Protection: At Odds with Antitrust History and Precedent*, 73 TENN. L. REV. 131 (2006); *see also* N.C. GEN. STAT. § 75-1.1(b) (2015); Preston v. Stoops, 285 S.W.3d 606, 609 (Ark. 2008) (holding that legal services are outside the coverage of the state consumer protection statute); Cripe v. Leiter, 703 N.E.2d 100, 107 (Ill. 1998) (holding that conduct by lawyers is outside the coverage of the state consumer fraud statute because lawyers are subject to regulation by the state supreme court and because the legislature did not specifically include lawyers in the statute's coverage).

139. *See supra* note 135 and accompanying text.

140. *See supra* note 135 and accompanying text.

probably reach the same conclusions as outlined above under the FTC Act and state consumer protection statutes.[141] Rule 7.1 provides:

> A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.[142]

A comment to the Rule states:

> Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.[143]

The "$500 bankruptcy" ad disseminated in connection with a practice that charged all of its clients more than $500 would clearly violate this rule. The "most are $500" ad, disseminated in connection with a practice that charged about a third of its clients more than $500, would also likely be interpreted as violating this rule. A regulator could well conclude that the ad, with its use of the alluring price and the small attempt to make the ad truthful by use of the word "most" could "lead a reasonable person to formulate a specific conclusion" that the fee required would be $500. This conclusion is supported by the reasoning of *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*,[144] which upheld the prohibition of a literally honest statement that no fee will be charged because it was misleading to omit the fact that clients would be liable for the costs and expenses of litigation. In our archetypal ad, the reference to $500 is not put in an accurate context of the large portion of the firm's cases for which a fee higher than $500 is charged.[145]

VI. RESPONDING TO THE PREVALENCE OF FALSE PRICE ADVERTISING AND THE APPARENT LACK OF REGULATORY CONTROLS

Our empirical findings show that the prices bankruptcy lawyers advertise for "bankruptcy" representation often are significantly less than the prices they

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141. *See generally* MODEL RULES OF PROF'L CONDUCT (2015).

142. MODEL RULES OF PROF'L CONDUCT R. 7.1 (2015).

143. *Id.* at cmt. 2.

144. 471 U.S. 626, 652 (1985).

145. Additional holdings that treat half-truths as misleading include *Leoni v. State Bar of Cal.*, 704 P.2d 183, 188 (Cal. 1985) (claiming that $60 in cash was needed to apply for debt relief omitted information about higher required legal fees) and *People v. Roehl*, 655 P.2d 1381, 1382 (Colo. 1983) (advertising legal services that named a fixed fee but did not disclose hidden costs).

actually charge.[146] And the analysis of a range of regulatory frameworks shows that in each of them, these advertising representations would likely be characterized as false or misleading.[147] This pattern of conduct can be compared with the concerns developed in *Bates* and with proposals for reform.[148]

A. Variability of Legal Services

One of the main debates in *Bates* centered on the variability of legal services.[149] If services like bankruptcy or divorce are not really standard, but might require significantly different amounts of work for different clients, could a lawyer possibly advertise a single price for that kind of work and do so in a practice context that made the advertising accurate? The data presented in this Article support the idea that even advertisers who purport to offer a single service for a single price may sometimes offer a range of services at a range of prices.[150] For example, Firm *B* in our study charged eight of its clients its advertised $500 fee in the group of thirty cases we studied.[151] But the firm collected a range of fees.[152] The fees were $700 in two cases, $750 in four cases, and $1100 in four cases.[153] Probably this firm would defend its conduct by describing varied degrees of difficulty in the various cases and by pointing to the significant number of cases in which the fee charged was exactly the fee advertised. That defense would reflect the thinking in the *Bates* debate about the likely variation in services lawyers provide.[154]

Our data provide a factual basis for resolving the *Bates* debate about the impact of variation in services on the legitimacy of price advertising. Lawyers with a practice like the practice of Firm *B* have essentially three choices. First, they can decline to advertise prices. Second, they can advertise a price for a named service but serve only some of their clients at that price. Third, they can advertise a price for a named service and actually serve all of their clients at that price. Only the first and third of these options are honest.

B. Difficulty in Regulating Advertising

The second main debate in *Bates* centered on the difficulty of policing price advertising.[155] Time has proven that the justices were correct in anticipating this difficulty. Apparently all of the advertising lawyers identified in this Article's

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146. *See infra* Appendix.

147. *See supra* note 135 and accompanying text.

148. *See generally* Bates v. State Bar of Ariz., 433 U.S. 350 (1977).

149. *Id.* at 372-75.

150. *See infra* Appendix.

151. *See infra* Appendix.

152. *See infra* Appendix.

153. *See infra* Appendix. The Appendix presents a full listing of all the fees the firm's clients paid.

154. *Bates*, 433 U.S. at 372-75.

