

23           mouth shut. I'll try to rely on my best  
24           memory of some of the comments in some of  
25           the research I thought that was discussed on

1           this rule because this was the subject of a  
2           good bit of debate within the Committee. I  
3           seem to recall there being a justification,  
4           perhaps, or -- that said that, when you  
5           bring in the judiciary as a sort of stamp of  
6           approval, it lends the honor and the  
7           integrity of the judicial side of things,  
8           the adjudicative side of things, as standing  
9           in your corner and giving you a favorable  
10          blessing, which is probably an inappropriate  
11          use of the judiciary, and that may well have  
12          also been the reason for not permitting --  
13          or the proposal did not permit the use of  
14          someone who's dressed like a Judge, or to  
15          portray a Judge.

16          MS. ALSTON:

17                 Well, I don't have a problem with  
18          that.

19          MR. PLATTSMIER:

20                 Well, and I'm just suggesting to you,  
21          it may have been part of the discussion,  
22          Beth, about why that ought to have been

23           there.

24           MS. ALSTON:

25                 But an empty courtroom, you know --

1 MR. PLATTSMIER:

2 I'm here to get your comments and  
3 observations.

4 MR. LEMMLER:

5 Anyone else on that point?

6 (No response.)

7 MR. LEMMLER:

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

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

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

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

20 MR. PITTENGER:

21 Sorry to interrupt you again, Richard,  
22 but back to the -- the nickname. Obviously,

23 our concern would be the -- that the -- we -

24 - we advertise using a nickname. That --

25 would that prohibit us from advertising or -

1 - or even using letterhead that says, "E.

2 Eric Guirard"?

3 MR. LEMMLER:

4 I think under the rule, it perhaps

5 would.

6 MS. SCHABEL:

7 It wouldn't prohibit you from using

8 the name, it would just prohibit you from

9 using the nickname.

10 MS. ALSTON:

11 Well, but -- are you talking about the

12 "E. Guarantee" thing? That's not a

13 nickname. That's a -- that's a --

14 MR. PLATTSMIER:

15 A slogan.

16 MS. ALSTON:

17 -- slogan.

18 MS. SCHABEL:

19 A slogan and slogans are also not

20 allowed.

21 MR. PITTENGER:

22 All right, so Skip Phillips would have

23 to change his name back to --

24 MR. PHILLIPS:

25 So it would become anonymous because

1 nobody knows me by my real name. That's my  
2 alias.

3 MR. PLATTSMIER:

4 I know who you are, Mr. Phillips.

5 MR. PHILLIPS:

6 I'm afraid that you do.

7 MR. LEMMLER:

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

16 MR. PHILLIPS:

17 I think that's the way they --

18 MR. LEMMLER:

19 -- if you have a -- you know, a  
20 nickname you've been using since you were a  
21 child, assuming that it doesn't say, you  
22 know, "Win all cases," you know, then, I



23           suppose it's okay.

24           MR. PHILLIPS:

25           You've got to read the whole phrase

1 together.

2 MR. LEMMLER:

3 Yes, sir?

4 MR. PITTENGER:

5 I think Skip can fly --

6 MR. PHILLIPS:

7 You do?

8 MR. PITTENGER:

9 -- and you're going to win.

10 (An off-the-record discussion followed.)

11 MR. LEMMLER:

12 Okay. Moving forward. Rule

13 7.2.(b)(2), "Misleading or Deceptive Factual

14 Statements. Any factual statement contained

15 in any advertisement or written

16 communication or any information furnished

17 to a prospective client under this Rule

18 shall not:

19 (A) be directly or impliedly false or

20 misleading;

21 (B) be potentially false or

22 misleading;

23 (C) fail to disclose material  
24 information necessary to prevent the  
25 information supplied from being actually or

1 potentially false or misleading;

2 (D) be unsubstantiated in fact; or

3 (E) be unfair or deceptive."

4 Again, all based on the primary rule

5 that nothing should be false, deceptive or

6 misleading when talking about yourself or

7 your firm.

8 Rule 7.2(b)(3) "Descriptive

9 Statements. A lawyer shall not make

10 statements describing or characterizing the

11 quality of the lawyer's services in

12 advertisements or written communications;

13 provided that this provision shall not apply

14 to information furnished to a prospective

15 client at that person's request or to

16 information supplied to existing clients"

17 so, again, the big exception here is that

18 you can tell your existing clients or

19 prospective clients who ask, whatever,

20 pretty much, they want to know, as long as

21 it, again, is not false, misleading or

22 deceptive.

23 "Prohibited Visual and Verbal  
24 Portrayals" in 7.2(b)(4). "Visual or verbal  
25 descriptions, depictions or portrayals of

1 persons, things, or events shall not be  
2 deceptive, misleading or manipulative."

3 All, again, based on the basic premise.

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

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

19 Rule 7.2(C), "General Regulations  
20 Governing Content of Advertisements." We'll  
21 just skip the overview and go right to the  
22 rules themselves. "Use of Illustrations.

23 Illustrations, including photographs, used  
24 in advertisements shall contain no features  
25 that are likely to deceive, mislead or

1 confuse the viewer." Nothing false,  
2 misleading or deceptive.

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

12 Lawyers certified by the Louisiana  
13 Board of Legal Specialization, those may  
14 state that they are certified. Lawyers  
15 certified by organizations other than the  
16 Louisiana Board of Legal Specialization or  
17 another state Bar, also, may proclaim that  
18 they are experts or specialists.

