LOUISIANA STATE BAR ASSOCIATION

IN RE:

RE-EVALUATING LOUISIANA’S LAWYER

ADVERTISING RULES

PUBLIC HEARING

The Public Hearing concerning the above captioned matter was held on Wednesday, the 8th day of November, 2006, at the Federal Courthouse in Lafayette, Louisiana commencing at 5:10 p.m.

Before: Lori Achee

Certified Court Reporter

State of Louisiana
MR. GAY:

We’re all set to start? Good afternoon, my name is Phelps Gay. I’m an attorney from New Orleans and a member of the State Bar’s Rules of Professional Conduct Committee, and we’re here this afternoon to present and discuss and get as much feedback as we can on some proposals to revise our current Rules of Professional Conduct on the subject of lawyer advertising and solicitation. I know that many, if not everyone, in this room is a member of the Louisiana Bar and so I won’t detain you with too much background, but these Rules of Professional Conduct are promulgated by the Louisiana Supreme Court and, traditionally, the Bar Association assists the Court in the study and formulation of the Rules, and it is common, I believe, and appropriate for the Bar to reach out to everyone across the State, members of the Bar and members of the public to get as much information as we can and feedback as I say before we make any final decisions. So this is part of a process that is going on across the state. I think
It's the second of four public hearings. One was conducted in Baton Rouge; we're in Lafayette today. I believe other members of the committee are going to New Orleans tomorrow and then after that, to Shreveport. So, we want to hear from you on these proposed revisions to the Rules of Professional Conduct.

Just a little bit of background information and then we're going to get into what these new proposals are and most importantly, your input and feedback on them, but -- and, I should say, I'm a member of the Rules of Professional Conduct Committee. I'm not the Chair of the committee, and we are joined here today -- Sam Gregorio of Shreveport, a very prominent attorney who is also a member of the committee and participating in the sub-committee which did a lot of hard work toward the drafting of the proposals that we have.

Quick background. We have had since 1994 Rule 7 of the Rules of Professional Conduct on lawyer advertising. It has been
revised once or twice since then. They were not part of the comprehensive review and revision of our Rules of Professional Conduct, which was called the Ethics 2000 process, which was conducted between 2000 and 2003, intentionally. We just thought that this subject deserved a separate consideration so they were not part of that consideration of the Rules and, of course, that process, Ethics 2000, reached it’s final conclusion, and we do have those new revised rules.

There was, and Sam, jump in here if I’m saying anything incorrectly, but there has been some legislative initiative to visit and revise our Rules of Professional Conduct. I believe there was a Bill in the State Senate to revise the Rules which, I believe, the Bill also partook heavily from the Florida Rules of Professional Conduct. I want to say that State Senator Marionneaux may have been the proponent of that legislation.

In any event, as happens with that kind of process, it becomes necessary to move
this subject to the attention of the Louisiana Supreme Court because it is the Louisiana Supreme Court that constitutionally has the jurisdiction to regulate the practice of law in the State of Louisiana, and so as I appreciate it, while that Bill met with a lot of support in the legislature, ultimately, it was referred to Louisiana Supreme Court.

Louisiana Supreme Court has it’s own committee to study our current advertising rules which is different from this State Bar Committee that is conducting this public hearing today. And they have also asked our State Bar Committee to conduct a thorough study and review of the Rules and to conduct these public hearings such as we’re conducting today, and the process will be that it’ll move from the State Bar Rules of Professional Conduct Committee, I believe, to the Supreme Court Committee and, ultimately, it will be the decision of the Louisiana Supreme Court as to what to do.

So that’s sort of how we got to be where we are, and I want to stress again that the

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purpose of this is to explain the Rules, present the Rules.

There is, I believe, a CLE component of this that is available to members of the Louisiana Bar who wish to obtain CLE credit. But really, the main purpose is to get feedback so that we -- we’re going to meet again in late November and we want to review and digest all of these topics.

Sam, is there anything else you need to add to that by way of background?

MR. GREGORIO:

The Senator and House of Delegates in between.

MR. GAY:

Absolutely. Thanks for reminding me. The State Bar has a body as you know called the House of Delegates elected from districts all over the state, and the plan is for this proposal, in whatever form it is in at that time which will be in January of 2007, to be presented to and discussed and debated by the members of the House of Delegates of the Louisiana State Bar Association. So certainly nothing final
will happen at least until that debate has been carried out.

I guess I should introduce a couple people here today. We are joined by the person who is going to take us through the Rules, Richard Lemmler. Richard is sitting right here next to me, and he is the Ethics Counsel for the Louisiana State Bar Association and has provided invaluable assistance as we’ve reached this point; Billy King who’s the Practice Assistant Counsel with the Bar is here today; Chuck Plattsmier, you all know, is the Chief Disciplinary Counsel; Frank Nuenor, former Bar President is here as well.

All that said, I guess I would like to turn the proceedings over. What’s going to happen is, Richard is going to -- has a Power Point, and I think you already have materials that include the new proposals and their comparison with the current rules, and Richard is going to take us through what the proposals are in the Power Point, and I believe the plan is to stop whenever anyone wants to after we get to a particular Rule,
whether it’s 7.1 or 7.1(a) or 7.2, and receive as much input as we can. Because if we just go through the whole thing, it’s going to take a little while and people may be a little tired if we gobble up all the oxygen in the room for 45 minutes and then ask for comments. So we want to talk about it. We want to hear your comments on it, pro or con, as we go through. Richard, the floor is yours.

MR. LEMMLER:

Okay. Thank you. A couple little housekeeping things before I get started into the actual language of the Rules themselves. As you note on the slide, this is a public hearing. We do have a court reporter present. We’re going to be transcribing your comments so we’d ask you for purposes of the record, for purposes of the committee, and perhaps the Supreme Court Committee when they get to look at these things, just state your name and whether you’re a lawyer or not just so we know who’s here whenever you have a comment, and I’ll try to remind you if you don’t remember.
We’ll go through it that way. And, as Phelps said, there is CLE credit. You get an hour of Ethics credit for attending this. We’ll give out the forms when it’s over with, and you can get your course number and so forth. There is a sign up sheet up here. Anyone who came in after we got started, at some point before you leave, just make sure to sign in so we have a record that way of your attendance.

All right. Proposed Rule Changes: An Overview of Proposed Rule Changes. The first thing we have on the list is the Florida State Bar experience. That might, at first glance, seem like a tour of alcoholic beverage establishments in South Florida, but actually we’re referring to the experience that the Florida State Bar might have with respect to these Rules, and that’s primarily one of the reasons why we focused on that with this proposal that’s based quite heavily on Florida’s existing Rules dealing with advertising and solicitation. Florida’s had some form of the current Rules for about 11 years now in place. In fact,
last week the have just revised their rules. So we’re going to be looking at that as well, but for the most part, the rules and the framework that we use is Florida’s for two reasons; one, because they have a history, they are working in Florida; two, because Florida has an 82-page handbook that they supply to all of their members as a guide to how to interpret the Rules, give you examples providing information, case law, etcetera, etcetera, everything you wanted to know about these Rules including the filing process that Florida has. We’ll be getting into that in a minute. That’s primarily where we got started.

As Phelps mentioned, there was a sub-committee of the Rules of Professional Conduct Committee, the Bar Committee, that started looking at this, I think, in mid-2005. We started looking at the Florida Rules, and it was a logical place. We didn’t want to really reinvent the wheel so it was a good place to start. Quite coincidentally, the State Legislature in early 2006, the Bill that was passed in
State Legislature, also focused on the Florida Rules. So that was another reason why we stuck with what we have and that they’re a pretty good set of Rules. If you look at the side-by-side comparison that we have available to you, you can see that the existing Rules that we had fit pretty nicely into the proposal. Nothing really was removed from what we currently had. That’s the Florida experience. That’s why we are here with the Florida Rules.

Review of Proposed Substantive Changes in Proposed Procedural Rules. Basically, what we did is break this down. There are two components to these Rules. It’s easier to understand them in that form. They are basically the substance of changes; what you can and can not do, what you should and should not do and a procedural component that deals with the filing requirement and a review requirement. We will take those in that order.

Comparatively, we just did this little list so that you can see, you know, what we have now on the left and what we’re
proposing on the right. Basically, we’re doubling the amount of Rules that we have as far as the number, but, again, many of these titles, many of these topics, match up quite nicely with what we already have and, again, on a comparative list, you’ll see that what we have now has fit into the proposal with almost no deletions.

Proposed Rule changes. Rule 7.1. What is generally permissible? Basically, a definition of the permissible forms of advertising and, again, as Phelps said, we thought it would be best for the committee and for the Court committee in going through these transcripts, if we just took it one Rule at a time and you stop me when you have a comment. I’m going to be reading and talking, but make sure you get my attention, and we’ll put your comment on the record; good or bad.

Permissible forms of advertising. Public media including print media, telephone directory, legal directory, newspaper, and other periodicals, the basic stuff. Outdoor advertising such as...
billboards and other signs, radio, TV, the more common and generally recognized forms of advertising. Computer access communications and that’s subdivided later on. You’ll see it’s internet advertising, websites and email. Recorded messages can be publically accessed by dialing a telephone number, which I don’t know is quite so common anymore, and written communication in accordance with Rule 7.4, and you’ll see that in a minute. That’s essentially what we’re calling right now targeted written solicitation. What we have right now in our Rule 7.3. Yes, ma’am?

MS. BILLEAUD:

Susan Billeaud, attorney. Why is this necessary? Also, this seems to be pretty comprehensive. Is there any other form that I can possibly anticipate that a lawyer might be --

MR. LEMMLER:

I’m going to have to confer with the members of the committee on that because this is their prop. I’ll see if any of the committee members present can comment to
with that respect. Sam?

