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3 LOUISIANA STATE BAR ASSOCIATION

4 ADVERTISING PUBLIC HEARING

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10 Public hearing on current and
11 proposed Louisiana Rules of Professional
12 Conduct regarding Lawyer Advertising and
13 Solicitation, held at the Loyola University
14 Campus, Audubon Room of the Danna Center, New
15 Orleans, Louisiana, on November 9th, 2006, at
16 or about 6:00 p.m.

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16 HOSTED BY:

17 Richard Stanley, LSBA's Rules of
18 Professional Conduct Committee

19 Richard Lemmler, LSBA's Ethics Council

20 William N. King, LSBA's Practice
21 Assistance Counsel

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22

23 REPORTED BY:

24 Gail F. Mason, RPR
25 Certified Court Reporter
Certificate No. 96004

1 BY MR. STANLEY:

2 I want to thank everybody for
3 coming out tonight. My name is Rick Stanley.
4 I'm Chair of the Rules of Professional Conduct
5 Committee, Louisiana State Bar Association.
6 And tonight is the third in a series of public
7 hearings that we're having on a proposed new
8 set of rules governing advertising.

9 The format briefly for tonight is
10 I'll give some very brief introductory remarks
11 following which Richard Lemmler, the LSBA's
12 Ethics Council, will actually walk us through
13 the proposed new rules. After that, we'd
14 invite folks to give comments. State your
15 name, where you're from and give comments about
16 anything you wish to say about the rules in
17 general. And if you have questions, we'll try
18 to address them, although the purpose here
19 tonight is not really for us to debate any of
20 the finer points of the rules but to hear what
21 you think of them. We're still in the comment
22 process as you'll hear in a minute.

23 Briefly by way of background,
24 approximately three years ago there was a
25 tremendous amount of impetus at least in some

1 sections of the Bar to move forward and do some
2 kind of revision to the advertising rules. And
3 not to say there is a -- to say there's a split
4 of opinion as to what ought to happen with the
5 advertising rules is to say that it's really
6 understated tremendously. There's some folks
7 who believe that there's no changes that are
8 needed at all. There are some folks who
9 believe that there's an entire rewrite that is
10 needed, and there are others that believe that
11 something in between is what's called for.

12 Prior to Hurricane Katrina, a
13 subcommittee of the Bar Association went to
14 Florida to meet with the Florida Bar to see how
15 they were approaching their advertising rules.
16 At that point, the process really stalled after
17 Hurricane Katrina. The next thing that
18 occurred of significance is that the
19 Legislature took it upon itself to say that
20 they were going to pass a set of advertising
21 rules and make it a form of statutory
22 regulation as opposed to a form of regulation
23 under the Rules of Professional Conduct.

24 I think after some negotiations
25 between the Supreme Court and the Legislature,

1 the Legislature ended up by passing a
2 resolution asking the Supreme Court to appoint
3 a committee to undertake a review of the
4 advertising rules with the idea that the
5 Committee would get back to the Court and the
6 Court would make some kind of decision about
7 this in spring of next year. And after the
8 Legislature reviews what the Court does, then
9 the Legislature would decide whether it needed
10 to take any further action.

11 Now, obviously, this raised and
12 still raises Constitutional issues as to who
13 ought to be regulating the Bar, the Court or
14 the Legislature, but part of this is hopefully
15 to be avoided by the process that we're
16 following.

17 The Rules Committee -- in the
18 middle of this, the Supreme Court Committee
19 asked the Rules Committee to take a look at the
20 work that had already been done by our
21 subcommittee on advertising. And the
22 subcommittee on advertising essentially used
23 the Florida Rules as the basis for the work
24 that was being done on revision.

25 So the starting point for

1 virtually everything you see is the Florida
2 Rules. And comments -- things that were pulled
3 up from the comments are the Florida rules.
4 The essential thinking was that Florida had a
5 great deal of experience regulating
6 advertising, that Florida had already litigated
7 at least a couple of issues on the advertising
8 front, and so if we followed the Florida format
9 that we would at least be following something
10 that had a track record of sorts. And I think
11 that we were also influenced by the fact that
12 New York largely followed the Florida model
13 when they proposed their new rules, which have
14 not yet been adopted.

15 So that's our -- that was our
16 benchmark for working. What we tried to do is
17 go through the Florida Rules and where we could
18 improve of them -- improve on them. Now, there
19 is unquestionably a lot of stuff in here that
20 some people are going to feel one way or
21 another about. There were several rules that
22 when they came up before our Committee were
23 subject to a vote where it was passed by 5 to 4
24 or 4 to 5, you know. So, believe me, we had a
25 lot of debate about these rules. And that's

1 one of the reasons we want to have these public
2 hearings is to hear what you guys have to say
3 about it and, you know, bring that back to the
4 Court.

5 The process from this point
6 forward will be that after we have these public
7 hearings and collect these comments, the Rules
8 Committee will meet, make one final review and
9 then issue its recommendation up to the House
10 of Delegates. The House of Delegates will then
11 have an opportunity to vote on the new rules up
12 or down.

13 So the first political step, I
14 guess, will be that this will go to the Bar
15 Association House of Delegates. From there the
16 Supreme Court Committee will make its final
17 recommendation to the Supreme Court, and then
18 it's essentially out of our hands. And the
19 Supreme Court will do whatever it feels
20 justified based on the record that's before it.
21 And then, I guess, if the Legislature wants to
22 do anything further after that, we'll see what
23 the Legislature does.

24 But the purpose of these meetings
25 is to take the product that we have now and

1 hear public comment on them either in support
2 or in criticism of and to try to answer as many
3 questions as we can. But I can assure you we
4 don't have time to debate all of the niceties
5 of the rules because, indeed, we're not here to
6 debate. Some of us may be on the side that you
7 are going to propose or the objecting side.
8 Some of us are maybe on the supporting side.
9 But a lot of these things were close votes.

10 But that's essentially the
11 introduction to the process and where we are.
12 And I'll turn it over now to Richard who can
13 take us through the rules and kind of give you
14 an overview of the substantive changes.
15 Richard.

16 BY MR. LEMMLER:

17 Thank you, Rick. At this point,
18 I just want to do a few little housekeeping
19 things before we actually get into the heart of
20 the rules themselves or the proposed rules.
21 Our public hearings are being transcribed. We
22 have a court reporter here. So when you have a
23 comment -- and let me make a statement about
24 that before I go any further. The way we've
25 approached it thus far, we've had two hearings

1 so far. We've had one in Baton Rouge last
2 week. Last night we were in Lafayette. We're
3 here tonight, and we'll be in Shreveport next
4 week. Thus far, we've actually gone
5 rule-by-rule or at least a summary of each
6 rule. And we have encouraged people to take
7 their comments at that point, hopefully not too
8 lengthy because we have ten rules to go
9 through. Last night we got a little stalled on
10 the first rule, and 45 minutes later we were
11 trying to get to the second rule. So we sped
12 that up a little bit and encouraged people not
13 to stay for breakfast, and it worked.

14 So I do want to encourage you to
15 make your comments. I'd ask you to make your
16 comment -- stand up, state your name for the
17 record, make your comment and not really
18 belabor the point. Again, we're not here to
19 debate the rule. If you want to make something
20 a little more extensive or you feel like you've
21 forgotten something, you're welcome to do that,
22 but you can also make it in writing and submit
23 it the Committee. Right now we do have on-line
24 an on-line comment form on the Bar website,
25 LSBA dot org. There's a link on the page under

1 news and developments that will actually take
2 you to the rules -- the proposed rules, take
3 you to a comment form and you can fill it out.
4 And we're planning to put all those public
5 comments on-line as well as the transcripts of
6 these hearings.

7 Let's see. Where are we? CLE
8 credit. You get CLE credit for tonight, one
9 hour or ethics. And we'll give you the number
10 and so forth at the end.

11 BY MR. HANTHORN:

12 Will someone respond to our
13 comments that we send in via e-mail or are they
14 just gratuitous comments that will be ignored?

15 BY MR. LEMMLER:

16 They're not by any means
17 gratuitous. I think the point of this whole
18 process is to gather all of the comments. The
19 Committee, I think, will be meeting at the end
20 of the month to review all of those comments.
21 If you have a specific question, we'll try to
22 respond to the question. If it's just a
23 comment or a remark about a suggestion, a
24 substantive change or something of that nature,
25 you know, if you want to respond to it, you'll

1 get it.

2 But primarily it's not going to
3 be, you know, we think you're totally wrong.
4 We're not going to agree with you or that sort
5 of thing. We just want to know what you think,
6 whether you like it or not. Okay.

7 BY MS. ALSTON:

8 Rich, you might want to explain
9 to them how the Committee process works so that
10 everybody understands that the Committee takes
11 the comments very seriously and they're
12 discussed at some length.

13 BY MR. STANLEY:

14 Yeah. In fact, just to sum up
15 what Richard said, if Ethics 2000 is any guide,
16 we did this same process in Ethics 2000. In
17 the public hearing -- and we thought we had a
18 really good set of rules. And in the public
19 hearing process, we heard a lot of very good
20 comments about the rules and issues that maybe
21 we weren't even focused on in the Committee.

22 And as a result of that, the
23 Committee made several revisions based on the
24 public hearings to the Ethics 2000 rules before
25 they went to the House of Delegates and before

1 they went to the Court. So the comments are
2 taken seriously, and they are reviewed and very
3 often do result in changes to the rules or at
4 least a vote as to whether the rule ought to be
5 changed based on the comments.

6 BY MR. LEMMLER:

7 Thank. Yes, this is a work in
8 progress and by no means a done-deal. We're
9 looking for ways to improve the product. We
10 are on a slightly more accelerated timetable
11 than we were with the Ethics 2000 proposal, but
12 so be it. That's where we are. But, please,
13 make your comments.

14 The Florida State Bar experience,
15 Rick has already alluded to that. As I told
16 the audience last night, this is not designed
17 to talk about a tour of alcoholic beverage
18 establishments in the state of Florida. It's
19 actually to talk about the State Bar in Florida
20 and what they've done so far and, basically,
21 why we chose this piece of work to propose as
22 part of our own.

23 They've had their rules in some
24 form, basically the form that's there now with
25 some revision. And by the way, they just

1 revised their rules last week, so I'll be
2 trying to incorporate some of those revisions
3 into -- or at least noting the revisions with
4 the rules as I go through them tonight. The
5 committee is obviously, I think, going to be
6 looking at those revisions as well. But their
7 rules have been in place for about 11 years.
8 That was one of the reasons why, I think, the
9 committee chose that -- or at least the
10 subcommittee chose that to go forward with as a
11 product. Why re-invent the wheel.

12 The other aspect of that is that
13 Florida has a handbook, an 82-page handbook
14 that includes examples, lots of explanations,
15 lots of guidance with respect to what the rules
16 are intended to mean, the application of the
17 rules, the filing process and so forth. So
18 we're intending at some point, I think, to also
19 come up with a handbook, assuming whatever
20 product of the rules goes through. So that was
21 a good additional reason to go with the Florida
22 rules. And, you know, again, why re-invent the
23 wheel?

24 Oddly enough or coincidentally
25 enough, I believe that's what the State

1 Legislature actually focused on in their
2 legislation. They were looking at the Florida
3 rules. What they were proposing is,
4 essentially, what Florida is doing right now
5 anyway. So they sort of meshed together. And,
6 again, why change it? If that's what the
7 Legislature was looking at, maybe that could
8 also be part of the product and appeal to
9 everyone.

10 We've broken down the actual
11 rules that we're going to be going through and
12 the substantive parts. And there's a
13 procedural component, so I'm going to go
14 through the substantive part first and then
15 we'll get to the procedural part second. We'll
16 take a couple rules out of order, but I think
17 it makes more sense logically to do it that
18 way.

19 Just comparatively, just so you
20 can see what we're talking about if you haven't
21 looked at these already -- let me ask that
22 question now: How many people have actually
23 looked at the proposal thus far?

24 (A SHOW OF HANDS FROM THE
25 AUDIENCE.)

1 BY MR. LEMMLER:

2 Okay. So most everybody here.

3 That's great. What we have right now on the

4 left, we have five rules. We're proposing ten.

5 You'll note on the side-by-side comparison

6 that's part of the materials that are in the

7 back -- and, again, if you haven't gotten them

8 already -- the current rules that we have in

9 Louisiana have not been deleted in any real

10 fashion. They mesh right into the proposal.

11 We took great care with making sure that they

12 fit into the proposal. Virtually, none of the

13 words in the current rules have been deleted.

14 The proposal really is just an admittedly

15 augmented form of what we have right now.

16 All right. Let's get right to

17 it. Proposed Rule 7.1 -- this is just a

18 general definitional rule -- Permissible Forms

19 of Advertising. Basically telling you what the

20 permissible forms are. Public media including

21 print media such as telephone directories,

22 legal directories, newspapers or other

23 periodicals, outdoor advertising such as

24 billboards and other signs, radio, TV, computer

25 access communications, recorded messages the

1 public may access by dialing a telephone
2 number, and written communications set in
3 accordance with Rule 7.4 which are effectively
4 referred to as targeted written solicitations,
5 direct mail.

6 Rule 7.2 -- any comments about
7 7.1 before I go forward?

8 (NO RESPONSE FROM THE AUDIENCE.)

9 BY MR. LEMMLER:

10 7.2 -- and I'm just going to keep
11 rolling unless you stop me. 7.2 is a very
12 large rule. As you'll note from your
13 side-by-side comparison, our existing Rule 7.1
14 actually fits into 7.2. All of the language
15 that's in our existing Rule 7.1 has been put
16 into 7.2 or already fit into what Florida has
17 for their 7.2. It's broken down into required
18 information, prohibited statements and
19 information and general regulations governing
20 the content of advertisements.

