

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

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1 MR. GAY:

2 We're all set to start? Good afternoon,
3 my name is Phelps Gay. I'm an attorney from
4 New Orleans and a member of the State Bar's
5 Rules of Professional Conduct Committee, and
6 we're here this afternoon to present and
7 discuss and get as much feedback as we can
8 on some proposals to revise our current
9 Rules of Professional Conduct on the subject
10 of lawyer advertising and solicitation. I
11 know that many, if not everyone, in this
12 room is a member of the Louisiana Bar and so
13 I won't detain you with too much background,
14 but these Rules of Professional Conduct are
15 promulgated by the Louisiana Supreme Court
16 and, traditionally, the Bar Association
17 assists the Court in the study and
18 formulation of the Rules, and it is common,
19 I believe, and appropriate for the Bar to
20 reach out to everyone across the State,
21 members of the Bar and members of the public
22 to get as much information as we can and
23 feedback as I say before we make any final
24 decisions. So this is part of a process
25 that is going on across the state. I think

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1 it's the second of four public hearings.
2 One was conducted in Baton Rouge; we're in
3 Lafayette today. I believe other members of
4 the committee are going to New Orleans
5 tomorrow and then after that, to Shreveport.
6 So, we want to hear from you on these
7 proposed revisions to the Rules of
8 Professional Conduct.

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

23 Quick background. We have had since
24 1994 Rule 7 of the Rules of Professional
25 Conduct on lawyer advertising. It has been

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1 revised once or twice since then. They were
2 not part of the comprehensive review and
3 revision of our Rules of Professional
4 Conduct, which was called the Ethics 2000
5 process, which was conducted between 2000
6 and 2003, intentionally. We just thought
7 that this subject deserved a separate
8 consideration so they were not part of that
9 consideration of the Rules and, of course,
10 that process, Ethics 2000, reached it's
11 final conclusion, and we do have those new
12 revised rules.

13 There was, and Sam, jump in here if I'm
14 saying anything incorrectly, but there has
15 been some legislative initiative to visit
16 and revise our Rules of Professional
17 Conduct. I believe there was a Bill in the
18 State Senate to revise the Rules which, I
19 believe, the Bill also partook heavily from
20 the Florida Rules of Professional Conduct.
21 I want to say that State Senator Marionneaux
22 may have been the proponent of that
23 legislation.

24 In any event, as happens with that kind
25 of process, it becomes necessary to move

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1 this subject to the attention of the
2 Louisiana Supreme Court because it is the
3 Louisiana Supreme Court that
4 constitutionally has the jurisdiction to
5 regulate the practice of law in the State of
6 Louisiana, and so as I appreciate it, while
7 that Bill met with a lot of support in the
8 legislature, ultimately, it was referred to
9 Louisiana Supreme Court.

10 Louisiana Supreme Court has it's own
11 committee to study our current advertising
12 rules which is different from this State Bar
13 Committee that is conducting this public
14 hearing today. And they have also asked our
15 State Bar Committee to conduct a thorough
16 study and review of the Rules and to conduct
17 these public hearings such as we're
18 conducting today, and the process will be
19 that it'll move from the State Bar Rules of
20 Professional Conduct Committee, I believe,
21 to the Supreme Court Committee and,
22 ultimately, it will be the decision of the
23 Louisiana Supreme Court as to what to do.

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

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

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

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

12 MR. GREGORIO:

13 The Senator and House of Delegates in
14 between.

15 MR. GAY:

16 Absolutely. Thanks for reminding me.
17 The State Bar has a body as you know called
18 the House of Delegates elected from
19 districts all over the state, and the plan
20 is for this proposal, in whatever form it is
21 in at that time which will be in January of
22 2007, to be presented to and discussed and
23 debated by the members of the House of
24 Delegates of the Louisiana State Bar
25 Association. So certainly nothing final

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1 will happen at least until that debate has
2 been carried out.

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

16 All that said, I guess I would like to
17 turn the proceedings over. What's going to
18 happen is, Richard is going to -- has a
19 Power Point, and I think you already have
20 materials that include the new proposals and
21 their comparison with the current rules, and
22 Richard is going to take us through what the
23 proposals are in the Power Point, and I
24 believe the plan is to stop whenever anyone
25 wants to after we get to a particular Rule,

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1 whether it's 7.1 or 7.1(a) or 7.2, and
2 receive as much input as we can. Because if
3 we just go through the whole thing, it's
4 going to take a little while and people may
5 be a little tired if we gobble up all the
6 oxygen in the room for 45 minutes and then
7 ask for comments. So we want to talk about
8 it. We want to hear your comments on it,
9 pro or con, as we go through. Richard, the
10 floor is yours.

11 MR. LEMMLER:

12 Okay. Thank you. A couple little
13 housekeeping things before I get started
14 into the actual language of the Rules
15 themselves. As you note on the slide, this
16 is a public hearing. We do have a court
17 reporter present. We're going to be
18 transcribing your comments so we'd ask you
19 for purposes of the record, for purposes of
20 the committee, and perhaps the Supreme Court
21 Committee when they get to look at these
22 things, just state your name and whether
23 you're a lawyer or not just so we know who's
24 here whenever you have a comment, and I'll
25 try to remind you if you don't remember.

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1 We'll go through it that way. And, as
2 Phelps said, there is CLE credit. You get
3 an hour of Ethics credit for attending this.
4 We'll give out the forms when it's over
5 with, and you can get your course number and
6 so forth. There is a sign up sheet up here.
7 Anyone who came in after we got started, at
8 some point before you leave, just make sure
9 to sign in so we have a record that way of
10 your attendance.

11 All right. Proposed Rule Changes: An
12 Overview of Proposed Rule Changes. The
13 first thing we have on the list is the
14 Florida State Bar experience. That might,
15 at first glance, seem like a tour of
16 alcoholic beverage establishments in South
17 Florida, but actually we're referring to the
18 experience that the Florida State Bar might
19 have with respect to these Rules, and that's
20 primarily one of the reasons why we focused
21 on that with this proposal that's based
22 quite heavily on Florida's existing Rules
23 dealing with advertising and solicitation.
24 Florida's had some form of the current Rules
25 for about 11 years now in place. In fact,

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1 last week they have just revised their rules.
2 So we're going to be looking at that as
3 well, but for the most part, the rules and
4 the framework that we use is Florida's for
5 two reasons; one, because they have a
6 history, they are working in Florida; two,
7 because Florida has an 82-page handbook that
8 they supply to all of their members as a
9 guide to how to interpret the Rules, give
10 you examples providing information, case
11 law, etcetera, etcetera, everything you
12 wanted to know about these Rules including
13 the filing process that Florida has. We'll
14 be getting into that in a minute. That's
15 primarily where we got started.

16 As Phelps mentioned, there was a sub-
17 committee of the Rules of Professional
18 Conduct Committee, the Bar Committee, that
19 started looking at this, I think, in mid-
20 2005. We started looking at the Florida
21 Rules, and it was a logical place. We
22 didn't want to really reinvent the wheel so
23 it was a good place to start. Quite
24 coincidentally, the State Legislature in
25 early 2006, the Bill that was passed in

1 State Legislature, also focused on the
2 Florida Rules. So that was another reason
3 why we stuck with what we have and that
4 they're a pretty good set of Rules. If you
5 look at the side-by-side comparison that we
6 have available to you, you can see that the
7 existing Rules that we had fit pretty nicely
8 into the proposal. Nothing really was
9 removed from what we currently had. That's
10 the Florida experience. That's why we are
11 here with the Florida Rules.

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

23 Comparatively, we just did this little
24 list so that you can see, you know, what we
25 have now on the left and what we're

1 proposing on the right. Basically, we're
2 doubling the amount of Rules that we have as
3 far as the number, but, again, many of these
4 titles, many of these topics, match up quite
5 nicely with what we already have and, again,
6 on a comparative list, you'll see that what
7 we have now has fit into the proposal with
8 almost no deletions.

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

21 Permissible forms of advertising.
22 Public media including print media,
23 telephone directory, legal directory,
24 newspaper, and other periodicals, the basic
25 stuff. Outdoor advertising such as

1 billboards and other signs, radio, TV, the
2 more common and generally recognized forms
3 of advertising. Computer access
4 communications and that's subdivided later
5 on. You'll see it's internet advertising,
6 websites and email. Recorded messages can
7 be publically accessed by dialing a
8 telephone number, which I don't know is
9 quite so common anymore, and written
10 communication in accordance with Rule 7.4,
11 and you'll see that in a minute. That's
12 essentially what we're calling right now
13 targeted written solicitation. What we have
14 right now in our Rule 7.3. Yes, ma'am?

15 MS. BILLEAUD:

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

21 MR. LEMMLER:

22 I'm going to have to confer with the
23 members of the committee on that because
24 this is their prop. I'll see if any of the
25 committee members present can comment to

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1 with that respect. Sam?