MR. GREGORIO:
I think it’s a question that --

MS. BILLEAUD:
Why is this necessary to alleviate with them? Is there some media that you anticipate that’s on this list, and, you know, it wasn’t necessary before?

MR. PLATTSMIER:
Chuck Plattsmier. This came directly from the Florida Rules, and this is part of their package about the types of advertising that the Rules were intended to address. If you look at the substance of the Rule itself, it says types of advertising you can engage in, included but not limited to. So if it says specifically included, but not limited to so that there’s no question that the rules, the intent was to reach certainly these types that are recognized types of advertising. We would recognize it as the type of advertising, permissible forms of advertising.

MS. BILLEAUD:
Well, I didn’t see that it’s -- included
but not limited to, but that doesn’t pass it over just all advertising and not go through a list. I’m a little concerned about --

MR. PLATTSMIER:

Richard, it might be helpful, at least from my perspective. We’re trying to bring in comments and concerns that people may have. So any comment I think shouldn’t be interpreted as an explanation for --

MS. BILLEAUD:

This is just one of my concerns.

MR. LEMMLER:

Yeah. I think Chuck’s point is very valuable. I certainly am not here to debate the merits of any of these Rules to you, just simply to try and explain what we have and to get your comments. Whether you like them or not and, certainly, if you have a question about it, or you think that this just doesn’t make sense, please put that on the record, but we may not come back with a, “Well, no, this is great, you know, you’ve got like”, and so forth.

MS. BILLEAUD:

I’m not really asking for argument. I

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just really wanted to know if there was a basis other than they did it in Florida. You know what I’m saying?

MR. LEMMLER:

That, I think, was probably the basis for this decision. Simply, we used the framework that they had and this is how they started. They give a basic definition of what they consider to be potential permissible forms of advertising. Not necessarily exclusive for what’s available. More instructive, but your comments will make.

MR. DURIO:

Well, I have a related question. In the course of business, does anybody identify any form of advertising that’s not included?

MR. LEMMLER:

That’s a great question. Can I ask you to state your name for the record?

MR. DURIO:

Oh, I’m sorry. Buzz Durio. I’m a lawyer here in Lafayette.

MR. LEMMLER:

I don’t recall that anyone tried to
identify any other forms of advertising, and
certainly, if you can think of any at this
point, we’d love to hear about them and put
them on the record.

MR. DURIO:
Well, I was just thinking and I can’t
think of any. I was going to ask you, I
asked you where does the magnet go? You
know, where does the magnet --

MR. LEMMLER:
I suppose that’s a form of written
communication.

MR. DURIO:
Well, I’m just kidding. I was just
wondering if in the course of this, that any
identification of something that would not
be regulated?

MR. LEMMLER:
We have not heard of any at this point,
but again, if anyone has any ideas of
something else that they want to get
included, or they want on the list,
certainly speak up.

UNIDENTIFIED SPEAKER:
I want to make a general comment. I
find the Rules extremely complex and all the
cross references to sub-chapters and sub-
sub-chapters and other regulations, not
even contained here is going to be difficult
to someone who wants to follow the Rules to
follow the Rules. How would they get to
this? I have something that says
permissible forms of advertising and unless
there’s some form of advertising considered
in this. I mean, I keep reading the Rules
that are a permissible part in achieving,
but constitutionally permissible in
regulating. I am very much for rules, but I
don’t think the rules are directed to the
heart. They are going after the people who
are doing deceptive, trashy advertising.
They degrade our profession and in many
cases, bad handling. I don’t think the
rules should have a single word that’s not
necessary and list as a form of advertising
of a single version.

MR. GREGORIE:

I believe the structural definition will
articulate with that. Subsequently, one
will say, we recognize it.

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MS. BILLEAUD:
Why say that?

MR. GREGORIO:
Well, I think it’s kind of a structural definition for 7.2.

MS. BILLEAUD:
I understand that point. I guess I confer with Richard that perhaps it’s a long way around the truth, and maybe we can do advertising in all types of whatever kind you accept, you know, those that broadcast, and it might just be straightforward. I was very concerned about that when I saw that. Can I ask another question?

MR. LEMMLER:
Sure.

MS. BILLEAUD:
What is the standard of review? Is it narrowly tailored to get a controlling government (inaudible)

MR. GREGORIO:
Florida (inaudible)

MS. BILLEAUD:
Has anyone read the Florida State Rules?

MR. LEMMLER:
I have.

MS. BILLEAUD:
I find them very straight forward.

MR. LEMMLER:
Okay, any other comments on that.

MR. BURGESS:
Just a general comment. If I understand you correctly, Florida has recently revised their rules. These are not revised rules; is that right?

MR. LEMMLER:
No, sir.

MR. BURGESS:
I’m sure there’s reason for possibly litigation. If you can push that along with the proposed handbook. It seems like we can sit down and say this is a proposed rule. These are the guidelines. There could be some benefit if we had guidelines, and if you don’t look at it, and you knew ahead of time, you save some time.

MR. PLATTSMIER:
Chuck Plattsmier. Excellent point. Let me tell you what my concern is. As I recall, the Louisiana Legislature wrote the

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handbook by agreement by resolution involved
the Louisiana Supreme Court set a sunset
provision or some sort of action to be
taken. The mechanism that would give us in
compliance with that, we felt would also
include, appropriately so, bringing in the
Louisiana State Bar and House of Delegates.
This meeting is, again, their agenda would
be posted by mid-December. So you see the
time table is backing us up based upon sort
of a sunset provision that is sort of
imposed by the legislative resolution.
That’s the first observation. Second, your
point about the handbook is very valid.
Many states utilize comments when they pass
a law. Louisiana Supreme Court has not
generally embraced the notion that would
impose these written comments. So for that
reason, the handbook is a very important
part of this. It may not make a lot of
sense to you writing a handbook until we’ve
got everybody’s comments on the substantive
rule. We want to make sure you have a
handbook that matches that. Third, the
revisions, as I understand it, came out
perhaps last week and probably at or around
the time we had our very first hearing, and
some of the changes are substantive. For
example, I think that if you look at the
recent part of the changes that they have
chosen the board members to delete the
disclaimer that every advertisement in every
written form, which was the disclaimer that
says selection of an attorney is an
extraordinarily important decision and
should not be made on the basis of
advertising alone. That’s part of the
proposal. It’s fashioned after Florida who
has that provision. Those were sorts of
things that was current.

MR. LEMMLER:

Follow up on something that Chuck said
with respect to the handbook. I think from
a practical standpoint, the handbook in
Florida is 82 pages long. The comment
before was the complexity of rules. Trying
to cross reference this set of rules with an
82 page handbook is a monumental task. I
know, I’ve done it twice already. So from a
practical standpoint trying to come up with
a complete handbook as well as a complete
set of proposed rules that you don’t yet
know whether they are actually going to be
adopted in this form, it seems like putting
the cart before the horse at that point. So
there’s every intention, I believe, at some
point for the committee to get into the
meeting of the handbook and a working
handbook. I’ve already prepared a clean
copy and a redline based on the proposal
that we have now that we actually had an
opportunity to look at, but we just don’t
have it for you now. That’s in the works.

MR. HERNANDEZ:

You know, I haven’t even really sat down
and discussed this, but I can tell you two
things that are going to interest me. One
is the public comments; hopefully, they will
be used in the House, because, you know, I
can’t go -- you know, all I know having
talking to members whom I represented
throughout the state not just in Lafayette,
also I have an efficiency of lawyers in
Lafayette who look upon the House and the
15th JDC and those who represent this area

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and say, “John, what are the proposed changes?” The biggest concern for me is if we’re going to go through each rule in the House, words like permissible, we could debate this. I don’t have the knowledge that this committee who’s put all the work and has done splendor job of performing what is a miraculous document. You have 144 members of the House who dedicate themselves to where we are, where we’re going to be and the exact purpose of where we’re going. The big question I have is, as often comes up, some of these rules are very easy, very explainable, they’re not controversial. Some will be. Like this is a very controversial piece of legislation that the House is going to discuss. I have been in that house for six years. The simple question is, is this -- do we adopt all the rules, or we adopt none of the rules, or we adopt several of the rules that we like, you know, that’s the issue because some of these rules that are very controversial, I can assure you, you’re going to have a lot of debate. Whether or not that can all be
discussed, you know, in one afternoon at the
House, I don’t know, but I think from an
aspect of the questions that I will be
asked, it’s simply is all or nothing or are
some of these rules negotiable because I
know the members of the committee will be
there as well as those pushing this in both
the Congress and the citizens who may have a
different plight as far as what should be
implemented regarding these rules. That’s
the procedural question I ask; is it all or
nothing or is it negotiable?

MR. LEMMLER:

Well, I think to answer your question,
there is rules of debate that was actually
adopted by the House, I think it was last
week, in the anticipation of this. It was
pretty much echoed what was used for the
Ethics 2000 revision, and then I think -- I
believe it’s an all or nothing so the House
can vote it up or vote it down as a package
as opposed to debating each individual item.
I could be mistaken, but I think that’s what
the rules say.

MR. KING:

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Bill King. It is an all or nothing thing, but there is a chance as I understand it, to amend certain provisions of it with a resolution 15 or 30 days ahead of time. So if you don’t agree with a certain aspect of these rules as they come out of the Louisiana State Bar Association and the Supreme Court Committee, you have a chance to amend it, I think, at the House. That’s how it’s agreed to work it through, Ethics 2000, correct?

MR. PLATTSMIER:
Yes.

MR. BROUSSARD:
Once it gets through the House, there will be the recommendation to the Supreme Court and of the committee?

MR. LEMMLER:
That’s my understanding. That the Court often would do whatever the Court wants to do, but this is the recommendation from the Bar with respect to the House.

MR. GAY:
I wanted to respond to John’s first question. I believe I heard yesterday from
you all that the intent is to transcribe these public hearings and to put them in full, the transcripts, on the Louisiana State Bar Association website.

