

**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

***ASSOCIATED REPORTERS, INC.***

***(337) 988-0556***

MR. GAY:

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

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

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

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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,

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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.

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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,

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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.

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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 splendor 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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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:

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

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 --

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.

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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:

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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.

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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:

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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:

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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:

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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.

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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.

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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.

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

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.

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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,

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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:

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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.

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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:

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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 --

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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:

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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.

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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:

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

1 because I'm going to get in trouble?

2 MR. LEMMLER:

3 If you comply with safe harbor, then  
4 presumptually 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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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,

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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:

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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](http://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

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

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.)  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

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

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

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

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

---

LORI ACHEE  
CERTIFIED COURT REPORTER  
LICENSE NO. 24007

## R E P O R T E R ' S P A G E

1  
2  
3 I, LORI ACHEE, Certified Court Reporter in and  
4 for the State of Louisiana, before whom this sworn  
5 testimony was taken, do hereby state on the Record:

6 That due to the interaction in the spontaneous  
7 discourse of this proceeding, dashes (--) have been  
8 used to indicate pauses, changes in thought, and/or  
9 talkovers;

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

14 That any words and/or names which could not be  
15 verified through reference material have been  
16 denoted with the phrase "(spelled phonetically)."  
17  
18  
19  
20  
21  
22

---

23 LORI ACHEE

24 CERTIFIED COURT REPORTER

25 LICENSE NO. 24007

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***

***ASSOCIATED REPORTERS, INC.***  
***(337) 988-0556***