2 MR. GREGORIO:

3 I think it's a question that --

4 MS. BILLEAUD:

5 Why is this necessary to alleviate with
6 them? Is there some media that you
7 anticipate that's on this list, and, you
8 know, it wasn't necessary before?

9 MR. PLATTSMIER:

10 Chuck Plattsmier. This came directly
11 from the Florida Rules, and this is part of
12 their package about the types of advertising
13 that the Rules were intended to address. If
14 you look at the substance of the Rule
15 itself, it says types of adverting you can
16 engage in, included but not limited to. So
17 if it says specifically included, but not
18 limited to so that there's no question that
19 the rules, the intent was to reach certainly
20 these types that are recognized types of
21 advertising. We would recognize it as the
22 type of advertising, permissible forms of
23 advertising.

24 MS. BILLEAUD:

25 Well, I didn't see that it's -- included

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1 but not limited to, but that doesn't pass it
2 over just all advertising and not go through
3 a list. I'm a little concerned about --

4 MR. PLATTSMIER:

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

10 MS. BILLEAUD:

11 This is just one of my concerns.

12 MR. LEMMLER:

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

24 MS. BILLEAUD:

25 I'm not really asking for argument. I

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

4 MR. LEMMLER:

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

14 MR. DURIO:

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

18 MR. LEMMLER:

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

21 MR. DURIO:

22 Oh, I'm sorry. Buzz Durio. I'm a lawyer
23 here in Lafayette.

24 MR. LEMMLER:

25 I don't recall that anyone tried to

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1 identify any other forms of advertising, and
2 certainly, if you can think of any at this
3 point, we'd love to hear about them and put
4 them on the record.

5 MR. DURIO:

6 Well, I was just thinking and I can't
7 think of any. I was going to ask you, I
8 asked you where does the magnet go? You
9 know, where does the magnet --

10 MR. LEMMLER:

11 I suppose that's a form of written
12 communication.

13 MR. DURIO:

14 Well, I'm just kidding. I was just
15 wondering if in the course of this, that any
16 identification of something that would not
17 be regulated?

18 MR. LEMMLER:

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

24 UNIDENTIFIED SPEAKER:

25 I want to make a general comment. I

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1 find the Rules extremely complex and all the
2 cross references to sub-chapters and sub-
3 sub-sub chapters and other regulations, not
4 even contained here is going to be difficult
5 to someone who wants to follow the Rules to
6 follow the Rules. How would they get to
7 this? I have something that says
8 permissible forms of advertising and unless
9 there's some form of advertising considered
10 in this. I mean, I keep reading the Rules
11 that are a permissible part in achieving,
12 but constitutionally permissible in
13 regulating. I am very much for rules, but I
14 don't think the rules are directed to the
15 heart. They are going after the people who
16 are doing deceptive, trashy advertising.
17 They degrade our profession and in many
18 cases, bad handling. I don't think the
19 rules should have a single word that's not
20 necessary and list as a form of advertising
21 of a single version.

22 MR. GREGORIE:

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

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1 MS. BILLEAUD:

2 Why say that?

3 MR. GREGORIO:

4 Well, I think it's kind of a structural
5 definition for. 7.2.

6 MS. BILLEAUD:

7 I understand that point. I guess I
8 confer with Richard that perhaps it's a long
9 way around the truth, and maybe we can do
10 advertising in all types of whatever kind
11 you accept, you know, those that broadcast,
12 and it might just be straight forward. I
13 was very concerned about that when I saw
14 that. Can I ask another question?

15 MR. LEMMLER:

16 Sure.

17 MS. BILLEAUD:

18 What is the standard of review? Is it
19 narrowly tailored to get a controlling
20 government (inaudible)

21 MR. GREGORIO:

22 Florida (inaudible)

23 MS. BILLEAUD:

24 Has anyone read the Florida State Rules?

25 MR. LEMMLER:

1 I have.

2 MS. BILLEAUD:

3 I find them very straight forward.

4 MR. LEMMLER:

5 Okay, any other comments on that.

6 MR. BURGESS:

7 Just a general comment. If I understand
8 you correctly, Florida has recently revised
9 their rules. These are not revised rules;
10 is that right?

11 MR. LEMMLER:

12 No, sir.

13 MR. BURGESS:

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

22 MR. PLATTSMIER:

23 Chuck Plattsmier. Excellent point. Let
24 me tell you what my concern is. As I
25 recall, the Louisiana Legislature wrote the

1 handbook by agreement by resolution involved
2 the Louisiana Supreme Court set a sunset
3 provision or some sort of action to be
4 taken. The mechanism that would give us in
5 compliance with that, we felt would also
6 include, appropriately so, bringing in the
7 Louisiana State Bar and House of Delegates.
8 This meeting is, again, their agenda would
9 be posted by mid-December. So you see the
10 time table is backing us up based upon sort
11 of a sunset provision that is sort of
12 imposed by the legislative resolution.
13 That's the first observation. Second, your
14 point about the handbook is very valid.
15 Many states utilize comments when they pass
16 a law. Louisiana Supreme Court has not
17 generally embraced the notion that would
18 impose these written comments. So for that
19 reason, the handbook is a very important
20 part of this. It may not make a lot of
21 sense to you writing a handbook until we've
22 got everybody's comments on the substantive
23 rule. We want to make sure you have a
24 handbook that matches that. Third, the
25 revisions, as I understand it, came out

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1 perhaps last week and probably at or around
2 the time we had our very first hearing, and
3 some of the changes are substantive. For
4 example, I think that if you look at the
5 recent part of the changes that they have
6 chosen the board members to delete the
7 disclaimer that every advertisement in every
8 written form, which was the disclaimer that
9 says selection of an attorney is an
10 extraordinarily important decision and
11 should not be made on the basis of
12 advertising alone. That's part of the
13 proposal. It's fashioned after Florida who
14 has that provision. Those were sorts of
15 things that was current.

16 MR. LEMMLER:

17 Follow up on something that Chuck said
18 with respect to the handbook. I think from
19 a practical standpoint, the handbook in
20 Florida is 82 pages long. The comment
21 before was the complexity of rules. Trying
22 to cross reference this set of rules with an
23 82 page handbook is a monumental task. I
24 know, I've done it twice already. So from a
25 practical standpoint trying to come up with

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1 a complete handbook as well as a complete
2 set of proposed rules that you don't yet
3 know whether they are actually going to be
4 adopted in this form, it seems like putting
5 the cart before the horse at that point. So
6 there's every intention, I believe, at some
7 point for the committee to get into the
8 meeting of the handbook and a working
9 handbook. I've already prepared a clean
10 copy and a redline based on the proposal
11 that we have now that we actually had an
12 opportunity to look at, but we just don't
13 have it for you now. That's in the works.

14 MR. HERNANDEZ:

15 You know, I haven't even really sat down
16 and discussed this, but I can tell you two
17 things that are going to interest me. One
18 is the public comments; hopefully, they will
19 be used in the House, because, you know, I
20 can't go -- you know, all I know having
21 talking to members whom I represented
22 throughout the state not just in Lafayette,
23 also I have an efficiency of lawyers in
24 Lafayette who look upon the House and the
25 15th JDC and those who represent this area

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1 and say, "John, what are the proposed
2 changes?" The biggest concern for me is if
3 we're going to go through each rule in the
4 House, words like permissible, we could
5 debate this. I don't have the knowledge
6 that this committee who's put all the work
7 and has done splendid job of performing what
8 is a miraculous document. You have 144
9 members of the House who dedicate themselves
10 to where we are, where we're going to be and
11 the exact purpose of where we're going. The
12 big question I have is, as often comes up,
13 some of these rules are very easy, very
14 explainable, they're not controversial.
15 Some will be. Like this is a very
16 controversial piece of legislation that the
17 House is going to discuss. I have been in
18 that house for six years. The simple
19 question is, is this -- do we adopt all the
20 rules, or we adopt none of the rules, or we
21 adopt several of the rules that we like, you
22 know, that's the issue because some of these
23 rules that are very controversial, I can
24 assure you, you're going to have a lot of
25 debate. Whether or not that can all be

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1 discussed, you know, in one afternoon at the
2 House, I don't know, but I think from an
3 aspect of the questions that I will be
4 asked, it's simply is all or nothing or are
5 some of these rules negotiable because I
6 know the members of the committee will be
7 there as well as those pushing this in both
8 the Congress and the citizens who may have a
9 different plight as far as what should be
10 implemented regarding these rules. That's
11 the procedural question I ask; is it all or
12 nothing or is it negotiable?

13 MR. LEMMLER:

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

25 MR. KING:

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1 Bill King. It is an all or nothing
2 thing, but there is a chance as I understand
3 it, to amend certain provisions of it with a
4 resolution 15 or 30 days ahead of time. So
5 if you don't agree with a certain aspect of
6 these rules as they come out of the
7 Louisiana State Bar Association and the
8 Supreme Court Committee, you have a chance
9 to amend it, I think, at the House. That's
10 how it's agreed to work it through, Ethics
11 2000, correct?

