

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM H. HARRELL, JR., HARRELL &
HARRELL, P.A., and PUBLIC CITIZEN,
INC.,

Plaintiffs,

vs.

Case No. 3:08-cv-15-J-34TEM

THE FLORIDA BAR, et al.,

Defendants.

FINAL JUDGMENT AND PERMANENT INJUNCTION

On September 30, 2011, the Court granted, in part, Plaintiffs' Motion for Summary Judgment and Memorandum in Support of Motion (Doc. No. 62). See Order (Doc. No. 77). In the Order, the Court determined that certain provisions of The Florida Bar's Rules of Professional Conduct contained within the Rules Regulating The Florida Bar (Rules) violate the Fourteenth Amendment. See Order at 39. Specifically, the Court found that Rules 4-7.2(c)(3) and 4-7.5(b)(1)(A), which prohibit the use of "manipulative" advertisements, and the comment to Rule 4-7.1 which requires that advertisements contain only "useful, factual information" are unconstitutionally vague. Id. at 39-40. Additionally, the Court concluded that certain of the Rules, as applied to Harrell¹ in this case, violate Plaintiffs' First Amendment rights. In particular, the Court determined that the application of Rule 4-7.2(c)(2) to prohibit Harrell's slogan "Don't settle for less than you deserve," violates the First Amendment. Id. at 40. The Court also found that Rule 4-7.5(b)(1)(C), as it would apply to

¹ The Court refers to William H. Harrell, Jr. and his law firm Harrell & Harrell, P.A. collectively as "Harrell."

prohibit the background sounds in Harrell's proposed advertisements, violates Plaintiffs' First Amendment rights. Id. In the Order, the Court stated that it would enter a Final Judgment and Permanent Injunction in accordance with those findings. See id. In light of the foregoing, as the Court finds that there is no just reason for delay, it is

ORDERED AND ADJUDGED:

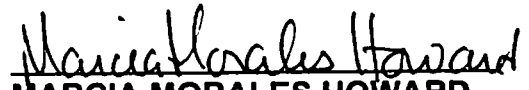
1. The Court's Order (Doc. No. 77), entered on September 30, 2011, is incorporated herein by reference.
2. **FINAL JUDGMENT** is hereby **ENTERED** in favor of Plaintiffs William H. Harrell, Jr., Harrell & Harrell, P.A., and Public Citizen, Inc., and against Defendants The Florida Bar, John F. Harkness, Kenneth L. Marvin, Mary Ellen Bateman, Elizabeth Tarbert, James N. Watson, Jr., Susan V. Bloemendaal, Jan K. Wichrowski, Adria E. Quintela, and Arlene K. Sankel, in their official capacities, to the extent Plaintiffs challenged the constitutionality of Rules 4-7.2(c)(3) and 4-7.5(b)(1)(A) on their face, and the constitutionality of Rules 4-7.2(c)(2) and 4-7.5(b)(1)(C) as applied in this case.
3. The Court declares that Rules 4-7.2(c)(3) and 4-7.5(b)(1)(A) are unconstitutionally vague on their face in violation of the Fourteenth Amendment of the United States Constitution.
4. Accordingly, Defendants, and all of their officers, agents, servants, employees, and attorneys, as well as other persons who are in active concert or participation with any of them, who receive actual notice of this Order, are **permanently enjoined** from enforcing Rules 4-7.2(c)(3) and 4-7.5(b)(1)(A).

5. In addition, the Court declares that the application of Rule 4-7.2(c)(2) to prohibit Harrell from using the phrase "Don't settle for less than you deserve" is a violation of Plaintiffs' First Amendment rights.
6. As such, Defendants, and all of their officers, agents, servants, employees, and attorneys, as well as other persons who are in active concert or participation with any of them, who receive actual notice of this Order, are **permanently enjoined** from enforcing Bar Rule 4-7.2(c)(2) to prohibit Harrell from using the phrase "Don't settle for less than you deserve."
7. Finally, the Court declares that 4-7.5(b)(1)(C), as applied to prohibit the background sounds in Harrell's proposed advertisements, violates Plaintiffs' First Amendment rights.
8. Thus, Defendants, and all of their officers, agents, servants, employees, and attorneys, as well as other persons who are in active concert or participation with any of them, who receive actual notice of this Order, are **permanently enjoined** from applying Bar Rule 4-7.5(b)(1)(C) to prohibit the background sounds contained in Harrell's proposed advertisements.²

² Specifically, the background sounds in Harrell's proposed advertisements are sounds caused by his dogs, gym equipment, and other activities in the law firm.

9. The Clerk of the Court is directed to terminate all remaining pending motions and deadlines and close the file.

DONE AND ORDERED at Jacksonville, Florida on October 4, 2011.


