

23 Moving forward -- and anything else

24 about this point?

25 (No response.)

1 MR. LEMMLER:

2 Permissible content. I think we've
3 already covered that.

4 "Rule 7.6 Computer-Accessed
5 Communications." Basically, electronic
6 communications not on TV or radio. Two
7 distinct forms, the -- as I said, the
8 Internet presence, or web site, versus
9 email. All of these are subject to the
10 location requirements of 7.2. You must
11 indicate where your office is located, that
12 you have a bonafide office in a certain
13 location. Must comply with 7.2 unless
14 otherwise provided. May provide information
15 deemed valuable to assist potential clients.
16 Oops, wait a minute. Yes. We skipped ahead
17 to 7.9. This is part of the substantive --
18 this is substantive versus procedural, so we
19 skipped 7.7 and 7.8, and we're saving that
20 for the procedural part, even though we
21 talked about it already.

22 Rule 7.9, if your clients are asking

23 you for information, you still must comply
24 with 7.2, unless otherwise provided. You
25 may provide information that is deemed

1 valuable to assist a potential client.

2 You may provide an engagement letter,
3 but any contingency fee contract shall have,
4 "SAMPLE" and, "DO NOT SIGN" written on it so
5 that they know it is a sample.

6 "May contain factually verifiable
7 statements concerning past results." Must
8 disclose the intent to refer the matter to
9 another lawyer or law firm, if indeed that
10 is the intent.

11 "Rule 7.10 Firm Names and Letterhead".
12 It's substantially what we have right now,
13 discussing what you can put on your
14 letterhead, what you can call your firm,
15 whether or not you can state that you are in
16 a partnership and so forth.

17 Proposed procedural rules, the second
18 component. "Advance Written Advisory
19 Opinions, that we've already talked about
20 briefly. Then there is a regular required
21 filing component and, then, there are
22 exceptions to that filing requirement.

23 Procedural rules for advertising, 7.7,
24 for filing requirements. Rule 7.7(b)
25 provides for the, "Advance Written Advisory

1 Opinion". Rule 7.7(C) provides the filing
2 requirement for most advertisements. You
3 can either do 7.7(b) in seeking advance
4 written advisory opinion and have that
5 basically served, at some point, as the
6 filing, or you can just submit it for filing
7 and skip the advisory opinion. It's up to
8 you.

9 Submission requirements, in either
10 case, there will be a fee to be set by the
11 Supreme Court under this proposed --

12 MS. ALSTON:

13 Payable to the Bar?

14 MR. LEMMLER:

15 Payable to the Bar, assuming the
16 Supreme Court wants it that way, to
17 basically underwrite this process.

18 MS. SCHABEL:

19 Wait one second.

20 MR. LEMMLER:

21 Yes. Yes, sir?

22 MR. COLLINS:

23 What sort of fee, I mean, what's --

24 what's done in Florida?

25 MR. LEMMLER:

1 Would you state your name, please.

2 MR. COLLINS:

3 Sean Collins.

4 MR. LEMMLER:

5 Okay. What sort of fee?

6 MR. COLLINS:

7 Yes. How large would --

8 MR. LEMMLER:

9 Florida -- I'm sorry.

10 MS. SCHABEL:

11 It's \$150.

12 MR. LEMMLER:

13 Florida, right now, is \$150 per --

14 MR. COLLINS:

15 Per ad?

16 MR. LEMMLER:

17 -- per ad. However, under the
18 advisory opinion process, and as is proposed
19 under this process, if you opt to seek a
20 written advisory opinion, until you get that
21 right, there is no additional fee. If you
22 decide to file it on your own, without

23 seeking an advisory opinion, you take your
24 chances, and you may have to pay another fee
25 if it's deemed not in compliance.