12 MR. PLATTSMIER:

13 Yes.

14 MR. BROUSSARD:

15 Once it gets through the House, there
16 will be the recommendation to the Supreme
17 Court and of the committee?

18 MR. LEMMLER:

19 That's my understanding. That the Court
20 often would do whatever the Court wants to
21 do, but this is the recommendation from the
22 Bar with respect to the House.

23 MR. GAY:

24 I wanted to respond to John's first
25 question. I believe I heard yesterday from

1 you all that the intent is to transcribe
2 these public hearings and to put them in
3 full, the transcripts, on the Louisiana
4 State Bar Association website.

5 MR. LEMMLER:

6 That's correct. The transcripts --
7 we're intending to put the full transcripts
8 from each one of the hearings on the
9 website. Right now, just to make a general
10 announcement, if you don't know, all of
11 these rules are on the Louisiana State Bar
12 Association website right now. There is a
13 public comment form online where anyone can
14 log in. You do not have to be a lawyer.
15 You do not have to be a member of this Bar
16 to log in and register your comments. We're
17 taking them. We're getting comments
18 everyday. We're intending to also publish
19 those comments on the same website. So you
20 should be able to read online what everyone
21 else is saying. So we're trying to make
22 this as open and transparent of a process as
23 we can given the time limitations that Chuck
24 already referred to. So that information is
25 there. If it's not yet, it will be. Any

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1 other comments with respect to 7.1? We have
2 a lot of rules to go through. These are all
3 great comments, but I'm going to push ahead
4 if no one has anything else to say with
5 respect to this. 7.2. 7.2 is a huge --
6 yes, sir?

7 MR. GOFORTH:

8 Before you go on, I did not see the --

9 MR. LEMMLER:

10 I'm sorry, can I ask you --

11 MR. GOFORTH:

12 Bill Goforth, I'm from Lafayette.

13 MR. LEMMLER:

14 Thank you.

15 MR. GORFORTH:

16 I read these rules. It seems to me that
17 there's a big hole in that area. I don't
18 know if you've covered that, but we have
19 national advertising by national law firms
20 soliciting our citizens here in Louisiana.
21 What is to prevent the same type of -- let's
22 say siphoning off of a client based here in
23 Louisiana to people advertising on a
24 national basis who are outside the state
25 that is soliciting our citizens? And, what

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1 effect is that going to have if any?

2 MR. LEMMLER:

3 Anyone from the committee want to
4 comment on that?

5 MR. GREGORIO:

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

10 MR. GOFORTH:

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

13 MR. GREGORIO:

14 Where?

15 MR. GOFORTH:

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

19 MR. GREGORIO:

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

22 MR. GORFORTH:

23 I'm talking about a New Jersey lawyer
24 advertising for -- in Louisiana on
25 television and soliciting our citizens --

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1 let's say for class actions, okay, and so
2 that those people signing a lawyer outside
3 the jurisdiction of the State Bar is like
4 being in Texas, to prevent this kind of
5 thing. What actions are we're going to take
6 if anything?

7 MR. PLATTSMIER:

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

17 MR. GAY:

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

23 MR. GORFORTH:

24 I don't know. It's like a --

25 MR. LEMMLER:

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

3 MR. GORFORTH:

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

6 MR. BURGESS:

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

12 MR. PLATTSMIER:

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

19 MR. LEMMLER:

20 I don't know that I have an answer --

21 MR. BURGESS:

22 If they intend to broadcast in Lake
23 Charles and Lafayette on one of the channels
24 they should submit that to the State Bar
25 like everyone else.

1 MR. LEMMLER:

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

11 MR. BURGESS:

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

15 MR. DURIO:

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

25 MR. PLATTSMIER:

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

23 MR. LEMMLER:

24 I'm sorry. I think this lady was ahead
25 of you.

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1 MS. BILLEAUD:

2 Well, I just think that that sort of
3 answers my question because I'm thinking
4 jurisdiction so that answers my question.

5 MR. GOFORTH:

6 I'm also concerned about --

7 COURT REPORTER:

8 I can not hear him.

9 MR. LEMMLER:

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

12 COURT REPORTER:

13 If you could stand, I can maybe hear
14 you.

15 MR. GOFORTH:

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

25 MR. LEMMLER:

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

12 MR. BROUSSARD:

13 That's the reason I came -- it's a good
14 comment.

15 MR. LEMMLER:

16 No, it's a great comment. I just --
17 we're really just trying to the comments
18 about the rules right now. The proposed
19 rules, and if that's a hole in the rule,
20 fine, we've got it. Where are we? 7.2,
21 Required information. And basically all
22 written communications in advertisements,
23 7.2 says you're going to be required to put
24 the name of the lawyer responsible for the
25 content of the communication as well as the

1 location of the practice. A bonafide office
2 location of a lawyer or lawyers who will
3 actually perform the services advertised.

4 Any comment on that?

5 7.2(b) Prohibited statements and
6 information. Basically, we just summarized
7 this. Your statements about legal services,
8 and this reflects pretty much what we have
9 right now in our existing Rule 7.1. It
10 cannot contain a false, misleading,
11 deceptive, or unfair communication about the
12 lawyer, the lawyer services, or the law firm
13 services. I'll note for you that Florida
14 has just amended the rule and taken out the
15 word "unfair." They are basically coming
16 more in line with what the ABA uses as it's
17 normal phrase of false, misleading, and
18 deceptive, which is what our rule says right
19 now. I'm sure that's something the
20 committee will be looking at.

21 Prohibited statements about legal
22 services. Examples of prohibited
23 statements. Communication violates this
24 rule if it contains a material
25 misrepresentation of fact or law or omits a

1 fact necessary to make the statement
2 considered as a whole, not materially
3 misleading. Florida, as a note, just
4 removed their last clause of that omits a
5 fact necessary. So, again, something we may
6 be looking at, but that's in our proposal
7 right now. Contains any reference to past
8 successes or results obtained or is
9 otherwise likely to create an unjustified
10 expectation about results the lawyer can
11 achieve. Effectively, that's in our rule
12 right now. Contains any reference --

13 MR. BROUSSARD:

14 I have a comment. If you use someone
15 that has a severe headache, horrible
16 headache, can't think straight, and they
17 need a neurosurgeon, you need one right now,
18 you need a good one, how do you pick a
19 neurosurgeon? You don't know a doctor. You
20 look for information. People go through the
21 same process when they try to pick a lawyer.
22 You look in the phone directory, or you
23 watch television, you'll see that almost all
24 the lawyer advertising is a personal injury.
25 So who are you talking about? People that

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1 are disabled, bill collectors, their boss
2 is mad at them they're not at work, they
3 have kids who they have to feed, and their
4 focus right now is quick as possible, get a
5 good lawyer. Where do they get information
6 about a good lawyer? A good lawyer who
7 doesn't practice personal injury work, and
8 say, you know, who are the best lawyers that
9 handle this kind of case, and that guy, he
10 knows something about that. Says, "Well,
11 Frank Neunor got a judgment on a very
12 difficult case; he got five million
13 dollars." How does that lawyer give his
14 friend a good lawyer's advice? He thinks
15 about what he knows about people. So the
16 lawyer takes his recommendation, the fact
17 that he knows that they've gotten these big
18 judgments in exactly this kind of case,
19 handling exactly this kind of case or in
20 Court. So the lawyer makes his
21 recommendation. You don't want to send them
22 to someone who has walked out of school
23 yesterday or someone who has been
24 advertising for thirty years and has never
25 been to a courthouse. So how, considering

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1 the requirements of Florida, how does this
2 meet the test to certain interests of our
3 profession? How does saying that someone
4 who actually got a judgment can not
5 advertise that judgment? I'm telling you
6 that I'm very much against being able to
7 advertise settlements because settlement
8 money is very deceptive. A guy settles a
9 case for a million dollars and it's worth
10 two million dollars, that doesn't tell you a
11 thing about -- but the guy got ten judgments
12 in exactly the kind of case that you're
13 handling for him. Doesn't that tell you
14 something important about these brought
15 cases to handle your case? So my comment as
16 for this one is, you should prohibit
17 advertisement of settlements. You should
18 prohibit any advertisement that gives unjust
19 expectations. Not what you can get on your
20 particular case, but you should permit
21 advertising that accurately reflects an
22 actual experience with the lawyer because
23 advertising is a legitimate way for people
24 to get valid information.

25 MR. LEMMLER:

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1 Okay. Thank you. Yes, ma'am.

