LOUISIANA STATE BAR ASSOCIATION

IN RE:

RE-EVALUATING LOUISIANA'S LAWYER
ADVERTISING RULES
PUBLIC HEARING

The Public Hearing Concerning the above captioned matter, at Louisiana State University, Law Center, Highland Road, Room 106, Baton Rouge, Louisiana, beginning at 5:00 p.m., on November 2, 2006.

BEFORE: Lori B. Overland
Certified Court Reporter
In and For the State of
Louisiana
APPEARANCES

Richard Lemmler, Jr., Esq.
Ethics Counsel

Charles Plattsmier, Esq.
Chief Disciplinary Counsel

Marta-Ann Schabel, Esq.
President of the Louisiana
State Bar Association

Ed Walters, Esq.

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EXAMINATION: PAGE(S): None

EXHIBITS: None

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MS. SCHABEL:

Good afternoon, everybody. Can everyone hear me; I don't need to use a microphone, do I?

MS. ALSTON:

No.

MS. SCHABEL:

I'm Marta Schabel, and I'm the president of the Louisiana State Bar Association. Thank you for coming. This is our first public meeting and hearing with regard to the proposed changes to lawyer advertising rules. Those of you who have been around for awhile know that we did this, and have done this, with any changes that are proposed or in the opting for the Rules of Professional Conduct, and we find it to be a very valuable exercise because we get to hear from you guys about what you think about these changes. In order to be sure that we know what's -- we can properly
reflect the opinions that we hear, this lady
is here. She's a court reporter and she's
taking down what we're all saying so that,
if you have a question or a comment, I'd ask you to speak loudly, maybe even come up front, so that she can hear you and get the question down. That's not to put you on the spot, that's so that we really do have a record of where the comments lie and what's going on with the commentary. I'm going to introduce you to Richard Lemmler, who is a lawyer on the LSBA staff. Tell me your title with them.

MR. LEMMLER:
Ethics counsel.

MS. SCHABEL:
He is the ethics counsel for the LSBA, and we also have with us today, Chuck Plattsmier, from the Office of Disciplinary Counsel. He's the chief disciplinary officer in the State, but Richard is going to run us through the basics of the proposed rule changes. How many here in the room have some familiarity with the proposed changes; have ya'll looked at them. Well,
good, because Richard has a 42-slide presentation, and I was suggesting to him that perhaps we could go through some of it
fairly quickly if people in the room were familiar with it.

I'm going to turn this over to Richard and do you want them to wait until you're finished to ask questions or comment?

MR. LEMMLER:

No. I think it might be better -- my proposal to you, since most of you appear to have already gone through the rules and looked at the rules, thankfully, we're just going to kind of click through the slides and bring up the language to focus on any issues that you might have, or anything you want to say. Our function, I believe, primarily, today is just to get your comments, not so much to try to necessarily explain or distinguish the rules but, really, to get your comments as to what you like and don't like. We can go into them but I'm just going to go through the slides and, you know, stop me when you see something you don't like, or something you
do like, and we'll put it on the record.

MS. SCHABEL:

Or something that you don't understand
and want clarification about, which we'll try to do.

MS. ALSTON:

Move to waive the power point.

MR. PLATTSMIER:

Move to waive the power point?

MS. SCHABEL:

Oh, come on. We spent a lot of time doing --

MS. ALSTON:

I know. I'm sure it's wonderful but, you know, I could be in the minority.

MS. SCHABEL:

Well, let's get started and --

MR. LEMMLER:

Let's get started that way and, if it looks like a problem, we'll try to switch gears. We've entitled it, "Re-evaluating Louisiana's Lawyer Advertising Rules." This is one of four public hearings that are going to take place around the State, and we'll get to that in just a second.
Essentially, the catalyst for this, in some way, was that in March of 2006, a bill regulating lawyer advertising and
solicitation was introduced into the Louisiana State Senate. That bill was, however, not enacted into law. The issue of lawyer advertising was actually referred to the Louisiana Supreme Court for review, since they have exclusive jurisdiction regarding the practice of law. As a bit of background -- well, I'll get to that in a second.

In keeping with the legislature's actions, the Supreme Court appointed its own committee to study attorney advertising. Chuck Plattsmier is actually on that committee. There are several folks from the State Bar's Rules of Professional Conduct Committee also on the Court's committee and a few others. The Rules of Professional Conduct Committee, through the Bar, our component of this process -- this is the mission statement, essentially. It looks at the Rules of Professional Conduct, makes recommendations regarding changes or
amendments or, you know, just interfaces

with the Court with respect to anything

related to the rules. This would obviously
be one of those things.

With respect to this process, the Rules Committee and -- and this is where I want to give you a little bit of extra background. The State Bar -- the Rules Committee for the Louisiana State Bar Association actually had a subcommittee that was appointed and formed, I believe, in early 2005. They were actually looking at rules -- examining our rules long before the legislature made any public statement with respect to their bills. We were in the process of looking at, primarily, the Florida rules and, when all of these other things happened, the Supreme Court's Committee decided that the work that the Rules Committee had already done was beneficial and they were going to continue to look at that and, basically, you know, put a blessing and said, "Go forward." The Committee submitted its proposed advertising rule changes to the Court's Committee. That
Committee, in turn, said, "Go forward with the public hearings and see what the people think" so here we are.
These are the public hearings, today in Baton Rouge. The next week, Lafayette on the 8th. New Orleans on the 9th and we'll be in Shreveport on the 16th. So if you just can't get enough, we'll see you in Lafayette, New Orleans and Shreveport.

The Florida State Bar experience, unlike the Jimmy Hendrix experience, this is essentially a note to prompt a little bit of historical background with respect to why we focused on Florida's rules. As I said, the subcommittee for the Rules of Professional Conduct Committee that was looking at advertising rules way back in early 2005, maybe even late 2004, decided initially that it would focus on Florida's Rules since; one, they were quite comprehensive; two, Florida has about an 82-page handbook on lawyer advertising and solicitation that it provides to all of the Florida Bar members to help them understand the rules. It contains lots of examples of good ads, bad
ads, lots of interpretations of the rules,
lots of tips and guidelines, so that seemed
like something we could use and perhaps
adopt to our own use and Florida's rules have been in effect for quite awhile. The process has been bedded through both the Courts and the Bar and it seemed like a good starting place. Rather than us reinventing the wheel, we just started with those rules and it seemed like a good match.

In actuality, more coincidentally I suppose than anything, when all was said and done, the legislature, the State Legislature of Louisiana, their bill actually focused on the Florida rules. As I said, it was never actually enacted into law but, since the legislature was going in that direction and we had already started that way, the Court, again, felt that it was a good start for us, and here we are trying to see what people think about it.

All right. To the rules. We've tried to break the slide down into two components, basically -- the slide show down into two components. Basically, the substantive
changes to the rules and, then, there is a
procedural component to the rules. We'll go
through them in just a second.
Quantitatively --

MS. SCHABEL:

Beth, you have to read all that.

MS. ALSTON:

I already have.

MS. SCHABEL:

No, no, aloud, to us.

MR. LEMMLER:

Just --

MS. ALSTON:

Oh, yes, right.

MR. LEMMLER:

-- just to give you a quick glance at what's happening here, our current rules is -- you know, right now we have five rules. When this is said and done, under the proposal, we would have ten so, you know, you can see that we're just really augmenting what's already there and, as part of the materials that were available to you and that are available in the back of the room, and on line, there is a side-by-side
comparison that we did of the current
Louisiana rules. Actually, it's on this
side (indicating), and the proposed Florida
-- I'm sorry -- the proposed Louisiana
rules, our current proposals, and you can
see, if you look at it pretty closely, or
even loosely, the language in our current
rules has not really been removed at all.
It's all there. All we've done, really, is
augmented what's already there by using some
of what Florida has done in both these
substantive and procedural aspects.

Okay. Rule 7.1. "Permissible Forms
of Advertising."

(Mr. Ed Walters entered the hearing.)