21 I'll note for you that in the
22 recent revision that Florida made to its rules,
23 they have effectively flipped B and C. Their
24 general regulations and permissible forms of
25 advertising come now first before the

1 prohibited information. Perhaps there's a
2 psychological benefit. It appeals to people to
3 see what they can do first rather than be told
4 what they can't do anymore.

5 7.2: Required Information,
6 7.2(a): In all advertisements and written
7 communications with the exception of whether
8 it's a Safe Harbor communications, the name of
9 the lawyer responsible for the content of the
10 communication must appear as well as the
11 location of the practice, a bona fide office
12 location of the lawyer or lawyers who will
13 actually perform the services advertised. Yes,
14 sir. State your name, please.

15 BY MR. HANTHORN:

16 Scott Hanthorn, solo
17 practitioner, and I work all over southeast
18 Louisiana. I do only DWI work, and I do it in
19 all the various locations. Does this require
20 me to have an office in every parish that I
21 work in?

22 BY MR. LEMMLER:

23 I don't believe. I believe it
24 requires you to state the name of an office
25 location with an advertisement.

1 BY MR. HANTHORN:

2 A location?

3 BY MR. LEMMLER:

4 Yes, sir.

5 BY MR. HANTHORN:

6 Now, further down here it talks
7 about phone numbers. I have an 800 number, and
8 I have a 985 number that I send out, a 225
9 number and a 504 number. Am I required to have
10 an office in those three locations?

11 BY MR. LEMMLER:

12 No, sir. If you read the last
13 sentence of (a)(2) it says: If an
14 advertisement or written communication lists a
15 telephone number in connection with a specified
16 geographic area other than an area containing a
17 bona fide office, appropriate qualifying
18 language must appear in the advertisement.

19 BY MR. HANTHORN:

20 So what does that mean?

21 BY MR. LEMMLER:

22 If you don't have an office
23 connected to that phone number, I suppose you
24 need to say this is -- you know, no office
25 location there or this is just a telephone

1 number. I'm not exactly sure what that means,
2 but I believe you're not required to have an
3 office in that location.

4 BY MR. HANTHORN:

5 So I'd have to say something like
6 here's my 800 number, call me for free. If
7 Broadway screws up again, for your convenience
8 here's a local number, because that's why I
9 have all these back-up numbers, because I've
10 had so much trouble with my 800 number.

11 BY MR. LEMMLER:

12 I understand.

13 BY MR. HANTHORN:

14 In order to just keep myself in
15 business, I've got these back-up numbers.

16 BY MR. LEMMLER:

17 Ask the committee members present
18 if they have a comment on this or an
19 explanation, perhaps.

20 BY MR. STANLEY:

21 I think the point here is that if
22 you have numerous phone numbers in different
23 areas of the state but you only have one
24 office, you'd have to footnote or asterisk and
25 say no physical office location in this area.

1 But you have a phone number in this area?

2 BY MR. HANTHORN:

3 But what if I do go physically
4 meet people in that area even though I don't
5 have an office under my name? I might borrow
6 someone else's office or I might buy them a cup
7 of coffee in a coffee shop.

8 BY MR. STANLEY:

9 That's the kind of thing we'll be
10 able to talk to you about when you get to the
11 submission of your advertisement for review by
12 the Bar.

13 BY MR. HANTHORN:

14 But by then it's going to be too
15 late because you'll have already put these
16 rules into place. I need to stop you now
17 before you destroy my business. Excuse me.

18 BY MR. STANLEY:

19 Well, I understand. And what I'm
20 saying is, the point here is, if you don't have
21 a physical office there, it may mislead the
22 public if you're giving a 504 number and they
23 think you've got an office in the 504 area code
24 where they can come visit you.

25 BY MR. HANTHORN:

1 What if I will, in fact, drive to
2 them, because that's what I do. My main office
3 is in Mandeville, but I will drive to New
4 Orleans to meet a client. I will drive to
5 Baton Rouge to meet a client. I will drive to
6 Houma and Thibodaux to meet a client. I'll buy
7 them a cup of coffee in a coffee shop, and we
8 have a wonderful time. So they don't have to
9 come to Mandeville to meet with me. And it's a
10 hell of a lot cheaper to buy them lunch than to
11 have an office and a staff and all that stuff.

12 BY MR. STANLEY:

13 Well, I couldn't agree with you
14 more.

15 BY MR. HANTHORN:

16 So where am I misleading them if
17 I'm going to their location to meet with them
18 at their location as per the number that I have
19 in that location?

20 BY MR. STANLEY:

21 Well, I think the rule as it's
22 written -- and again -- simply states that
23 you've got to qualify it, that if you're not
24 there, you're going to come meet them there.
25 And as long as you've stated what you do, I

1 don't think you've got a problem with it.

2 BY MR. HANTHORN:

3 Okay.

4 BY MR. LEMMLER:

5 I don't think the rules require
6 you to have an office simply to qualify why the
7 phone number is there without an office. So
8 say by appointment only or, you know, I'll
9 drive to you or whatever you want.

10 BY MR. HANTHORN:

11 So if I would say convenient
12 meeting places available in various locales?

13 BY MR. STANLEY:

14 That sounds appropriate.

15 BY MR. HANTHORN:

16 That will do it?

17 BY MR. LEMMLER:

18 And giving an ethics' opinion on
19 rules that don't exist yet, it's kind of hard,
20 but I think you're probably right.

21 BY MR. HANTHORN:

22 Well, once these go in, Rich, you
23 know, it's going to be impossible to change
24 them, right?

25 BY MR. LEMMLER:

1 Well, I don't know about
2 impossible. Thank you. Ms. Alston, I think
3 you were first.

4 BY MS. ALSTON:

5 Yeah, I'm not going to repeat any
6 of the comments I made in Baton Rouge.

7 BY MR. LEMMLER:

8 Could you state your name for us,
9 please?

10 BY MS. ALSTON:

11 Elizabeth Alston. But the rule
12 about a bona fide office, since this rule
13 applies to any communication concerning a
14 lawyer's services, it also applies to firm web
15 pages. So, for example, Adams and Reese has
16 offices in Louisiana, Tennessee, Mississippi,
17 various states. And part of the practice of a
18 large law firm is if they have overload work in
19 one geographic location, they can utilize the
20 lawyers and associates in another locale to
21 catch up, help them catch up with that. But
22 this type of rule prohibits a large law firm
23 from sending business out of state to one of
24 their other lawyers in another office to work
25 on because they're not in the location of the

1 lawyers in the Louisiana law office.

2 BY MR. LEMMLER:

3 I don't envision that. I don't
4 see that rule, but we'll -- the comment is
5 well-taken. It's on the record.

6 BY MR. STANLEY:

7 Yeah, we'll take a look at that.

8 BY MR. LEMMLER:

9 Any other comments? Yes, sir.
10 Your name, please.

11 BY MR. CHAPMAN:

12 The name is Nathan Chapman. Let
13 me tell you the context for my remarks. I
14 actually work for an advertising agency. About
15 15 years ago, I went to do a print ad for a
16 friend of mine who was an attorney at a law
17 firm that specialized in social security
18 disability. And they started asking me
19 questions about whether the ad should be in the
20 sports section or movie section. The more we
21 talked for their niche, the social security
22 disability claimants, we recognized they should
23 be on television itself. And my first reaction
24 was, oh, lawyer commercials. And I made a deal
25 with them then, I'm only going to do this -- I

1 have a good reputation for my work -- if I can
2 do it with just as high a quality as any other
3 work I've ever done for anybody else. And the
4 firm, to their credit, said we've got a good
5 reputation too, that suits us fine.

6 And I started then. We did very
7 well. And we did it as high a quality as
8 possible. And I got reputation for that work.
9 And I now do that in 135 cities around the
10 country. And I can jump through any hoop that
11 you give me. But my pet peeve is when there
12 are rules that make it actually worse, you
13 know, because I'm trying to do quality work.
14 And I've got three comments on us that I want
15 to go through today when we go through the
16 different things.

17 This is -- this is one of them.
18 One of the things that's going on is that
19 there's now national advertising firms clearly
20 out of state will go to like the national
21 cable. It's like CNN instead of like the local
22 Cox Cable. And they're not putting this in
23 there. And so it's really bugging my clients.
24 So, for example, I have a client who's in
25 Lafayette, and we do some advertising, you

1 know, let's say, in Lake Charles. And so if we
2 have to put in there his office in Lafayette,
3 that's a little bit of a negative. And I guess
4 that's why people don't -- I guess the
5 attorneys in Lake Charles would like that.
6 They'd say, hey, that's a Lafayette guy. But
7 these big out-of-town firms, they're not doing
8 it and they're signing people up. So it's kind
9 of forcing the Louisiana attorneys to play by
10 rules that you can't -- you can't enforce on
11 the out-of-town firms. And those are the ones
12 you'd really like to know. Those aren't even
13 Louisiana attorneys. And they're probably just
14 going to refer it out.

15 I'm not sure we're solving a big
16 problem here, you know. What's the
17 justification we really -- I can see where the
18 Lake Charles people don't like it, and that's
19 just kind of an anti-competitive thing. You
20 know, do they do good work? Do they have
21 references, all those other things you ought to
22 evaluate an attorney by. Why is the physical
23 location of their office the biggest thing?

24 BY MR. STANLEY:

25 Why is the physical -- it's not

1 the biggest thing. It's one factor that should
2 be in the advertisement so the client can
3 actually know where they can physically locate
4 the attorney.

5 And as to your point as to the
6 out-of-town lawyers who are soliciting within
7 Louisiana, there is some problem with that with
8 respect to just the whole disciplinary process.
9 You can't reach those attorneys if they're not
10 licensed here. Now, there is -- if you read
11 the rules carefully, there is a bite in here in
12 that if that out-of-town attorney has solicited
13 a client in violation of these rules, this rule
14 says that ultimately if client doesn't want to
15 pay the fee, he doesn't have to. The fee
16 contract is going to be at issue.

17 So there will be a sanction of
18 sorts in here if a client is solicited
19 improperly by the out-of-town lawyer. But what
20 you pointed out is a multi-jurisdictional
21 issue, and it is indeed a problem. And there's
22 not a whole lot we can do. We can't stop
23 television advertisers from taking ads from
24 attorneys who are out of state.

25 So, yeah, these may impose rules

1 on Louisiana attorneys that are not imposed on
2 an Illinois attorney who's advertising in
3 Louisiana.

4 BY MR. CHAPMAN:

5 Well, my suggestion then would
6 be, if that's what our goal is tonight is to
7 give you suggestions --

8 BY MR. STANLEY:

9 Yes, please.

10 BY MR. CHAPMAN:

11 -- will be, like I have sympathy
12 for this man who says, well, he wants to go in
13 the entire region and now they're going to be
14 less reluctant to call him. I don't think
15 we're helping the public a whole lot. And so I
16 would suggest that we skip this rule. Thank
17 you.

18 BY MR. LEMMLER:

19 Okay. Anyone else? Mr. Bart,
20 for the record, please.

21 BY MR. BART:

22 Okay. Morris Bart, New Orleans.
23 And I'm going to have a number of comments, but
24 I can't resist the occasion at this point to
25 jump in on this one and put an exclamation

1 point on what is the biggest problem with rules
2 like this, and that is simply interpretation.
3 When you have rules like this, the danger is in
4 interpretation. And although we know you're
5 very experienced with ethics -- and, Rick, we
6 know you're very experienced and I've had 20
7 years of service on the committee of
8 advertising. I think I have knowledge with it.
9 Our interpretation of it does not necessarily
10 mean that's the way the Supreme Court or some
11 other committee is going to interpret it.

12 And, specifically, this office,
13 this physical office thing, in my opinion, it's
14 an outdated concept. It really is
15 protectionist type legislation. It came about
16 when lawyers in their communities didn't like
17 the fact that lawyers from outside their
18 community were coming in and advertising and
19 getting business without establishing an office
20 in that community.

21 And at one time, I guess a good
22 point could be made that perhaps it is
23 misleading to the public because they like to
24 think they can go knock on the door underneath
25 the shingle of the local lawyer. In the age of

1 the internet and video conferencing and 1-800
2 numbers, this really is a very outdated
3 concept.

4 You know, as an example, we have
5 offices in every city throughout the state, and
6 we have a very high-tech video conferencing
7 system. So, technically, a lawyer is present
8 there. We have a virtual lawyer present in
9 every office. And I think the public has
10 accepted that. The public is used to calling
11 1-800 numbers. The public is used to going on
12 the internet. Video conferencing has
13 proliferating throughout the country and is
14 widely used and even been accepted now by some
15 courts who are doing plea bargaining and doing
16 pre-sentencing proceedings on video
17 conferencing.

18 So this is being well-accepted.
19 I think it's more protectionist litigation
20 that's outdated. I can't resist giving an idea
21 to the gentleman here. Easy solution is, I
22 suggest you designate your car as your physical
23 location.

24 BY MR. HANTHORN:

25 Is that acceptable?

1 BY MR. BART:

2 Well, of course it is because
3 your interpretation is as good as mine, is as
4 good as Mr. Stanley's or anybody else. But if
5 you think of your car as a physical location
6 and read that rule, you'll perfectly comply.

7 BY MR. HANTHORN:

8 And the truth is it is, with a
9 laptop computer, a portable printer, and pocket
10 PC and a cell phone.

11 BY MR. BART:

12 And are you a lawyer that's
13 regularly and routinely present in that
14 physical location?

15 BY MR. HANTHORN:

16 I absolutely am.

17 BY MR. BART:

18 Bingo. There you go.

19 BY MR. HANTHORN:

20 I have literally signed up people
21 at the last minute in Shoney's in Butte, went
22 to the parking lot to type up their
23 administrative hearing and filed it in Williams
24 Boulevard Post Office three minutes before the
25 close to save their driver's license. So he's

1 absolutely right. My car is my office more
2 than anything else.