MR. LEMMLER:

That’s correct. The transcripts -- we’re intending to put the full transcripts from each one of the hearings on the website. Right now, just to make a general announcement, if you don’t know, all of these rules are on the Louisiana State Bar Association website right now. There is a public comment form online where anyone can log in. You do not have to be a lawyer. You do not have to be a member of this Bar to log in and register your comments. We’re taking them. We’re getting comments everyday. We’re intending to also publish those comments on the same website. So you should be able to read online what everyone else is saying. So we’re trying to make this as open and transparent of a process as we can given the time limitations that Chuck already referred to. So that information is there. If it’s not yet, it will be. Any
other comments with respect to 7.1? We have a lot of rules to go through. These are all great comments, but I’m going to push ahead if no one has anything else to say with respect to this. 7.2. 7.2 is a huge -- yes, sir?

MR. GOFORTH:
Before you go on, I did not see the --

MR. LEMMLER:
I’m sorry, can I ask you --

MR. GOFORTH:
Bill Goforth, I'm from Lafayette.

MR. LEMMLER:
Thank you.

MR. GORFORTH:
I read these rules. It seems to me that there’s a big hole in that area. I don't know if you've covered that, but we have national advertising by national law firms soliciting our citizens here in Louisiana. What is to prevent the same type of -- let’s say siphoning off of a client based here in Louisiana to people advertising on a national basis who are outside the state that is soliciting our citizens? And, what
effect is that going to have if any?

MR. LEMMLER:

Anyone from the committee want to comment on that?

MR. GREGORIO:

It's my understanding of the committee is that each (inaudible) from advertising (inaudible) is not intended to broadcast. It is intended to be here.

MR. GOFORTH:

But a lawyer outside this state is not subject to state laws.

MR. GREGORIO:

Where?

MR. GOFORTH:

In Texas. I mean, what do we have here to prevent this kind of thing or is this something not considered?

MR. GREGORIO:

You're talking about a Texas lawyer trying to advertise in Texas?

MR. GORFORTH:

I’m talking about a New Jersey lawyer advertising for -- in Louisiana on television and soliciting our citizens --
let’s say for class actions, okay, and so that those people signing a lawyer outside the jurisdiction of the State Bar is like being in Texas, to prevent this kind of thing. What actions are we’re going to take if anything?

MR. PLATTSMIER:

Chuck Plattsmier. Under the Supreme Court jurisdictional rules which is contained in Rule 19, Section 6. As well as any lawyer not admitted in this state who practices law or renders or offers to render any legal services in this state is subject to the disciplinary actions of the Court. I think that language would extend to any lawyer.

MR. GAY:

I think that the rules are meant to apply to out of state lawyers who advertise in Louisiana, but I understood your comment, and I think it may -- sends a confusing signal, we should look at it.

MR. GORFORTH:

I don’t know. It’s like a --

MR. LEMMLER:

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Excuse me, sir, could you speak up a little more.

MR. GORFORTH:

Actually, that's the only real problem I see here.

MR. BURGESS:

I just want to briefly comment on that. It would seem to me the only way to monitor that would have to be someone has seen the commercial from an out of state lawyer, and obviously they’re not --

MR. PLATTSMIER:

As a practical matter, that’s where we are today. We don’t get -- we don’t take disciplinary action of a violation of advertising rules unless someone brings it to our attention, or I stay up late at night and catch it myself.

MR. LEMMLER:

I don’t know that I have an answer --

MR. BURGESS:

If they intend to broadcast in Lake Charles and Lafayette on one of the channels they should submit that to the State Bar like everyone else.
MR. LEMMLER:

Well, I’ll get to those questions in just a second. There is a little known provision in the Revised Statute. Revised State 37:212 and 213 of the legislature for the practice of law. 213 actually makes -- advertising as a lawyer in the state if you’re not licensed here, and whether or not that’s possibly enforced by the criminal authorities.

MR. BURGESS:

I’m just asking, I would suggest that someone look into possibly local commercials, maybe consider some type of --

MR. DURIO:

I don’t know about what Chuck said, and your comment, but I’m wondering whether it really is to see if the Office of the Supreme Court to try to prosecute people who are not licensed under the provision you read for -- it’s never -- to my knowledge, the intent to the Office of the Supreme Court to prosecute people who are not licensed as lawyers

MR. PLATTSMIER:

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We have jurisdiction, and we have investigated and taken disciplinary action against out of state lawyers who are here on co hoc vitae who applied for and obtained permission on co hoc vitae while here. The real concern we need to have on the out of state lawyer who may be here in a transactional capacity, perhaps it would apply it would apply to co hoc vitae, application, and engage in a misbehavior here. If he doesn't have a license or a recognition grant, what can I do to effect their behavior other than investigate, perhaps prosecute by the Supreme Court and ask them to perhaps impose the discipline for misbehavior. If they're here violating our rules -- most states have a Rule of Professional Conduct, it's against our rules and jurisdiction, and you get a mixed sort of result in other states enforcing disciplinary action against one of their own.

MR. LEMMLER:

I'm sorry. I think this lady was ahead of you.
MS. BILLEAUD:

Well, I just think that that sort of answers my question because I’m thinking jurisdiction so that answers my question.

MR. GOFORTH:

I’m also concerned about --

COURT REPORTER:

I can not hear him.

MR. LEMMLER:

Sir, can you speak up? She can't hear you.

COURT REPORTER:

If you could stand, I can maybe hear you.

MR. GOFORTH:

Several years ago there was an organization (inaudible), and you can have a lawyer outside of the state not subject to jurisdiction (inaudible) that’s a concern of mine much of the same as the national advertising that we see today. Just because it’s a non-lawyer and people inside the state and people inside the state and that’s concern of mine.

MR. LEMMLER:

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That’s a good concern. It’s a good comment, sir. I think we may be getting a little afield from the text of the rules themselves. That is another issue, and we can go on probably in another public hearing about it, and I’ll take another comment from you at the end if you want to make a general statement, but we’ve really got to plow through the text of the rules, and unless it’s a direct comment to the text, we could just go forward.

MR. BROUSSARD:

That’s the reason I came -- it’s a good comment.

MR. LEMMLER:

No, it’s a great comment. I just -- we’re really just trying to the comments about the rules right now. The proposed rules, and if that’s a hole in the rule, fine, we’ve got it. Where are we? 7.2, Required information. And basically all written communications in advertisements, 7.2 says you’re going to be required to put the name of the lawyer responsible for the content of the communication as well as the
location of the practice. A bonafide office location of a lawyer or lawyers who will actually perform the services advertised. Any comment on that?

7.2(b) Prohibited statements and information. Basically, we just summarized this. Your statements about legal services, and this reflects pretty much what we have right now in our existing Rule 7.1. It cannot contain a false, misleading, deceptive, or unfair communication about the lawyer, the lawyer services, or the law firm services. I’ll note for you that Florida has just amended the rule and taken out the word "unfair." They are basically coming more in line with what the ABA uses as it’s normal phrase of false, misleading, and deceptive, which is what our rule says right now. I’m sure that’s something the committee will be looking at.

Prohibited statements about legal services. Examples of prohibited statements. Communication violates this rule if it contains a material misrepresentation of fact or law or omits a
fact necessary to make the statement considered as a whole, not materially misleading. Florida, as a note, just removed their last clause of that omits a fact necessary. So, again, something we may be looking at, but that’s in our proposal right now. Contains any reference to past successes or results obtained or is otherwise likely to create an unjustified expectation about results the lawyer can achieve. Effectively, that’s in our rule right now. Contains any reference --

MR. BROUSSARD:

I have a comment. If you use someone that has a severe headache, horrible headache, can’t think straight, and they need a neurosurgeon, you need one right now, you need a good one, how do you pick a neurosurgeon? You don’t know a doctor. You look for information. People go through the same process when they try to pick a lawyer. You look in the phone directory, or you watch television, you’ll see that almost all the lawyer advertising is a personal injury. So who are you talking about? People that
are disabled, bill collectors, their boss
is mad at them they’re not at work, they
have kids who they have to feed, and their
focus right now is quick as possible, get a
good lawyer. Where do they get information
about a good lawyer? A good lawyer who
doesn't practice personal injury work, and
say, you know, who are the best lawyers that
handle this kind of case, and that guy, he
knows something about that. Says, “Well,
Frank Neunor got a judgment on a very
difficult case; he got five million
dollars.” How does that lawyer give his
friend a good lawyer’s advice? He thinks
about what he knows about people. So the
lawyer takes his recommendation, the fact
that he knows that they’ve gotten these big
judgments in exactly this kind of case,
handling exactly this kind of case or in
Court. So the lawyer makes his
recommendation. You don't want to send them
to someone who has walked out of school
yesterday or someone who has been
advertising for thirty years and has never
been to a courthouse. So how, considering
the requirements of Florida, how does this meet the test to certain interests of our profession? How does saying that someone who actually got a judgment can not advertise that judgment? I’m telling you that I’m very much against being able to advertise settlements because settlement money is very deceptive. A guy settles a case for a million dollars and it’s worth two million dollars, that doesn’t tell you a thing about -- but the guy got ten judgments in exactly the kind of case that you're handling for him. Doesn’t that tell you something important about these brought cases to handle your case? So my comment as for this one is, you should prohibit advertisement of settlements. You should prohibit any advertisement that gives unjust expectations. Not what you can get on your particular case, but you should permit advertising that accurately reflects an actual experience with the lawyer because advertising is a legitimate way for people to get valid information.

MR. LEMMLER:

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Okay. Thank you. Yes, ma’am.