155. *Id.* at 379.

study disseminated false or misleading ads and were not deterred from doing so by their perceptions of the regulatory system. It may be that the societal resources for regulating bad conduct by lawyers are being allocated well at present and that the lack of attention to false price advertising is justified because those resources are being spent to prevent or penalize worse misconduct. On the other hand, identifying these false ads is extremely easy; no expensive investigation is required. We are thus needlessly presented with a situation in which genuine harms to vulnerable clients are tolerated and lawyers, who are supposed to uphold ethical standards and be models or respect for law, choose to violate relevant legal standards routinely.[156]

C. Facilitating Honest Price Advertising and the Social Benefits It Might Create

There is nothing inherent in price advertising that requires it to be coupled with deception. A lawyer who wants to provide a service at a uniform price and wants to advertise that price honestly can do so. If a client is attracted by the ad but has circumstances that would require more work than the lawyer prefers to do for the advertised fee, a possible resolution of this dilemma would be to refer the client to another lawyer *in a way that provided no financial benefit to the referring lawyer*. This would regrettably subject the client to the inconvenience of dealing with more than one lawyer, but it would prevent the advertising lawyer from profiting from "bait and switch" marketing.

The bankruptcy lawyer advertising analyzed in this Article may be helpful in developing general reform proposals.[157] For example, in the field of personal injury practice, Professor Engstrom has suggested that closing statements disclosing fees should be required in personal injury cases and that public availability of this information could facilitate competition and deter false advertising by personal injury lawyers.[158] The sad experience detailed here for bankruptcy advertising may help in evaluating those proposals.[159] Requiring

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156. Fred C. Zacharias, *The Future Structure and Regulation of Law Practice: Confronting Lies, Fictions, and False Paradigms in Legal Ethics Regulation*, 44 ARIZ. L. REV. 829, 857-862 (2002) ("Many aspects of the codes are not seriously enforced. . . . The resources of the disciplining bodies are limited. They must choose among the policies of pursuing violations they consider to be the worst, pursuing a random assortment of code violations, or targeting prosecutions that will produce the most general deterrence. They must choose between acting on cases that come to their attention easily or proactively seeking out and investigating violations. In practice, most jurisdictions have focused on lawyer mishandling of client funds, to the exclusion of most other misconduct. The result is that many rules simply go unenforced or are patently under-enforced. *The most notable examples include advertising* and lawyer reporting rules. But one could safely hazard the assertion that few rules truly are enforced in a way that makes lawyers fear discipline for violating them.") (emphasis added).

157. *See generally* Sousa, *supra* note 70.

158. Engstrom, *supra* note 11, at 693-94.

159. *Id*.

disclosure of fees paid in bankruptcy cases *has not* curtailed false descriptions of those fees in lawyers' advertisements.[160] This suggests that an analogous requirement for personal injury cases should be fashioned to have greater effect than the required bankruptcy disclosures seem to have had. Making the data available publicly on the Internet would go a long way in that direction, as Professor Engstrom recommends,[161] in comparison to the availability of bankruptcy data solely through PACER.[162]

It might make sense for states to adopt rules requiring lawyers who advertise prices to maintain or file records of the fees they actually charge, so that prospective clients or regulatory authorities could identify discrepancies between fees advertised and fees charged. Internet posting of this data could strengthen its deterrent effect. Its availability could also provide an incentive for regulators to become more active, since publicly available evidence of misconduct by regulated actors ought to be an embarrassment to those in a position of regulatory authority.

Finally, in the current setting of frequent false advertising, rival lawyers ought to police their competitors by developing information and making complaints to regulatory authorities. And class actions or suits under state consumer protection statutes could be avenues for redress.[163] Many state statutes provide for payment of attorney's fees and offer treble damages.[164]

False advertising by lawyers harms clients. It also harms honest lawyers from whose practices the false ads may divert clients.[165] Its persistence shows a failure of attention or capability on the part of regulators. And it degrades the role of lawyers in society when members of the profession ignore or distort basic legal principles. Because it has all of these consequences, decreasing its prevalence would be a significant public good.

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160. *Id*.

161. *Id.* at 693.

162. It is unrealistic to think that potential clients in need of bankruptcy representation would know about PACER and know how to use it, although regulatory authorities, in contrast, ought to know about it and be able to use it.

163. *See, e.g.*, CONN. GEN. STAT. § 42-110g (2014).

164. *Id.*

165. *See generally* Best, *supra* note 97.

APPENDIX

For each of the eight firms whose ads and fees were covered in this study, this Appendix sets out:

1) the firm's city,
2) the portion of the text of its ad that makes a price representation,
3) a listing of each of the thirty fees the firm charged in the sample of cases we identified,
4) the average of those fees, and
5) the percentage of clients who paid more than the advertised fee.