3 BY MR. BART:

4 There you go. Problem solved.

5 BY MR. LEMMLER:

6 Are you suggesting that we amend
7 the rule to include both vehicle and --

8 BY MR. BART:

9 Well, I just think there might
10 be --

11 BY MR. LEMMLER:

12 -- vehicle identification --

13 BY MR. STANLEY:

14 These comments, I think, are all
15 extremely helpful. I've been jotting them
16 down. I mean, we've got --

17 BY MR. BART:

18 We need to recognize technology
19 in today's society. I mean, every other
20 industry recognizes it and embraces it. And
21 the thought of a physical office, I think, is an
22 outdated concept.

23 BY MR. STANLEY:

24 I think it's a valid point. And
25 I think -- you know, we want to get these but

1 we want to also keep moving through this.

2 BY MR. LEMMLER:

3 Yes, Mr. Hingle.

4 BY MR. HINGLE:

5 Mike Hingle. I live on the
6 Northshore. We may be overlooking the young
7 attorney, the person that's trying to crack
8 into this business. Advertising is allowed,
9 and many people who didn't have the opportunity
10 to market in the old-fashioned, whatever it
11 was, market through TV and all the other
12 electronic means. There are telephone books
13 out there that you can get a half,
14 three-quarter page ad for in the county
15 parishes all over South Louisiana that are
16 presented to me all the time, the Pelican
17 Pages, some other telephone books that I don't
18 even know and I don't even advertise in.

19 But what happens if some young
20 guy or young girl wants to invest \$75 or \$150 a
21 month in those telephone books all over South
22 Louisiana, and like this gentleman over here,
23 they're willing to travel to go and get that
24 business so they can have some money and they
25 can earn some money to support their family and

1 pay their \$150,000 debt that it took them to go
2 to Tulane?

3 BY MR. STANLEY:

4 I think as currently written, all
5 they'd have to say is we'll come to you. Our
6 physical location is here, but we'll come to
7 you. But, I mean, I think we've heard
8 everybody's point here that maybe the physical
9 location idea is outdated and something that we
10 need to revisit.

11 BY MR. LEMMLER:

12 Any further comments on this?
13 Okay. Let's move forward. Thank you. Good
14 comments. 7.2(b): Prohibited Statements and
15 Information Overview. It's broken down into
16 statements about legal services, misleading or
17 deceptive factual statements, descriptive
18 statements, prohibited visual and verbal
19 portrayals, advertising areas of practice and
20 stating or implying LSBA approval.

21 And I think we have slides that
22 go through one at a time on this. A lawyer
23 shall not make or permit to be made a false,
24 misleading or deceptive or unfair communication
25 about the lawyer, the lawyer's services or the

1 law firm services. I would note for you that
2 in Florida's recent revision, they have removed
3 the word "unfair." And I suspect that the
4 committee will be looking at that since the
5 ABA's general phraseology is false, misleading
6 or deceptive and which is our current rule. I
7 think that's the basic underlying rule probably
8 for most of this. As the slide says, same as
9 the current Louisiana Rule 7.1 except more
10 enumerated than that. Any comment on this?
11 Mr. Bart?

12 BY MR. BART:

13 Well, a couple things. First of
14 all -- Morris Bart, New Orleans. Since you
15 bring up Florida, I do not want to mention that
16 my friends there tell me that the rules have
17 just been liberalized and so has the
18 interpretation.

19 As a quick example, Florida has
20 prohibited testimonials without regard to the
21 content. They now interpret that to allow
22 testimonials if the content doesn't deal with
23 past results. So, in other words, if a client
24 were to get on and say I recommended Morris
25 Bart and recommend anybody see him for an

1 injury case, that's permissible now under
2 Florida's rule even though that's a
3 testimonial. If a client were to get on and
4 say Morris Bart got me \$100,000, that would not
5 be permissible.

6 So I think Florida is more
7 properly looking at the content as opposed to
8 the style, which is my objection with the
9 example you enumerate here because, you know,
10 we all know -- and I'm sure the Committee has
11 looked at it -- that First Amendment,
12 protective commercial free speech, and as such,
13 that's given a high accord and a high degree of
14 protection, meaning that the state has to show
15 a specific harm and then you can only prohibit
16 that conduct with the narrowest means possible.

17 The problem with your rule as
18 proposed here is it's so overly broad that
19 whenever you have broad bans, it does not pass
20 Constitutional muster. So if you look at (b),
21 for instance, contains any reference to past
22 successes or results, that apparently the
23 drafter simply deems that if you have a
24 reference to a past success or result, that in
25 and of itself is misleading, which a broad ban

1 like that, again, I don't think will pass
2 Constitutional muster.
3 And then, which is as vague and
4 overly broad as you can get it, or is otherwise
5 likely to create an unjustified expectation
6 about results. Well, now does that tell me
7 what to do or where to go? It doesn't give me
8 any specific guidance.

9 I think what you're dealing with
10 here is the style versus content issue, that
11 this is a certain style that the drafter of
12 these rules don't like, similar to if the Court
13 were to decide that everybody that goes to the
14 court must wear button-down shirts and
15 regimental-striped ties, that's appropriate
16 wear. You can't regulate style. It's
17 appropriate to regulate content. But when you
18 get into these broad standards like this, you
19 can't do it.

20 The second defect, which is an
21 overall defect in all of these rules we might
22 as well put on the table now is, the
23 Constitution mandates that you have to
24 establish a record. And there's case law
25 holding that a record must be established in

1 the state to show the harm before you enact
2 these rules that restrict our right to
3 commercial free speech on the First Amendment.

4 Now, you were just enacting the
5 Florida rules. I think it would be worthwhile
6 for this Committee to realize that before those
7 Florida rules were enacted, they did poling in
8 the state, they did research, they did surveys,
9 they spent hundreds of thousands of dollars
10 doing a massive scientific study and research
11 project to document the perception of attorney
12 advertising among the citizens of that specific
13 state. And then they drafted rules that they
14 could back up with their records to show the
15 harm.

16 You're not doing that. I mean,
17 having a session like this which is not really
18 a public hearing. It's more an informational
19 session which we get CLE credit for, that's not
20 addressing any harm. You're not showing --
21 you're not establishing a record. You're not
22 showing any specific harm to the citizens of
23 the state by advertising.

24 To the contrary, Charles
25 Plattsmier would tell you -- because for the 20

1 years I was on the Bar Association Committee on
2 advertising this would come up -- the push-pull
3 that we would always go through is we would say
4 it's not the rules, it's the enforcement of the
5 rules. And then Plattsmier would truck down to
6 New Orleans and come to our committee. And we
7 would ask him, we'll say, now, how many
8 complaints do you get on attorney advertising?
9 And it way maybe one or two a year. And that's
10 the way it's been for the last 10 or 15 years,
11 so I would assume it's the still the same
12 today. I can't imagine it's changed that much
13 in the last year since I've been off the
14 committee.

15 And then we would say, now, with
16 those committees, have you ever one time had a
17 prosecution for an attorney advertising
18 violation that you couldn't prosecute because
19 the rules were too vague? The answer is never.
20 Never in his history has he ever had a
21 prosecution that he couldn't go forward with
22 because the rules were too vague. If that were
23 the case, it would be a different story. He
24 would come here and say, look, guys, you've got
25 to give me some rules with teeth because

1 there's all these violations and I can't
2 prosecute. But that's not the case.
3 So let's look at it, because
4 that's the problem we always had on the
5 committee. If you don't have a record and
6 you're not showing any harm to the citizens of
7 this state -- and nobody, to be honest, is even
8 interested among the citizens because it's old
9 news. My God, it's been going on for 25 years
10 or so. People get it. They understand
11 attorneys advertising. It's not that special.

12 And on the second hand, you --
13 your own disciplinary counsel testified it's a
14 non issue with me. I don't have any
15 complaints. I don't have any prosecutions. I
16 don't have any prosecutions I can't do because
17 of these rules. Where is your record that will
18 uphold if you have a Constitutional challenge?
19 You couldn't just adopt the Florida rules.
20 What are you going to do, say, oh, well, the
21 harm to the citizens in Florida is the same
22 thing here and that study was done 15 years
23 ago? The whole thing is defective.

24 And then specifically -- those
25 are kind of general comments. But specifically

1 just to -- here's a subline: Contains a
2 testimonial. Well, the Supreme Court has
3 mandated you have to look at the content. You
4 can't do blanket bans. Well, you can do a
5 blanket ban on a testimonial. We recognize
6 that there can be testimonials that contain non
7 deceptive truthful speech. When you do a
8 blanket ban on all testimonials regardless of
9 the content, that's unconstitutional.

10 And then here's one of my
11 favorites here, No. 4: Prohibitive visual and
12 verbal portrayal. That really gives me a lot
13 of guidance. Visual or verbal descriptions,
14 depictions or portrayals of persons, things or
15 events shall not be deceptive, misleading or
16 manipulative. Persons, things or events. So I
17 don't know. You do an ad. It could be
18 interpreted any way. Who is going to staff it?
19 I mean, we're not a rich Bar like Florida is.
20 So are we going to hire law clerks? Are we
21 going to have law students? Are we going to
22 have secretaries that are going to look at all
23 these ads and make the decision? I mean,
24 that's something you have to grapple with.

25 BY MR. LEMMLER:

1 Look at (c)(5): Fees paid,
2 that's what --

3 BY MR. BART:

4 Well, it's very expensive. And,
5 Richard, when you look at Florida, look at the
6 Florida experience, because I've been there
7 from the very beginning. And Florida was
8 flabbergasted when they first put their rules
9 into effect 15 years ago at the cost of it.
10 They were just overrun by the costs. And they
11 were doing the very things I'm saying where
12 they had secretaries and volunteer law students
13 who were looking at these ads trying to
14 determine if there are violations and then
15 giving it to a committee of a few lawyers that
16 would go over to the Bar once a week to meet
17 and look at the problem.

18 So it's only fair to us if we try
19 to comply with these rules and pay the fees, as
20 you all have mentioned, are very expensive that
21 you're going to have a very astute system. And
22 I think to preserve the credibility of this
23 system, if these rules are passed, the Supreme
24 Court or somebody needs to assure us for the
25 money we're spending that there's going to be

1 people that look at them.

2 And they also need to realize,
3 which I think is one of the most significant
4 comments I'm going to make tonight, that before
5 you pass these rules you better have a record
6 and you better talk to Plattsmier to see what
7 kind of violations you have, because if you
8 don't have a record, you're wide open for
9 attack.

10 BY MR. LEMMLER:

11 Thank you. Let me take two
12 general points of, I guess, information with
13 respect to what you said. I'm not trying to
14 debate you at all. I'm not sure what the
15 enforcement policy in Florida is right now
16 regarding the newest revision with respect to
17 testimonials since it just went into effect
18 last week. I'm not sure exactly how they're
19 enforcing it yet. But the new revision does
20 still specifically include the testimonials as
21 a prohibition, something you cannot do.

22 BY MR. BART:

23 But it's interpretation.

24 BY MR. LEMMLER:

25 I said I don't know what the

1 interpretation is. But the rules -- the
2 Supreme Court enacted the rule, again, to
3 include testimonials.

4 BY MR. BART:

5 I want to suggest to you, a
6 friend of mine in Miami who's the largest
7 advertiser there has told me for the last month
8 now he's gotten approved by the Florida Bar a
9 testimonial where the people in the testimonial
10 recommends him as a lawyer but he was told they
11 can't say results.

12 BY MR. LEMMLER:

13 Okay. That's fine. But I did
14 want to point out that the rule still does
15 contain the word testimonial. The other point,
16 which I've lost at this point, I'll just skip
17 and go forward. Ms. Alston, I think, was next.
18 And, folks, let me just say this again. We
19 have ten rules to go through. We're only
20 through two at this point. If you have
21 comments of a more general nature, we're happy
22 to have them. I'd encourage you to submit
23 them, perhaps, in writing so we can kind of get
24 through this in a fairly quick process to allow
25 everyone to get an opportunity to say something

1 about every rule.

2 BY MS. ALSTON:

3 Well, Bart is right. I read the
4 1999 order of the Florida Supreme Court today
5 whereby they adopted certain rules that the Bar
6 had recommended. And one of the rules that the
7 Bar had recommended was a ban on trade names.
8 And the Court specifically declined to
9 implement such a ban because the statistical
10 data, the focus groups and the interviews that
11 had been conducted showed no harm or misleading
12 effect upon the consumer public. So the
13 Florida Bar decided -- or the Florida Supreme
14 court decided not to adopt that ban.

15 Also, on this back table here I
16 found two Federal Court cases in New Mexico and
17 Ohio where the absolute ban on testimonials
18 were challenged in court and the rules were
19 changed. We have documented proof that Ohio
20 changed it as a result of a Constitutional
21 challenge by a lawyer there in exchange for
22 that lawyer dropping the lawsuit. It appears
23 that the same thing happened in New Mexico.

24 BY MR. LEMMLER:

25 Thank you. Yes, sir.

1 BY MR. RICHARDSON:

2 I'm Jeff Richardson with Adams
3 and Reese. And I just wanted to note an
4 objection to one of the rules that Mr. Bart
5 talked about, (b)(1)(B) contains reference to
6 past success. And I think there's -- I see two
7 types of reasons that this rule not only does
8 not make sense to me but I think it actually
9 goes against what these rules should be about.