2 MS. BILLEAUD:

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

17 MR. LEMMLER:

18 Thank you. Yes, sir.

19 MR. HERNANDEZ:

20 Advertising is at times, it projects an
21 unjustifiable expectation. You know, in the
22 context of advertising of true advertising
23 and this is nothing to do with legal
24 advertising; you see it all the time on TV.
25 That's this. That's that. Number one

1 gumbo, number one etouffee, it's our
2 culture. The expectation is that that this
3 restaurant is better than the other one.
4 Some restaurants advertise. Some
5 restaurants don't need to advertise. Same
6 thing with lawyers, some may advertise, some
7 may not need to advertise. Material
8 misleading -- and I agree with Richard. The
9 information that is subject to a client or a
10 potential client to determine who is the
11 lawyer for that individual, I think it's
12 certainly incumbent upon that individual;
13 it's different to every individual. An
14 individual that is looking for a business
15 lawyer versus an individual that is looking
16 for a personal injury lawyer, and I can tell
17 you it's such a fine line -- it's such a
18 fine line as to what is, you know,
19 unjustifiable expectation of that lawyer,
20 that says, you know, ten million dollars in
21 settlements in 2005 versus the lawyer that
22 says ten million dollar judgment, you know,
23 for the cases ten years old. That's -- you
24 know, when we discuss lawyers in the House,
25 it's to put the personal of what I think of

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1 advertisement is misleading by nature often
2 to confuse the consumer in buying the
3 product. That is nothing that the legal
4 profession never wants to get into, that we
5 are selling "a product that we're selling
6 somebody along the line gumbo," a lot of
7 people feel that are there, that we've cross
8 the line, and that the only way we can
9 legislate proper advertising is to document
10 the meeting today. I think the majority of
11 lawyers -- I think the majority of the
12 lawyers I know, I speaking as of myself, are
13 like that, but I think it's a very delicate
14 process, and I think it would come to --
15 with my conception of advertising is, it
16 makes it more difficult because you look at
17 material misleading, words such as that,
18 unjustifiable expectation, and it's at the
19 core of what I think advertising provokes.
20 It may not be, but certainly in the consumer
21 fashion.

22 MR. LEMMLER:

23 Thank you, sir. Yes, ma'am, you're
24 first.

25 MS. SIAS:

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1 Jocelin Sias, I'm a lawyer in Lafayette.
2 I am one of those new lawyers, and I am
3 concerned about the attorneys who are
4 advertising the amount of settlements. I
5 feel like if they have qualifications to
6 settle that kind of case, but I have people
7 who are coming in for representation, they
8 have relative minor injuries, and that
9 because of that fact they are injured, they
10 are going to get this huge settlement, and I
11 think a lot of it -- not of all it is due to
12 the advertisement that those people are
13 talking about that they get hundreds of
14 thousand dollar settlements, and they look
15 fine; they look like nothing is wrong with
16 them, but the person who is watching it,
17 doesn't know that there's a problem with
18 their vehicle that hit them, or they had
19 surgery to get that amount of settlement so
20 I do believe that type of advertisement is
21 misleading, and I'm real concerned about
22 that.

23 MR. LEMMLER:

24 Thank you. Yes, sir.

25 MR. GOFORTH:

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

5 MR. LEMMLER:

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

13 MR. GOFORTH:

14 (Inaudible).

15 MR. LEMMLER:

16 There's a specific rule that deals with
17 that. Anyone else? Yes, sir.

18 MR. BURGESS:

19 I'm sorry to keep commenting on these
20 rules. When you look at these rules, this
21 is probably (inaudible). Other states have
22 specializations; we do not have that now.
23 It would appear to be the content of this
24 rule and all the rules is to say, "Look, you
25 can't mislead anyone about your abilities.

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1 You can't act like you can try a case if you
2 can't. You're going to act like you're
3 going to handle the case" and you can not.
4 In my opinion, it punishes those that are
5 doing the right thing. If we keep the case
6 and we try the case and we present the case
7 and we get a good judgment, why can't
8 someone say, "Look, I've done it. I've gone
9 through court. I have done it." Because
10 without that, I have looked down at folks
11 that can't do it or won't do it, and because
12 we don't have specializations, quite
13 frankly, this may be the only way to
14 communicate your abilities to someone before
15 they already hired a lawyer, and by the time
16 they're to your office, it's too late. They
17 made their judgment on who it will be off
18 the advertisement. By the time they are in
19 somebody else's office, it's too late; they
20 made their judgment on who may be a quality
21 lawyer off the advertisement, and I don't
22 think -- but a lot of times, I would say if
23 somebody is working harder than you and
24 playing by the rules and they received
25 judgments, they ought to be able to say, "I

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1 received these verdicts"; they ought to be
2 able to say that they reach their success,
3 not to be looking down at those who aren't
4 going to do the work. I really believe
5 that. We all say that this is to prevent
6 misleading, which is fine, we shouldn't have
7 that, but there ought to be a way that
8 someone should be able to legitimately talk
9 about their successes to the public before
10 they make the choice to go to someone else's
11 office. I honestly believe it punishes
12 those for all these years of having talked
13 about, "I received this, this dollar
14 settlement" -- you ought to be able to say a
15 factually true statement that they are
16 successful.

17 MR. LEMMLER:

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

24 MR. BURGESS:

25 We don't have that now.

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1 MR. LEMMLER:

2 This proposal will allow that. Yes,
3 ma'am.

4 MS. BILLEAUD:

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

20 UNIDENTIFIED PERSON:

21 I have a question.

22 MR. LEMMLER:

23 I'm sorry.

24 MR. GORFORTH:

25 (Inaudible).

1 MR. LEMMLER:

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

12 UNIDENTIFIED PERSON:

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

17 MR. LEMMLER:

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

24 MR. GAY:

25 Phelps Gay. The rules provide that you

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1 can advertise once that certifying is
2 approved by the Louisiana Bar of Legal
3 Specialization, and today, I don't think
4 civil trial advocacy under the National Bar
5 Trial Agency has been approved even though
6 there is a U.S. Supreme Court decision. I
7 think that's the answer to your question.
8 Right now, it hasn't been approved by the
9 Louisiana Bar of Legal Specialization. I
10 just want to make one comment about the past
11 successes and the money question. This kind
12 of goes back to the beginning of what I had
13 said. This is not new or radical, and it's
14 in the ABA comments, and the rational and
15 you make a very compelling case on the
16 consumer side, one, if you advertise a
17 particular sum, in other words, if it's a
18 judgment or a sum, it is because it's only
19 related to the particular facts of that
20 case, and the person who is receiving this
21 advertisement doesn't know that. And as you
22 say, it may be a good result or it may be a
23 poor result, but it doesn't -- it's
24 apparently misleading as it leads to the
25 belief you did it in that case, but Richard

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1 Broussard is going to get you five million
2 dollars in the next case and so of many
3 jurisdictions have taken review altogether.

4 MR. BROUSSARD:

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

17 MR. DURIO:

18 Buzz Durio, Lafayette. Has Florida had
19 any experience under that subsection? And
20 what's the litigating experience? Has it
21 been 11 years?

22 MR. PLATTSMIER:

23 Chuck Plattsmier. My understanding is
24 that Florida has had this rule that you have
25 to turn the advertising into them in advance

1 or at least a part of it, and so they have a
2 mechanism that sort of stuff, for the
3 attorneys, and most of the experience that
4 Florida want to comply --

5 MR. DURIO:

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

10 MR. LEMMLER:

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

18 MR. BROUSSARD:

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

23 MR. LEMMLER:

24 In a matter of speaking, right now, the
25 Bar, which is what my function is primarily,

1 which is the Ethics Advisory Service. We
2 provide non-binding informal occasions to
3 members of the Bar, with respect to them,
4 respected conduct, which includes
5 advertising. A lawyer can submit a proposed
6 advertisement to us, and we'll give them an
7 unbinding opinion on whatever it is they
8 proposed to run so this is -- we aren't
9 doing that, but we do work with the lawyers
10 rather than with the advertisement agency.

11 MR. GREGORIO:

12 Just a couple of comments. If a
13 settlement is mishandled and a thirty
14 million dollar case is settled for one
15 million dollar, what's the difference
16 between a case that went to the Court that's
17 a thirty million dollars case being
18 mishandled and getting a judgment for one
19 million dollars? My other concern would be
20 the comment about consumers in sorting it
21 all out. All I can tell you is my personal
22 experience is that often times when we see
23 someone has an advertisement, run of the
24 mill, and I'm saying it that way because I'm
25 not putting out advertisement for myself, my

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1 impression, my experience is this, they're
2 settling those cases, never looked at the
3 file, has information in the file that has
4 not been acted on, and their office didn't
5 even know what's in the file and the public
6 is being hurt. The other observation from
7 that experience is that, that there's no
8 lawyer or paralegal, someone who runs up to
9 the house who signs up a contract, there's
10 no lawyer in the file. The only conclusion
11 that I come to this case comes to Shreveport
12 area handled out of New Orleans, and the
13 client thinks that the lawyer is in
14 Shreveport, but they can not reach the
15 lawyer. I think these problems are real,
16 and I think that's important for these
17 rules, but these are real problems that we
18 are experiencing in our state. I personally
19 think I have had multiple cases and
20 complained about these types of
21 advertisements where people say, "I'll get
22 my money." There are severe complaints for
23 allowing that type of advertising for the
24 public. I think those are real problems.
25 So that's my experience.