1 MS. SCHABEL:

2 Beth?

3 MS. ALSTON:

4 In 2008, we will be celebrating 100
5 years of lawyer self-regulation, the
6 anniversary date of the canons of
7 professional responsibility, and scholars
8 who have been reviewing the motives behind
9 the initial drafters of those canons have --
10 are pretty much in agreement that the anti-
11 solicitation rules were designed to protect
12 the status quo, people with the societal and
13 business contacts, and to prevent people who
14 wanted to represent immigrants, or tell
15 immigrants that they had legal rights that
16 could be protected. Additionally, this
17 anti-competitive effect of the rules has
18 been safe from anti-trust regulation by the
19 state action exception but our -- the
20 Louisiana State Bar Association status, as a
21 mandatory state Bar, is quite imperiled at
22 this point because none of the traditional

- 23 justifications for a mandatory Bar exist.
- 24 The Supreme Court has taken away Bar
- 25 admissions, Bar discipline, MCLE. What

1 else, Marta? Something else.

2 MS. SCHABEL:

3 This is your statement, not mine.

4 MS. ALSTON:

5 And so those traditional functions of
6 the mandatory Bar are no longer with our
7 Bar. I know that other states are
8 considering roles like this. For example,
9 New York, and in New York, they're already
10 preparing -- gathering money to mount First
11 Amendment challenges to rules like this. If
12 the -- if the Louisiana State Bar
13 Association recommends these rules for
14 adoption to the Supreme Court and ends up
15 being sued in those First Amendment
16 challenges, if there are any filed here, the
17 Bar Association may not have the state
18 action exception to the anti-competitive
19 effect of these rules and I, for one, would
20 hate to see our Bar dues going to pay for
21 expensive First Amendment fights, which are
22 going to be well-funded on the other side.

23 MS. SCHABEL:

24 Anybody else have any comment in that

25 regard?

1 (No response.)

2 MR. LEMMLER:

3 Okay. Part of the submission
4 requirements, again, a fee to be composed
5 and perhaps set by the Supreme Court. A
6 copy of the advertisement and a sample of
7 your envelope.

8 Let me just say before I go any
9 further, that you get an hour of CLE credit
10 for your attendance here today. We'll give
11 out the forms when we're done so those of
12 you who might need it who consider leaving
13 at this point, you're free to leave but know
14 that your CLE credit is available.

15 Let's see.

16 MS. SCHABEL:

17 We're almost done, though.

18 MR. LEMMLER:

19 Yes. We're moving pretty well.

20 MS. SCHABEL:

21 We're on slide 38 of 41, so we're
22 almost there.

23 MR. LEMMLER:

24 I'm surprised that we've made it that

25 far so quickly.

1 A copy of the advertisement and a
2 sample of the envelope.

3 A typewritten copy of a transcript
4 that, presumably, it's a TV or radio ad,
5 something that is not already in printed
6 form.

7 A statement concerning the type of
8 media frequency and duration of the
9 advertisement, where you intend to run it,
10 how long you intend to run it, how many
11 times you intend to run it and so forth.

12 Exemptions from the filing
13 requirement. Again, 7.8. It contains --
14 one of the exemptions is that your
15 materials, your advertising, contains only
16 the safe harbor content as enumerated in
17 7.2(C)(12), all of those plain, vanilla
18 things.

19 If your advertisement is a brief
20 announcement identifying the lawyer as a
21 sponsor for a charity event, provided that
22 no information is given but the name and the

23 location of the sponsoring law firm, that is
24 presumptively exempt from the filing
25 requirements.

1 "A listing or entry in a law list or
2 bar publication."

3 "A communication mailed only to
4 existing clients, former clients or other
5 lawyers."

6 "Any written communications requested
7 by a prospective client."

8 Yes, sir?

9 MR. PITTENGER:

10 Richard, if a client calls and asks
11 about being represented in an automobile
12 accident, can you, then, send them -- I
13 mean, do they have to specifically request,
14 you know, "Send me a track record of what
15 you have done in the past" or, "Tell me what
16 you can do for me", that sort of thing?