MR. PLATTSMIER:

Mr. Walters, good afternoon.

MS. SCHABEL:

We're saying hello to Ed Walters --

MR. LEMMLER:

Ed Walters.

MS. SCHABEL:

-- who is actually on our Rules of
Professional Conduct Committee and had been
slated to give this presentation but found
23 himself delayed a bit so we asked Mr. Lemmler to go forward.
24 MR. WALTERS:
Thanks.

MS. SCHABEL:

Do you want to take over or --

MR. WALTERS:

No. Go ahead.

MR. LEMMLER:

Anytime you can't stand me anymore, just come up here and take this away and they'll be happy to listen to you.

All right. Rule 7.1. This is the general rule, basically, explaining the permissible forms of advertising. I don't know that there is anything really controversial in here but does anyone have anything they want to raise for our consideration and for the record?

(No response.)

MR. LEMMLER:

Very good. Rule 7.2. This is a large rule, basically, listing required information, prohibited statements and information and general regulations
governing content of advertisements. That is broken down, then, into the required information. Basically, the name of the
lawyer responsible for the content of the
communication and a bonafide office location
of the lawyer or lawyers who actually
perform the services advertised. Anyone
want to say anything with respect to that?
(No response.)

MR. LEMMLER:

Rule 7.2(b), "Prohibited Statements
and Information" overview. This is
basically a listing of things that -- and
information that you can provide, broken
down into, "Statements About Legal
Services", "Misleading or Deceptive Factual
Statements", "Descriptive Statements" and so
on.

"A lawyer shall not make or permit to
be made a false, misleading, deceptive or
unfair communication about the lawyer, the
lawyer's services or the law firm's
services." As the slide says, this is
essentially the rule that we have now.

Nothing has really changed. Right now, you
cannot make statements about yourself, your law firm, or your services that are false, misleading or deceptive, so nothing really
is changed there. "A communication violates this Rule", and then there are a list of prohibited statements. "If it contains a material misrepresentation of fact or law or omits a fact necessary", again, basically, the rule we have now.

It may be even more beneficial just to look at the side-by-side comparison as I'm going through here, and you can see that the language is roughly the same.

"(B) contains any reference to past successes or results obtained", right now our rule says, "Statement or implication that the outcome of any particular legal matter was not or will not be related to its facts or merits", substantially similar.

Any comments? Yes, sir?

MR. NOBLE:

Yes. Would it --

MS. SCHABEL:

Can you --

MR. LEMMLER:
Would you state your name for the record?

MR. NOBLE:
Sure. My name is John Noble, and it does appear that it is substantially similar, but it is different in that it shows that, "Any reference to past successes or results." Would that prohibit an attorney from advertising that he has 20 years in debt collection experience? That would -- it seems like that would potentially be prohibited as talking about past successes or results.

MS. SCHABEL:

Beth?

MS. ALSTON:

Wouldn't you -- wouldn't this make, per se, violative of the rules for law firms to have in their bio sections, lists of cases they've won, cases -- you know, reporting cases that they've won; is there any law firm, over ten lawyers, that doesn't have that on their web page?

MR. LEMMLER:

Ed?
MS. ALSTON:

Well, I thought you might know.

MR. WALTERS:
No. I think you're right, Beth.

MS. ALSTON:

That's crazy.

MR. LEMMLER:

I think the key part of this portion of the rule is that the last phrase says, "As allowed in the Rule regulating information about a lawyer's services provided upon request". If the client asks you, or someone asks you, "How many cases have you won" --

MS. ALSTON:

Okay.

MR. LEMMLER:

-- "How much money did you get for your last client", there is nothing that prohibits you from saying that.

MS. ALSTON:

Well, voluntarily accessing a firm's website, is that asking to know that information?

MR. LEMMLER:
That's a good question.

MS. ALSTON:

It's a rhetorical question.
MS. SCHABEL:

Are there any other comments on --

MR. LEMMLER:

You've stated it for the record.

"(C) states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law". Again, something that is essentially in our rules right now. You cannot violate the Rules of Professional Conduct or other law.

"Compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated". Again, what we already have in our rules.

"Contains a testimonial". Yes, ma'am, Ms. Alston?

MS. ALSTON:

Does this mean that Adams & Reese can't use Boise/Bollinger ads anymore?

MS. SCHABEL:

(Indicated a positive response.)
23 MS. ALSTON:
24 Yes.
25 MR. LEMMLER:
Any other comments?

MS. ALSTON:

On my web page, I have client comments. Are those testimonials?

MS. SCHABEL:

(Indicated a positive response.)

MR. LEMMLER:

Anyone else?

(No response.)

MR. LEMMLER:

"Includes a portrayal of a client by a non-client or the reenactment of any events or scenes or pictures that are not actual or authentic". Again, the basic rule, nothing false, misleading or deceptive.

"(G) includes" -- yes, sir?

MR. RAY:

My name is Charles Ray. We skipped over testimonials?

MR. LEMMLER:

No, sir. I think we actually discussed --
MS. SCHABEL:

We just discussed it, but please give

us your comment on testimonial. Can you
come forward a little bit so this lady can
take down what you're saying.

MR. RAY:

I think I can speak loud enough from
here. I just wanted to know who's going to
say what a testimonial is and what is not?

MR. LEMMLER:

I suppose, ultimately, the Supreme
Court would decide that.

MS. ALSTON:

There is no definitional phrase
considered?

MR. WALTERS:

Not for that.

MS. SCHABEL:

Not for that, no.

MR. LEMMLER:

Now, the Florida handbook, if we come
up with a handbook similar to Florida, does
have examples, does have language that would
explain that, but we have not gotten that
far within the process.
MR. PLATTSMIER:

It might be helpful if you explain our historical lack of comments to our rules --
MR. WALTERS:
Yes.

MR. PLATTSMIER:
-- and how, perhaps, a handbook would help.

MR. LEMMLER:
Yes. As Mr. Plattsmier is attempting to point out, given his local limitations at the moment, our Supreme Court, historically, has taken the position that what it puts in the rules serve as the rules, that they do not add comments, they do not publish comments in conjunction with the rules. If it's important enough, it should be in the rule, rather than a comment. However, the Florida rules do contain comments, much like the ABA model rules, and they also have that 82-page handbook that I've referenced a couple of times.

MS. ALSTON:
But we do --

MR. LEMMLER:
I think our goal with this,
eventually, once we get a working body of
rules, or at least proposed rules, is to
also focus on trying to come up with a handbook that would perhaps contain non-binding but very useful comments.

MS. ALSTON:

Well, we do have a terminology section.

MR. LEMMLER:

We do. I don't think we've actually focused on that portion of the Rules of Professional Conduct but there is nothing to say that the Court couldn't decide to include something in that, as well.

MR. BATEMAN:

David Bateman. Will the Bar Association have any mechanism for -- to have potential advertising material reviewed to determine whether it is in compliance with the rule like you have on --

MR. LEMMLER:

Yes, sir. That's actually Rule 7.7, if I remember correctly, the proposed rule, and I'm going to get to that in a second
but, yes, that's part of the process.  Oops, what did I do Billy?  Technical assistance, please.
MR. PLATTSMIER:

It might help alleviate some concerns
as we go through the rules, maybe to chat
briefly with them now about the possibility
of submitting them for --

MR. LEMMLER:

Sure.

MR. PLATTSMIER:

-- advisory review and assistance and
repair.

MS. SCHABEL:

Especially, since we're having
technical difficulties.

MR. LEMMLER:

Yes. All right. This is the time
killer. Rule 7.7 and, then, 7.8, which
contains exceptions to a filing requirement,
part of 7.7 is that there will be the
availability of, essentially, optional
written advisory opinions on any advertising
that you wish to use. You can submit it to
the Bar.
MS. ALSTON:

Optional to who?

MR. LEMMLER:
To anyone who wants to use it.

MS. ALSTON:

Oh, okay, so --

MR. LEMMLER:

Any member of the Bar.

MS. ALSTON:

-- so if you ask for an opinion, advisory opinion, on an ad, you will get one?