MS. BILLEAUD:

Susan Billeaud. How do you prohibit absolutely true statements just because, you know, someone may be misled, why do people focus on what is actually misleading, and I think that may would cover what Richard was saying. Perhaps we just change the “or” to “and,” and say past successes “and” is likely unjustified expectation. That way if someone does hash out a twist an otherwise true statement to become a misleading statement, but past result, a straight forward manner that’s absolutely true. So again I don’t want to outlaw or ban people from communicating accurate information.

MR. LEMMLER:

Thank you. Yes, sir.

MR. HERNANDEZ:

Advertising is at times, it projects an unjustifiable expectation. You know, in the context of advertising of true advertising and this is nothing to do with legal advertising; you see it all the time on TV. That’s this. That’s that. Number one
gumbo, number one etouffee, it’s our
culture. The expectation is that that this
restaurant is better than the other one.
Some restaurants advertise. Some
restaurants don’t need to advertise. Same
thing with lawyers, some may advertise, some
may not need to advertise. Material
misleading -- and I agree with Richard. The
information that is subject to a client or a
potential client to determine who is the
lawyer for that individual, I think it’s
certainly incumbent upon that individual;
it’s different to every individual. An
individual that is looking for a business
lawyer versus an individual that is looking
for a personal injury lawyer, and I can tell
you it’s such a fine line -- it’s such a
fine line as to what is, you know,
unjustifiable expectation of that lawyer,
that says, you know, ten million dollars in
settlements in 2005 versus the lawyer that
says ten million dollar judgment, you know,
for the cases ten years old. That’s -- you
know, when we discuss lawyers in the House,
it’s to put the personal of what I think of
advertisement is misleading by nature often to confuse the consumer in buying the product. That is nothing that the legal profession never wants to get into, that we are selling “a product that we’re selling somebody along the line gumbo,” a lot of people feel that are there, that we’ve cross the line, and that the only way we can legislate proper advertising is to document the meeting today. I think the majority of lawyers -- I think the majority of the lawyers I know, I speaking as of myself, are like that, but I think it’s a very delicate process, and I think it would come to -- with my conception of advertising is, it makes it more difficult because you look at material misleading, words such as that, unjustifiable expectation, and it’s at the core of what I think advertising provokes. It may not be, but certainly in the consumer fashion.

MR. LEMMLER:

Thank you, sir. Yes, ma’am, you’re first.

MS. SIAS:

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Jocelin Sias, I’m a lawyer in Lafayette. I am one of those new lawyers, and I am concerned about the attorneys who are advertising the amount of settlements. I feel like if they have qualifications to settle that kind of case, but I have people who are coming in for representation, they have relative minor injuries, and that because of that fact they are injured, they are going to get this huge settlement, and I think a lot of it -- not of all it is due to the advertisement that those people are talking about that they get hundreds of thousand dollar settlements, and they look fine; they look like nothing is wrong with them, but the person who is watching it, doesn’t know that there’s a problem with their vehicle that hit them, or they had surgery to get that amount of settlement so I do believe that type of advertisement is misleading, and I’m real concerned about that.

MR. LEMMLER:

Thank you. Yes, sir.

MR. GOFORTH:

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I think that is an extremely valid point. I did this and that and I need this result, and that might be the most important thing for a client.

MR. LEMMLER:

I’m going to point out one distinction with what you just said. I think this prohibits you from saying public communication or advertisement. The rules specifically permit you to tell prospective clients upon request. That sort of information.

MR. GOFORTH:

(Inaudible).

MR. LEMMLER:

There’s a specific rule that deals with that. Anyone else? Yes, sir.

MR. BURGESS:

I’m sorry to keep commenting on these rules. When you look at these rules, this is probably (inaudible). Other states have specializations; we do not have that now. It would appear to be the content of this rule and all the rules is to say, “Look, you can’t mislead anyone about your abilities.
You can’t act like you can try a case if you can’t. You’re going to act like you’re going to handle the case” and you can not. In my opinion, it punishes those that are doing the right thing. If we keep the case and we try the case and we present the case and we get a good judgment, why can’t someone say, “Look, I’ve done it. I’ve gone through court. I have done it.” Because without that, I have looked down at folks that can’t do it or won’t do it, and because we don’t have specializations, quite frankly, this may be the only way to communicate your abilities to someone before they already hired a lawyer, and by the time they’re to your office, it’s too late. They made their judgment on who it will be off the advertisement. By the time they are in somebody else’s office, it’s too late; they made their judgment on who may be a quality lawyer off the advertisement, and I don’t think -- but a lot of times, I would say if somebody is working harder than you and playing by the rules and they received judgments, they ought to be able to say, “I
received these verdicts”; they ought to be able to say that they reach their success, not to be looking down at those who aren’t going to do the work. I really believe that. We all say that this is to prevent misleading, which is fine, we shouldn’t have that, but there ought to be a way that someone should be able to legitimately talk about their successes to the public before they make the choice to go to someone else’s office. I honestly believe it punishes those for all these years of having talked about, “I received this, this dollar settlement” -- you ought to be able to say a factually true statement that they are successful.

MR. LEMMLER:

One remark with respect to what you just said about specialization. Further down, there is a rule. There is a provision that actually provides several different types of specialization. I think that’s what we have right now.

MR. BURGESS:

We don’t have that now.
MR. LEMMLER:

This proposal will allow that. Yes, ma’am.

MS. BILLEAUD:

I think what Clay said is absolutely true. I would actually take it one step further. I think that advertising is a very important source of consumer education. I think that if lawyers are able to say in their advertisement that something is a standard of a person, I think that would prompt clients to ask a question like that. So if you’re saying, you know, I have this many cases that went to Jury Trial, Clay’s saying it, I’m saying it, everybody is saying, then naturally a client would think that is an important aspect. I think that you know, you don’t want to cut off a very important part.

UNIDENTIFIED PERSON:

I have a question.

MR. LEMMLER:

I’m sorry.

MR. GORFORTH:

(Inaudible).
MR. LEMMLER:

Let me clarify. Maybe I can. The Board of Specialization does not recognize that as a per say specialization. Although, they plan of legal specialization that they use, currently allows you to state truthfully that you have some sort of other certification with the certified agency that permits you to claim that certification, but it’s not a sanction specialization under the plan of specialization.

UNIDENTIFIED PERSON:

I hate to get off the subject here, but does the State Bar -- does the Supreme Court -- the word specialization approve certain certification --

MR. LEMMLER:

The claim of legal specialization section 6.2 that’s actually cited in the proposal basically permits that. As long as you’re very clear with the certifying agency and stating that is not certified by the Louisiana Bar of Legal Specialization.

MR. GAY:

Phelps Gay. The rules provide that you
can advertise once that certifying is approved by the Louisiana Bar of Legal Specialization, and today, I don’t think civil trial advocacy under the National Bar Trial Agency has been approved even though there is a U.S. Supreme Court decision. I think that’s the answer to your question. Right now, it hasn’t been approved by the Louisiana Bar of Legal Specialization. I just want to make one comment about the past successes and the money question. This kind of goes back to the beginning of what I had said. This is not new or radical, and it’s in the ABA comments, and the rational and you make a very compelling case on the consumer side, one, if you advertise a particular sum, in other words, if it’s a judgment or a sum, it is because it’s only related to the particular facts of that case, and the person who is receiving this advertisement doesn’t know that. And as you say, it may be a good result or it may be a poor result, but it doesn’t -- it’s apparently misleading as it leads to the belief you did it in that case, but Richard
Broussard is going to get you five million dollars in the next case and so of many jurisdictions have taken review altogether.

MR. BROUSSARD:

I deem it as a problem with what I’m proposing, but I think it’s better that it’s the same way that you make a recommendation. If you’ve got an attorney -- someone calls you up from Illinois and says, “I’ve got a case down in Houma for a guy that got hurt on a boat, who do I send them to?” Well, I can tell Mike St. Martin because he’s got many, many big judgments down there. I mean, because you know that that person had actually obtained judgments in that line of work.

MR. DURIO:

Buzz Durio, Lafayette. Has Florida had any experience under that subsection? And what’s the litigating experience? Has it been 11 years?

MR. PLATTSMIER:

Chuck Plattsmier. My understanding is that Florida has had this rule that you have to turn the advertising into them in advance.
or at least a part of it, and so they have a mechanism that sort of stuff, for the attorneys, and most of the experience that Florida want to comply --

MR. DURIO:

Well, I guess that’s the chilling effect of it. I understand that. Let me use somebody else’s name, Sam Gregorio who has challenged that successfully --

MR. LEMMLER:

These are the rules. These are Florida’s rules. I don’t know the answer. These particular courses were not taken out of the advisory to my remembrance. I just looked at them a couple of days of ago. I don’t think these particular aspects were remote. Yes, sir, in the back.

MR. BROUSSARD:

Zack Broussard. Is there anything in place now with the attorney where there’s any way we can work with State Bar to make sure we are in compliance with them?

MR. LEMMLER:

In a matter of speaking, right now, the Bar, which is what my function is primarily,
which is the Ethics Advisory Service. We provide non-binding informal occasions to members of the Bar, with respect to them, respected conduct, which includes advertising. A lawyer can submit a proposed advertisement to us, and we’ll give them an unbinding opinion on whatever it is they proposed to run so this is -- we aren’t doing that, but we do work with the lawyers rather than with the advertisement agency.

MR. GREGORIO:

Just a couple of comments. If a settlement is mishandled and a thirty million dollar case is settled for one million dollar, what’s the difference between a case that went to the Court that’s a thirty million dollars case being mishandled and getting a judgment for one million dollars? My other concern would be the comment about consumers in sorting it all out. All I can tell you is my personal experience is that often times when we see someone has an advertisement, run of the mill, and I’m saying it that way because I’m not putting out advertisement for myself, my
impression, my experience is this, they’re settling those cases, never looked at the file, has information in the file that has not been acted on, and their office didn’t even know what’s in the file and the public is being hurt. The other observation from that experience is that, that there’s no lawyer or paralegal, someone who runs up to the house who signs up a contract, there’s no lawyer in the file. The only conclusion that I come to this case comes to Shreveport area handled out of New Orleans, and the client thinks that the lawyer is in Shreveport, but they can not reach the lawyer. I think these problems are real, and I think that’s important for these rules, but these are real problems that we are experiencing in our state. I personally think I have had multiple cases and complained about these types of advertisements where people say, “I’ll get my money.” There are severe complaints for allowing that type of advertising for the public. I think those are real problems. So that’s my experience.