10 If the point is for people who
11 are trying to choose a lawyer to know whether
12 that's the lawyer they want to choose, that
13 lawyer's experience is very relevant. So, you
14 know, there are types of clients that we bring
15 on as a larger firm, the fact that we may run
16 an ad that we closed some big transaction,
17 that's directly relevant to other businesses
18 that have other transactions that they might
19 want to close and that would be of interest to
20 them.

21 And additionally, as I read the
22 rules, 7.6 says that websites, through 7.9 have
23 to comply with 7.2, which means, for example,
24 that on our website, many of our individual
25 attorneys, including myself, we have examples

1 of cases that we've worked on. You know, in
2 this case, I defeated class certification on a
3 nationwide case. And that is -- not only is it
4 not confusing to potential clients, it actually
5 helps potential clients understand, oh, this
6 attorney is someone who has handled five cases
7 and reported decisions in the F2nd or the
8 Southern Second on exactly that kind of issue.

9 So to pass a rule that would bar
10 that would not ultimately not protect the
11 clients, it would actually hurt the clients and
12 prevent them from hiring a lawyer that knows --
13 that has experience in this area.

14 BY MR. STANLEY:

15 Well, Jeff, I meant to read all
16 these before I came in today, and I didn't.
17 But my recollection is that websites are
18 different.

19 BY MR. RICHARDSON:

20 Well, 7.6 says that websites have
21 to comply with 7.9, which is information
22 provided on request. And 7.9 says that you
23 have to -- 7.2 applies unless 7.9 says
24 otherwise. And I didn't see anything in 7.9
25 that says that any of the (B)(1) things don't

1 apply.

2 BY MR. LEMMLER:

3 I think if you look further in
4 7.9(b) -- and we're jumping way ahead, but
5 we'll try to answer the question -- it says
6 whenever a potential client shall request
7 information regarding a lawyer or a law firm
8 for the purpose of making a decision, regarding
9 the employment of the lawyer or law firm -- and
10 I'm skipping ahead now to No. 3 --
11 notwithstanding the provisions of subdivision
12 (b)(1)(B) of Rule 7.2, information provided to
13 a potential client in response to a potential
14 client's request may contain factually
15 verifiable statements concerning past results
16 obtained by the lawyer or law firm, if either
17 alone or in the context in which they appear,
18 such statements are not otherwise misleading.

19 In 7.6 --

20 BY MR. RICHARDSON:

21 All websites then --

22 BY MR. LEMMLER:

23 Yes, a website is basically a
24 safe harbor.

25 BY MR. RICHARDSON:

1 But not in an advertisement that
2 you put in a national publication?

3 BY MR. STANLEY:

4 Generally, I think that's -- I
5 think that distinction is correct the way it's
6 written down. And I think we deviated on that
7 from some other Bars. New York, for instance,
8 wraps the website into the advertising. We
9 didn't go that far. I mean, we thought about
10 that and said no, no, no. If they go to your
11 website, they're walking into your tent and
12 they can see whatever you want to put up on
13 that website.

14 BY MR. LEMMLER:

15 And I'll note for you that in the
16 recent revision, the Court's order for Florida,
17 the Bar had actually recommended stricter
18 enforcement on the websites, and the Court said
19 we want to see more information about it. So
20 they have not changed that in Florida at this
21 point. Ms. Alston?

22 BY MS. ALSTON:

23 Just a question. So does that
24 mean that testimonials can go on websites?

25 BY MR. STANLEY:

1 I'd have to read it carefully,
2 Beth, you know. But it's essentially
3 websites --

4 BY MS. ALSTON:

5 I'm not sure it's really that
6 clear, but I'll look at it again.

7 BY MR. STANLEY:

8 I think websites are essentially
9 viewed as a tent that if they walk in, they see
10 what they get. That was my understanding.

11 BY MR. CHAPMAN:

12 I'd like to -- I'm Nathan Chapman
13 from the Marketing Center. I'd like to suggest
14 that we cut the word manipulative. I'm not
15 sure what that means. Everybody's goal is to
16 get somebody to call to advertising. And I'd
17 like to urge --

18 BY MR. STANLEY:

19 Nathan, what rule in particular
20 are you --

21 BY MR. CHAPMAN:

22 Wasn't that the one we just read?

23 BY MR. STANLEY:

24 I was looking at the (b)(1)(B).
25 We can find it.

1 BY MR. CHAPMAN:

2 7.5.

3 BY MR. LEMMLER:

4 We haven't even touched on 7.5.

5 But if you want to cut it from 7.5, we'll note

6 it for the record.

7 BY MR. STANLEY:

8 Thank you.

9 BY MR. CHAPMAN:

10 I'd like to also ask that we cut
11 the section ban testimonials. I think what --
12 what we don't like -- I've seen some tacky
13 testimonials. But what I don't like is the
14 tacky part, but of course that's the part
15 that's hard to regulate. I think there's a
16 presumption that all testimonials are tacky.
17 And I will tell you that in my work, I've done
18 some beautiful ones in a way they're nice. I
19 have some really good clients who are really
20 caring people that they can't stand up there
21 and say I'm a really caring person. But I
22 don't see -- if that's really part of their
23 character, I don't see anything wrong, just
24 like you might have a letter of reference, to
25 have somebody else to describe their character

1 I think would be a very positive and a very
2 good thing.

3 BY MR. LEMMLER:

4 Thank you.

5 BY MR. HANTHORN:

6 So you're -- are you allowed to
7 have testimonials in other forms of advertising
8 other than the written communications?

9 BY MR. LEMMLER:

10 I don't know that we've
11 established that yet or not. But I think under
12 the Safe Harbor provisions with respect to
13 websites and information requested by a client,
14 as long as it is not otherwise misleading, I
15 suppose you can make factually verifiable
16 statements. So whether that's a testimonial or
17 not, I don't know. Perhaps that's something to
18 look at.

19 BY MR. HANTHORN:

20 What's the rationale for wanting
21 to block testimonials in the first place? I
22 don't understand that.

23 BY MR. LEMMLER:

24 Well, I think it was in Florida's
25 rules, and we've included them in ours. The

1 Committee has a different take on it, but --

2 BY MR. HANTHORN:

3 Oh, because Florida did it,

4 that's it.

5 BY MR. STANLEY:

6 Look, there are some members of
7 the Committee that can certainly speak more
8 eloquently to this, but I think I can say that
9 there is some feeling that some testimonials --
10 and Mr. Bart -- Morris's buddy has made a very
11 good point -- that not all of them -- the
12 blanket ban maybe needs to be thought through
13 better. But some testimonials may be
14 misleading in the sense that if someone says,
15 hi, I called Rick and I got this big check,
16 that that's all you have to do. If you call
17 me, you get a big check. Well, that's not
18 true. You've got to call me. You've got to
19 have a case. You've got to have a cause of
20 action. You've got to have a defendant who can
21 pay. There's a lot of steps there.

22 So maybe that has some points in
23 there that need to be cleared up. On the other
24 hand, if the testimonial is that I went to
25 Mr. Bart --

1 BY MR. HANTHORN:

2 Well, who did he say --

3 BY MR. STANLEY:

4 Well, no, he said, if I went to
5 Mr. Bart, I was very satisfied. He was a very
6 nice person. He took care of me. If all
7 that's accurate --

8 BY MR. HANTHORN:

9 But that's the content of what
10 was achieved though. Wasn't there some
11 technicality you mentioned?

12 BY MR. BART:

13 Well, the difference was a
14 testimonial on results versus a testimonial on
15 just a recommendation, meaning that the
16 recommendation could be truthful, non deceptive
17 speech.

18 BY MR. HANTHORN:

19 So you can say Scott is a great
20 guy, but I can't tell you what he did or can
21 they say, hey, I was busted for a third offense
22 DWI and Scott got it reduced to a first offense
23 on pre-trial motions and then we went to trial
24 and won. Hire this man. That happens to be a
25 lawyer, because two of my testimonials are from

1 attorneys. So why can't I send that out in my
2 letter? Since I'm also the only DWI lawyer
3 who's sending out testimonials in a letter, I
4 feel like really targeted by this, Rich.

5 BY MR. STANLEY:

6 I'm just the messenger, Scott.

7 BY MR. LEMMLER:

8 I think the comments are noted.

9 BY MR. STANLEY:

10 I think we need to take a look at
11 it.

12 BY MR. LEMMLER:

13 I think it's a good point. It's
14 noted. And, again, I invite you to send in
15 more comments in writing if you want. I just
16 don't want to keep everybody here until 11:00
17 tonight. So if we could just move forward, and
18 it's noted.

19 BY MR. HANTHORN:

20 One last question. How can we
21 continue to have input and continue to be
22 effective in blocking these things after this
23 meeting?

24 BY MR. STANLEY:

25 Well, let me say that -- let me

1 make that point. We have on the Bar website a
2 comment box. Okay? No, no, I think -- this is
3 not just -- we want these comments. We want to
4 get this feedback. This is important. The
5 Supreme Court Committee wants this feedback.
6 Go to that comment box with respect to -- you
7 know, if you have -- if you don't mind doing
8 it, 7.5, this is the problem with this rule and
9 it is, A, B, C, D. 7.6 the problem is A, B, C,
10 D. These comments are going to be grouped,
11 brought to the committees, looked at, and voted
12 on hopefully. And we're going to get -- you
13 know, we're either going to improve -- some of
14 these rules may disappear, some of them may be
15 improved, some of them the comments may be
16 rejected. But it's not -- and this is not an
17 insignificant process. We're not trying to
18 just throw this out there and say whether you
19 like it or not. We really do want the
20 feedback.

21 And so that comment box is a
22 great place, because we're having her
23 transcribe this so we can capture the oral
24 comments. But if you could send them in
25 through that website, it's captured. And it's

1 going to be put in a form that everybody can
2 read.

3 BY MR. HANTHORN:

4 Thank you.

5 BY MR. LEMMLER:

6 Okay. Yes, ma'am.

7 BY MS. COPPING:

8 Yes, it's Judith Copping with
9 Jones Walker. I just wanted to confirm,
10 getting back to publicizing transactions, large
11 transactions, wins, that sort of thing, can we
12 advertise that information? Like if we, you
13 know, in Baton Rouge have -- we have an
14 advertisement that we publish annually telling
15 how much our total real estate transactions
16 added up for that year. Is that something we
17 can run or are we now limited to what we can
18 say because of this new rule?

19 BY MR. LEMMLER:

20 Well, I think the rules sort of
21 drill that down a little further to who your
22 audience is. If you're sending it to someone
23 in the public that you've never dealt with
24 before, probably not. If you're sending them
25 to past or existing clients, certainly.

1 BY MS. COPPING:

2 So if it's published in the Baton

3 Rouge Public Business report --

4 BY MR. LEMMLER:

5 Under the rules, I don't think

6 so.

7 BY MS. COPPING:

8 And I wanted to make a quick

9 comment since you brought it up, the audience.

10 As I understand it, these rules are trying to

11 cover the whole state of Louisiana. But this

12 gentleman's audience is, you know, the poor man

13 that has had the unfortunate experience of

14 getting a DWI where his interpretation of the

15 advertisements are completely different from,

16 say, a sophisticated Fortune 500 client who has

17 a complete understanding when we publicize our

18 transactions. It's very difficult to define

19 these rules for such a vast audience.

20 BY MR. LEMMLER:

21 Okay. Fair enough. Thank you.

22 Anything else before I move forward?

23 BY MR. STANLEY:

24 Keep rolling.

25 BY MR. LEMMLER:

1 Further examples, and we may have
2 already touched on this -- we have,
3 testimonials. Portrayal of a client by a non
4 client or the reenactment of any events or
5 scenes or pictures that are not actual or
6 authentic, includes the portrayal of a judge,
7 portrayal of a lawyer by a non lawyer, the
8 portrayal of a law firm as a fictionalized
9 entity, the use of a fictitious name to refer
10 to lawyers not associated together in a law
11 firm, or otherwise implies that lawyers are
12 associated in a law firm if that is not the
13 case.

14 Again, I think building primarily
15 on the false, deceptive or misleading. The
16 actual examples, I suppose, are subject to
17 further scrutiny.

18 BY MR. BART:

19 I have some comments on that.
20 Morris Bart, New Orleans. In regards to
21 this -- this will be an appropriate time -- I
22 have two exhibits I'd like to offer and file
23 into the record. And let me mark it just "A"
24 and "B." And "A" is a letter from the Federal
25 Trade Commission dated September 14th, 2006.

1 Quick history on this, the New York rules which
2 you alluded to, they are being proposed. The
3 Federal Trade Commission recently weighed in on
4 it and gave their opinions and their comments
5 as to why they felt those specific rules were
6 unconstitutional and the restraint of free
7 trade and were opposed by the Federal Trade
8 Commission. Many of those rules are exactly
9 the same as what we have proposed in Louisiana.

10 And, specifically, they mention
11 images of non attorney spokespersons
12 recognizable to the public, depictions of
13 courtrooms, portrayals of judges and lawyers by
14 non lawyers, portrayals of clients by non
15 clients, re-enactments of events. They say
16 such techniques may be useful to consumers in
17 identifying suitable providers of legal
18 services.

19 Without belaboring the point,
20 they go on that the FTC has a statutory mandate
21 to prevent rules like this that hinder trade
22 and are not of a benefit to the consumer. And
23 I have already been in touch with the FTC about
24 taking a look at the Louisiana situation. So
25 this is very close to what's proposed here, and

1 I would encourage the Committee to closely read
2 this letter from the FTC.

3 BY MR. LEMMLER:

4 Thank you. Actually, we already
5 have.

6 BY MR. BART:

7 Okay. The second one then is
8 involving the same thing, the New York rules --
9 which by the way, the New York Bar, Supreme
10 Court has now taken those rules back and they
11 have them under reconsideration.