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1 MR. LEMMLER:

2 Ms. Billeaud.

3 MS. BILLEAUD:

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

10 MR. BROUSSARD:

11 Sam, I agree with almost everything you
12 said about your input and with your
13 experience and all that. I've tried "X"
14 number of cases and got "X" number of
15 results and settled "X" number of cases
16 because what they're looking for is someone
17 who has successfully handled, the courtroom
18 experience, to represent themselves.

19 MR. GREGORIO:

20 (Inaudible).

21 MR. BROUSSARD:

22 Let's say that you were the trial lawyer
23 who made the opening statement and the
24 closing argument and you got the judgment --

25 MR. LEMMLER:

1 Let me just say this folks, we've got
2 ten rules to go through, and we've been
3 through one and a half, thus far. All of
4 your comments are excellent. Maybe with the
5 comments that get to be more point,
6 counterpoint. If you want to save that to
7 the end or you want to put that in writing
8 to us, we're happy to get them, but I really
9 think we need to kind of push forward and
10 get to the heart of these rules and focus on
11 each point that -- yes, sir.

12 MR. ALLEN:

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

17 MR. PLATTSMIER:

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

24 MR. LEMMLER:

25 Let's try to get to the comments on some

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1 more of the rules. Let's just go forward.
2 Examples of prohibited statements about
3 legal services. Compares the lawyer's
4 services with other lawyers' services,
5 unless the comparison can be factually
6 substantiated. That's in our rule right
7 now. Contains a testimonial. Yes, ma'am.

8 MS. BILLEAUD:

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

23 MR. LEMMLER:

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

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1 so that's a good comment, but I'm not going
2 to come back with, "Well, no, we're going to
3 need that," so anyone else wants to comment
4 on the part about testimonials?

5 Includes a portrayal of a client by a
6 non-client or the reenactment of any events
7 or scenes or pictures that are not actual
8 authentic. Includes the portrayal of a
9 judge, the portrayal of a lawyer by a non-
10 lawyer, the portrayal of a law firm as a
11 fictionalized entity, the use of a
12 fictitious name to refer to lawyers not
13 associated together in a law firm, or
14 otherwise implies that the lawyers are
15 associated in a law firm if that is not the
16 case. Again, that is all based on the false
17 deceptive or misleading, which is our basic
18 rule now, and the basic rule here.

19 Depicts the use of a courtroom.
20 Resembles a legal pleading, notice,
21 contract, or other document, already in our
22 rules now. Utilizes a nickname, moniker,
23 motto, trade name that states or implies an
24 ability to obtain results in a matter. Note
25 that distinction, the one would that would

1 imply the ability to obtain results not
2 necessarily every nickname, but one that
3 would imply ability to obtain results.

4 Fails to comply with Rule
5 1.8(e)(4)(iii), the new Court's rule about
6 advertising in advance to getting clients if
7 you can supply financial assistance or
8 provide costly expenses up front, things of
9 that nature. That's in our rule right now.

10 7.2(b)(2) -- you've got a question. I
11 saw a movement so I was trying to react.

12 MR. DURIO:

13 Buzz Durio, before you get off that
14 list, the act of portrayals, "G." Why
15 aren't you to speak to judges and lawyers?
16 I'm thinking of money portrayals, insurance
17 adjusters, that are probably misleading.

18 MR. LEMMLER:

19 I don't know that it's restricted to
20 that. I think it says "includes the
21 portrayal of a judge." I think if it's
22 potentially something else, it would be
23 false, deceptive, or misleading, but this is
24 something that is clearly indicated under
25 the rules as prohibited.

1 7.2(b)(2), any factual statement
2 contained in any advertisement or written
3 communication or any information furnished
4 to a prospective client under this Rule
5 shall not, again, be directly or impliedly
6 false or misleading; be potentially false or
7 misleading; fail to disclose material
8 information; be unsubstantiated in face, or
9 unfair or deceptive. And I will note to you
10 that Florida has just struck this entire
11 provision from its newest rules so you may
12 not see this at some point in the future.

13 MR. BURGESS:

14 That is anything like the rule before to
15 analyze by this -- strike it, too.

16 MR. LEMMLER:

17 Moving forward.

18 MR. DURIO:

19 I have a question.

20 MR. LEMMLER:

21 Yes, sir.

22 MR. DURIO:

23 Can you go back one more? 7.2(b)(2),
24 why would any lawyer want to advertise or
25 why would any committee allow a lawyer to

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1 advertise in a way to concluded it -- or
2 what public purpose would it serve to go out
3 and virtually to conclude false, misleading,
4 potentially false, misleading, or deceptive?

5 MR. LEMMLER:

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

18 MR. BURGESS:

19 When it says indirectly, it almost
20 implies that you can't do factual
21 statements, directly, indirectly.

22 MR. LEMMLER:

23 That's noted. Moving forward again.
24 7.2(b)(3), Descriptive Statements. A lawyer
25 shall not make statements describing or

1 characterizing the quality of the lawyer's
2 services in advertisements and written
3 communications; provided that this provision
4 shall not apply to information furnished to
5 a prospective client at that person's
6 request or to information supplied to
7 existing clients. So if people ask you, you
8 can tell them. If they are your clients,
9 you can give them this information. Yes,
10 sir.

11 MR. BROUSSARD:

12 This lawyer's services complies with the
13 highest standard of ethical conduct would be
14 prohibited by this rule.

15 MR. LEMMLER:

16 Supposedly it would.

17 MR. BROUSSARD:

18 So what public interest would a lawyer
19 saying, "I'm not one of these shoddy lawyers
20 who's going to try to get you a good
21 settlement."

22 MR. LEMMLER:

23 Without trying to debate with you,
24 simply, who determines that? Who makes the
25 determination whether that lawyer is

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1 complying with the highest ethical standards
2 other than the Supreme Court, and that's
3 typically done in a disciplinary proceeding
4 so who can say, "I do or I don't."

5 MR. BROUSSARD:

6 But it does help a consumer who is
7 concerned about that issue.

8 MR. LEMMLER:

9 But is there truthfulness to that, I
10 suppose.

11 MR. BROUSSARD:

12 It doesn't have to be true. Then how
13 would the advertisement in 30 years of
14 practice, I've never been examined by Mr.
15 Plattsmier or prosecuted by his office.
16 That wouldn't work there either. What I'm
17 saying is true descriptive statement,
18 doesn't this prohibit untrue descriptive or
19 misleading statement. If it is absolutely
20 true, descriptive statement or go into --

21 MR. PLATTSMIER:

22 But there is a distinction between when
23 you're an absolutely true information.

24 MR. BROUSSARD:

25 What's that?

1 MR. PLATTSMIER:

2 I have been a lawyer for 30 years, and
3 it's an absolutely true statement, and
4 there's nothing -- there's nothing in this
5 room that says, "I've been a lawyer for 30
6 years, and I'm never been subject to
7 discipline." This says you can't make
8 statements describing when you're
9 characterizing a law firm of your service.
10 "I am the single most ethical lawyer on the
11 planet. Hire me, I'm Richard Broussard,"
12 it's probably something that we would say
13 that you can't say.

14 MR. HERNANDEZ:

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

21 MR. BURGESS:

22 I think it's very, very wrong. It seems
23 to me you can say, "I'm going to use my best
24 efforts. I'll have two lawyers working on
25 the case. If necessary, I'll have three.

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1 I'll work after hours if necessary.
2 Arguably, that is a descriptive statement on
3 the quality of my services. It appears to
4 be very broad, very, very broad.

5 MR. LEMMLER:

6 7.2(b)(4), Prohibited Visual and Verbal
7 Portrayals. Visual or verbal descriptions,
8 depictions, or portrayals of persons,
9 things, or events shall not be deceptive,
10 misleading, or manipulative. Again,
11 building on that false, deceptive, or
12 misleading basic under the rule.

13 7.2(b)(5), Advertising Areas of
14 Practice. A lawyer or law firm shall not
15 state or imply in advertisements or
16 communications if the lawyer or law firm
17 currently practices in an area of practice
18 when that is not the case. Again, something
19 that would be false, deceptive, or
20 misleading. You don't do personal injury
21 work, you shouldn't be saying you do
22 personal injury. Yes, ma'am.

23 MS. BILLEAUD:

24 At what point can we then say we do --
25 we get a personal injury? And this, again,

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1 considering a new lawyer, just starting out,
2 you know, if you're planning to or you're
3 otherwise competent to practice in an area
4 and you're interested in getting more cases
5 in that area, could you not advertise your
6 interest in entering that area?