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MR. LEMMLER:

Ms. Billeaud.

MS. BILLEAUD:

I understand those concerns. I don’t disagree with them. My concern, though, is penalizing lawyers who report truthfully their actual results. Maybe there are some other disciplinary actions to take care of those.

MR. BROUSSARD:

Sam, I agree with almost everything you said about your input and with your experience and all that. I’ve tried “X” number of cases and got “X” number of results and settled “X” number of cases because what they’re looking for is someone who has successfully handled, the courtroom experience, to represent themselves.

MR. GREGORIO:

(Inaudible).

MR. BROUSSARD:

Let’s say that you were the trial lawyer who made the opening statement and the closing argument and you got the judgment --
Let me just say this folks, we’ve got ten rules to go through, and we’ve been through one and a half, thus far. All of your comments are excellent. Maybe with the comments that get to be more point, counterpoint. If you want to save that to the end or you want to put that in writing to us, we’re happy to get them, but I really think we need to kind of push forward and get to the heart of these rules and focus on each point that -- yes, sir.

MR. ALLEN:

Aaron Allen from Lafayette. Mr. Plattsmier, I’m wondering how many complaints are you getting from the citizens of people who are misled by advertising?

MR. PLATTSMIER:

I’m going to try to answer your question as accurately as possible. Our precedence is that the rules has currently (inaudible) In the last ten and a half years, with the disciplinary counsel, we have seen a fair measure of complaints that have come in.

MR. LEMMLER:

Let’s try to get to the comments on some
more of the rules. Let’s just go forward.
Examples of prohibited statements about
legal services. Compares the lawyer’s
services with other lawyers’ services,
unless the comparison can be factually
substantiated. That’s in our rule right
now. Contains a testimonial. Yes, ma’am.

MS. BILLEAUD:

I believe that if I would submit to you,
actually, I’m a young lawyer, but I do have
some clients that I am not misleading.
Perhaps it would be better to allow me to
submit those testimonials to the committee
to verify the authenticity. Not all my
clients would prefer not to be named because
they are employed -- but, again, verify the
authenticity of those statements and make
sure that they’re not misleading, but to
completely ban -- again, include
information, accurate information that helps
differentiate accurate my services from
someone else, I think is --

MR. LEMMLER:

That’s a good point. I’m just a
messenger. I’m not here to debate the rules

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so that’s a good comment, but I’m not going
to come back with, “Well, no, we’re going to
need that,” so anyone else wants to comment
on the part about testimonials?

Includes a portrayal of a client by a
non-client or the reenactment of any events
or scenes or pictures that are not actual
authentic. 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 the lawyers are
associated in a law firm if that is not the
case. Again, that is all based on the false
deceptive or misleading, which is our basic
rule now, and the basic rule here.

Depicts the use of a courtroom.
Resembles a legal pleading, notice,
contract, or other document, already in our
rules now. Utilizes a nickname, moniker,
motto, trade name that states or implies an
ability to obtain results in a matter. Note
that distinction, the one would that would
imply the ability to obtain results not necessarily every nickname, but one that would imply ability to obtain results.

Fails to comply with Rule 1.8(e)(4)(iii), the new Court’s rule about advertising in advance to getting clients if you can supply financial assistance or provide costly expenses up front, things of that nature. That’s in our rule right now.

7.2(b)(2) -- you’ve got a question. I saw a movement so I was trying to react.

MR. DURIO:

Buzz Durio, before you get off that list, the act of portrayals, “G.” Why aren’t you to speak to judges and lawyers? I’m thinking of money portrayals, insurance adjusters, that are probably misleading.

MR. LEMMLER:

I don’t know that it’s restricted to that. I think it says “includes the portrayal of a judge.” I think if it’s potentially something else, it would be false, deceptive, or misleading, but this is something that is clearly indicated under the rules as prohibited.
7.2(b)(2), any factual statement contained in any advertisement or written communication or any information furnished to a prospective client under this Rule shall not, again, be directly or impliedly false or misleading; be potentially false or misleading; fail to disclose material information; be unsubstantiated in face, or unfair or deceptive. And I will note to you that Florida has just struck this entire provision from its newest rules so you may not see this at some point in the future.

MR. BURGESS:
That is anything like the rule before to analyze by this -- strike it, too.

MR. LEMMLER:
Moving forward.

MR. DURIO:
I have a question.

MR. LEMMLER:
Yes, sir.

MR. DURIO:
Can you go back one more? 7.2(b)(2), why would any lawyer want to advertise or why would any committee allow a lawyer to
advertise in a way to concluded it -- or what public purpose would it serve to go out and virtually to conclude false, misleading, potentially false, misleading, or deceptive?

MR. LEMMLER:

We’re not trying to debate here. I think that the reason that they may have struck this particular revision is that it’s fairly subjective. There are other committees that do say false, deceptive, or misleading very clear, but I think this is impliedly correctly, words of that nature. I have no reason -- I don’t know exactly why they did it; I’m just speculating that because there are other places in the rules that do still prohibit false, deceptive, misleading forms of communications.

MR. BURGESS:

When it says indirectly, it almost implies that you can’t do factual statements, directly, indirectly.

MR. LEMMLER:

That’s noted. Moving forward again. 7.2(b)(3), Descriptive Statements. A lawyer shall not make statements describing or
characterizing the quality of the lawyer’s services in advertisements and 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 if people ask you, you can tell them. If they are your clients, you can give them this information. Yes, sir.

MR. BROUSSARD:
This lawyer’s services complies with the highest standard of ethical conduct would be prohibited by this rule.

MR. LEMMLER:
Supposedly it would.

MR. BROUSSARD:
So what public interest would a lawyer saying, “I’m not one of these shoddy lawyers who’s going to try to get you a good settlement.”

MR. LEMMLER:
Without trying to debate with you, simply, who determines that? Who makes the determination whether that lawyer is
complying with the highest ethical standards other than the Supreme Court, and that’s typically done in a disciplinary proceeding so who can say, “I do or I don’t.”

MR. BROUSSARD:
But it does help a consumer who is concerned about that issue.

MR. LEMMLER:
But is there truthfulness to that, I suppose.

MR. BROUSSARD:
It doesn’t have to be true. Then how would the advertisement in 30 years of practice, I’ve never been examined by Mr. Plattsmier or prosecuted by his office. That wouldn’t work there either. What I’m saying is true descriptive statement, doesn’t this prohibit untrue descriptive or misleading statement. If it is absolutely true, descriptive statement or go into --

MR. PLATTSMIER:
But there is a distinction between when you’re an absolutely true information.

MR. BROUSSARD:
What’s that?
MR. PLATTSMIER:

I have been a lawyer for 30 years, and it’s an absolutely true statement, and there’s nothing -- there’s nothing in this room that says, “I’ve been a lawyer for 30 years, and I’m never been subject to discipline.” This says you can’t make statements describing when you’re characterizing a law firm of your service. “I am the single most ethical lawyer on the planet. Hire me, I’m Richard Broussard,” it’s probably something that we would say that you can’t say.

MR. HERNANDEZ:

A lawyer with the highest quality of excellence by the way you practice law. I mean, if that’s what you believe, you know, it’s hard to say and to qualify because you’re not saying anybody but you believes that statement. That’s not misleading.

MR. BURGESS:

I think it’s very, very wrong. It seems to me you can say, “I’m going to use my best efforts. I’ll have two lawyers working on the case. If necessary, I’ll have three.
I’ll work after hours if necessary.
Arguably, that is a descriptive statement on
the quality of my services. It appears to
be very broad, very, very broad.

MR. LEMMLER:

7.2(b)(4), Prohibited Visual and Verbal Portrayals. Visual or verbal descriptions,
depictions, or portrayals of persons,
things, or events shall not be deceptive,
manipulative. Again,
building on that false, deceptive, or
misleading basic under the rule.

7.2(b)(5), Advertising Areas of Practice. A lawyer or law firm shall not
state or imply in advertisements or
communications if the lawyer or law firm
currently practices in an area of practice
when that is not the case. Again, something
that would be false, deceptive, or
misleading. You don’t do personal injury
work, you shouldn’t be saying you do
personal injury. Yes, ma’am.

MS. BILLEAUD:

At what point can we then say we do --
we get a personal injury? And this, again,
considering a new lawyer, just starting out, you know, if you’re planning to or you’re otherwise competent to practice in an area and you’re interested in getting more cases in that area, could you not advertise your interest in entering that area?

   MR. LEMMLER:

   I think this was discussed in the committee at some length. I think the decision or I recall some of the comments were essentially that as long as you state truthfully that you are intending to practice in the area of personal injury or now practicing in the area of personal injury, you’re misleading someone saying, “I have 35 years of experience to personal injury cases,” when you just got out of law school. I think there’s a distinction --

   MS. BILLEAUD:

   I think that comes by experience stuff that makes me not -- but, yes, okay, so if you have one personal injury case, you can say I --

   MR. LEMMLER:
Again, whatever is not false, deceptive, or misleading, and the statement is true, then I think you would be safe. Mr. Broussard.

MR. BROUSSARD:

I knew that I had a conflict at 6:30 so I did my written -- I’d like to give you --

MR. LEMMLER:

Thank you.

MR. BROUSSARD:

And I’m going to leave a few extra copies here, and I appreciate the opportunity.