MARCIA MORALES HOWARD
United States District Judge

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Copies to:

Counsel of Record
Pro Se Parties

CIVIL APPEALS JURISDICTION CHECKLIST

1. **Appealable Orders:** Courts of Appeals have jurisdiction conferred and strictly limited by statute:
 - (a) **Appeals from final orders pursuant to 28 U.S.C. Section 1291:** Only final orders and judgments of district courts, or final orders of bankruptcy courts which have been appealed to and fully resolved by a district court under 28 U.S.C. Section 158, generally are appealable. A final decision is one that “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” Pitney Bowes, Inc. V. Mestre, 701 F.2d 1365, 1368 (11th Cir. 1983). A magistrate judge’s report and recommendation is not final and appealable until judgment thereon is entered by a district court judge. 28 U.S.C. Section 636(c).
 - (b) **In cases involving multiple parties or multiple claims,** a judgment as to fewer than all parties or all claims is not a final, appealable decision unless the district court has certified the judgment for immediate review under Fed.R.Civ.P. 54(b), Williams v. Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984). A judgment which resolves all issues except matters, such as attorneys’ fees and costs, that are collateral to the merits, is immediately appealable. Budinich v. Becton Dickinson & Co., 486 U.S. 196, 201, 108 S. Ct. 1717, 1721-22, 100 L.Ed.2d 178 (1988); LaChance v. Duffy’s Draft House, Inc., 146 F.3d 832, 837 (11th Cir. 1998).
 - (c) **Appeals pursuant to 28 U.S.C. Section 1292(a):** Appeals are permitted from orders “granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions...” and from “[i]nterlocutory decrees...determining the rights and liabilities of parties to admiralty cases in which appeals from final decrees are allowed.” Interlocutory appeals from orders denying temporary restraining orders are not permitted.
 - (d) **Appeals pursuant to 28 U.S.C. Section 1292(b) and Fed.R.App.P.5:** The certification specified in 28 U.S.C. Section 1292(b) must be obtained before a petition for permission to appeal is filed in the Court of Appeals. The district court’s denial of a motion for certification is not itself appealable.
 - (e) **Appeals pursuant to judicially created exceptions to the finality rule:** Limited exceptions are discussed in cases including, but not limited to: Cohen V. Beneficial Indus. Loan Corp., 337 U.S. 541,546,69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); Atlantic Fed. Sav. & Loan Ass’n v. Blythe Eastman Paine Webber, Inc., 890 F. 2d 371, 376 (11th Cir. 1989); Gillespie v. United States Steel Corp., 379 U.S. 148, 157, 85 S. Ct. 308, 312, 13 L.Ed.2d 199 (1964).
2. **Time for Filing:** The timely filing of a notice of appeal is mandatory and jurisdictional. Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). In civil cases, Fed.R.App.P.4(a) and (c) set the following time limits:
 - (a) **Fed.R.App.P. 4(a)(1):** A notice of appeal in compliance with the requirements set forth in Fed.R.App.P. 3 must be filed in the district court within 30 days after the entry of the order or judgment appealed from. However, if the United States or an officer or agency thereof is a party, the notice of appeal must be filed in the district court within 60 days after such entry. **THE NOTICE MUST BE RECEIVED AND FILED IN THE DISTRICT COURT NO LATER THAN THE LAST DAY OF THE APPEAL PERIOD - no additional days are provided for mailing.** Special filing provisions for inmates are discussed below.
 - (b) **Fed.R.App.P. 4(a)(3):** “If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.”
 - (c) **Fed.R.App.P.4(a)(4):** If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in this rule, the time for appeal for all parties runs from the date of entry of the order disposing of the last such timely filed motion.
 - (d) **Fed.R.App.P.4(a)(5) and 4(a)(6):** Under certain limited circumstances, the district court may extend the time to file a notice of appeal. Under Rule 4(a)(5), the time may be extended if a motion for an extension is filed within 30 days after expiration of the time otherwise provided to file a notice of appeal, upon a showing of excusable neglect or good cause. Under Rule 4(a)(6), the time may be extended if the district court finds upon motion that a party did not timely receive notice of the entry of the judgment or order, and that no party would be prejudiced by an extension.
 - (e) **Fed.R.App.P.4(c):** If an inmate confined to an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution’s internal mail system on or before the last day for filing. Timely filing may be shown by a declaration in compliance with 28 U.S.C. Section 1746 or a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.
3. **Format of the notice of appeal:** Form 1, Appendix of Forms to the Federal Rules of Appellate Procedure, is a suitable format. See also Fed.R.App.P. 3(c). A pro se notice of appeal must be signed by the appellant
4. **Effect of a notice of appeal:** A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction or to rule on a timely motion of the type specified in Fed.R.App.P. 4(a)(4).