12 The second one is an opinion
13 letter from -- dated September 15th, 2006 from
14 Floyd Abrams, who many of you might recognize
15 as probably the top First Amendment lawyer in
16 the United States. And he has weighed in
17 against these proposed rules in New York,
18 again, which are very similar to the Louisiana
19 rules. I've also been in touch with Floyd
20 Abrams, and I would like to introduce his
21 opinion letter into the record also.

22 BY MR. LEMMLER:

23 Thank you.

24 BY MR. STANLEY:

25 Sure. We'll take them.

1 BY MR. BART:

2 I'll offer, introduce and file.

3 Do you accept them?

4 BY MR. STANLEY:

5 Any objections? Let it be filed.

6 BY MR. BART:

7 There we go.

8 BY MR. STANLEY:

9 I feel important.

10 BY MR. BART:

11 Permission to proceed, Your
12 Honor.

13 BY MS. ALSTON:

14 Mr. Stanley, that's where I've
15 always envisioned you to be.

16 BY MR. STANLEY:

17 Please, please. No, thank you.

18 Actually, we've seen the Florida letter. I
19 haven't seen Mr. Abrams' opinion, but I think
20 those things do need to be looked at.

21 BY MR. LEMMLER:

22 Further examples of 7.2(b),
23 depicts the use of a courtroom, noting that
24 it's the use of a courtroom rather than the
25 courtroom itself; resembles a legal pleading,

1 notice, contract or other legal document --
2 already in our existing rule -- utilizes a
3 nickname, moniker, motto or trade name that
4 states or implies an ability to obtain results
5 in a matter -- noting that the nickname is not
6 the problem. It's the ability to obtain
7 results. So if you have a nickname like Rick,
8 I suppose that's okay. But if it's, you know,
9 Quick Cash or Easy Settlement, that might not
10 be permissible under that rule -- fails to
11 comply with Rule 1.8(e)(4)(iii) -- the current
12 rule regarding offering to provide financial
13 assistance or loans in advance of being
14 employed. That's already in your rules.
15 Mr. Hanthorn?

16 BY MR. HANTHORN:

17 In your moniker, would that cover
18 something like "1-800 Not Guilty"?

19 BY MR. LEMMLER:

20 Let's look at it again. I
21 suppose that might do that if it implies an
22 ability to obtain results.

23 BY MR. HANTHORN:

24 How about "www.scottfreeme.com"?

25 BY MR. LEMMLER:

1 Well, I guess that's subject to
2 some interpretation then. I don't know.

3 BY MR. STANLEY:

4 That's more of a request.

5 BY MR. HANTHORN:

6 That's my -- you're coming after
7 me again here.

8 BY MR. LEMMLER:

9 Again, we're just presenting them
10 to you. I don't know that I can give you an
11 opinion on them at this point.

12 BY MR. HANTHORN:

13 It's easy to remember. It's kind
14 of ambiguous. I'm Scott Free, you know.

15 BY MR. STANLEY:

16 It sounds like a request to me,
17 but that's me.

18 BY MR. BART:

19 Mr. Lemmler, I just want to,
20 again, reemphasize the danger of blanket bans.
21 So if you look at (h), depicts the use of a
22 courtroom. I mean, what could be more benign
23 than for a lawyer to appear in a courtroom?
24 But under these rules, there's just a blanket
25 ban on that. So I think the Committee needs to

1 look very carefully at these because the goal
2 is to restrict in the narrowest means possible
3 deceptive, non truthful content. But when you
4 just knock out a courtroom, that's style, not
5 content. And we can easily envision many
6 example of where a lawyer would be in a
7 courtroom and it's non deceptive and truthful
8 speech.

9 BY MR. LEMMLER:

10 I guess what was intended there
11 -- and I'm just speculating at this point -- is
12 a lawyer perhaps doesn't truthfully go to a
13 courtroom. If you're portraying that you're in
14 a courtroom and using a courtroom and you
15 really don't -- it says depicts the use of a
16 courtroom.

17 BY MR. BART:

18 That's all it says, right.

19 BY MR. LEMMLER:

20 How can we determine when the
21 lawyer is in the courtroom and the plaintiff
22 lawyer is not?

23 BY MS. ALSTON:

24 There's a case where a lawyer was
25 disciplined -- a group of lawyers were

1 disciplined for depicting an ad with them
2 arguing a case to a jury where they had never
3 had a jury trial or any kind of trial
4 whatsoever, and that was prosecutable and
5 sanctionable under the rules as we now have.
6 It's false and misleading to depict that you go
7 to court and argue to a jury if you don't to
8 that. We don't need a blanket prohibition on
9 this.

10 BY MR. LEMMLER:

11 I'm not necessarily in favor,
12 Ms. Alston. I'm just trying to explain what I
13 thought the meaning was.

14 BY MS. ALSTON:

15 Oh, I didn't mean to argue with
16 you. I know you're not debating it.

17 BY MR. HINGLE:

18 Michael Hingle from the
19 Northshore. As I understand the First
20 Amendment, the First Amendment is to protect
21 those things that we may not necessarily like.
22 There are people out there that don't like the
23 guys with turbans on their head, but they have
24 a right to wear them. There are people out
25 there that don't like the kids' music, but they

1 didn't like Elvis Presley in the '50s either.
2 I don't use a name or a nickname, but I know
3 there's some guys out there. I don't
4 practically like their nicknames. But under
5 the First Amendment, I think they have a right
6 to use their nicknames. And I would suggest
7 that utilizing nicknames, monikers or mottos or
8 trade names would be an inappropriate sanction.
9 And if it's because somebody just doesn't like
10 it, that's contrary to the First Amendment.
11 Whether you like it or not, it's protected by
12 the First Amendment. Thank you.

13 BY MR. LEMMLER:

14 Thank you. Moving forward.
15 Misleading or deceptive factual statements.
16 Any factual statement contained -- and I'll
17 note for you before I even go through this that
18 Florida just removed this entire portion from
19 its rules. This whole section is gone. This
20 is in our proposal right now, but I suppose the
21 Committee will be looking at the purpose of it
22 little more closely given Florida's desire to
23 take it out.
24 Any factual statement contained
25 in any advertisement or written communication

1 or any information furnished to a prospective
2 client under this rule shall not be directly or
3 impliedly false or misleading; be potentially
4 false or misleading; fail to disclose material
5 information; be unsubstantiated in fact; or be
6 unfair or deceptive.

7 So, again, Florida's lost this.
8 I guess we'll be looking at it. Any comment on
9 it? Mr. Bart?

10 BY MR. BART:

11 Yeah, I look at this as the
12 "gotcha rule," that just in case in 23 pages
13 there's something we missed, we can get you
14 anyway we want with this rule. If you want
15 compliance, the best way to have compliance is
16 with clear, easy to follow rules. The more you
17 complicate this, the more you give rules that
18 are difficult to follow and that are overly
19 broad and vague and have broad bans. That's
20 going to ensure non compliance.

21 So this is a rule I would
22 encourage the Board to take out completely
23 because it gives absolutely no guidance to the
24 practitioner. All it does is have a "gotcha
25 rule" so the Committee can prosecute you for

1 anything that they deem is appropriate.

2 BY MR. LEMMLER:

3 Thank you. I mean, I would note
4 for you just as an inside bit of information,
5 perhaps, that all of these points that you're
6 bringing up, most all of them were subject to
7 the briefing committee. And as Rick pointed
8 out initially, some of them passed by 5 to 4
9 votes as to leaving them in and some of them
10 were looked at several times, and some of them
11 were left in and some of them will be probably
12 be coming out. So thank you for your comment.

13 7.2(b)(3), descriptive
14 statements. A lawyer shall not make statements
15 describing or characterizing the quality of the
16 lawyer's services in advertisements and written
17 communications, provided that this provision
18 will not apply to information furnished to a
19 prospective client at that person's request or
20 to information supplied to the existing
21 clients.

22 I'd also note for you that the
23 part about information furnished to prospective
24 clients upon request, which is our proposed
25 Rule 7.9, which was Florida's 7.9, was also

1 moved entirely into 7.1 as a blanket, per se,
2 exemption from filing and considered something
3 that was essentially a safe harbor. So,
4 perhaps, that aspect of this rule will be
5 looked at as well. Yes.

6 BY MR. RICHARDSON:

7 I also think this one is too
8 broad, that statements describing the quality
9 of a lawyer's services. It seems to me phrases
10 such as experienced, hard-working -- I mean,
11 I'm not sure what you could say about yourself
12 except that you are a lawyer. And I realize
13 that there's a procedure that you can submit
14 your ads first, and that might solve some of
15 some. But it seems incredibly vague. I'm not
16 sure what you could say about yourself.

17 BY MR. LEMMLER:

18 Thank you. 7.2(b)(4), prohibited
19 visual and verbal portrayals. I think Mr. Bart
20 may have touched on that already, but I'll just
21 repeat it for the sake of anyone else who may
22 want to comment. Visual or verbal
23 descriptions, depictions or portrayals of
24 persons, things or events shall not be
25 deceptive, misleading or manipulative. Is that

1 where you're suggesting removal?

2 BY MR. CHAPMAN:

3 Yes.

4 BY MR. HANTHORN:

5 So isn't all advertisement an
6 intent to manipulate someone into hiring you?
7 I'm sure you've heard that one already.

8 BY MR. LEMMLER:

9 Thank you, Mr. Hanthorn.
10 7.2(b)(5), advertising areas of practice. A
11 lawyer or law firm shall not state or imply in
12 advertisements or communications that the
13 lawyer or law firm currently practices in an
14 area of practice when this is not the case.
15 Again, something that is not false, deceptive
16 or misleading.

17 Stating or implying Louisiana
18 State Bar Association approval, a lawyer or law
19 firm shall not make any statement that directly
20 or impliedly indicates that the communication
21 has received any kind of approval from the
22 State Bar Association. That's to be
23 distinguished from the advisory opinion that
24 you'll see further on which is a non binding
25 advisory opinion, basically just advice, that

1 the Bar is not giving you a seal of approval
2 but basically our best advice, which by the way
3 we do right now.

4 Mr. Bart was on that committee
5 and worked for many years. We provided advice,
6 and we're still doing that. So that's really
7 not a major change, but it clarifies that the
8 Bar is not giving you a get-out-of-jail free
9 card, I guess, is what someone referred to it
10 as.

11 General regulations governing
12 content of advertisements, 7.2(c), and there's
13 a whole laundry list of things here including,
14 as you'll see towards the end, a safe harbor.
15 Let's just go right through them, and I won't
16 even try to read all of this.

17 Use of illustrations,
18 illustrations including photographs used in
19 advertisements shall contain no features that
20 are likely to deceive, mislead or confuse the
21 viewer. Mr. Bart?

22 BY MR. BART:

23 Yeah, I'm amazed that you would
24 put a rule like this in. First of all,
25 illustrations, we're going so far back now.

1 The Zauderer (phonetic) decision with the
2 Dow-Con Shield (phonetic) litigation went up to
3 the U.S. Supreme Court and specifically allowed
4 the use of illustrations. And now you're
5 saying it shall contain no features that are
6 likely to deceive, mislead or confuse the
7 viewer.

8 How does that give me guidance?
9 I know the Zauderer case, which is with the
10 U.S. Supreme Court says I can have
11 illustrations. And now are we going that far
12 back where we're going to ignore the Zauderer
13 decision and say, okay, we'll allow
14 illustrations, but it can't contain any
15 features that are likely to deceive, mislead or
16 confuse the viewer? I mean, I just think,
17 again, it's overly broad. It's vague. This
18 invites litigation. And I would encourage the
19 Committee to completely get rid of this one.

20 BY MR. LEMMLER:

21 Just to, I guess, point out a
22 point of information or at least what I
23 understood Zauderer to say is that it does not
24 prohibit use of accurate and non deceptive
25 illustrations I think is what is in there. So

1 illustration are permitted as long as they're
2 accurate and non deceptive.

3 BY MR. BART:

4 It doesn't say that.

5 BY MR. LEMMLER:

6 I think that was the line, but I
7 don't want to debate.

8 BY MR. BART:

9 I mean, I'd rather it say
10 accurate and non deceptive if that's what you
11 want to do.

12 BY MR. LEMMLER:

13 Okay. Noted. That might be a
14 better suggestion all the way around.

15 BY MR. NOBLE:

16 This is John Noble with Michael
17 Hingle's office. It's so clear that most of
18 these rules are so overly broad, so vague that
19 it's clear that there will be First Amendment
20 challenges. The results would probably be that
21 the rules in their entirety would be stricken
22 down, which would defeat the purpose of the Bar
23 Association in its attempts to regulate
24 advertising. Unless these rules are more
25 tailored more specifically, it seems that a lot

1 of efforts will be in vain.

2 BY MR. LEMMLER:

3 Thank you. I don't know that the
4 Bar, per se, is attempting to regulate
5 advertising. Only the Supreme Court can do
6 that. The rules ultimately if enacted would be
7 the Supreme Court's rules, not the Bar's rules,
8 just as a point of clarification. Mr. DeLaup?

9 BY MR. DELAUP:

10 Guy DeLaup from Metairie. I'm
11 just trying to understand your argument.
12 You're arguing the words deception or
13 misleading are just too broad and they
14 shouldn't have a place in the rules, because it
15 seems to be all, you know, the rules say? It
16 shouldn't be deceptive or misleading.