MR. LEMMLER:

Thank you. I guess I’ll give it to the court reporter, and she can attach it as an attachment to the record.

MR. BROUSSARD:

Probably the first comment here, probably would be of interest to you, and that I’m very much impressed with the work of the committee, and generally favor what the committee has done, but I do have some very specific comments about the changes that I think are important.
MR. LEMMLER:

Thank you, sir. Let’s try to move forward again. 7.2(b)(6), Stating or Implying Louisiana State Bar Association Approval. Does anyone have any comments with respect to that? You can not state that you have a Bar Association approval, any particular act; there’s no seal of approval on any of these things. You’re getting under the provision of the rules, and advisory opinion with respect to the advertisement but not approval per say.

7.2(c), General Regulations Governing Content of Advertisements. And this goes through the various list, Use of Illustrations, Fields of Practices, and so forth. 7.2(c), Use of Illustrations. Illustrations, including photographs, used in advertisements shall contain no features that are likely deceive, mislead, or confuse the viewer. Again, it goes off of deception or misleading. A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. And this is getting to the comment that was made
earlier about certification. Lawyers shall not state or imply that the lawyer is certify, board certified, an expert, or a specialist, and I note that Florida has just added the word, “expert,” to their rules. This is part of proposal. It’s part of our rule right now. We were actually ahead of them on this so they just added that into their rule. Except as follows: Lawyers certified by the Louisiana Board of Legal Specialization, essentially, which they are now. Lawyers certified by organizations other than Louisiana Board of Legal Specialization or another State Bar and certification by another State Bar so there are three different sets of certification are all permissible under these rules in the fashion described.

MS. BILLEAUD:

I have a question on this. What is it between if you’re saying you’re a specialist and you’re saying specializing?

MR. LEMMLER:

No difference.

MS. BILLEAUD:

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So if you say, “I specialize in trade laws,” could I say, “I focus on them.” I mean, what --

MR. LEMMLER:

Our opinion is has been thus far with the advisory service, and I don’t know -- Chuck’s view of that with ODC. I assume it’s pretty much the same, that if you’re going to use the words “specifying,” or any durative of those words saying that you’re an expert, or expertise, or you’re a specialist, or you specialize that, those things are prohibited. If you want to say you focus on an area, you concentrate on an area, this is the type of law you’re currently practicing, I think all that’s permissible because it’s true.

Moving forward. 7.2(c), Advertising lawyers must disclose whether the client would be liable for costs and/or other expenses in the addition to the fee will provide information about fees. You have to do that now.

MR. DURIO:

My question is, can you actually tell
the client that he’s not liable for costs?

MR. LEMMLER:
Yes, you can. You have to be clear one way or the other. If they want to be responsible, you tell them. You should tell them that. The distinction of because under the rule, you can’t advertise, an advancement to the client, that they will not be responsible --

MR. DURIO:
Under this proposal, you would be able to advertise that the client will not be liable --

MR. LEMMLER:
No, sir. No, sir. The previous provision, we cited 1.8(e)(3)(k), I believe, was the number. That’s in our rules right now as part of the financial assistance where you can not advertise that in advance you will be waiving costs and expectance and so forth.

MR. DURIO:
Well, shouldn’t it say that in here?

MR. LEMMLER:
Well, it’s referenced higher up in the
rule. Any other comment on this? You must honor the fee quoted in the advertisement for a certain period of time. Again, already in our rules. Pay for the advertisements themselves. You can’t have someone else pay for your advertisement for this proposal. Disclose that the matter would be deferred to another lawyer if that is the case. Information presumed not to violate. These are what we calling the safe harbor provision. The newest amendment Florida has essentially flipped the order. Right now, the safe harbor -- you know, under this proposal, but under Florida’s new amendment, the safe harbor comes first.

MS. BILLEAUD:

Excuse me, did you skip one?

MR. LEMMLER:

Well, we’re not actually going through it word by word on some of these things. We’re going through the general topics. If there’s a particular passage you want to talk about, we certainly can.

MS. BILLEAUD:

It’s 7 --
MR. LEMMLER:

7.2, this is probably -- wait a minute. We went back. Safe harbor, 7.2(c)(12). It’s way in the back. There’s a long list of things that you are permitted to do that are assumed to be acceptable and permissible, but you do just these things. Is there a comment?

MS. BILLEAUD:

I just have a question. The last one, (J), “photograph of the head and shoulders of the lawyer or lawyers,” you can’t have full body?

MR. LEMMLER:

Well, you can now in Florida. They just amended that. So they’ve accepted that, that you can have a whole lawyer as opposed to a half of lawyer. So that’s been addressed already by Florida. I will suspect we will be looking at that with the committee as well. Florida has also expanded the list of illustrations that are acceptable in addition to the Lady Justice. We can have the Statute of Liberty, the American Eagle, and so on and so forth and a
number of other things. So some of these things may have already been addressed, but please, make your comment and make that part of the record.

All right, moving forward, Bill. These are just all the safe harbor provisions. We’re just going to skip forward unless some has a comment to this.

7.3, Advertisements in the Public Print Media. I’ll note for you now before I even get started with this that Florida has struck virtually all of this rule with the exception of saying this is also substantive to the requirements of Rule 7.2. They got rid of the disclosure statement, but under our proposal, you would make this part of 7.2, you would have to comply with the general provisions of 7.2 of not being falsely, deceptive or misleading, but you also have and contain a statement saying the hiring of the lawyers are an important decision that should not be based solely upon advertisements, but as the slide points out, you’re not required to put that where your add contains no illustrations or other
information other than what’s listed in the safe harbor section of 7.2, and you’re not required to put this in written communications that are sent in compliance with 7.4.

MR. DURIO:
Where do you see this?

MR. LEMMLER:
7.4, you’re required to put that as in advertisements so we will go forward with that?

MS. BILLEAUD:
I have a question.

MR. LEMMLER:
Yes, ma’am.

MS. BILLEAUD:
Is public print media defined anywhere?

MR. LEMMLER:
I’m sorry?

MS. BILLEAUD:
Is public print media defined anywhere?

MR. LEMMLER:
I don’t know that it is. So that’s a good comment. I don’t know that I know that there is a definition specifically defining
the public print media, other than 7.1. I think it mentions the permissible forms of advertising. Through the public print media included but not limited to print media, such as, telephone directory, legal directory, newspaper, or other periodicals so I suppose in some fashion it is defined. Moving forward, please.

7.4, Direct contact with prospective clients, broken down into two major categories, solicitation and written communication, essentially what we have right now. The notable changes in the proposal that we’ll be changing or recommending that the phrase, “prior professional relationship,” be changed to prior lawyer/client relationship, and then prior lawyer/client relationship, is further defined in a portion of 7.3(a) -- it proposed 7.4, excuse me, as something to exclude relationships in which the client was an unnamed member of a class action, a cast of thousands, someone you have never met before; you can not basically solicit that person in person claiming that that
person is part of the lawyer/client
relationship that are not even listed on the
pleadings. You never had that -- you’ve
never had any personal contact with that
person. Moving forward.

7.4, Written communications contains the
same prohibitions as 7.3(b), this is, I
think, talking about target of written
communications. Communication must abide by
7.2 indicating the required information as
stated about hiring -- but I’m getting lost
here so let’s move forward. Copy must be
filed with the LSBA provided by Rules 7.7.
We’ll get to that in a minute. No written
communications to someone unlikely to
exercise reasonable judgment in employing a
lawyer. If contacting a perspective client
about a specific occurrence, it must contain
the phrase that, “If you have already
retained a lawyer for this matter, please
disregard this letter. Stating that “the
lawyer will not handle the matter, if indeed
that is the case, and no revelation of the
underlying legal matter on the outside of
the envelope. This is to tell you something
about your serious personal injury case. Please open the envelope.” Nothing of that nature. Yes, ma’am.

MS. BILLEAUD:

I get a lot of information materials. They’re not necessarily -- they’re mainly newsletter that kind of thing.

MR. LEMMLER:

Newsletter are under a special section. We’ll get to that in a minute, but, again, you’re falling into false, deceptive, misleading category, but we’ll get to the newsletter in just a moment. I think, again, if it’s somebody you’re sending these to that you already have a past lawyer/client relationship with and I think you’re free to do so without complying with a lot of this stuff. This is part of the solicitation some of you never met before.

MS. BILLEAUD:

Some of these people I have a lawyer/client relationship with, some of them I’ve never met before. They may have got my email or business card or --

MR. LEMMLER:

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Perhaps your stationery.

MS. BILLEAUD:

Yes.

MR. LEMMLER:

Okay, moving forward. 7.5, Advertisements in the Electronic Media other than computer-accessed communications. And this would be basically TV and radio. In general, computer-based ads are subject to Rule 7.6. All of the ads in the electronic media included but not limited to television and radio are subject to the requirements of 7.2 not falsely, deceptive, or misleading.

Appearance on television or radio, the prohibited things. Television or radio advertisement shall not contain any feature that is deceptive, misleading, manipulative, or that is likely to confuse the viewer or listener. Any spokesperson’s voice or image that is recognizable to the public in the community where the advertisement appears. Lawyers who are not members of the advertising law firm speaking on behalf of the advertising lawyer or law firm or any background sound other than instrumental
music.