MR. LEMMLER:

Yes. It's essentially the same as the ethics advisory service now provides on all ethics issues. This will be focused particularly on advertising, proposed advertising.

MS. ALSTON:

What's the turnaround time on that?

MR. LEMMLER:

Thirty days, minimum.

MS. ALSTON:

Minimum?

MR. LEMMLER:
I'm sorry.

MS. SCHABEL:

Maximum.
MS. ALSTON:

Maximum?

MR. LEMMLER:

There is a 30-day window.

MS. ALSTON:

Okay. Thank you.

MR. LEMMLER:

A 30-day window.

MS. SCHABEL:

Wait. Richard, this gentleman had a question.

MR. LEMMLER:

Yes?

MR. PITTENGER:

Tommy Pittenger. Back to testimonials. I -- and I don't mean to jump in front of you before you start on all that but --

MR. LEMMLER:

Go ahead.

MR. PITTENGER:

-- I'm not sure I understand why, you
know, to use the testimonials is a negative thing, and maybe this isn't the right area for that -- for that question but it seems
to me that, if you are a former client of a lawyer, who better to ask, whether it's, you know, face-to-face or on a TV ad or a radio spot, or even in a -- in a direct mail piece, I don't understand why testimonials are a bad thing.

MR. LEMMLER:

I don't know that I'm here to debate any of this with any of you, and I don't wish to. I think that the function of this hearing is basically to get your concerns for the record so that the Rules Committee and the Court can look at them during the process.

MR. WALTERS:

Can I address this?

MR. LEMMLER:

Yes, sure.

MR. WALTERS:

Tommy, I think the rationale behind it was that it may be misleading if you have someone go on TV and say, "My lawyer got me
$400,000 for my back injury." You know, every case is different than every other case, liability is different, causation is
different, the accident is different and I
believe that's why that's in there because
it's different in every other case.

UNIDENTIFIED SPEAKER:

But if it were a case where's he
talking about, where it's just, "Hi, I am
satisfied with my attorney and I'd like you
to know about it" and he's not making any
claims about what, you know, kind of
personal injury it is, then, what --

MR. PITTENGER:

You still have to be truthful in your
advertising.

UNIDENTIFIED SPEAKER:

If you're truthful, could that be
passed in front of the review committee and
approved?

MR. WALTERS:

Well, that's why we're here.

MS. ALSTON:

Well, why doesn't this violate the
First Amendment?
MS. SCHABEL:

Much of this has already been

litigated on the First Amendment issues,
which is the reason why we've chosen to copy
that language, because there is a body of
case law on this.

MS. ALSTON:

All the way up to the U. S. Supreme
Court?

MS. SCHABEL:

Some of them have been, yes, ma'am.
You know, I think one of the other things
that I've heard said about the testimonial
issue is the concern about the genuineness
of it, the coercion issue, those sorts of
things. Now, those are just some of the
things that have been said about it but so
you know that there -- it didn't come
arbitrarily, there have been discussions on
those issues, particularly, the background
in Florida.

MR. BATEMAN:

It just -- you know, it just seems
like there is -- David Bateman. It seems
like there has been this blanket rule, no --
you know, perhaps someone saying, "I got $400,000 for a back injury" could be potentially misleading but, you know, so we
pass this blanket rule saying, "No
testimonials," then we may be throwing the
baby out with the bath water when, in fact,
what we want are good things said about
lawyers, like people saying, "Hey, I went
to" -- you know Boise/Bollinger saying, "I
like Adams & Reese. They did a great job"
or, "The lawyers in this firm helped me
tremendously." I mean, that seems to me to
generate positive information about the
practice of law and good information for the
client, a potential client, to make a
decision about which lawyer they wish to
retain.

MS. SCHABEL:

With regard to the celebrity, or
famous person endorsement, there is a
separate concern in these rules and I think
that the concern that has been expressed
about that is trying to get the public to
make a decision based on the celebrity or
famous person endorsement, might not be an
appropriate thing. But I think your point
is well taken with regard to testimonial and
it's something that will go back and be
MR. LEMMLER:

Okay. Let's proceed.

MS. ALSTON:

I'm sorry to beat the horse that's not quite dead yet but the testimonial phrase, has that gone up to the U. S. Supreme Court?

MS. SCHABEL:

Beth, I don't know each and every case, whether it was --

MS. ALSTON:

Right. Well, it seems to me that that's very similar to the political speech issues with Judges that the Supreme Court has spoken on recently and found that Judges weren't -- that the code of judicial conduct in certain respects was unconstitutional because it infringed on judicial/political speech.

MS. SCHABEL:

Any other comments on testimonials?

(No response.)
MS. SCHABEL:

Good.

MR. LEMMLER:
Rule 7.2.(b)(G), "Includes the portrayal of a judge, the portrayal of a lawyer by a non-lawyer, the portrayal of a law firm as a fictionalized entity, the use of a fictitious name to refer to lawyers not associated together in a law firm, or otherwise implies that lawyers are associated in a law firm if that is not the case". Again, I think the basis, primarily, on the principle portion of the rule, nothing false, misleading or deceptive. "(H) depicts the use of a courtroom".

MS. ALSTON:

What is that about? That's where we work.

MS. SCHABEL:

There are certainly folks that put themselves in courtrooms in advertisements, who don't actually appear in courtrooms, and I think that's one of the issues. I think the other issue, from the perspective of Judges and the judiciary is that you're
taking the respect for the courtroom out and
making it less important. That's certainly
one of the things that I've heard. Ed?
MR. WALTERS:

Just basically, too, I guess the thought was, if somebody is seen in a courtroom, it implies that they go to a courtroom and a lot of people don't.

MS. SCHABEL:

Yes, sir?

MR. BORGHARDT:

Franz Borghardt. Might it be a better way of handling that? Instead of disallowing all attorneys who might go to Court from advertising that, from weeding out those that don't go to Court, than disallowing all lawyers that do go to Court from advertising that. It's not false. It's not misleading. It's seems like a very, very hefty rule that's going to punish a lot of otherwise lawyers who do go to courtrooms.

MR. PLATTSMIER:

You may not be able to hear much of what I'm saying, that's why I've kept my
mouth shut. I'll try to rely on my best
memory of some of the comments in some of
the research I thought that was discussed on
this rule because this was the subject of a
good bit of debate within the Committee. I
seem to recall there being a justification,
perhaps, or -- that said that, when you
bring in the judiciary as a sort of stamp of
approval, it lends the honor and the
integrity of the judicial side of things,
the adjudicative side of things, as standing
in your corner and giving you a favorable
blessing, which is probably an inappropriate
use of the judiciary, and that may well have
also been the reason for not permitting --
or the proposal did not permit the use of
someone who's dressed like a Judge, or to
portray a Judge.

MS. ALSTON:
Well, I don't have a problem with
that.

MR. PLATTSMIER:
Well, and I'm just suggesting to you,
it may have been part of the discussion,
Beth, about why that ought to have been
there.

MS. ALSTON:

But an empty courtroom, you know --
MR. PLATTSMIER:

I'm here to get your comments and observations.

MR. LEMMLER:

Anyone else on that point?

(No response.)

MR. LEMMLER:

"Resembles a legal pleading, notice, contract or other legal document". This portion actually -- this language actually appears in a couple of places within the rules. It actually already appears within our current rules, as well.

"Utilizes a nickname, moniker, motto or trade name that states or implies an ability to obtain results in a matter".

"Fails to comply with Rule 1.8(e)(4)(iii)."

Basically, the rule now that we have dealing with advertising financial assistance.

MR. PITTINGER:

Sorry to interrupt you again, Richard, but back to the -- the nickname. Obviously,
our concern would be the -- that the -- we -

- we advertise using a nickname. That --

would that prohibit us from advertising or -
- or even using letterhead that says, "E. Eric Guirard"?

MR. LEMMLER:

I think under the rule, it perhaps would.

MS. SCHABEL:

It wouldn't prohibit you from using the name, it would just prohibit you from using the nickname.