17 BY MR. BART:

18 Well, generally the standard is
19 that any advertisement should not be false,
20 deceptive or misleading. And within that, that
21 makes sense. We can look at that general rule.
22 However, when you start getting down to
23 specifics, like this one here is illustrations,
24 I think it confuses a practitioner who might
25 want to follow it, because clearly we have a

1 Constitutional right to have pictures and
2 illustrations. There's no need to say that.
3 If you could have one rule for all of this --
4 no advertising can be false, deceptive or
5 misleading -- that could be easier to follow.

6 The problem is when you start
7 getting down to specificity to rules like this,
8 it becomes unclear as to what's meant and it
9 leaves it subject to interpretation which gives
10 us no guidance.

11 BY MR. DELAUP:

12 So your argument is that we
13 should have a general rule and not a specific
14 rule?

15 BY MR. BART:

16 I think that would be far
17 advisable, far advisable than having this.
18 And, in fact, that's what's supported by the
19 FTC. The FTC says ads should not be false,
20 deceptive or misleading and that any conduct
21 that a state deems to be harmful or prohibited
22 can be taken care of by a disclaimer.

23 BY MR. LEMMLER:

24 Okay. Any further comments.
25 Thank you. 7.2(c)(3), a lawyer may communicate

1 the fact that the lawyer does or does not
2 practice in particular fields of law. A lawyer
3 shall not state or imply that the lawyer is
4 certified, board certified, an expert or a
5 specialist except as follows. I'll note for
6 you that that is essentially the current Rule
7 7.4. I'd also note for you that Florida in its
8 revision just added the word expert. That was
9 not originally in there. When we decided that
10 it's already in ours and so it was probably
11 good. We were apparently ahead of them on
12 this.

13 That's broken down into
14 essentially three different forms: Lawyers
15 certified by Louisiana Board of Legal
16 Specialization, essentially what you have now.
17 Lawyers who can say that they are board
18 certified and the specialties that are listed
19 in the rules.

20 Lawyers certified by
21 organizations other than the Louisiana Board of
22 Legal Specialization or another State Bar, and
23 then Certification by other State Bars. Any
24 comments on this? Moving forward.

25 7.2(c) advising lawyers must

1 disclose whether the client will be liable for
2 costs and/or other expenses in addition to the
3 fee when providing information about fees,
4 essentially what's already in our rules. Honor
5 the fee quoted in the advertisement for a
6 certain period of time, again in our rules.

7 Pay for the advertisement
8 themselves, disclose that the matter will be
9 referred to another lawyer if that is the case.

10 BY MR. BART:

11 I have some comments on that.
12 The payment by a non advertising lawyer, really
13 the basis for this was simply, again, just this
14 protectionist litigation. There's absolutely
15 no reason why lawyers shouldn't be entitled to
16 engage in joint ventures, which is done in
17 every other industry. So if, let's say, there
18 is a certain mass tort that I wanted to get
19 involved in with a group of other lawyers and
20 we wanted to have a joint venture, expenses and
21 fees are split down the middle.

22 Why is it that I as the
23 advertising lawyer now have to pay 100 percent
24 of my advertising and yet I'm an equal partner
25 in the joint venture? I think when this came

1 about, if I remember the history, this rule
2 came about as a result of all the mass tort and
3 class action advertising that was promulgated
4 after the breast implant litigation. And right
5 after that you had Fen-Phen, and then the roof
6 blew off and Resilin and all these other ones.
7 And there was then an effort by the class
8 action and mass tort plaintiff lawyers in the
9 country to try to prohibit advertising lawyers
10 from advertising for these mass torts. And so
11 they've ram-rodged a rule through like this.

12 This to me is strictly
13 protectionist litigation. I just can't see any
14 benefit for that, particularly joint ventures,
15 not only on the plaintiff's side, I think the
16 defense bar and the business legal community
17 should be upset about this because it's quite
18 common especially in real estate for there to
19 be joint ventures in different projects. But
20 this prohibits any advertising unless the
21 lawyer himself pays for it. There's a lot of
22 ramifications, and I don't see how this
23 prevents false and misleading speech. If the
24 concern is you want the public to know about
25 who is actually behind this, meaning that you

1 want to prevent law brokerage where a lawyer
2 will simply advertise or refer the cases out
3 and have nothing to do with it. That should be
4 taken care of by disclaimers, it should not be
5 a blanket ban on the joint venturing of
6 advertising.

7 BY MR. LEMMLER:

8 Thank you.

9 BY MR. CHAPMAN:

10 Nathan Chapman. I'd like to
11 propose that in No. 1 that we change the word
12 "whether" to "when" so that we're not caught in
13 the situation -- I have some clients in a
14 commercial say there's no fee unless you win.
15 And I don't have a problem if you want to say,
16 uh-ha, but there might be costs. If you want
17 them to disclose that, that's fine. But in
18 some states we're required to have a disclaimer
19 that says and we're not going to charge you for
20 costs either. And all of a sudden we're
21 looking negative when actually it's the good
22 guys waving the costs.

23 BY MR. LEMMLER:

24 Thank you. Moving forward.

25 Permissible content of advertisements, some

1 Safe Harbor provisions. And, again, as I noted
2 for you before, these have actually been
3 reversed and the new amendments that Florida
4 just enacted, these come first instead of
5 prohibitions that we just looked at in-depth.

6 Information that is presumed not
7 to violate the rule; subject to the
8 requirements of this Rule and Rule 7.10 which
9 deals with the firm names and letterhead and so
10 forth, which is our existing Rule 7.5, name of
11 the lawyer or law firm, a listing of lawyers
12 associated with the firm, office locations,
13 parking arrangements, disability
14 accommodations, telephone numbers and so forth.

15 Any comments with respect to any
16 of this? Other Safe Harbor information, and
17 I'll note for you Florida has also expanded the
18 list of Safe Harbor sorts of things. You can
19 also list military experience now. I think
20 there's some other things in there we'll get to
21 in a second. Any comments on these in
22 particular?

23 Information -- further
24 information, technical and professional
25 licenses, foreign language ability, fields of

1 law in which the lawyer practices, prepaid or
2 group legal services in which the lawyer
3 participates, fee for initial consultation and
4 fee schedule, subject to the requirements of
5 subdivisions (c)(4) and (c)(5) of this rule.

6 A listing of the name and
7 geographic location of a lawyer or law firm as
8 a sponsor of a public service announcement or
9 charitable, civic, or community program or
10 event. I'll note for you that that has been
11 further expanded lower down in -- I think it's
12 7.5. But we'll get to that in a second. Just
13 note that they have expanded what is Safe
14 Harbor information with respect to charitable,
15 public service type announcements.

16 Common salutary language, and
17 we've already had comment that that should,
18 perhaps, be salutary language. Illustration
19 of the scales of justice, and this is where
20 they've expanded of the list of permissible
21 sorts of things. You can now also include the
22 Statue of Liberty, for instance, the American
23 Eagle, a number of other things, photographs of
24 the head and shoulder of the lawyer. Now you
25 can show the whole lawyer. Florida can accept

1 that lawyers have whole bodies rather than just
2 heads and shoulders.

3 BY MR. HINGLE:

4 So this means that now we can
5 show our whole bodies?

6 BY MR. LEMMLER:

7 I think that's where Florida has
8 gone. And I suspect we'll go that way here.

9 BY MR. HINGLE:

10 I was under the understanding
11 that there was a lady who was advertising had
12 too much cleavage showing so that's why the
13 rule is going to be only from the -- you know,
14 from above that.

15 BY MR. LEMMLER:

16 Are you suggesting that we --

17 BY MR. HINGLE:

18 No, no, not at all. I like
19 cleavage.

20 BY MR. LEMMLER:

21 Okay. I just wanted to clarify
22 that for the record.

23 BY MR. HINGLE:

24 But do I understand correctly
25 that this is now part of the rule that we can

1 show our whole bodies?

2 BY MR. LEMMLER:

3 Well, this is not part of the
4 Florida rules. This is what Florida meant.
5 What you're seeing right here is the proposal
6 that we have presented to you tonight that was
7 put together before Florida's amendments last
8 Thursday. So we haven't had an actual amount
9 of time to look at this. But all I'm
10 suggesting to you and the reason I'm telling
11 you that we'll probably be looking at that and
12 saying you can show the whole body. I'm not
13 speaking for the committee but only speculating
14 that they probably will think that's
15 reasonable, because this was an item of debate
16 if I recall.

17 BY MR. HINGLE:

18 Thank you.

19 BY MR. LEMMLER:

20 7.3, advertisements in the public
21 print media. Before going into this, I'll note
22 for you that Florida has instruct virtually all
23 of this as well from its current newest part of
24 rule which goes into effect on January 1st.
25 Now it says also subject to the requirements of

1 Rule 7.2. The disclosure statement is no
2 longer required in Florida as of January 1st.

3 BY MR. CHAPMAN:

4 Can I ask a question? The
5 printout that I got from your website is not
6 entirely matching this. And I had a concern
7 that since it's not on the screen, does that
8 mean it's no longer there?

9 BY MR. LEMMLER:

10 Well, we're trying to condense
11 this into potentially a two-hour, perhaps even
12 a one-hour presentation. And we don't have
13 verbatim every part of the rule. That's why we
14 supplied you with the actual content and the
15 language. If you have particular information
16 or particular parts of the rule that you don't
17 see listed, please bring them up. We're not
18 trying to hide anything from you. It's just an
19 attempt to condense it.

20 BY MR. CHAPMAN:

21 Oh, can I do that right now, 7.2?

22 BY MR. LEMMLER:

23 Sure.

24 BY MR. CHAPMAN:

25 In -- I'm a little lost with the

1 numbers. It was under the heading of
2 appearance and required statements, 7.2(11)
3 maybe. And it said that any word required by
4 the rules -- any words or statements required
5 by these rules to appear in an advertisement or
6 communication must be clearly legible. If the
7 words appear in text, then the text must be
8 legible and no smaller than one-quarter the
9 size of the largest type otherwise appearing in
10 the advertisement or direct mail communication,
11 or eight-point typeface, whichever is larger.

12 And so I would -- you know, in
13 television commercials you'll often put the
14 phone number bigger, and I don't see anything
15 wrong with that. And to say, okay, now legal
16 disclaimers have to be one-quarter of that size
17 either forces us to make the graphics much
18 blander, all in similar size, or make the
19 disclaimer much larger. There's a standard
20 size, at least in television. In fact, we
21 don't really use point sizes. Seventeen scan
22 lines is a good readable, you know, a fairly
23 accepted disclaimer size for disclaimers in
24 television commercials. And I would encourage
25 you just to go with that.

1 BY MR. LEMMLER:

2 Two remarks, and I thank you for
3 that comment. I think there's a special
4 section in 7.5 that deals with radio and TV.
5 And I think some of these particular things
6 regarding type size and so forth don't
7 necessarily apply. I would also suggest -- and
8 I'm not absolutely certain at this point
9 because I just looked at them three days ago.
10 I've before looking at them for the last three
11 days -- that Florida may have removed this
12 portion completely with respect to the type
13 size and so forth.

14 Don't quote me on that, but I'm
15 saying take a look at that. And I'm going to
16 take a look at that to make sure because I
17 recollect that they have removed that. The
18 Court may have removed that from Florida.

19 BY MR. CHAPMAN:

20 Thank you.

21 BY MR. LEMMLER:

22 Thank you. Any further comments
23 before I try to move forward? Again, under the
24 proposal we're asking that there be a
25 disclosure statement in public print media

1 advertisements with the exception of as it
2 contain no illustrations and all the other
3 information other than that listed in the Safe
4 Harbor provisions in (c)(12) or written
5 communications sent in compliance with 7.4.

6 There are several requirements in there.

7 Again, Florida has removed a lot
8 of this, so I suspect the Committee will be
9 looking at that seriously as well. All right.

10 7.4, a lot like what we have
11 right now in 7.3(b) or 7.3(a) and (b).

12 Solicitation and written communication and are
13 two major categories. The solicitation rule is
14 essentially the same as what we have now as our
15 current rule 7.3(a). Notable changes, however,
16 the Committee recommended that prior
17 professional relationship be changed to prior
18 lawyer/client relationship. And that is
19 further defined in the balance of the rule to
20 say that prior lawyer/client relationship shall
21 exclude relationship in which the client was an
22 unnamed member of a class action. Someone who
23 is not -- a named member of it rather than a
24 cast of thousands, perhaps. Any comment there?
25 Moving forward.

1 Written communications contains
2 the same prohibitions as the current Louisiana
3 Rule 7.3(b), targeted written solicitations.
4 Notable additions, conditions or prohibitions.
5 Communication must abide by 7.2 including the
6 required information. A copy must be filed
7 with the LSBA as provided in 7.7, which we'll
8 see hopefully when we get to it in the
9 procedural aspect of this.

10 No written communications to
11 someone unlikely to exercise reasonable
12 judgment in employing a lawyer. If contacting
13 a prospective client about specific currents,
14 it must contain the phrase if you have already
15 retained a lawyer for this matter, please
16 disregard this letter or a statement that the
17 sign-in lawyer will not handle the matter, if
18 that is the case, and no revelation of the
19 underlying legal matter on the envelope.
20 Nothing on the outside of the envelope saying
21 we're contacting you about this serious
22 personal injury case, that debilitating injury
23 that you just received last week. Basically, a
24 privacy concern, perhaps.