MR. BURGESS:

I have a comment. I’m sure the Rules are intended to prohibit this for the period, but would this prevent someone from hiring a voice to read their commercial, to read their radio ad, hire a local DJ to do run radio ad, you know, KLFY, you know, advertising at the football game. It seems to me the rules are intended to prevent a non-lawyer from acting like a lawyer, but, nonetheless, it seems to me that this would have a chilling effect on who the spokesman really is and to prevent local radio personalities from reading your advertisement on the radio; it would also prevent you from possibly also hiring a professional voice that sounds better, that’s clearer than you and routinely does commercials in a specific area just because he sounds better than you; the guy here in town is hired on as jockey does; he does ten commercials for different clients --

MR. LEMMLER:

Thank you. Perhaps, but section 2 does

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provide a permissible content, and one of those things I’ll skip ahead to, and it says that, “Television and radio advertisements may contain non-lawyer spokesperson speaking on behalf of the lawyer or law firm, as long as the spokesperson is not recognizable to the public and the community where the advertisement appears, and that spokesperson shall provide a spoken disclosure identifying the spokesperson and disclosing that the spokesperson who is not a lawyer.

MR. BURGESS:

That’s exactly what I was talking about. Maybe some local guy that does the motor sports on the local radio who “known to the public or the community,” for doing the radio advertisement unless he says, “And don’t forget I’m whatever DJ on the local radio station,” why does it specifically prohibit local radio personalities from reading your commercial on the air unless they go off on this disclaimer, “Remember, I’m such and such.” It’s a small town. All I can think of is the football games and the basketball games.
MR. LEMMLER:

I will note in respect to your comment that the amendments of Florida, the Florida Bar was recommending that that portion would be changed to allow some latitude and say that the spokesperson should only need to identify themself when it’s not apparent. The Florida Supreme Court actually said, “No, we’re not changing it. We think this is unequivocal. It’s very clear, that someone says their not lawyer, there’s no misunderstanding. I’m not trying to argue with you. I’m just giving you some background so that’s been upheld in Florida as we speak.

MR. GREGORIO:

Let me ask Clay, and maybe I can understand your comment. One of the purposes of this section is to prohibit Captain Kirk from coming down here and telling people that they ought to hire his law firm. As I understand your comment, you’re not opposed to prohibiting that type of --

MR. BURGESS:

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Not at all.

MR. GREGORIO:

Your concern is the local --

MR. BURGESS:

That’s right. Prevent us from hiring local talented persons to do these things.

MR. GREGORIO:

I just wanted to make sure I was clear, and the record was clear.

MS. BILLEAUD:

Just to expand on what Clay has said about a radio ad, it’s open up, obviously not a lawyer, obviously not me, talking about me, just my voice, identifying myself to make the DJ who’s introducing the whole thing, and say, “I’m not a lawyer spokesperson for Susan Billeaud, da, da, da, da, and here’s what I’ve got to say,” I mean, it’s so obvious that they’re not saying, “I’m a lawyer,” or any of those things.

MR. ALLEN:

I just want to make sure I’m reading this correctly. I’m going to jump a little bit off of this. I’m not interpreting this

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about the celebrity or local person, but it seems to me to be saying, the non-lawyer has to not be locally recognizable and just identify himself as a spokesperson. And a commercial you’ve got so many other things you’re having to say, and you don’t have time for all this stuff so I’m wondering if there is any consideration about how many of things you expect in here.

MR. HERNANDEZ:

It says that any feature that is deceptive, misleading, manipulative, or that is likely to confuse the viewer or the listener. Who designs that? The Committee? And what is the penalty? You know, a feature about an ad is very complex, you know, and some are very simple, but they can have the same effect. If the ad has to approved by this committee, you know, are they going -- you know, the rules are the rules that say this is, you know, how do you -- to me, that’s troublesome to me because I think --

MR. LEMMLER:

Well, that’s a good comment. Let me
jump ahead for a second. The review process is in place. I’ve alluded to this already, will provide advisory committees, basically binding on the committee’s part. Non-binding, essentially, that we don’t think that this is going to fit under the rules. Now, the lawyer is not constrained to follow that. I think it would be probably in the lawyer’s best interest to do so because under the provisions that you’ll see later, there’s a fining of non-compliance, that will be reported to the Disciplinary Counsel’s Office, and the lawyer can go forward. You’re not bound to us. Ultimately, the Supreme Court is going to determine whether that fits under the rules of whether there’s a problem under the rules, but the process is designed at least to give the lawyer some advance assistance with trying to interpret these rules and perhaps figure out whether it fits there or doesn’t fit there. You know, our advice now that we give people, is very conservative, but it’s design to say, “Look, if you do this, more than likely you’re not going to
have a problem.” We don’t really tell people to how to figure out how to push the envelope on the other end. So that’s -- we’re not going to decide, but we’re going to try to give you some help and some advice. So, ultimately, only the Supreme Court can only decide whether you’re following these rules and whether you complied with them or not. Moving forward.

There’s essentially two major ways you can do this. You can get the advisory opinion, you’re not required get the advisory opinion so I’m not going to really tell you what the law is. If you get the advisory and opinion and you try to get the advisory opinion, you need to do that at least 30 days before you run it. Under your scenario, it will probably work, but you’re not required to get the advisory opinion. If you feel confident that the ad is going to run the way it is, it's okay, you can do it.

MR. BURGESS:

That’s the whole point. I mean, who feels confident? Am I to turn myself
because I’m going to get in trouble?

MR. LEMMLER:
If you comply with safe harbor, then presumptively you would.

MS. BILLEAUD:
Susan Billeaud.

MR. LEMMLER:
Yes, ma’am.

MS. BILLEAUD:
The safe harbor provisions are basically your Martindale-Hubbell Directory; is it not?

MR. LEMMLER:
That’s part of -- yes, ma’am.

MS. BILLEAUD:
So I guess my question comes off of your last statement was, that is, I run an ad. You guys think it’s outside the rule. While my case is pending with the U.S. Supreme Court, am I prohibited from practicing law? I mean, am I disbarred at that point? My livelihood is hanging on this. Particularly when it comes to the current decisions or even prior decisions. I’m also concerned about some people who run television ads
invest thousand and thousand of dollars on these ads, and technically, they can run for years, and then suddenly, we’re having these meetings, and then two months from now they’re pulled. You know, those are the kinds of things I’m worried about.

MR. LEMMLER:

Those are good comments. I’ll try to get back to that or at least reference that again when I get to it. Let’s move forward, and we’ll actually get to the process in just a moment.

Other permissible content, television and radio advertisements may contain images otherwise conform to the requirements of these Rules; 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 and experience of the lawyer or law firm, or -- and we’ve already talked about this, a non-lawyer spokesperson.

7.6 deals Computer-Accessed
Communications, not TV or radio, essentially what I’ve talked about before, either internet presence or website or the other form, email, those are the two major categories. All of these are subject to listing your location requirements as indicated in 7.2. You have to put a bonafide office address or otherwise identify yourself.

7.9, and let’s take the substantive -- maybe the substance when we get into the procedural things, but we’ll review the process and the filing process. 7.9, information provided upon request. This rule was actually just struck from Florida’s rules, and “struck,” is perhaps a strong word. It was moot up into 7.2, I think, actually 7.1. It’s now been made just a general blanket exception. But if you’re providing information to clients upon request, they don’t even need a special rule; it just says you can do it. Again, as long as you comply with 7.2, and you’re not being false, deceptive, misleading, but this is what we have in the proposal right now,
and that clause has a lot of exceptions that allow you to send information to clients upon request. You can provide information deemed valuable to assist a potential client, again, as long as it not false, deceptive, and misleading. An engagement letter that any contingency fee contract, should have the word “sample,” or “do not sign,” on it. Again, designed not to mislead or confuse someone. May contain factually verifiable statements concerning past results. Must disclose intent to refer to another lawyer or law firm if that’s the case.

MR. BURGESS:

Assuming the information that are on judgments, pleadings, things like that, my understanding, would it be a violation on a website for you to say “Well, these are my past judgments.” But will it not be according to this rule for me to say, “If you want information about my past judgments, click here,” because they are requesting information, and I can then lead them to where that information is. Do you
follow what I’m saying? If we can’t talk about our judgments, can we tell them, “If you’re interested in that information, rather than have to call or fax you something, can you click here or fill out -- I mean, I’m interested in whatever.”

MR. LEMMLER:

I think this ducktails -- if you read very carefully what 7.6(b), an internet presence or website that you’re referring to, and 7.6(b)(3) says, “That each communication are considered to be information provided upon request, and, therefore, are otherwise governed by the requirements of Rule 7.9.” So you can do all what you say on your website.

MR. BURGESS:

Would it be permissible just to put on there “click here?”

MR. LEMMLER:

I don’t think that’s what it says.

MR. BURGESS:

I’m talking about, for example, past judgments --

MR. LEMMLER:

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I said you can put that --

MR. BURGESS:

Click on the website.

MR. LEMMLER:

Yes, sir.

MR. BURGESS:

But you couldn’t do it on television and radio?

MR. LEMMLER:

Yes, sir. I think one is a more accurate distinction. Moving forward, 7.10, Firm names and letterheads, substantially the same as the current Louisiana Rule 7.5. Florida is getting rid of 7.9 and has moved that 7.10 into 7.9 so that’s where it is.

Now, we’re getting into the aspects we’re going to talk about a little bit. You can get an advancement advisory opinion, or you can do a regular required filing. Again, advancement advisory opinion is optional. You have 30 days prior to filing or running your advertisement or your communication, and then there’s some exceptions to the filing requirements.

Under 7.7(b), which provides the

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advancement advisory opinion. Any comments there?

MR. BURGESS:

Has it ever been considered that this rule of the evaluation advertisements will filter out any of violating rules -- do you follow what I’m saying?

MR. LEMMLER:

I’m not sure what you’re saying.