7 MR. LEMMLER:

8 I think this was discussed in the
9 committee at some length. I think the
10 decision or I recall some of the comments
11 were essentially that as long as you state
12 truthfully that you are intending to
13 practice in the area of personal injury or
14 now practicing in the area of personal
15 injury, you're misleading someone saying, "I
16 have 35 years of experience to personal
17 injury cases," when you just got out of law
18 school. I think there's a distinction --

19 MS. BILLEAUD:

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

24 I --

25 MR. LEMMLER:

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1 Again, whatever is not false, deceptive,
2 or misleading, and the statement is true,
3 then I think you would be safe. Mr.
4 Broussard.

5 MR. BROUSSARD:

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

8 MR. LEMMLER:

9 Thank you.

10 MR. BROUSSARD:

11 And I'm going to leave a few extra
12 copies here, and I appreciate the
13 opportunity.

14 MR. LEMMLER:

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

18 MR. BROUSSARD:

19 Probably the first comment here,
20 probably would be of interest to you, and
21 that I'm very much impressed with the work
22 of the committee, and generally favor what
23 the committee has done, but I do have some
24 very specific comments about the changes
25 that I think are important.

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1 MR. LEMMLER:

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

13 7.2(c), General Regulations Governing
14 Content of Advertisements. And this goes
15 through the various list, Use of
16 Illustrations, Fields of Practices, and so
17 forth. 7.2(c), Use of Illustrations.
18 Illustrations, including photographs, used
19 in advertisements shall contain no features
20 that are likely deceive, mislead, or confuse
21 the viewer. Again, it goes off of deception
22 or misleading. A lawyer may communicate the
23 fact that the lawyer does or does not
24 practice in particular fields of law. And
25 this is getting to the comment that was made

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1 earlier about certification. Lawyers shall
2 not state or imply that the lawyer is
3 certify, board certified, an expert, or a
4 specialist, and I note that Florida has just
5 added the word, "expert," to their rules.
6 This is part of proposal. It's part of our
7 rule right now. We were actually ahead of
8 them on this so they just added that into
9 their rule. Except as follows: Lawyers
10 certified by the Louisiana Board of Legal
11 Specialization, essentially, which they are
12 now. Lawyers certified by organizations
13 other than Louisiana Board of Legal
14 Specialization or another State Bar and
15 certification by another State Bar so there
16 are three different sets of certification
17 are all permissible under these rules in the
18 fashion described.

19 MS. BILLEAUD:

20 I have a question on this. What is it
21 between if you're saying you're a specialist
22 and you're saying specializing?

23 MR. LEMMLER:

24 No difference.

25 MS. BILLEAUD:

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1 So if you say, "I specialize in trade
2 laws," could I say, "I focus on them." I
3 mean, what --

4 MR. LEMMLER:

5 Our opinion is has been thus far with
6 the advisory service, and I don't know --
7 Chuck's view of that with ODC. I assume
8 it's pretty much the same, that if you're
9 going to use the words "specifying," or any
10 durative of those words saying that you're
11 an expert, or expertise, or you're a
12 specialist, or you specialize that, those
13 things are prohibited. If you want to say
14 you focus on an area, you concentrate on an
15 area, this is the type of law you're
16 currently practicing, I think all that's
17 permissible because it's true.

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

24 MR. DURIO:

25 My question is, can you actually tell

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1 the client that he's not liable for costs?

2 MR. LEMMLER:

3 Yes, you can. You have to be clear one
4 way or the other. If they want to be
5 responsible, you tell them. You should tell
6 them that. The distinction of because under
7 the rule, you can't advertise, an
8 advancement to the client, that they will
9 not be responsible --

10 MR. DURIO:

11 Under this proposal, you would be able
12 to advertise that the client will not be
13 liable --

14 MR. LEMMLER:

15 No, sir. No, sir. The previous
16 provision, we cited 1.8(e)(3)(k), I believe,
17 was the number. That's in our rules right
18 now as part of the financial assistance
19 where you can not advertise that in advance
20 you will be waiving costs and expectance and
21 so forth.

22 MR. DURIO:

23 Well, shouldn't it say that in here?

24 MR. LEMMLER:

25 Well, it's referenced higher up in the

1 rule. Any other comment on this? You must
2 honor the fee quoted in the advertisement
3 for a certain period of time. Again,
4 already in our rules. Pay for the
5 advertisements themselves. You can't have
6 someone else pay for your advertisement for
7 this proposal. Disclose that the matter
8 would be deferred to another lawyer if that
9 is the case. Information presumed not to
10 violate. These are what we calling the safe
11 harbor provision. The newest amendment
12 Florida has essentially flipped the order.
13 Right now, the safe harbor -- you know,
14 under this proposal, but under Florida's new
15 amendment, the safe harbor comes first.

16 MS. BILLEAUD:

17 Excuse me, did you skip one?

18 MR. LEMMLER:

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

24 MS. BILLEAUD:

25 It's 7 --

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1 MR. LEMMLER:

2 7.2, this is probably -- wait a minute.
3 We went back. Safe harbor, 7.2(c)(12). It's
4 way in the back. There's a long list of
5 things that you are permitted to do that are
6 assumed to be acceptable and permissible,
7 but you do just these things. Is there a
8 comment?

9 MS. BILLEAUD:

10 I just have a question. The last one,
11 (J), "photograph of the head and shoulders
12 of the lawyer or lawyers," you can't have
13 full body?

14 MR. LEMMLER:

15 Well, you can now in Florida. They just
16 amended that. So they've accepted that,
17 that you can have a whole lawyer as opposed
18 to a half of lawyer. So that's been
19 addressed already by Florida. I will
20 suspect we will be looking at that with the
21 committee as well. Florida has also
22 expanded the list of illustrations that are
23 acceptable in addition to the Lady Justice.
24 We can have the Statute of Liberty, the
25 American Eagle, and so on and so forth and a

1 number of other things. So some of these
2 things may have already been addressed, but
3 please, make your comment and make that part
4 of the record.

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

9 7.3, Advertisements in the Public Print
10 Media. I'll note for you now before I even
11 get started with this that Florida has
12 struck virtually all of this rule with the
13 exception of saying this is also substantive
14 to the requirements of Rule 7.2. They got
15 rid of the disclosure statement, but under
16 our proposal, you would make this part of
17 7.2, you would have to comply with the
18 general provisions of 7.2 of not being
19 falseLY, deceptive or misleading, but you
20 also have and contain a statement saying the
21 hiring of the lawyers are an important
22 decision that should not be based solely
23 upon advertisements, but as the slide points
24 out, you're not required to put that where
25 your add contains no illustrations or other

1 information other than what's listed in the
2 safe harbor section of 7.2, and you're not
3 required to put this in written
4 communications that are sent in compliance
5 with 7.4.

6 MR. DURIO:

7 Where do you see this?

8 MR. LEMMLER:

9 7.4, you're required to put that as in
10 advertisements so we will go forward with
11 that?

12 MS. BILLEAUD:

13 I have a question.

14 MR. LEMMLER:

15 Yes, ma'am.

16 MS. BILLEAUD:

17 Is public print media defined anywhere?

18 MR. LEMMLER:

19 I'm sorry?

20 MS. BILLEAUD:

21 Is public print media defined anywhere?

22 MR. LEMMLER:

23 I don't know that it is. So that's a
24 good comment. I don't know that I know that
25 there is a definition specifically defining

1 the public print media, other than 7.1. I
2 think it mentions the permissible forms of
3 advertising. Through the public print media
4 included but not limited to print media,
5 such as, telephone directory, legal
6 directory, newspaper, or other periodicals
7 so I suppose in some fashion it is defined.
8 Moving forward, please.

9 7.4, Direct contact with prospective
10 clients, broken down into two major
11 categories, solicitation and written
12 communication, essentially what we have
13 right now. The notable changes in the
14 proposal that we'll be changing or
15 recommending that the phrase, "prior
16 professional relationship," be changed to
17 prior lawyer/client relationship, and then
18 prior lawyer/client relationship, is further
19 defined in a portion of 7.3(a) -- it
20 proposed 7.4, excuse me, as something to
21 exclude relationships in which the client
22 was an unnamed member of a class action, a
23 cast of thousands, someone you have never
24 met before; you can not basically solicit
25 that person in person claiming that that

1 person is part of the lawyer/client
2 relationship that are not even listed on the
3 pleadings. You never had that -- you've
4 never had any personal contact with that
5 person. Moving forward.

6 7.4, Written communications contains the
7 same prohibitions as 7.3(b), this is, I
8 think, talking about target of written
9 communications. Communication must abide by
10 7.2 indicating the required information as
11 stated about hiring -- but I'm getting lost
12 here so let's move forward. Copy must be
13 filed with the LSBA provided by Rules 7.7.
14 We'll get to that in a minute. No written
15 communications to someone unlikely to
16 exercise reasonable judgment in employing a
17 lawyer. If contacting a perspective client
18 about a specific occurrence, it must contain
19 the phrase that, "If you have already
20 retained a lawyer for this matter, please
21 disregard this letter. Stating that "the
22 lawyer will not handle the matter, if indeed
23 that is the case, and no revelation of the
24 underlying legal matter on the outside of
25 the envelope. This is to tell you something

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1 about your serious personal injury case.
2 Please open the envelope." Nothing of that
3 nature. Yes, ma'am.