MS. ALSTON:

Well, but -- are you talking about the "E. Guarantee" thing? That's not a nickname. That's a -- that's a --

MR. PLATTSMIER:

A slogan.

MS. ALSTON:

-- slogan.

MS. SCHABEL:

A slogan and slogans are also not allowed.

MR. PITTENGER:

All right, so Skip Phillips would have
to change his name back to --

MR. PHILLIPS:

So it would become anonymous because
nobody knows me by my real name. That's my
alias.

MR. PLATTSMIER:
I know who you are, Mr. Phillips.

MR. PHILLIPS:
I'm afraid that you do.

MR. LEMMLER:
No. I think -- I think if you
reexamine -- let me differ with you on that
one point and this is not meant to be
debated as much as for absolute or a
clarification as to what I think the
language might be, "Utilizes a nickname that
states or implies an ability to obtain
results" --

MR. PHILLIPS:
I think that's the way they --

MR. LEMMLER:
-- if you have a -- you know, a
nickname you've been using since you were a
child, assuming that it doesn't say, you
know, "Win all cases," you know, then, I
suppose it's okay.

MR. PHILLIPS:

You've got to read the whole phrase
MR. LEMMLER:
Yes, sir?

MR. PITTENGER:
I think Skip can fly --

MR. PHILLIPS:
You do?

MR. PITTENGER:
-- and you're going to win.

(An off-the-record discussion followed.)

MR. LEMMLER:
Okay. Moving forward. Rule 7.2.(b)(2), "Misleading or Deceptive Factual Statements. Any factual statement contained in any advertisement or written communication or any information furnished to a prospective client under this Rule shall not:
(A) be directly or impliedly false or misleading;
(B) be potentially false or misleading;
23 (C) fail to disclose material
24 information necessary to prevent the
25 information supplied from being actually or
potentially false or misleading;
(D) be unsubstantiated in fact; or
(E) be unfair or deceptive."
Again, all based on the primary rule
that nothing should be false, deceptive or
misleading when talking about yourself or
your firm.

Rule 7.2(b)(3) "Descriptive
Statements. A lawyer shall not make
statements describing or characterizing the
quality of the lawyer's services in
advertisements or written communications;
provided that this provision shall not apply
to information furnished to a prospective
client at that person's request or to
information supplied to existing clients"
so, again, the big exception here is that
you can tell your existing clients or
prospective clients who ask, whatever,
pretty much, they want to know, as long as
it, again, is not false, misleading or
deceptive.
"Prohibited Visual and Verbal Portrayals" in 7.2(b)(4). "Visual or verbal descriptions, depictions or portrayals of
persons, things, or events shall not be
deceptive, misleading or manipulative."

All, again, based on the basic premise.

Rule 7.2(b)(5), "Advertising Areas of
Practice. A lawyer or law firm shall not
state or imply in advertisements or
communications that the lawyer or law firm
currently practices in an areas of practice
when that is not the case." Basically, you
can't lie about what you do.

"Stating or Implying Louisiana State
Bar Association Approval" in 7.2(b)(6). "A
lawyer or law firm shall not make any
statement that directly or impliedly
indicate that the communication has received
any kind of approval from The Louisiana
State Bar Association." We're not endorsing
anyone's ads.

Rule 7.2(C), "General Regulations
Governing Content of Advertisements." We'll
just skip the overview and go right to the
rules themselves. "Use of Illustrations.
Illustrations, including photographs, used in advertisements shall contain no features that are likely to deceive, mislead or
confuse the viewer." Nothing false, misleading or deceptive.

"A lawyer may communicate the fact" -- in 7.2(C)(3) -- "That the lawyer does or does not practice in particular fields of law. A lawyer shall not state or imply that the lawyer is 'certified,' 'board certified,' an 'expert' or a 'specialist' except as follows:" and, again, this is pretty much mirroring what is already in our current rules. It's just augmented a bit.

Lawyers certified by the Louisiana Board of Legal Specialization, those may state that they are certified. Lawyers certified by organizations other than the Louisiana Board of Legal Specialization or another state Bar, also, may proclaim that they are experts or specialists.

In keeping with that, "Certification by Other State Bars" --

MS. HARVEY:

I have a question.
MR. LEMMLER: Yes, ma'am?

MS. HARVEY:
My name is Brenda Harvey. Where you're talking about the particular fields of law, that would be all right to communicate the particular field of law. Could you give us an example?

MR. LEMMLER:

Essentially, it's the same as the rule right now. You can say that, "I concentrate my practice in personal injury", "I am focused on family law matters", I limit my practice exclusively to intellectual property." You can't use the buzz words, that, "I am certified", "I am an expert or specialist", unless you fall under those categories and have been indeed certified as having a specialty under the Louisiana Plan of Legal Specialization.

Advertising lawyers, under 7.2(C), must, "Disclose whether" -- did I skip something here?

MR. PLATTSMIER:

No.
23 MS. SCHABEL:

24 No.

25 MR. LEMMLER:
Okay. Sorry. "Disclose whether the client will be liable for any costs and/or expenses in addition to the fee", when providing information about fees. Again, essentially, I think what is probably in our rules right now. You have to tell them whether they're going to be responsible for anything other than the fees.

You must honor the fee quoted in the advertisement for a certain period of time. You must pay -- again, what's in our rules, pay for the advertisements themselves. This, I think, is a little something added but -- any comments?

(No response.)

MR. LEMMLER:

Okay. Disclose that the matter will be referred to another lawyer, if that is the case. Nothing false, misleading or deceptive.

"Permissible Content of Advertisements." These are the safe harbor
provisions, information that is, on its face, presumed not to violate these rules.

"Subject to the requirements of this
rule and Rule 7.10," which deals with firm letterhead and so forth, you can state the name of the lawyer or the law firm, a listing of lawyers that are associated with the firm, office locations, parking arrangements, disability accommodations, telephone numbers, web site addresses, electronic mail addresses, office and telephone service hours and designate yourself as an, "Attorney" or a, "Lawyer" or a, "Law firm". Basic information. Nothing wrong with telling clients in your advertisements basic information, again, as long as it's presumably not false, misleading or deceptive.

You can state the date that you were admitted to the State Bar, and any other Bars, your current membership or positions, or your former membership or positions held with the Louisiana State Bar, sections or committees, together with the dates of those positions. Former positions of employment
held in the legal profession, together with
dates those positions were held, years of
experience practicing law, number of lawyers
in the advertising firm and a listing of the
federal Courts and jurisdictions other than
Louisiana where you're licensed to practice.
Again, all information that clients would
probably want to know, all basic stuff about
yourself.

You can provide technical and
professional licenses, information on that,
granted by the state or other recognized
licensing authorities.
If you can speak or have someone that
can speak a foreign language.
Fields of law in which you practice --
to answer your question from before --
including official certification logos,
subject to the requirements of subdivisions
(C)(2) and (C)(3), what we've already
alluded to.
Prepaid or group legal service plans
in which you participate.
Your fee for your initial
consultation, if there is one, a fee
schedule. Again, subject to the provisions of Section (C)(4) and (C)(5) of this Rule.

List the name and geographic location
of yourself or your firm, "As a sponsor of a
public service announcement or charitable,
civic or community program or event."
"Common salutary language such as
"best wishes," "good luck," "happy
holidays," and the like.
"Illustration of the scales of justice
not deceptively similar to official
certification logos" of the Bar Association
logo. "A gavel or traditional renditions of
Lady Justice, or a photograph of the head
and shoulders of a lawyer or lawyers who are
members of or employed by the firm against a
plain background consisting of a single
solid color or a plain unadorned set of law
books," --
MS. ALSTON:
So what is it --
MR. LEMMLER:
-- plain, vanilla.
MS. ALSTON:
You can't have a waist-up shot?
MS. SCHABEL:

I'm sorry?

MS. ALSTON:
You can only have head and shoulders,
you can't have a full body shot in your ad?

MR. PLATTSMIER:

That may be the Chuck Plattsmier rule.