Firm *A* (Denver)

Advertisement text:
"$500 Bankruptcy"

Fee in each identified case:
$800.00
$850.00
$900.00
$900.00
$900.00
$900.00
$900.00
$900.00
$900.00
$900.00
$900.00
$1,000.00
$1,000.00
$1,050.00
$1,050.00
$1,050.00
$1,050.00
$1,050.00
$1,050.00
$1,100.00
$1,100.00
$1,100.00
$1,100.00
$1,100.00
$1,100.00
$1,200.00
$1,250.00
$1,250.00
$1,285.00

Average fee: $1,017.83.
Percent of clients charged more than advertised fee: 100%

Firm *B* (Denver)

Advertisement text:
"$500 Bankruptcy"

Fee in each identified case:
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$600.00
$700.00
$700.00
$750.00
$750.00
$750.00
$750.00
$799.00
$799.00
$799.00
$799.00
$850.00
$850.00
$900.00
$999.99
$1,100.00
$1,100.00
$1,100.00
$1,100.00
$1,100.00
$1,300.00
$1,500.00

Average fee: $803.20
Percent of clients charged more than advertised fee: 73%

Firm *C* (Denver)

Advertisement text:
"the following rates are for full bankruptcy representation and are available to all Colorado residents! $499.00"

Fee in each identified case:
$499.00
$499.00
$499.00
$499.00
$500.00
$599.00
$599.00
$599.00
$599.00
$599.00
$599.00
$599.00
$599.00
$599.00
$599.00
$599.00
$599.00
$600.00
$600.00
$600.00
$699.00
$699.00
$699.00
$699.00
$699.00
$699.00
$800.00
$899.00
$899.00
$899.00
$899.00

Average fee: $649.17
Percent of clients charged more than advertised fee: 87%

Firm *D* (Denver)

Advertisement text:
"Chapter 7 Bankruptcy, from $500!"

Fee in each identified case:
$500.00
$536.00
$650.00
$650.00
$650.00
$650.00
$700.00
$700.00
$850.00
$900.00
$900.00
$900.00
$1,000.00
$1,100.00
$1,120.00
$1,300.00
$1,400.00
$1,400.00
$1,500.00
$1,500.00
$1,600.00
$1,600.00
$1,600.00
$1,600.00
$1,600.00
$1,600.00
$1,650.00
$1,650.00
$1,700.00
$2,400.00

Average fee: $1,196.87
Percent of clients charged more than advertised fee: 97%

Firm *E* (Chicago)

Advertisement Text:
"$859 Chapter 7 Special for attorney fees."

Fee in each identified case:
$750.00
$750.00
$750.00
$840.00
$850.00
$850.00
$850.00
$850.00
$850.00
$850.00
$850.00
$900.00
$900.00
$900.00
$900.00
$900.00
$900.00
$900.00
$900.00
$900.00
$900.00
$900.00
$900.00
$900.00
$940.00
$940.00
$994.00
$1,000.00
$1,200.00

Average fee: $890.47
Percent of clients charged more than advertised fee: 63%

Firm *F* (Chicago)

Advertisement Text:
"Only $99 to Get Started. Pricing Breakdown: $991 Attorneys Fees, Court Filing Fee in the amount of $306, Credit Report Fee in the amount of $28, Admin Fee $10."

Fee in each identified case:
$799.00
$884.00
$999.00
$999.00
$999.00
$999.00
$999.00
$999.00
$999.00
$1,009.00
$1,019.00
$1,019.00
$1,019.00
$1,019.00
$1,024.00
$1,024.00
$1,024.00
$1,024.00
$1,024.00
$1,049.00
$1,084.00
$1,094.00
$1,094.00
$1,099.00
$1,099.00
$1,099.00
$1,109.00
$1,159.00
$1,464.00
$1,464.00

Average fee: $1,037.00
Percent of clients charged more than advertised fee: 93%

Firm *G* (Portland)

Advertisement Text:
"the attorney fees for most Chapter 7 Cases are $500 – call for a quote."

Fee in each identified case:
$0.00
$0.00
$0.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$650.00
$650.00
$650.00
$700.00
$700.00
$700.00
$700.00
$750.00
$750.00
$750.00
$800.00

Average fee: $526,67
Percent of clients charged more than advertised fee: 37%

Firm *H* (Seattle)

Advertisement Text:
"For a Chapter 7 bankruptcy, we charge: SINGLE = $500 legal + $100 partial filing fee + $35 cr. report + $25 1st certificate = $660 total to get the case filed 1st PAYMENT: $350 down to create the case; 2nd PAYMENT $310 to file the case MARRIED = $500 legal + $100 partial filing fee + $70 cr. report + $25 1st certificate = $695 total to get the case filed 1st PAYMENT: $350 down to create the case; 2nd PAYMENT $345 to file the case"

Fee in each identified case:
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$500.00
$565.00
$565.00

Average Fee: 504.48
Percent of clients charged more than advertised fee: 7%