4 MS. BILLEAUD:

5 I get a lot of information materials.
6 They're not necessarily -- they're mainly
7 newsletter that kind of thing.

8 MR. LEMMLER:

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

20 MS. BILLEAUD:

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

25 MR. LEMMLER:

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1 Perhaps your stationery.

2 MS. BILLEAUD:

3 Yes.

4 MR. LEMMLER:

5 Okay, moving forward. 7.5,

6 Advertisements in the Electronic Media other
7 than computer-accessed communications. And
8 this would be basically TV and radio. In
9 general, computer-based ads are subject to
10 Rule 7.6. All of the ads in the electronic
11 media included but not limited to television
12 and radio are subject to the requirements of
13 7.2 not falsely, deceptive, or misleading.

14 Appearance on television or radio, the
15 prohibited things. Television or radio
16 advertisement shall not contain any feature
17 that is deceptive, misleading, manipulative,
18 or that is likely to confuse the viewer or
19 listener. Any spokesperson's voice or image
20 that is recognizable to the public in the
21 community where the advertisement appears.
22 Lawyers who are not members of the
23 advertising law firm speaking on behalf of
24 the advertising lawyer or law firm or any
25 background sound other than instrumental

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1 music.

2 MR. BURGESS:

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

24 MR. LEMMLER:

25 Thank you. Perhaps, but section 2 does

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1 provide a permissible content, and one of
2 those things I'll skip ahead to, and it says
3 that, "Television and radio advertisements
4 may contain non-lawyer spokesperson speaking
5 on behalf of the lawyer or law firm, as long
6 as the spokesperson is not recognizable to
7 the public and the community where the
8 advertisement appears, and that spokesperson
9 shall provide a spoken disclosure
10 identifying the spokesperson and disclosing
11 that the spokesperson who is not a lawyer.

12 MR. BURGESS:

13 That's exactly what I was talking about.
14 Maybe some local guy that does the motor
15 sports on the local radio who "known to the
16 public or the community," for doing the
17 radio advertisement unless he says, "And
18 don't forget I'm whatever DJ on the local
19 radio station," why does it specifically
20 prohibit local radio personalities from
21 reading your commercial on the air unless
22 they go off on this disclaimer, "Remember,
23 I'm such and such." It's a small town. All
24 I can think of is the football games and the
25 basketball games.

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1 MR. LEMMLER:

2 I will note in respect to your comment
3 that the amendments of Florida, the Florida
4 Bar was recommending that that portion would
5 be changed to allow some latitude and say
6 that the spokesperson should only need to
7 identify themselves when it's not apparent.
8 The Florida Supreme Court actually said,
9 "No, we're not changing it. We think this
10 is unequivocal. It's very clear, that
11 someone says their not lawyer, there's no
12 misunderstanding. I'm not trying to argue
13 with you. I'm just giving you some
14 background so that's been upheld in Florida
15 as we speak.

16 MR. GREGORIO:

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

25 MR. BURGESS:

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1 Not at all.

2 MR. GREGORIO:

3 Your concern is the local --

4 MR. BURGESS:

5 That's right. Prevent us from hiring
6 local talented persons to do these things.

7 MR. GREGORIO:

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

10 MS. BILLEAUD:

11 Just to expand on what Clay has said
12 about a radio ad, it's open up, obviously
13 not a lawyer, obviously not me, talking
14 about me, just my voice, identifying myself
15 to make the DJ who's introducing the whole
16 thing, and say, "I'm not a lawyer
17 spokesperson for Susan Billeaud, da, da, da,
18 da, and here's what I've got to say," I
19 mean, it's so obvious that they're not
20 saying, "I'm a lawyer," or any of those
21 things.

22 MR. ALLEN:

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

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

10 MR. HERNANDEZ:

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

24 MR. LEMMLER:

25 Well, that's a good comment. Let me

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1 jump ahead for a second. The review process
2 is in place. I've alluded to this already,
3 will provide advisory committees, basically
4 binding on the committee's part. Non-
5 binding, essentially, that we don't think
6 that this is going to fit under the rules.
7 Now, the lawyer is not constrained to follow
8 that. I think it would be probably in the
9 lawyer's best interest to do so because
10 under the provisions that you'll see later,
11 there's a fining of non-compliance, that
12 will be reported to the Disciplinary
13 Counsel's Office, and the lawyer can go
14 forward. You're not bound to us.
15 Ultimately, the Supreme Court is going to
16 determine whether that fits under the rules
17 of whether there's a problem under the
18 rules, but the process is designed at least
19 to give the lawyer some advance assistance
20 with trying to interpret these rules and
21 perhaps figure out whether it fits there or
22 doesn't fit there. You know, our advice now
23 that we give people, is very conservative,
24 but it's design to say, "Look, if you do
25 this, more than likely you're not going to

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1 have a problem." We don't really tell
2 people to how to figure out how to push the
3 envelope on the other end. So that's --
4 we're not going to decide, but we're going
5 to try to give you some help and some
6 advice. So, ultimately, only the Supreme
7 Court can only decide whether you're
8 following these rules and whether you
9 complied with them or not. Moving forward.

10 There's essentially two major ways you
11 can do this. You can get the advisory
12 opinion, you're not required get the
13 advisory opinion so I'm not going to really
14 tell you what the law is. If you get the
15 advisory and opinion and you try to get the
16 advisory opinion, you need to do that at
17 least 30 days before you run it. Under your
18 scenario, it will probably work, but you're
19 not required to get the advisory opinion.
20 If you feel confident that the ad is going
21 to run the way it is, it's okay, you can do
22 it.

23 MR. BURGESS:

24 That's the whole point. I mean, who
25 feels confident? Am I to turn myself

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1 because I'm going to get in trouble?

2 MR. LEMMLER:

3 If you comply with safe harbor, then
4 presumptionally you would.

5 MS. BILLEAUD:

6 Susan Billeaud.

7 MR. LEMMLER:

8 Yes, ma'am.

9 MS. BILLEAUD:

10 The safe harbor provisions are basically
11 your Martindale-Hubbell Directory; is it
12 not?

13 MR. LEMMLER:

14 That's part of -- yes, ma'am.

15 MS. BILLEAUD:

16 So I guess my question comes off of your
17 last statement was, that is, I run an ad.
18 You guys think it's outside the rule. While
19 my case is pending with the U.S. Supreme
20 Court, am I prohibited from practicing law?
21 I mean, am I disbarred at that point? My
22 livelihood is hanging on this. Particularly
23 when it comes to the current decisions or
24 even prior decisions. I'm also concerned
25 about some people who run television ads

1 invest thousand and thousand of dollars on
2 these ads, and technically, they can run for
3 years, and then suddenly, we're having these
4 meetings, and then two months from now
5 they're pulled. You know, those are the
6 kinds of things I'm worried about.

7 MR. LEMMLER:

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

13 Other permissible content, television
14 and radio advertisements may contain images
15 otherwise conform to the requirements of
16 these Rules; a lawyer who is a member of the
17 advertising firm personally appearing to
18 speak regarding the legal services the
19 lawyer or law firm is available to perform,
20 the fees to be charged for such services,
21 and the background and experience of the
22 lawyer or law firm, or -- and we've already
23 talked about this, a non-lawyer
24 spokesperson.

25 7.6 deals Computer-Accessed

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1 Communications, not TV or radio, essentially
2 what I've talked about before, either
3 internet presence or website or the other
4 form, email, those are the two major
5 categories. All of these are subject to
6 listing your location requirements as
7 indicated in 7.2. You have to put a
8 bonafide office address or otherwise
9 identify yourself.

10 7.9, and let's take the substantive --
11 maybe the substance when we get into the
12 procedural things, but we'll review the
13 process and the filing process. 7.9,
14 information provided upon request. This
15 rule was actually just struck from Florida's
16 rules, and "struck," is perhaps a strong
17 word. It was moot up into 7.2, I think,
18 actually 7.1. It's now been made just a
19 general blanket exception. But if you're
20 providing information to clients upon
21 request, they don't even need a special
22 rule; it just says you can do it. Again, as
23 long as you comply with 7.2, and you're not
24 being false, deceptive, misleading, but this
25 is what we have in the proposal right now,

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1 and that clause has a lot of exceptions that
2 allow you to send information to clients
3 upon request. You can provide information
4 deemed valuable to assist a potential
5 client, again, as long as it not false,
6 deceptive, and misleading. An engagement
7 letter that any contingency fee contract,
8 should have the word "sample," or "do not
9 sign," on it. Again, designed not to
10 mislead or confuse someone. May contain
11 factually verifiable statements concerning
12 past results. Must disclose intent to refer
13 to another lawyer or law firm if that's the
14 case.