They just don't want anything but my head.

MS. ALSTON:

Yes. Well, I could understand that

but you're not going to be --

MR. PLATTSMIER:

That's true.

MS. ALSTON:

-- advertising, are you?

MR. PLATTSMIER:

Thank you, Beth.

MR. LEMMLER:

These are the presumptively approved
forms of advertising. No one has said,

necessarily, that you cannot show from the

waist up. It just says, if you do this,

you're presumptively approved.

MS. ALSTON:

Chilling effect.
MR. LEMMLER:

"Rule 7.3, Advertisements in the Public Print Media." Also, subject,
generally, to the requirements of the
previous Rule 7.2 that we've just discussed.

"Disclosure Statement." "Shall
contain the following disclosure:" -- this
is the highlighted 7.3. Your,
"Advertisement in the public print media
shall" state that, 'The hiring of a lawyer
is an important decision that should not be
based solely upon advertisements.'
Disclosure is not required when the ad
contains no illustrations and no information
other than that listed in subdivision
(C)(12) of 7.2, what we've been calling the
safe harbor exceptions, the things that I've
just discussed. All of those head and
shoulder shots and the plain, vanilla stuff.
"Written communication sent in compliance
with 7.4.", targeting direct mail,
especially, what you can do now, as well.
"Rule 7.4 Direct contact with
Prospective Clients." This is broken down
into essentially two parts, solicitation in
person, or other forms, and written communications.

I'm just going to keep rolling.
Somebody stop me when you have a point to make.

The solicitation rule in the proposed 7.4 is essentially what we have right now in our current Rule 7.3. Notable changes on that, the phrase, "Prior professional relationship" has been changed to, "Prior lawyer-client relationship".

MS. ALSTON:

Why?

MR. LEMMLER:

Ms. Alston?

MS. ALSTON:

Why?

MR. LEMMLER:

That's one for the Committee. They would have to answer that.

MS. SCHABEL:

It was felt to be more directly descriptive, I think it was.

MS. ALSTON:

Okay, so you can't have direct contact
with your doctor; if you have a professional
-- prior professional relationship with your
doctor, you can't say, "Doc, your HIPAA form
is not in compliance. Let me fix it for you"? I think --

MR. PLATTSMIER:

I think that was discussed in the Committee meetings --

MS. ALSTON:

I think --

MR. PLATTSMIER:

-- specifically.

MS. ALSTON:

I think that's a narrowing of the rule.

MR. PLATTSMIER:

It may well be, Beth. It certainly is a change. I think the notion was that, if you had a prior -- you know, the ABA -- I believe this is right. The ABA model includes even a prior significant social relationship --

MS. ALSTON:

Right.

MR. PLATTSMIER:
-- gives you the entree.

MS. ALSTON:

Right.
MR. PLATTSMIER:

The Florida rule did not incorporate that, but incorporated what is referred to as, "The prior professional relationship," which, I think many people interpreted, certainly, to include an attorney-client relationship. That may well have been interpreted by some as including individuals with whom you've had a prior professional relationship, such as you described, your doctor, a CPA, a tax preparer, whatever the case may be. The question arose in debates whether or not those individuals who are not part of a prior attorney-client relationship necessarily want to be included within the scope of a rule that allows you to make an in-person, face-to-face solicitation of their legal business or not, and the Committee's decision at that point was perhaps it ought to be narrowed to the attorney-client relationship. As I remember the discussion, that's what was said but
that's why we're having this meeting, again,
to get comments from folks who may have a
different perspective.
MS. ALSTON:

Well, if it -- you know, as I see the intent of some of these rules, is to narrow what is perceived to be distasteful and over-the-top advertising for unsophisticated clients. If you have a prior professional relationship with someone who's a professional, I would think that, that type of person would not necessarily need protection of this rule change.

MS. SCHABEL:

Are there any other comments with regard to this?

(No response.)

MR. LEMMLER:

Okay. Another notable exception or change, with respect to the same phrase, is that, "Prior lawyer-client relationship" has been defined, within the proposed rules, to exclude, "Relationships in which the client was an unnamed member of a class action", essentially, one of thousands, a cast of
thousands that you truly have never had

contact with.

MS. ALSTON:
Isn't that a matter of law, wasn't that -- I mean, in the -- there is a lot of different ramifications of class action law, whether a member -- unnamed member of a class is your client or not. I mean, isn't that an issue of state and federal law?

MR. LEMMLER:

That's a good point.

MR. BURNS:

Ms. Alston, some people in the back are saying they can't hear you.

MS. ALSTON:

Oh, I'm sorry. I said, isn't that a matter of law, whether an unnamed member of the class is a client or not? I think that there are cases both ways, and it depends on the jurisdiction. Different federal jurisdictions, state jurisdictions, vary on whether an unnamed member of a class is a client, and at what point they become a member of the class, and a client, or not.

MR. WALTERS:
Beth, I think this is broader than that. I think what this says is that, if a person is an unnamed member of the class,
but not named on a thousand --

MS. ALSTON:

They fall within the class?

MR. WALTERS:

Yes.

MS. ALSTON:

That has been certified?

MR. WALTERS:

Right, but what this is designed to do is to prohibit people from having a list of a gazillion people and just contacting a gazillion people. Every time something happens, you all of a sudden have a relationship with all these people in this class --

MS. ALSTON:

Well --

MR. WALTERS:

-- whose clients are they, whose clients aren't they, but this is pretty narrow as to unnamed persons in the class.

MS. ALSTON:
Well, as I understand it, all contact
-- most -- in most class action cases,
especially in Federal Court, all contact
with potential class members is closely
regulated by the Court and sanctioned by the
Court, and am I wrong?

MR. WALTERS:

Well, I don't know, Beth. I've never
had a Federal Court class action so -- but
I'm not sure that State Court class action
contact is very regulated.

MS. ALSTON:

Well, the point is, and -- and we're
wrestling with this issue on the ABA
Standing Committee on Ethics and
Professional Responsibility, of which I'm a
member, and we're talking -- we're studying
this issue and one of the things we
discussed is that, you know, when can
counsel for the defendants contact unnamed
members of the class and when can the
counsel for plaintiffs contact them and, you
know, we haven't reached a conclusion but
what we're looking at is an even playing
field and, if -- because, you know, I don't
think you can restrict plaintiffs' lawyers
from doing this when defense lawyers are
doing it all the time. You know, Kleenex
sends out investigators to interview people
who might be part of a class action of an
allergy claim against Kleenex, to find out
if there really is enough numerosity to
become a class. I just -- in this way, I
think it's obviously slanted against the
plaintiffs' lawyers.

MR. LEMMLER:

Any other comments?

(No response.)

MR. LEMMLER:

Okay. Let's move forward. "Rule 7.4
Direct Contact with Prospective Clients."
Written communications, again, the same
prohibitions as are currently contained in
Rule 7.3(b). The notable additional
conditions on prohibitions, the
communication must abide by 7.2, containing
the required information, "The hiring of a
lawyer is an important decision" and so
forth.

A copy must be filed with the LSBA, as
provided by Rule 7.7 --

MS. ALSTON:

Well --
MR. LEMMLER:
-- which we've already alluded to and
we will get to in a moment.

MS. ALSTON:
I'm sorry, Richard. What is the LSBA
going to do with it; are you going to look
at all of them?

MR. LEMMLER:
I think so.

MS. SCHABEL:
And we're going to be the keeper of
them.

MS. ALSTON:
Right, and, then, if you think they
violated the rule, then, you're sending them
to Chuck?

MR. LEMMLER:
Then we will give them advice with
respect to the rules.

MS. ALSTON:
Oh, okay.

MR. LEMMLER:
Question, I think?

MS. ALSTON:

Wait. There is a question.
MS. MARTIN:

Margaret Martin. So e-communications
that we send out thousands of a week, we
need to file with you each time?

MR. LEMMLER:

E-communications, emails?

MS. MARTIN:

No, e-communications.