25 BY MR. HANTHORN:

1 What's your rationale on this, if
2 you've already retained a lawyer, please
3 disregard the letter?

4 BY MR. LEMMLER:

5 Rick, do you have any comments on
6 that?

7 BY MR. STANLEY:

8 This was -- this is a matter of
9 some vague -- the rationale is if they've
10 already retained a lawyer, they're, quote,
11 represented in the matter. And so you
12 shouldn't be soliciting. You can go either way
13 on that. I don't think that that's --
14 personally, I would have voted against this,
15 and I think I may have voted against this
16 because I think that it doesn't matter. You
17 can always get a second opinion even if you
18 already have a lawyer, and you can always be
19 solicited even if you already have a lawyer
20 because a better lawyer may come along.

21 But this was something that was
22 in the Florida rule, and I think it was one of
23 those very close votes that the Committee
24 decided to go with what Florida had, because
25 there was actually I think in their Bar, in one

1 of their surveys, there was a tremendous amount
2 of complaints from clients of once they had a
3 lawyer, they continued to get all this mail
4 from other lawyers soliciting their cases. And
5 they felt that that was an intrusion on them.
6 I think it's a very close call. But that's the
7 rationale.

8 The rationale is, if they've
9 already hired Mr. Bart and they get a letter
10 from Mr. Hingle, Mr. Hingle's letter -- or the
11 second letter should say if you've already got
12 a letter, you should disregard this.

13 BY UNIDENTIFIED SPEAKER:

14 I thought that was voted down. I
15 thought that was --

16 BY MR. STANLEY:

17 Claire, you and I were in the
18 minority.

19 BY MR. LEMMLER:

20 I think it may have been a
21 multiple-occasion vote. And I think the last
22 one ended up with this version, but I'll double
23 check that. Mr. Bart?

24 BY MR. BART:

25 Well, I think it's really the Bar

1 Association's shot at civility. And speaking
2 of that and given the hour, I wonder if
3 everybody here can't get two hours of CLE or
4 one --

5 BY MR. LEMMLER:

6 That would be up to the CLE
7 Committee, sir.

8 BY MR. BART:

9 One hour should be for ethics and
10 one should be for professionalism.

11 BY MR. LEMMLER:

12 We've got approval for one hour.
13 I'm not authorized to give you any more, but
14 you're certainly welcome to call the Court and
15 ask them that.

16 BY MR. BART:

17 Okay. Will you back us up if
18 we're here two hours?

19 BY MR. LEMMLER:

20 I'll verify you were here for two
21 hours. I'm sure the transcript will do that as
22 well. Moving forward, I think. 7.5 -- we're
23 making progression -- advertisements in the
24 electronic media other than computer-accessed
25 communications. Essentially, at this point

1 we're talking about TV and radio, things
2 including TV and radio not -- otherwise the
3 computer-based ads subject to 7.6, the websites
4 and the e-mails, which we'll get to in a
5 moment.

6 Appearance on TV or radio,
7 prohibited content. Television and radio
8 advertisements shall not contain any feature
9 that is deceptive, misleading, manipulative or
10 is likely to confuse the viewer or listener. I
11 believe Florida may have just amended that to
12 just say deceptive, misleading -- false,
13 deceptive or misleading. But, again, don't
14 quote me on that. But I believe that was the
15 gist of most of their amendments was to try to
16 get in line with what the ABA is doing with
17 that.

18 Any spokesperson's voice or image
19 that is recognizable to the public in the
20 community where the advertisement appears.
21 Lawyers who are not members of the advertising
22 law firm speaking on behalf of the advertising
23 lawyer or law firm, or any background sound
24 other than instrumental music. Yes, sir,
25 Mr. Bart?

1 BY MR. BART:

2 There's two provisions here which
3 I've seen in many other -- particularly in
4 Florida that are just so offensive. (A) any
5 feature that is deceptive, misleading,
6 manipulative or that is likely to confuse the
7 viewer or listener. Again, it's a very vague,
8 overbroad provision. It doesn't say anything.
9 I go back to what I was saying earlier. If you
10 would just simply say advertising can't be
11 false, deceptive or misleading and then have
12 disciplinary counsel pursue any lawyer who's ad
13 they deem to be false, deceptive or misleading
14 is a very workable and Constitutional standard.
15 This doesn't give us any guidance. This,
16 again, is another gotcha-type phrase that
17 shouldn't be in there.

18 And then any background sound
19 other than instrumental music, I mean,
20 remember, you can't regulate style just as you
21 can't regulate a lawyer's dress when he goes
22 into court. You can only regulate the content.
23 You're dealing with the First Amendment. This
24 is protective speech under the First Amendment.
25 How in the world you can make an argument that

1 any background sound other than instrumental
2 music is automatically banned and automatically
3 false, deceptive or misleading. What if I do a
4 television commercial where I'm walking toward
5 the camera and you hear the sound of my shoes
6 walking on a wooden floor? You have now deemed
7 that to be false, deceptive and misleading.
8 That's the danger in blanket bans. I just
9 can't see any basis whatsoever for having that.

10 BY MR. LEMMLER:

11 Thank you.

12 BY MR. GEE:

13 William Gee, Lafayette. I'd like
14 to comment on number (b), any spokesperson's
15 voice or image recognizable to the public.
16 First of all, my primary basis is that I
17 believe that the First Amendment -- or course,
18 protected by the First Amendment. Secondly, I
19 don't think any member of the general public
20 really takes any offense to that. Thirdly I
21 would state that if, in fact, the public figure
22 is familiar with the credentials of the
23 attorney and, in fact, knows that attorney or
24 has repore with that attorney, I don't think
25 that's improper. And it's not something that

1 has any rationale -- Constitutional rationale.
2 I personally have hired Mr. Robert Vaughn as a
3 spokesperson, and I've consulted with him. He
4 does endorse me as a practitioner. And I don't
5 really think that anybody takes any offense to
6 that. And I think that particular entry, I
7 don't know if that is in the Florida rules or
8 not, but I think that particular entry is
9 rapport to, for example, Robert Vaughn being a
10 spokesperson, William Shatner being a
11 spokesperson, you know.

12 I would simply say that it's -- I
13 don't think that it has any real rationale
14 except for people who have a distain or dislike
15 for attorney advertising.

16 BY MR. LEMMLER:

17 Thank you. I just would note
18 that it is in the Florida rules, I believe,
19 currently. That's where we got it from. It
20 wasn't something the Committee came up on its
21 own.

22 BY MR. STANLEY:

23 No. And it was a matter -- I can
24 assure you it was a matter of high debate. And
25 it got turned around twice.

1 BY MR. LEMMLER:

2 Yes, yes. Mr. Hingle?

3 BY MR. HINGLE:

4 I think this is another example
5 of the First Amendment. I personally don't
6 like the ads with William Shatner or
7 Mr. Vaughn. I really really don't like them.
8 But I think he has the right under the First
9 Amendment to use them if he wants to, and we
10 shouldn't be telling him if that's how he's
11 going to market himself that you can't use this
12 means to do it. I think his, although I don't
13 like it or would rather him not do it, I think
14 he has the right to do so.

15 BY MR. STANLEY:

16 Thank you, sir.

17 BY MR. LEMMLER:

18 Thank you. Moving forward.
19 Appearance on television or radio, what is
20 permissible. Television or radio
21 advertisements may contain images that
22 otherwise conform to the requirements of these
23 rules. A lawyer who is a member of the
24 advertising firm personally appearing to speak
25 regarding the legal services the lawyer or law

1 firm is available to perform, the fees to be
2 charged for such services and the background
3 and experience of the lawyer or law firm, or a
4 non lawyer spokesperson speaking on behalf of
5 the lawyer or law firm as long as the
6 spokesperson's voice or image is not
7 recognizable to the public in the community
8 where the advertisement appears, and that
9 spokesperson shall provide a spoken disclosure
10 identifying the spokesperson as a spokesperson
11 and disclosing that the spokesperson is not a
12 lawyer.

13 I'd note for you that the Florida
14 Bar was recommending that the Court in Florida,
15 with this recent amendment, liberalize that, if
16 you will, and remove the disclaimer about the
17 spokesperson being a non lawyer. I think their
18 rationale was that their criteria was to say
19 that unless it -- that if it is obvious from
20 the ad, you do not have to use the disclaimer.
21 I'd note for you that the Florida Supreme Court
22 said, no, we like it like this. We're keeping
23 it. They basically felt it was unequivocal,
24 fairly clear. And that was what they stated in
25 their order. I'm not, again, trying to argue

1 or debate it for you but just pointing out that
2 that's what the Florida Supreme Court has done.

3 BY MR. CHAPMAN:

4 Nathan Chapman. I would urge you
5 if you decide to keep -- I would urge you to
6 not have the, you know, disclosure. But if you
7 do decide to keep it, that it not be required
8 to be a spoken disclosure. In a television
9 commercial you only have 29 and a half seconds.
10 And I just think there's no reason that it
11 can't be a written disclosure.

12 BY MR. LEMMLER:

13 Yes, sir.

14 BY MR. EDMOND:

15 Leon Edmond, New Orleans. I'm
16 looking back over these rules here, and I see
17 that we have an issue of descriptive statements
18 under 7.2, somewhere in (3), yet it says here
19 under permissible content, it says, that --
20 background experience of the lawyer. So how do
21 those two rules fit together?

22 BY MR. LEMMLER:

23 I think 7.5 is intending to deal
24 with advertisements in the electronic media and
25 7.2 is more general. And I'm not certain, but

1 I think there's an exception carved out in
2 there for advertisements of this nature or -- I
3 think they work together, but your question is
4 noted. I don't know that I can answer it at
5 this point. Rick, do you have anything --

6 BY MR. STANLEY:

7 I'm trying to -- let me look
8 back. If you could point me to the specific
9 provision.

10 BY MR. EDMOND:

11 7.2(b).

12 BY MR. STANLEY:

13 Are you talking about the
14 descriptive statements?

15 BY MR. EDMOND:

16 Descriptive statements, yes.

17 BY MR. STANLEY:

18 Yeah, the descriptive statements
19 is intended, although it may not be drafted as
20 well as everybody here would like, it's
21 intended to say -- catch things like I'm an
22 excellent lawyer or I'm the best lawyer. This,
23 I think, is intended to say the background and
24 experience of a lawyer. You can say what you
25 do, the areas that you've practiced and that

1 you have 21 years of experience doing DWI.
2 That's all okay. But you can't characterize or
3 describe that with those adjectives. Now,
4 whether or not that gets modified or survives
5 the next round of review is a different thing.
6 But I think those capture two different things.

7 BY MR. LEMMLER:

8 Thank you. 7.6,
9 computer-accessed communications. We're
10 talking now not about TV or radio but,
11 essentially, internet presence, your website
12 and e-mail. These are all subject to the
13 location requirements of Rule 7.2 stating at
14 least one bona fide office address and perhaps
15 the name of the lawyer or lawyers in the firm.

16 Skipping ahead to 7.9, the
17 substantive portion of these rules. I'll get
18 back to the procedural aspects of 7.7 and 7.8
19 in a moment. This, I'll note for you again,
20 was totally removed from the Florida amendment
21 last week and moved in its intent to 7.1. That
22 is now an exemption -- a general exemption
23 included in 7.1 of the new Florida rules that
24 go in fact on January 1st. This is in our
25 revision at the -- proposed revision at the

1 moment.

2 Information provided upon request
3 should comply with 7.2 unless otherwise
4 provided. I think, again, the intent there is
5 nothing false, deceptive or misleading. May
6 provide information deemed valuable to assist
7 the potential client, however an engagement
8 letter can be included, but any contingency fee
9 contract should have the words "sample" and "do
10 not sign" on it so that it's fairly clear to
11 the client or prospective client who has
12 requested it, that it is not an actual contract
13 and they're not obligated to sign it, perhaps.

14 May contain factually verifiable
15 statements concerning past results. Here is
16 where you can talk about the \$750,000 verdict
17 that you got and so forth if, indeed, it's
18 true. Must disclose intent to refer to another
19 lawyer or law firm, again, if that's the case.
20 Any comment?

21 7.10, Florida in removing 7.9 has
22 renumbered 7.10 to 7.9. That's just a
23 housekeeping note. 7.10 is essentially what we
24 have right now as our Rule 7.5 dealing with
25 firm names and letterhead. I think the one

1 change that they included in the new revision
2 was to include -- I think it say false,
3 deceptive or misleading now as well where it
4 may not have said that originally in the
5 Florida rule. But I could be wrong. I know
6 there's some minor change, but it's not major.
7 Any question or comment on that?

8 Proposed procedural rules, this
9 is what we're talking about in proposed Rule
10 7.7 and 7.8. Essentially, two tracks or two
11 possibilities, the first one being an optional
12 advance written advisory opinion. Pretty much
13 what the Bar is providing right now. We can
14 give you an advisory opinion. We give ethics
15 advisory opinions that are non binding, that
16 are informal right now all day long on
17 advertising included.

18 The proposed procedural rules
19 would still retain that. I think one of the
20 components of that is that you must provide the
21 proposed ad at least 30 days prior to using it,
22 but you're not obligated to do that. That's if
23 you want an advisory opinion, if you want the
24 advisory opinion that will suffice as the
25 otherwise required regular filing which you can

1 do when running the ad or concurrently with
2 that or the day before, whenever. You're not
3 required to get a advisory opinion, but it's
4 there for you. The intent is to help you and
5 to provide that to you and to avoid the need to
6 do two filings. That is, I suppose, the real
7 distinction there is that the advanced written
8 advisory opinion provides you a period to go
9 back and forth with the Bar for the one filing
10 fee and continue to refine and perhaps debate
11 the merits of whatever you're proposing until
12 some conclusion can be reached, before you
13 spend any real money on the ad. If you decide
14 that that's unnecessary or you're willing to
15 take your chances or you feel confident with
16 what you're doing, you're still required to do
17 it as a regular filing. You can do it
18 concurrently with running the ad or just prior
19 to.