15 MR. BURGESS:

16 Assuming the information that are on
17 judgments, pleadings, things like that, my
18 understanding, would it be a violation on a
19 website for you to say "Well, these are my
20 past judgments." But will it not be
21 according to this rule for me to say, "If
22 you want information about my past
23 judgments, click here," because they are
24 requesting information, and I can then lead
25 them to where that information is. Do you

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1 follow what I'm saying? If we can't talk
2 about our judgments, can we tell them, "If
3 you're interested in that information,
4 rather than have to call or fax you
5 something, can you click here or fill out --
6 I mean, I'm interested in whatever."

7 MR. LEMMLER:

8 I think this ducktails -- if you read
9 very carefully what 7.6(b), an internet
10 presence or website that you're referring
11 to, and 7.6(b)(3) says, "That each
12 communication are considered to be
13 information provided upon request, and,
14 therefore, are otherwise governed by the
15 requirements of Rule 7.9." So you can do
16 all what you say on your website.

17 MR. BURGESS:

18 Would it be permissible just to put on
19 there "click here?"

20 MR. LEMMLER:

21 I don't think that's what it says.

22 MR. BURGESS:

23 I'm talking about, for example, past
24 judgments --

25 MR. LEMMLER:

1 I said you can put that --

2 MR. BURGESS:

3 Click on the website.

4 MR. LEMMLER:

5 Yes, sir.

6 MR. BURGESS:

7 But you couldn't do it on television and
8 radio?

9 MR. LEMMLER:

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

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

25 Under 7.7(b), which provides the

1 advancement advisory opinion. Any comments
2 there?

3 MR. BURGESS:

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

8 MR. LEMMLER:

9 I'm not sure what you're saying.

10 MR. BURGESS:

11 In other words, has anyone considered an
12 evaluation process of the system we
13 currently have separate and apart from every
14 one of the rules? In other words, could it
15 be possible in our current rules, many of
16 the advertisements could be violating the
17 rules, has anyone considered saying, "Look,
18 under our current rules, we're going to
19 adopt the evaluation process, start sending
20 it in, and use the same evaluation process,
21 just kind of filtering out those -- the
22 complaint of following the rules we have?
23 In other words, it seemed to me that could
24 be waived, start filtering out, you know,
25 those who have blatantly violated the rules

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1 we should all agree on even if there was a
2 problem with the remainder of the rules,
3 fore example, what can be passed and what
4 couldn't be passed. It would seem to me, a
5 package could be done; it would appear to
6 me, everyone should at least be in agreement
7 to a certain extent to begin an evaluation
8 process immediately to see those that are
9 currently violating the rules, and that
10 would be prevent this burdensome, "I'm in
11 DeRidder, Louisiana and I thought I saw a
12 print ad, and whatever I did in violated in
13 doing it, and if nothing else, I would at
14 least suggest these rules failed, that we
15 would consider doing evaluation process
16 immediately to start weeding out those who
17 are in clear violation already.

18 MR. LEMMLER:

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

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1 whether it's in compliance or not.

2 MR. BURGESS:

3 If they were pre-submitted --

4 MR. LEMMLER:

5 Yes, sir. Unless it falls under one of
6 the exemptions, which would be safe harbor.

7 MR. BURGESS:

8 I guess what I'm trying to get at, that
9 would prevent -- that would focus to getting
10 an advisory opinion ahead of time and
11 eventually send them home, which could be
12 screened --

13 MR. LEMMLER:

14 Yes.

15 MR. BURGESS:

16 I think that would be extremely helpful
17 because if nothing else, if these rules
18 fail, you know, they would start cleaning
19 some of the up immediately.

20 MR. LEMMLER:

21 Good. Under 7.7(c), which is the
22 regular filing we're talking about. You
23 basically have to submit a fee, which under
24 the proposal, would be determine by the
25 Supreme Court. A copy of advertisement, a

1 sample envelope, if it's going to be
2 contained in that envelope, a type written
3 copy of a transcript. Yes, ma'am.

4 MS. BILLEAUD:

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

10 MR. LEMMLER:

11 I can tell you right now that this fee
12 in Florida is \$150 for a regular filing and
13 \$250 for a late filing. In Texas, it's \$75,
14 I think, for a regular filing, and \$100 or
15 \$125 for a late filing.

16 MS. BILLEAUD:

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

23 MR. LEMMLER:

24 I think that's essentially what's
25 envisioned here as well. I don't think this

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1 is not a money making thing; it's just to
2 cover expenses. I'm purely speculative,
3 again, but I suspect --

4 MS. BILLEAUD:

5 I'm sure it is.

6 MR. LEMMLER:

7 -- because it's going to cover a staff
8 and so forth.

9 MS. BILLEAUD:

10 I'm sure that's the case, but I'm just
11 stating the nature of the fee and what the
12 fee would cover.

13 MR. LEMMLER:

14 I think the proposal reads out to the
15 Court as to what would be best and you know
16 -- these hearings are going to determine
17 that. The other thing you'll be required to
18 tell us is the type of media, the frequency
19 and the duration of the proposed
20 advertisement, where you're going to run it,
21 how long are you going to run it, and so
22 forth.

23 MS. BILLEAUD:

24 I have a quick question. Why is it
25 necessary to say it's going to run on this

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1 radio frequency for 25 repeats per month for
2 the unknown future?

3 MR. LEMMLER:

4 Well, I don't know the complete answer
5 to that. I think practically speaking,
6 probably, encompasses the need for a re-
7 file. If you say, "I'm going to be using
8 this ad for the next six months," there's no
9 need to re-file the same ad four months
10 later or five months later when the Bar
11 already knows you're using it for six
12 months.

13 MS. BILLEAUD:

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

17 MR. LEMMLER:

18 There is no re-filing if you don't
19 change the content.

20 MS. BILLEAUD:

21 So that's why I'm wondering why you have
22 to talk about, you know, you're going to use
23 it only on this station, and it's going to
24 be only this thing and used for this period
25 of time, then why don't you just say, it's a

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1 regular ad; you can use it anywhere on radio
2 as much as you want and as long as you want?

3 MR. LEMMLER:

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

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

25 Communication mailed only to existing

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1 clients, former clients, or otherwise. If
2 you send any of these things to people, you
3 do not need to file to. Florida has, I
4 believe, expanded -- actually, moved that
5 forward into 7.1 and say this is
6 automatically an exemption. You do not have
7 to file, and we consider that okay.

8 MR. BURGESS:

9 I didn't quite catch that. A listing of
10 law publications --

11 MR. LEMMLER:

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

15 MR. BURGESS:

16 It seems to me you can actively say,
17 "I'm listed in and where the publication
18 is."

19 MS. BILLEAUD:

20 I'm sorry, I have one more question
21 about safe harbor. Is that -- I'm trying to
22 get my arms around like when is sponsorship,
23 for example, I'm putting on a seminar to
24 benefit a charitable 501(c) organization on
25 a legal topic. Would that sort of

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1 announcement have to brought before the
2 committee.

3 MR. LEMMLER:

4 The announcements that you're making
5 that sponsorship or that you are sponsoring
6 that event --

7 MS. BILLEAUD:

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

14 MR. LEMMLER:

15 I think so. I don't know if that's even
16 included. I'm not real sure one way or the
17 other about that, but I think the typical
18 example is discussed in the litigating -- I
19 remember it was someone, for instance, in
20 New Orleans, that their law firm had
21 sponsored public radio, sections of public
22 radio, you know, it said, "The firm of so
23 and so sponsored the last half hour of
24 public radio," something of that nature, but
25 your example, I'm not sure. I'm not really

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1 good at giving an ethics opinion on the side
2 especially about proposals so your comment
3 is noted.

4 MS. BILLEAUD:

5 Well, then, again, you know, that's the
6 chilling thing. Where is it under safe
7 harbor?

8 MR. LEMMLER:

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

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

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

14 Future work plans. We're doing the
15 public hearings. We've done two now.
16 Special rules of debate. We'll be in New
17 Orleans tomorrow night. Special rules of
18 debate we're adopting. We've already talked
19 about those. And Billy mentioned that
20 resolutions addressing additional amendments
21 or proposed amendments to these proposals
22 that we're going to -- at some point we're
23 going to be submitting to the House, but
24 those resolutions need to be submitted in
25 writing 30 days in advance of the House of

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1 Delegates meeting, which I think is like
2 December 13th or 12th or something like
3 that, the deadline for resolutions.

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

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

23 MR. ALLEN:

24 I want to commend the guys for doing
25 this, but one thing I want to comment on, I

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1 know how hard this is. How much is the
2 public actually involved? I know this is
3 hard to do, but it seems like almost
4 everyone is an attorney or a media person.
5 I mean, is there any other way we can ensure
6 that the public does get involved; they may
7 not want to get involve, or, at least, an
8 invitation that they haven't been involved,
9 you know, in public hearings.

10 MR. LEMMLER:

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

18 MR. ALLEN:

19 Thank you.

20 MR. GAY:

21 We're adjourned.

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