MR. LEMMLER:

There is a distinction in the rules, I
think, and we'll get to that in a moment,
and I don't know which one this would fall
into, given their definition.

MS. MARTIN:

All right, so any -- let's say --

newsletters that you -- that you have been
mailing on an ongoing basis to an existing
mailing list, do we have to file every
newsletter before it's sent?

MS. ALSTON:

I think that's a good question

because, you know, under our current rules,
newsletters are not advertisements. For our newsletters and thing -- and web sites and stuff are not advertisements, and these
rules make them advertisements.

MS. SCHABEL:

I think it would depend on the contents of the newsletters. What you put in the newsletter could fall within the stuff that's essentially a safe harbor.

MS. MARTIN:

And so is it a 30-day waiting period to find out whether or not we can send out a newsletter?

MS. SCHABEL:

What I'm telling you is that, if your newsletter contains only the safe harbor information, if, it doesn't --

MR. LEMMLER:

Let me see if I can try to address your question. We've jumped ahead but I don't want to miss your question. Rule 7.8, the proposed 7.8, contains a list of exceptions to the filing requirement. One of those exceptions is, "A communication mailed only to existing clients, former
clients, or other lawyers" so, if these
folks are already your clients and you're
sending them a newsletter every week or
every month, there is no reason to file it,
much as you would with people who are
requesting information, the contact has
already been established, essentially. Any
other questions on this point?
(No response.)

MR. LEMMLER:

No written communications to someone
unlikely to, "Exercise reasonable judgment
in employing a lawyer."

MS. ALSTON:

That includes insurance companies,
doesn't it?

MR. LEMMLER:

If contacting a prospective client
about a specific occurrence, you must -- the
communication must contain the phrase that,
"If you have already retained a lawyer for
this matter, please disregard this letter."

A statement that the signing lawyer
will not handle the matter, if that is
indeed the case.
No revelation of the underlying legal matter on the envelope. Nothing saying "I'm contacting you about your serious personal
injury case that occurred last week."

You're respecting those privacies.

General computer -- I'm sorry. "Rule 7.5 Advertisements in the Electronic Media

Other Than Computer-Accessed Communications." We're effectively talking here about TV and radio.

In general, computer-based ads are subject to 7.6. All other ads in the electronic media, including but not limited to TV, radio, are subject to the requirements of 7.2, nothing false, misleading or deceptive.

"Appearance on Television or Radio.

"Prohibited Content. Television and radio advertisements shall not contain:

(A) any feature that is deceptive,

misleading, manipulative, or that is likely to confuse the viewer or listener;

(B) any spokesperson's voice or image that is recognizable to the public in
the community where the advertisement appears;

(C) lawyers who are not members of the
firm or the advertising law firm
speaking on behalf of the advertising
lawyer or law firm; or

(D) an background sound --

UNIDENTIFIED SPEAKER:

Wait. A question on that, if you --

if you have a voice-over, a professional
voice-over, saying that they know the
attorney, they -- they can't do this, like a
talent if the --

MR. LEMMLER:

I think that this -- the rule says,

"Recognizable to the public in the community
where the advertisement appears" so you're
not prohibited from having spokespersons or
voice-overs, it's just someone who is
recognizable to the public and the community
where the advertisement appears.

UNIDENTIFIED SPEAKER:

So this would apply to just that?

MR. LEMMLER:

Yes, ma'am.
Moving forward. Appearance on TV and radio, what is presumptively permissible?

"Television and radio advertisements may
contain:

(A) images that otherwise conform to the requirements of these Rules;

(B) a lawyer who is a member of the advertising firm personally appearing to speak regarding the legal services the lawyer or law firm is available to perform, the fees to be charged for such services, and the background experience of the lawyer or law firm;

or" -- as we just discussed --

(C) a non-lawyer spokesperson speaking on behalf of the lawyer or law firm, as long as the spokesperson's voice or image is not recognizable to the public in the community where the advertisement appears, and that spokesperson shall provide a spoken disclosure identifying the spokesperson" as such and, "Disclosing that the spokesperson is not a lawyer."
MR. PITTENGER:

Richard, I'm sorry, again. Can we go back to 7.4, the last element contained in
MR. LEMMLER:
If I can figure out how to do this.
Do you want me to -- let's see if I can scroll through it. Rule 7.4?
MR. PITTENGER:
Yes.
MR. LEMMLER:
Okay.
MR. PITTENGER:
One of them said something about a -- background music.
MR. PLATTSMIER:
Rule 7.5, Tommy.
MR. PITTENGER:
I'm sorry.
MR. PLATTSMIER:
Rule 7.5(1)(d).
MS. SCHABEL:
At the bottom there.
MR. PITTENGER:
Yes. I'm just curious about why,
other than instrumental music.

MS. SCHABEL:

The discussions were about things like
the sounds of car crashes and stuff; isn't
that right?

MR. WALTERS:

Car crashes and jingles, that kind of
stuff.

MS. SCHABEL:

Yes. It was quite an ambient
discussion about jingles, I might add. It
went on a long-time, the discussion about
jingles.

MS. ALSTON:

Anybody who thinks that this rule is
not susceptible to a valid First Amendment
challenge, then, they must have skipped the
Bill of Rights classes, like George W. Bush
apparently did.

MR. PLATTSMIER:

Okay.

MS. SCHABEL:

All right, Beth, that was on the
record.

MR. LEMMLER:
23 Moving forward -- and anything else
24 about this point?
25 (No response.)
MR. LEMMLER:

Permissible content. I think we've already covered that.

"Rule 7.6 Computer-Accessed Communications." Basically, electronic communications not on TV or radio. Two distinct forms, the -- as I said, the Internet presence, or web site, versus email. All of these are subject to the location requirements of 7.2. You must indicate where your office is located, that you have a bonafide office in a certain location. Must comply with 7.2 unless otherwise provided. May provide information deemed valuable to assist potential clients.

Oops, wait a minute. Yes. We skipped ahead to 7.9. This is part of the substantive -- this is substantive versus procedural, so we skipped 7.7 and 7.8, and we're saving that for the procedural part, even though we talked about it already.

Rule 7.9, if your clients are asking
you for information, you still must comply with 7.2, unless otherwise provided. You may provide information that is deemed
valuable to assist a potential client.

You may provide an engagement letter,

but any contingency fee contract shall have,

"SAMPLE" and, "DO NOT SIGN" written on it so

that they know it is a sample.

"May contain factually verifiable

statements concerning past results."  Must
disclose the intent to refer the matter to
another lawyer or law firm, if indeed that
is the intent.

"Rule 7.10 Firm Names and Letterhead".

It's substantially what we have right now,
discussing what you can put on your
letterhead, what you can call your firm,
whether or not you can state that you are in
a partnership and so forth.

Proposed procedural rules, the second
component. "Advance Written Advisory
Opinions, that we've already talked about
briefly. Then there is a regular required
filing component and, then, there are
exceptions to that filing requirement.
Procedural rules for advertising, 7.7, for filing requirements. Rule 7.7(b) provides for the, "Advance Written Advisory
Opinion". Rule 7.7(C) provides the filing requirement for most advertisements. You can either do 7.7(b) in seeking advance written advisory opinion and have that basically served, at some point, as the filing, or you can just submit it for filing and skip the advisory opinion. It's up to you.

Submission requirements, in either case, there will be a fee to be set by the Supreme Court under this proposed --

MS. ALSTON:

Payable to the Bar?

MR. LEMMLER:

Payable to the Bar, assuming the Supreme Court wants it that way, to basically underwrite this process.

MS. SCHABEL:

Wait one second.

MR. LEMMLER:

Yes. Yes, sir?

MR. COLLINS:
What sort of fee, I mean, what's --

what's done in Florida?

MR. LEMMLER:
Would you state your name, please.

MR. COLLINS:

Sean Collins.

MR. LEMMLER:

Okay. What sort of fee?

MR. COLLINS:

Yes. How large would --

MR. LEMMLER:

Florida -- I'm sorry.

MS. SCHABEL:

It's $150.