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

21 MS. HARVEY:

22 I have a question.



23 MR. LEMMLER:

24 Yes, ma'am?

25 MS. HARVEY:

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

6           MR. LEMMLER:

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

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

21          MR. PLATTSMIER:

22          No.

23 MS. SCHABEL:

24 No.

25 MR. LEMMLER:

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

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

15          (No response.)

16          MR. LEMMLER:

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

21          "Permissible Content of  
22          Advertisements." These are the safe harbor

23 provisions, information that is, on its  
24 face, presumed not to violate these rules.  
25 "Subject to the requirements of this

1 rule and Rule 7.10," which deals with firm  
2 letterhead and so forth, you can state the  
3 name of the lawyer or the law firm, a  
4 listing of lawyers that are associated with  
5 the firm, office locations, parking  
6 arrangements, disability accommodations,  
7 telephone numbers, web site addresses,  
8 electronic mail addresses, office and  
9 telephone service hours and designate  
10 yourself as an, "Attorney" or a, "Lawyer" or  
11 a, "Law firm". Basic information. Nothing  
12 wrong with telling clients in your  
13 advertisements basic information, again, as  
14 long as it's presumably not false,  
15 misleading or deceptive.

16 You can state the date that you were  
17 admitted to the State Bar, and any other  
18 Bars, your current membership or positions,  
19 or your former membership or positions held  
20 with the Louisiana State Bar, sections or  
21 committees, together with the dates of those  
22 positions. Former positions of employment

23 held in the legal profession, together with  
24 dates those positions were held, years of  
25 experience practicing law, number of lawyers

1 in the advertising firm and a listing of the  
2 federal Courts and jurisdictions other than  
3 Louisiana where you're licensed to practice.  
4 Again, all information that clients would  
5 probably want to know, all basic stuff about  
6 yourself.

7 You can provide technical and  
8 professional licenses, information on that,  
9 granted by the state or other recognized  
10 licensing authorities.

11 If you can speak or have someone that  
12 can speak a foreign language.

13 Fields of law in which you practice --  
14 to answer your question from before --  
15 including official certification logos,  
16 subject to the requirements of subdivisions  
17 (C)(2) and (C)(3), what we've already  
18 alluded to.

19 Prepaid or group legal service plans  
20 in which you participate.

21 Your fee for your initial  
22 consultation, if there is one, a fee



23            schedule. Again, subject to the provisions  
24            of Section (C)(4) and (C)(5) of this Rule.  
25            List the name and geographic location

1 of yourself or your firm, "As a sponsor of a  
2 public service announcement or charitable,  
3 civic or community program or event."

4 "Common salutary language such as  
5 "best wishes," "good luck," "happy  
6 holidays," and the like.

7 "Illustration of the scales of justice  
8 not deceptively similar to official  
9 certification logos" of the Bar Association  
10 logo. "A gavel or traditional renditions of  
11 Lady Justice, or a photograph of the head  
12 and shoulders of a lawyer or lawyers who are  
13 members of or employed by the firm against a  
14 plain background consisting of a single  
15 solid color or a plain unadorned set of law  
16 books," --

17 MS. ALSTON:

18 So what is it --

19 MR. LEMMLER:

20 -- plain, vanilla.

21 MS. ALSTON:

22 You can't have a waist-up shot?

23 MS. SCHABEL:

24 I'm sorry?

25 MS. ALSTON:

1           You can only have head and shoulders,  
2           you can't have a full body shot in your ad?

3           MR. PLATTSMIER:

4           That may be the Chuck Plattsmier rule.  
5           They just don't want anything but my head.

6           MS. ALSTON:

7           Yes. Well, I could understand that  
8           but you're not going to be --

9           MR. PLATTSMIER:

10          That's true.

11          MS. ALSTON:

12          -- advertising, are you?

13          MR. PLATTSMIER:

14          Thank you, Beth.

15          MR. LEMMLER:

16          These are the presumptively approved  
17          forms of advertising. No one has said,  
18          necessarily, that you cannot show from the  
19          waist up. It just says, if you do this,  
20          you're presumptively approved.

21          MS. ALSTON:

22          Chilling effect.

23 MR. LEMMLER:  
24 "Rule 7.3, Advertisements in the  
25 Public Print Media." Also, subject,

1 generally, to the requirements of the  
2 previous Rule 7.2 that we've just discussed.

3 "Disclosure Statement." "Shall  
4 contain the following disclosure:" -- this  
5 is the highlighted 7.3. Your,  
6 "Advertisement in the public print media  
7 shall" state that, 'The hiring of a lawyer  
8 is an important decision that should not be  
9 based solely upon advertisements.'

10 Disclosure is not required when the ad  
11 contains no illustrations and no information  
12 other than that listed in subdivision  
13 (C)(12) of 7.2, what we've been calling the  
14 safe harbor exceptions, the things that I've  
15 just discussed. All of those head and  
16 shoulder shots and the plain, vanilla stuff.

17 "Written communication sent in compliance  
18 with 7.4.", targeting direct mail,  
19 essentially, what you can do now, as well.

20 "Rule 7.4 Direct contact with  
21 Prospective Clients." This is broken down  
22 into essentially two parts, solicitation in

23 person, or other forms, and written

24 communications.

25 I'm just going to keep rolling.