MR. BURGESS:

In other words, has anyone considered an evaluation process of the system we currently have separate and apart from every one of the rules? In other words, could it be possible in our current rules, many of the advertisements could be violating the rules, has anyone considered saying, “Look, under our current rules, we’re going to adopt the evaluation process, start sending it in, and use the same evaluation process, just kind of filtering out those -- the complaint of following the rules we have? In other words, it seemed to me that could be waived, start filtering out, you know, those who have blatantly violated the rules
we should all agree on even if there was a
problem with the remainder of the rules,
fore example, what can be passed and what
couldn’t be passed. It would seem to me, a
package could be done; it would appear to
me, everyone should at least be in agreement
to a certain extent to begin an evaluation
process immediately to see those that are
currently violating the rules, and that
would be prevent this burdensome, “I’m in
DeRidder, Louisiana and I thought I saw a
print ad, and whatever I did in violated in
doing it, and if nothing else, I would at
least suggest these rules failed, that we
would consider doing evaluation process
immediately to start weeding out those who
are in clear violation already.

MR. LEMMLER:

That’s a good comment. Just to note, I
think right now, many of you may have
noticed that the advisory service does
provide advance advisory opinions. Anyone
can submit an advertisement and get an
advisory opinion on whether or not we
believe it fits under the current rules and
whether it’s in compliance or not.

MR. BURGESS:
If they were pre-submitted --

MR. LEMMLER:
Yes, sir. Unless it falls under one of the exemptions, which would be safe harbor.

MR. BURGESS:
I guess what I’m trying to get at, that would prevent -- that would focus to getting an advisory opinion ahead of time and eventually send them home, which could be screened --

MR. LEMMLER:
Yes.

MR. BURGESS:
I think that would be extremely helpful because if nothing else, if these rules fail, you know, they would start cleaning some of the up immediately.

MR. LEMMLER:
Good. Under 7.7(c), which is the regular filing we’re talking about. You basically have to submit a fee, which under the proposal, would be determine by the Supreme Court. A copy of advertisement, a
sample envelope, if it’s going to be contained in that envelope, a type written copy of a transcript. Yes, ma’am.

MS. BILLEAUD:

Susan Billeaud. As to the committee, I’m a little concerned about perception of discretion. Are there any guidelines that perhaps we can promulgate to find the nature that the fee would pay for?

MR. LEMMLER:

I can tell you right now that this fee in Florida is $150 for a regular filing and $250 for a late filing. In Texas, it’s $75, I think, for a regular filing, and $100 or $125 for a late filing.

MS. BILLEAUD:

Well, something else that I was concerned about, in Texas, for example, they say that the fee is to cover these expenses of the committee, and they’re very specific as to what those are. It’s not just a tax, and that’s just --

MR. LEMMLER:

I think that’s essentially what’s envisioned here as well. I don’t think this
is not a money making thing; it’s just to cover expenses. I’m purely speculative, again, but I suspect --

MS. BILLEAUD:
I’m sure it is.

MR. LEMMLER:
-- because it’s going to cover a staff and so forth.

MS. BILLEAUD:
I’m sure that’s the case, but I’m just stating the nature of the fee and what the fee would cover.

MR. LEMMLER:
I think the proposal reads out to the Court as to what would be best and you know -- these hearings are going to determine that. The other thing you’ll be required to tell us is the type of media, the frequency and the duration of the proposed advertisement, where you’re going to run it, how long are you going to run it, and so forth.

MS. BILLEAUD:
I have a quick question. Why is it necessary to say it’s going to run on this
radio frequency for 25 repeats per month for
the unknown future?

MR. LEMMLER:

Well, I don’t know the complete answer
to that. I think practically speaking,
probably, encompasses the need for a re-
file. If you say, “I’m going to be using
this ad for the next six months,” there’s no
need to re-file the same ad four months
later or five months later when the Bar
already knows you’re using it for six
months.

MS. BILLEAUD:

What if you don’t require a re-filing if
there’s no substantive change to the ad
content?

MR. LEMMLER:

There is no re-filing if you don’t
change the content.

MS. BILLEAUD:

So that’s why I’m wondering why you have
to talk about, you know, you’re going to use
it only on this station, and it’s going to
be only this thing and used for this period
of time, then why don’t you just say, it’s a
regular ad; you can use it anywhere on radio as much as you want and as long as you want?

MR. LEMMLER:

I don’t know. That’s a good point. I don’t know. Moving forward. Exemptions for the filing requirement, 7.8. If your ad contains only part of a safe harbor content that which is contained 7.2(c)(12), all those vanilla things, you do not have to file that with the Bar. A brief announcement identifying the lawyer as a sponsor for a charitable event provided no information is given with the name and location of the sponsoring law firm. I’ll note for you that in the newest amendments to Florida, they’ve expanded that to say basically the lawyer can provide any of the safe harbor content, not just the name of the lawyer and the location of the law firm so you can indicate some of these vanilla things as well.

A listing or entry in a law list or bar application. That’s your Martindale-Hubbell we’re referring to, I suppose.

Communication mailed only to existing
clients, former clients, or otherwise. If you send any of these things to people, you do not need to file to. Florida has, I believe, expanded -- actually, moved that forward into 7.1 and say this is automatically an exemption. You do not have to file, and we consider that okay.

MR. BURGESS:

I didn’t quite catch that. A listing of law publications --

MR. LEMMLER:

Martindale-Hubbell, I think that’s the most common example, but it can be things of that nature.

MR. BURGESS:

It seems to me you can actively say, “I’m listed in and where the publication is.”

MS. BILLEAUD:

I’m sorry, I have one more question about safe harbor. Is that -- I’m trying to get my arms around like when is sponsorship, for example, I’m putting on a seminar to benefit a charitable 501(c) organization on a legal topic. Would that sort of
announcement have to brought before the committee.

MR. LEMMLER:

The announcements that you’re making that sponsorship or that you are sponsoring that event --

MS. BILLEAUD:

What’s exactly required? List the content; it refers people for 100-percent donation per person to this thing, but you’re not doing an educational thing to the public at the same time that is a legal comment; is that under safe harbor?

MR. LEMMLER:

I think so. I don’t know if that’s even included. I’m not real sure one way or the other about that, but I think the typical example is discussed in the litigating -- I remember it was someone, for instance, in New Orleans, that their law firm had sponsored public radio, sections of public radio, you know, it said, “The firm of so and so sponsored the last half hour of public radio,” something of that nature, but your example, I’m not sure. I’m not really
good at giving an ethics opinion on the side especially about proposals so your comment is noted.

MS. BILLEAUD:
Well, then, again, you know, that’s the chilling thing. Where is it under safe harbor?

MR. LEMMLER:
Okay, thank you. Any written communications requested by a prospective client, we’ve covered that. Professional announcement cards mailed to other lawyers, relatives, current clients, or close friends. Florida just carved out another exception that the lawyers own family members. I think that’s included, but they made that especially a part in 7.1 that you can consider that an exemption. Computer-accessed communication as described in subdivision (b) of 7.6, your websites.

All right, I think we’re actually through the rules. The committee considered that there’s probably going to be some sort of transitional period for the rules, and I’m supposing that the Supreme Court

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Committee is probably looking at that as well. It’s envisioned that there should be some sort of phase particularly with the type of ads, telephone directory is an annual basis, those kind of things can’t be changed overnight. Suppose, at least, perhaps a 90-day period to modify the ads that are in current use, but with printed advertisements, as I said, with annual or other limited periodic publication schedules perhaps grandfathered in and allow them to be extended or at least given an extended reporting period or compliance period.

Future work plans. We’re doing the public hearings. We’ve done two now. Special rules of debate. We’ll be in New Orleans tomorrow night. Special rules of debate we’re adopting. We’ve already talked about those. And Billy mentioned that resolutions addressing additional amendments or proposed amendments to these proposals that we’re going to -- at some point we’re going to be submitting to the House, but those resolutions need to be submitted in writing 30 days in advance of the House of
Delegates meeting, which I think is like December 13th or 12th or something like that, the deadline for resolutions.

The Supreme Court Committee to study attorney advertising is presumably going to review our proposal. I think the Rules Committee is scheduled to meet at the end of the month and take all these comments and probably look at the Florida Amendments and come up with some proposals to proposed to the House and give to the Supreme Court. Again, all of the comments are on the website, lsba.org; there’s a place on the home page right now. It’s a link that will take to the rules committee pagem and there’s another link that will take to the rules of all the public comments in the future of the transcript.

CLE credit, I’ve got the forms. Anybody that’s interested in CLE credit, you can come and get it. It’s your reward for listening to me for this long.

MR. ALLEN:

I want to commend the guys for doing this, but one thing I want to comment on, I
know how hard this is. How much is the public actually involved? I know this is hard to do, but it seems like almost everyone is an attorney or a media person. I mean, is there any other way we can ensure that the public does get involved; they may not want to get involve, or, at least, an invitation that they haven’t been involved, you know, in public hearings.

MR. LEMMLER:

We’ve advertised this to the members of the Bar primarily because that was the fastest way we can get the information out. We couldn’t send a media announcement to the media. It was really up to them to decide to pick it up or not, apparently, since, I hadn’t send anything, perhaps.

MR. ALLEN:

Thank you.

MR. GAY:

We’re adjourned.

(THE HEARING WAS ADJOURNED AT 7:15 P.M.)
CERTIFICATE

This certification is valid only for a transcript accompanied by my original signature and official seal on this page.

I, LORI ACHEE, Certified Court Reporter, in and for the State of Louisiana, as the officer before whom this Public Hearing, do hereby certify that the transcript hereinbefore set forth in the foregoing 104 pages;

That the testimony was reported by me in the voice-writing method, and was prepared and transcribed by me or under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding;

That I am not related to counsel or to the parties herein; am not otherwise interested in the outcome of this matter; and am a valid member in good stand of the Louisiana State Board of Examiners of Certified Shorthand Reporters.

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I, LORI ACHEE, Certified Court Reporter in and for the State of Louisiana, 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 talkovers;

That same is the proper method for a Court Reporter's transcription of proceedings, and that the dashes (--) do not indicate that words or phrases have been left out of this transcript;

That any words and/or names which could not be verified through reference material have been denoted with the phrase "(spelled phonetically)."

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