MR. LEMMLER:

Florida, right now, is $150 per --

MR. COLLINS:

Per ad?

MR. LEMMLER:

-- per ad. However, under the advisory opinion process, and as is proposed under this process, if you opt to seek a written advisory opinion, until you get that right, there is no additional fee. If you decide to file it on your own, without
seeking an advisory opinion, you take your chances, and you may have to pay another fee if it's deemed not in compliance.
MS. SCHABEL:

Beth?

MS. ALSTON:

In 2008, we will be celebrating 100 years of lawyer self-regulation, the anniversary date of the canons of professional responsibility, and scholars who have been reviewing the motives behind the initial drafters of those canons have -- are pretty much in agreement that the anti-solicitation rules were designed to protect the status quo, people with the societal and business contacts, and to prevent people who wanted to represent immigrants, or tell immigrants that they had legal rights that could be protected. Additionally, this anti-competitive effect of the rules has been safe from anti-trust regulation by the state action exception but our -- the Louisiana State Bar Association status, as a mandatory state Bar, is quite imperiled at this point because none of the traditional
justifications for a mandatory Bar exist.

The Supreme Court has taken away Bar

admissions, Bar discipline, MCLE. What
else, Marta? Something else.

MS. SCHABEL:

This is your statement, not mine.

MS. ALSTON:

And so those traditional functions of
the mandatory Bar are no longer with our
Bar. I know that other states are
considering roles like this. For example,
New York, and in New York, they're already
preparing -- gathering money to mount First
Amendment challenges to rules like this. If
the -- if the Louisiana State Bar
Association recommends these rules for
adoption to the Supreme Court and ends up
being sued in those First Amendment
challenges, if there are any filed here, the
Bar Association may not have the state
action exception to the anti-competitive
effect of these rules and I, for one, would
hate to see our Bar dues going to pay for
expensive First Amendment fights, which are
going to be well-funded on the other side.
MS. SCHABEL:

Anybody else have any comment in that regard?
(No response.)

MR. LEMMLER:

Okay. Part of the submission requirements, again, a fee to be composed and perhaps set by the Supreme Court. A copy of the advertisement and a sample of your envelope.

Let me just say before I go any further, that you get an hour of CLE credit for your attendance here today. We'll give out the forms when we're done so those of you who might need it who consider leaving at this point, you're free to leave but know that your CLE credit is available.

Let's see.

MS. SCHABEL:

We're almost done, though.

MR. LEMMLER:

Yes. We're moving pretty well.

MS. SCHABEL:

We're on slide 38 of 41, so we're almost there.
MR. LEMMLER:

I'm surprised that we've made it that far so quickly.
A copy of the advertisement and a sample of the envelope.

A typewritten copy of a transcript that, presumably, it's a TV or radio ad, something that is not already in printed form.

A statement concerning the type of media frequency and duration of the advertisement, where you intend to run it, how long you intend to run it, how many times you intend to run it and so forth.

Exemptions from the filing requirement. Again, 7.8. It contains -- one of the exemptions is that your materials, your advertising, contains only the safe harbor content as enumerated in 7.2(C)(12), all of those plain, vanilla things.

If your advertisement is a brief announcement identifying the lawyer as a sponsor for a charity event, provided that no information is given but the name and the
location of the sponsoring law firm, that is
presumptively exempt from the filing
requirements.
"A listing or entry in a law list or bar publication."

"A communication mailed only to existing clients, former clients or other lawyers."

"Any written communications requested by a prospective client."

Yes, sir?

MR. PITTENGER:

Richard, if a client calls and asks about being represented in an automobile accident, can you, then, send them -- I mean, do they have to specifically request, you know, "Send me a track record of what you have done in the past" or, "Tell me what you can do for me", that sort of thing?

MR. LEMMLER:

Well --

MR. PITTENGER:

If they call and ask for representation, can we then send them a packet of information?
MR. LEMMLER:

I guess the devils in the details. If they say, "I want more information" or, "Can
you send me something", sure. If they say,
"I don't want to use you," then, I think
you'd have a hard time proving that they
asked for that information.

Any other questions or comments?

(No response.)

MR. LEMMLER:

As we said, any written communications
that are requested by the prospective
client.

Professional announcement cards mailed
to other lawyers, relatives, former or
current clients and close friends. "Richard
Lemmler is opening his new practice for the
practice of law."

"Computer-accessed communications as
described in subdivision (b) of Rule 7.6."

Essentially, your web sites.

The proposal -- I think we're now
through the body of the proposed rules.

This is what we are proposing to the Court
Committee and to the Court, is that there
should probably be some sort of phase-in, if

the Court adopts some form of these rules.

We're proposing that there should be at
least, perhaps, a 90-day period to modify
ads that are currently in use. The printed
advertisements with an annual or other
limited periodic publication schedule,
obviously, recognizing that you can't change
a Yellow Pages ad but once a year.
Grandfather -- as I said, grandfathered
annual advertisements must be submitted
thereafter.

Future work plan. We're conducting
the public hearings, as we talked about
already, three more to take place. Special
rules of debate were adopted by the
Louisiana State Bar House of Delegates.
They've already been adopted. Presumably,
onece the proposal has gone through the
public hearing process and assuming that the
Supreme Court Committee believes that we
should go forward, then, I suppose we'll go
through the House and be debated before the
House of Delegates.

Resolutions addressing amendments must
be submitted in writing 30 days in advance of the House of Delegates' meeting. I think the deadline for that is --
MS. SCHABEL:

     December 15th.

MR. LEMMLER:

     -- December 15th or 13th?

MS. SCHABEL:

     Better to be safe and --

MR. LEMMLER:

     Right around the 13th or 15th, but you
can find that on the Bar website, LSBA.org.

     The Supreme Court Committee to study
attorney advertising will review our
proposal, so all of your comments that are
being recorded here today will be reviewed
by the Rules of Professional Conduct
Committee and then, again, reviewed, I'm
assuming and assured, probably that they
will be reviewed by the Supreme Court
Committee and, perhaps, more than likely, by
the Supreme Court themselves.

     That's it. Yes, ma'am?

MS. HARVEY:

     Will the slide show be on the web
site?

MR. LEMMLER:

I suppose we can put it up there. I
don't see why not.

MS. SCHABEL:

We'd be delighted to; although, we hadn't thought of that.

MR. LEMMLER:

Right now, in case you're not aware that, on the web site, we do have a basic set of the rules, as proposed. There is also, as I've been alluding to and as you'll find in the back of the room, a side-by-side comparison of our current versus the proposed rules.

Yes, sir?

MR. COLLINS:

So what's the -- the earliest date for the new rules to take effect?

MS. SCHABEL:

Well, let me just address the process so that everybody is clear on this. The Bar Association operates essentially in an advisory capacity to the Supreme Court. The Court is the only entity that can make a
decision about what rule will actually be implemented, and I don't know that there is any way to predict what their schedule would
be, but the issue of whether we will
recommend these rules, and what content our
recommendation will take, will be heard in
the House of Delegates on January 20th, at
which point, whatever our decision is will
be transmitted to the Court, which will then
take action in the Court. Historically, the
Court has moved fairly slowly. In this
particular circumstance, the Court has been
requested by the legislature to move forward
on this issue, and there is a sense of a
little bit more urgency about it. I would
anticipate March 1.

UNIDENTIFIED SPEAKER:
For the rules to be in effect, or for
the Supreme Court --

MS. SCHABEL:
For them to be adopted and with an
effective date in -- shortly thereafter,
would be our thought, which also means, you
know, from the Bar Association's
perspective, if it moves forward as
proposed, that we've got to change a lot of what we're doing to be able to accommodate people's needs.
UNIDENTIFIED SPEAKER:

And I have a question, as -- as you go to Lafayette, Shreveport and New Orleans and you hear the same questions being asked on the same three or four issues that brought me here, are -- is that -- is it likely that the rule -- what you recommend would be changed?