20 I'll note for you that Florida,
21 the major change in Florida with its
22 revision -- and this I think some people would
23 probably consider not a liberalization as it
24 was characterized before -- is that they are
25 now requiring all radio and TV ads, things of

1 that nature, to be filed at least 15 days
2 before running unless it contains exclusively
3 Safe Harbor content. They're no longer
4 allowing you go to file it concurrently with
5 the running of the ad. The Court made a very,
6 I guess, direct statement in its order, in a
7 comment saying that, you know, they believed
8 that there was enough potential danger for
9 allowing someone to run an ad without getting
10 the Bar to look at it in advance, that they
11 felt it was necessary to require at least a
12 15-day advance review before giving them the
13 ability to run the ad.

14 So that's Florida's rule now. We
15 haven't proposed that yet, but I'm letting you
16 know that's something Florida went actually the
17 other way with from the more liberal stance.

18 And then there are exceptions to
19 the filing requirements, those Safe Harbor
20 things. Mr. Hingle?

21 BY MR. HINGLE:

22 What are the costs and expenses
23 of the filing?

24 BY MR. LEMMLER:

25 Okay. Those have not actually

1 been determined at this point. That's up to
2 the Court. The proposal would leave it up to
3 the Supreme Court to determine the costs. I'll
4 tell you, for example, in Florida, it's a \$150
5 right now for a regular filing. It's \$250 for
6 a late filing. Texas, I think, it's \$75 for a
7 filing and maybe a \$100 or \$125 for a late
8 filing. So we haven't come up with a number.
9 We're leaving that up to the Court. Again,
10 this is going to be the Court's ruling if they
11 decide to use it.

12 BY MR. HINGLE:

13 For the record, this is Michael
14 Hingle on the Northshore. Mississippi is only
15 \$25.

16 BY MR. LEMMLER:

17 Okay. Noted. 7.7(b) -- yes,
18 sir.

19 BY MR. RICHARDSON:

20 Jeff Richardson with Adams and
21 Reese. We comply with similar rules in a
22 number of states. The best one is Tennessee
23 which -- the easiest one for us to comply with.
24 You can simply e-mail a PDF file with your ad.
25 It's very efficient. I would just recommend

1 that when the implementation is done of the
2 rules, that you all would consider doing that
3 too.

4 BY MR. LEMMLER:

5 You can actually do that now, but
6 thank you for the comment. I get PDFs all day
7 long. I get videotapes. I get letters. I get
8 transcripts. I get all manner of forms of ads
9 to look at, so I don't think that was
10 necessarily not under consideration. But thank
11 you for noting that.

12 7.7(c), the filing requirement
13 for most advertisements, again, the distinction
14 between (b) with the advanced optional written
15 advisory opinion and (c) the regular filing.
16 Under either situation, the proposal would
17 include submission of a fee, a copy of the
18 advertisement and the sample envelope if it's
19 going to be mailed, a typewritten copy of the
20 transcript, I suppose, if it's not a otherwise
21 a written ad like a TV commercial or a radio
22 ad.

23 Statement concerning the type of
24 media, the frequency and the duration of the
25 advertisement, where you're going to run it,

1 how you're going to run it, how long you
2 anticipate running it. Any comment there?
3 Mr. Hingle?

4 BY MR. HINGLE:

5 Michael Hingle from the
6 Northshore. Maybe I read this wrong some
7 place, but I thought the information that would
8 have to be disclosed what station you're going
9 to run it on, what time periods you're going to
10 run it, how many times you were going to run
11 it, which I would suggest is a bit oppressive.
12 As, for instance, in Mississippi, you can tell
13 them I'm running it on the Gulf Coast, and
14 that's satisfactory. To plan for an extended
15 period of time what shows, what time periods
16 and so forth, I don't think most people comply
17 with.

18 BY MR. LEMMLER:

19 I don't think that the language
20 -- I think that's a fairly close paraphrase of
21 what's actually in 7.7 -- 7.7(d), a statement
22 listing all medium in which the advertisement
23 or communication will appear, the anticipated
24 frequency of use of the advertisement or
25 communication in each medium in which it will

1 appear and the anticipated time period during
2 which the advertisement or communication will
3 be used. I don't remember any distinct
4 language about the station and so forth.

5 BY MR. HINGLE:

6 My last question. And I may have
7 read this some place else, but was there going
8 to be a fee for each TV station?

9 BY MR. LEMMLER:

10 I don't leave so. I think it's
11 anticipated that it's a per filing.

12 BY MR. HINGLE:

13 Per ad?

14 BY MR. LEMMLER:

15 I supposed that's the advantage
16 to stating where you intend to run it. If
17 you're going to run it all over the country,
18 tell us. I think that's the intent. Thank
19 you.

20 Exemptions from the filing
21 requirement, Rule 7.8. These are the Safe
22 Harbors, contains only Safe Harbor content of
23 Rule 7.2(c)(12), again, that long list of
24 things like the Statue of Liberty and the half
25 body or whole body of a lawyer depending on

1 where you are and what day you are in Florida.

2 A brief announcement identifying

3 the lawyer as a sponsor for a charity event --

4 this is what I was referring to before --

5 provided no information is given but the name

6 and location of the sponsor of a law firm.

7 That's now been expanded to include much more

8 Safe Harbor content. You can talk about other

9 things with respect to the firm. I don't

10 remember all the particulars, but note that's

11 expanded in Florida's new version of the rule.

12 A listing or an entry in a law

13 list of Bar publication. I guess the common

14 example of that would be, perhaps,

15 Martindale-Hubbell or something of that nature.

16 Communication mailed only to

17 existing clients, former clients or other

18 lawyers. I'd note for you that Florida has

19 expanded its pro se exemption in 7.1 as well to

20 now include -- and I'm not sure exactly why

21 that was necessary -- but family members, the

22 lawyer's own family members. That's now been

23 exempted and carved out as a general initial

24 exemption in 7.1.

25 Any written communication

1 requested by the prospective client.
2 Professional announcement cards mailed to other
3 lawyers, relatives, former or current clients
4 and close friends.

5 Computer-accessed communications
6 as described in subdivision (b) of 7.6, the
7 website. All except from filing requirements
8 if you list this sort of information and, I
9 guess, presumably only this information, this
10 type of information.

11 All right. We've made it through
12 the rules.

13 BY MR. STANLEY:

14 Congratulations.

15 BY MR. LEMMLER:

16 Thank you. The transitional
17 period that has been anticipated or at least is
18 going to be recommended perhaps by the
19 Committee in its final proposal, obviously, we
20 can't expect everyone to just jump into this
21 overnight if it goes into effect given the
22 types of ads that people are running and the
23 publication schedule and so forth. It's
24 anticipated that there would be a phase-in,
25 that there would be at least a 90-day period to

1 modify ads in current use, with probably
2 greater exceptions in grandfathering of those
3 types of ads that have annual or other more
4 limited publication schedules. So telephone
5 directories, you can't expect to change a
6 telephone book in one that appears -- or gets
7 published once a year the minute this rule goes
8 into effect.

9 So I think that there's some
10 leeway there and some recognition that lawyers
11 live in the real world and they're not
12 necessarily driving this as much as those that
13 are selling the advertising, perhaps. So those
14 systems are what are controlling some of these
15 forms of ads. So that's the phase-in period.
16 Any comment with respect to that?

17 Future work plan, public hearings
18 are being conducted around the state. We'll be
19 in Shreveport next Thursday at 10:00 a.m.
20 Anyone who hasn't had enough of this that wants
21 to come and join us there, please come. We'll
22 have food I'm sure.

23 Special rules of debate were
24 adopted by the House of Delegates, the LSBA
25 House of Delegates. That was adopted, I think,

1 at the last house meeting in anticipation of
2 some work product which will now be brought
3 forth, I believe, at the next house meeting.
4 Any resolutions that might be addressing
5 amendments should be submitted in writing 30
6 days in advance of the house of Delegates'
7 meeting. And I believe that deadline is
8 December 12th or 13th.

9 BY UNIDENTIFIED SPEAKER:

10 The 13th.

11 BY MR. LEMMLER:

12 The 13th. Okay. The Supreme
13 Court Committee to study attorney advertising,
14 we believe and fully expect we'll want to
15 review whatever proposal we finally come up
16 with, depending on what the House does with it,
17 their recommendation. So I think that's --
18 let's see.

19 On-line comments in case you want
20 to make comments on-line or have not already or
21 wish to make more, there's the web address.
22 Again, as I said, there's a link directly on
23 the Bar's home page that you can file into the
24 comment form. Mr. Guiraud?

25 BY MR. GUIRAUD:

1 E. Eric Guiraud. Were there any
2 voices on the Committee that were voting to not
3 submit the rule at all and just maybe keep what
4 we have?

5 BY MR. STANLEY:

6 Let me address that. Initially,
7 Eric, this -- it started out three years ago
8 really as a Bar initiative to start looking at
9 the advertising rules. And, frankly, that
10 initiative was probably more focused on a few
11 areas that needed reform. Where we are now is
12 completely different. What has happened is the
13 Legislature literally was about to adopt
14 Florida rules and put them in a statute when we
15 were, you know -- they ended up having a
16 resolution by the Legislature asking the
17 Supreme Court to form a committee to look at
18 the rules. The Supreme Court did that. And
19 then that committee asked our Committee to look
20 at the rules and come up with a work plan and
21 come up with some things and really try to get
22 out a series of rules that at least had been
23 out there and that has some experience with,
24 Florida being the one with the most experience,
25 and tried to improve off them as much as

1 possible, go to the Bar get the comments. And
2 these are excellent comments, and I really want
3 to thank everyone because, I mean, a lot of
4 this stuff is going to be helpful to us in our
5 work.

6 But, in essence, the impetus for
7 the reform is coming from outside of the Bar
8 right now. And it's coming from the
9 Legislature. And, ultimately, you know, if --
10 I think if the Bar said, you know, we don't
11 want any more -- any advertising rules at all,
12 then we would lose our opportunity to have any
13 input into the process.

14 BY MR. GUIRAUD:

15 Well, I'm familiar with the
16 history. And Senator Marioneaux was the one
17 that introduced that legislation on the heels,
18 I might add, of a nasty feat on behalf of my
19 firm. And I think it was partially personal
20 retribution by Senator Marioneaux against my
21 firm introduced as legislation which he knew to
22 be unconstitutional which he expressed to
23 members of our firm that he knew himself to be
24 unconstitutional.

25 So I'm a little surprised that

1 the Board would really cow-tow to that kind of
2 heavy-handed attack by the Legislature on an
3 area that the Supreme Court clearly has
4 jurisdiction over. It strikes me as we should
5 really be treating the citizens of the state as
6 adults and not as morons, not as idiots, not as
7 nincompoops or children. Let the rules be as
8 they are. If you must, require that a website
9 be attached to everything. And let people go
10 there and get the information they need to be
11 fully informed. But don't go to this
12 overreaching, overarching -- and I'll reiterate
13 all the comments I heard here tonight. I just
14 think it's gone way too far and quite clear
15 it's unconstitutional. And I just -- I hate to
16 see that bite that's going to inevitably
17 happen.

18 BY MR. LEMMLER:

19 Thank you. I'd just note for
20 those that we've been referring to this
21 legislation. I think it's Senate Bill 617 from
22 the 2006 regular session that we're referring
23 to that the Legislature was trying to enact.

24 BY MR. STANLEY:

25 Was that the joint resolution or

1 was that the --

2 BY MR. LEMMLER:

3 No, that was Marioneaux's bill.

4 I think that was what was passed. So if you

5 want to look for it --

6 BY MR. HANTHORN:

7 Do we want to endorse him in his

8 next campaign?

9 BY MR. LEMMLER:

10 Any more comments, please?

11 BY MR. STANLEY:

12 And, again, we very much

13 encourage you to put written comments on this

14 website. It will assist us greatly. And we do

15 value everything you guys have said because a

16 lot of this stuff is important. It will help

17 us go back and make some changes.

18 BY MR. LEMMLER:

19 The moment many of you have

20 probably been waiting for, the information

21 regarding the one hour of ethics credit. Your

22 award for having listened to me for this entire

23 period of time. The course number is listed

24 there as the third down there for New Orleans.

25 As I said, one hour -- as it says up there, one

1 hour of ethics credit. If you want more, get
2 with Mr. Bart and maybe he can help you with
3 that. Thanks, folks.

4 BY UNIDENTIFIED SPEAKER:

5 What's the title of the program?

6 BY MR. LEMMLER:

7 Bill?

8 BY MR. KING:

9 Advertising Public Hearing.

10 BY MR. STANLEY:

11 Thanks everyone for turning out.

12 BY MR. LEMMLER:

13 Yeah, I want to thank everyone.

14 The comments were very good, and they're beng

15 transcribed. We will certainly look at them.

16 Again, thank you very much.

17

18 (AT THIS TIME, THE PUBLIC
19 HEARING WAS CONCLUDED AT OR ABOUT
20 8:15 P.M. AND THE RECORD WAS CLOSED.)

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1 REPORTER'S CERTIFICATE

2

3 I, Gail F. Mason, RPR, Certified Court
4 Reporter in and for the State of Louisiana,
5 Certificate No. 96004, which is current and in
6 good standing, as the officer before whom this
7 public hearing was taken, do hereby certify
8 that this proceeding was reported by me in the
9 stenotype reporting method, was prepared and
10 transcribed by me or under my personal
11 direction and supervision, and is a true and
12 correct transcript to the best of my ability
13 and understanding; that I am not related to
14 counsel or to the parties herein, nor am I
15 otherwise interested in the outcome of this
16 matter.

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Gail F. Mason, RPR, CCR
Certificate No. 96004

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