MS. SCHABEL:

The answer to that is, that, historically, when we did the ethics 2000 trip around the state, very much like this, we thought the comments were invaluable and they were indeed incorporated. The thoughtful ones were very -- were indeed incorporated into what we ultimately came up with and I haven't heard anything here today that I didn't think was thoughtful, with certain possible exceptions, but -- Beth and I are friends. I apologize.

MS. ALSTON:

I did that on purpose.
MS. SCHABEL:

I know, so, yes, I think that the more you say, and I think you should encourage
people. It's -- you know, you can comment

on the web site. The idea is to get input,

not to just push something through. We are

on a short time frame but that is largely
dictated by forces other than us so, you

know, stepping up to the plate and making

your comments is really important.

Yes?

MR. PITTINGER:

Not -- not to drag this out, Richard,

any longer, my wife actually has a

babysitter tonight, so she's going to be

disappointed if I sit around here all night,

but I read -- in reviewing the materials

before tonight's meeting, I remember seeing

something that -- that said you submit your

ads and if -- if the LSBA says that the ads

pass muster, and you run them, that they

could still run afoul at the ODC; is that my

understanding?

MR. LEMMLER:

I think that's correct. I think it --
as in any instance currently, if you seek an advisory opinion from the LSBA, that is not binding on anyone. It's our advice. It's
our best interpretation of the rules and our
best counsel to you as to what we believe
the rules mean, and I think that, perhaps,
has some mitigating value and I know it
would for a hearing committee and the board
and perhaps even the Court, but it is not
binding on the Disciplinary Counsel or the
board or the Court.

MR. PITTENGER:

Yes, but up -- up to this date, your --
your suggestions or your -- your answers
to my routinely stupid questions over the
telephone are not admissible in the -- in a

MS. SCHABEL:

That's a change.

MR. PITTENGER:

-- at a hearing or --

MR. LEMMLER:

That's correct.

MS. SCHABEL:

In this situation --
23    MR. PLATTSMIER:
24                This would be admissible, Tommy.
25    MS. SCHABEL:
MR. PLATTSMIER:

If you've got something in writing, an approval from Richard and the LSBA screening folks, acted in good faith, tried to comply, modified the advertisement, if that had been suggested, whatever, and, then, you ran it and we get a complaint from somebody that says, "It's obviously deceptive or wrong because of 'A', 'B' or 'C','" and we look at it and we say, "Well, you know, they've got a point. Maybe it is" and you come back and say, "But I did it exactly in accordance with the recommendations of the good folks there", that has got to be taken into consideration and it is admissible if we would be perhaps foolish enough to go forward with the disciplinary prosecution --

MR. PITTENGER:

Thank you.

MR. PLATTSMIER:

-- and it's provided for.
MR. PITTENGER:

Thank you.

MR. LEMMLER:
Yes, it's essentially what we have now, modified, and I have to admit that, certainly, I guess we were discussing this earlier, a couple of the staff attorneys and myself, that, you know, it's a process, at least, that's available to you. It's someone to give you a second opinion on your ad before you run it, you know. It's better than not getting it, I guess, in my view so, you know, we're trying to help the lawyers, I guess is the real goal here.

MR. PLATTSMIER:

Let me make a statement for the record. The information that we have kind of gotten feedback from, from other states, who have a similar process, such as Florida, is that, over the years, their perception has been that lawyers who wish to engage in some form of advertisement, routinely do make use of that service because they genuinely want it to be in compliance with the rules. That is not to say that there
might not be some folks who would like to
push the envelope and see if they can't
intentionally, perhaps, present
constitutional issues. That may well happen, as well, but that could probably happen with just about any set of rules or restrictions on advertising.

UNIDENTIFIED SPEAKER:

I have another question, is there -- is there a process that, before you invest your money in producing a TV spot, that you have a video description and a -- and a script that you say, "This is what I intend to do", before I do it, so that you don't have to incur the production costs twice?

MR. LEMMLER:

Essentially, if you do the written advisory opinion process the first component, that first process, you do have to pay a fee, but it's before you incur all your production costs and so forth and, you know, there is no real time limit on that and we'll work with you until you get it right, under the proposal. We do that now.

Anyone else?
MR. LEMMLER:

Okay. Well, I guess that's it.
Thanks to everyone for coming.

MR. KING:

The number?

MR. LEMMLER:

Oh, yes. On the CLE, I'm sure you need that.

MR. KING:

Write this down, 0250061102.

MR. PHILLIPS:

Do it again.

MR. KING:

It's 0250061102.

MR. PHILLIP:

And what's the name?

MR. KING:

Reevaluating Louisiana's Lawyer Advertising Rules, and I'll bring -- I'll leave it right up here if anybody needs to see it.

MR. LEMMLER:

You get one hour of ethics for this.

MR. KING:
One hour of ethics.

MR. GUIRARD:

One last question. I'm sorry. E --
E. Eric Guirard. Has there been any effort, I'm just wondering, on the part of the Committee, to -- to poll or study attorneys in other jurisdictions that have had to toil under similar rules? There are a number of other states that have that.

MR. LEMMLER:

Florida. Florida has this right now. Texas has it right now.

MR. GUIRARD:

Florida, yes.

MR. LEMMLER:

New York is proposing it.

MR. GUIRARD:

It seems to be -- it seems to me it would be really valuable to -- to at least talk to lawyers who have had to be subject to these rules to see their -- their experiences or their problems.

MS. SCHABEL:

We are told, and we are regularly in contact with people active in the Texas and
Florida Bar --
MR. GUIRARD:
That's the Bar Association.
MS. SCHABEL:

-- we are told that they are -- that
they are regularly -- you know, that there
has been positive --

MR. GUIRARD:

Well, you were told that. That's the
Bar. I just wonder about the actual
lawyers.

MR. LEMMLER:

Well, I don't know how we could
identify and target those folks.

MR. GUIRARD:

They have ads.

MR. LEMMLER:

They have an opportunity to come
forward. Well, they can come forward now.

We have a public comment --

MR. GUIRARD:

Would it be okay, I mean, if some of
those attorneys contacted and commented?

MR. LEMMLER:

It's public comment. Anyone can
comment.

MS. SCHABEL:

Anyone can comment. It's on the web
site.

MR. LEMMLER:

They're more than welcome, I'm sure, anyone's comments --

MR. GUIRARD:

Okay.

MR. LEMMLER:

-- so there is no restriction. You don't have to be a member of the Bar to comment.

Anything else?

(No response.)

MR. LEMMLER:

There is refreshments, food outside. Please help yourself. There is plenty.

MS. SCHABEL:

Take some home.

MR. LEMMLER:

Thank you for coming. Thank you very much for your comments.

MR. PLATTSMIER:

Thank you for coming.
THE HEARING WAS CONCLUDED AT 6:12 P.M.

* * * * *
I, Lori B. Overland, Certified Court Reporter, in and for the State of Louisiana, the officer, as defined in Rule 28 of the Federal Rules of Civil Procedure and/or Article 1434(b) of the Louisiana code of Civil Procedure, before whom this sworn testimony was taken, do hereby state on the Record

That due to the interaction in the spontaneous discourse of this proceeding, dashes (--) have been used to indicate pauses, changes in thought, and/or talk overs; that same is the proper method for a Court Reporters's transcription of proceeding, and that the dashes (--) do not indicated that words or phrases have been left out of this transcript;

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Lori Overland, C.C.R.

# 97083
CERTIFICATION

I, the undersigned reporter, do hereby certify that the above and foregoing is a true and correct transcription of the stenomask tape of the proceedings had herein, taken down by me and transcribed under my supervision, to the best of my ability and understanding, at the time and place hereinbefore noted, in the above entitled cause.

I further certify that the witness was duly sworn by me in my capacity as a Certified Court Reporter pursuant to the provisions of R.S. 37:2551 et seq. in and for the state of Louisiana; that I am not of counsel nor related to any of the counsel of any of the parties, nor in the employ of any of the parties, and that I have no interest in the outcome of this action.

I further certify that my license is in good standing as a court reporter in and for the state of Louisiana.

____________________________

Lori Overland, C.C.R.