17 MR. LEMMLER:

18 Well --

19 MR. PITTENGER:

20 If they call and ask for
21 representation, can we then send them a
22 packet of information?

23 MR. LEMMLER:

24 I guess the devils in the details. If

25 they say, "I want more information" or, "Can

1 you send me something", sure. If they say,
2 "I don't want to use you," then, I think
3 you'd have a hard time proving that they
4 asked for that information.

5 Any other questions or comments?

6 (No response.)

7 MR. LEMMLER:

8 As we said, any written communications
9 that are requested by the prospective
10 client.

11 Professional announcement cards mailed
12 to other lawyers, relatives, former or
13 current clients and close friends. "Richard
14 Lemmler is opening his new practice for the
15 practice of law."

16 "Computer-accessed communications as
17 described in subdivision (b) of Rule 7.6."
18 Essentially, your web sites.

19 The proposal -- I think we're now
20 through the body of the proposed rules.
21 This is what we are proposing to the Court
22 Committee and to the Court, is that there

23 should probably be some sort of phase-in, if
24 the Court adopts some form of these rules.
25 We're proposing that there should be at

1 least, perhaps, a 90-day period to modify
2 ads that are currently in use. The printed
3 advertisements with an annual or other
4 limited periodic publication schedule,
5 obviously, recognizing that you can't change
6 a Yellow Pages ad but once a year.
7 Grandfather -- as I said, grandfathered
8 annual advertisements must be submitted
9 thereafter.

10 Future work plan. We're conducting
11 the public hearings, as we talked about
12 already, three more to take place. Special
13 rules of debate were adopted by the
14 Louisiana State Bar House of Delegates.
15 They've already been adopted. Presumably,
16 once the proposal has gone through the
17 public hearing process and assuming that the
18 Supreme Court Committee believes that we
19 should go forward, then, I suppose we'll go
20 through the House and be debated before the
21 House of Delegates.

22 Resolutions addressing amendments must

23 be submitted in writing 30 days in advance
24 of the House of Delegates' meeting. I think
25 the deadline for that is --

1 MS. SCHABEL:

2 December 15th.

3 MR. LEMMLER:

4 -- December 15th or 13th?

5 MS. SCHABEL:

6 Better to be safe and --

7 MR. LEMMLER:

8 Right around the 13th or 15th, but you

9 can find that on the Bar website, LSBA.org.

10 The Supreme Court Committee to study

11 attorney advertising will review our

12 proposal, so all of your comments that are

13 being recorded here today will be reviewed

14 by the Rules of Professional Conduct

15 Committee and then, again, reviewed, I'm

16 assuming and assured, probably that they

17 will be reviewed by the Supreme Court

18 Committee and, perhaps, more than likely, by

19 the Supreme Court themselves.

20 That's it. Yes, ma'am?

21 MS. HARVEY:

22 Will the slide show be on the web

23 site?

24 MR. LEMMLER:

25 I suppose we can put it up there. I

1 don't see why not.

2 MS. SCHABEL:

3 We'd be delighted to; although, we
4 hadn't thought of that.

5 MR. LEMMLER:

6 Right now, in case you're not aware
7 that, on the web site, we do have a basic
8 set of the rules, as proposed. There is
9 also, as I've been alluding to and as you'll
10 find in the back of the room, a side-by-side
11 comparison of our current versus the
12 proposed rules.

13 Yes, sir?

14 MR. COLLINS:

15 So what's the -- the earliest date for
16 the new rules to take effect?

17 MS. SCHABEL:

18 Well, let me just address the process
19 so that everybody is clear on this. The Bar
20 Association operates essentially in an
21 advisory capacity to the Supreme Court. The
22 Court is the only entity that can make a

23 decision about what rule will actually be
24 implemented, and I don't know that there is
25 any way to predict what their schedule would

1 be, but the issue of whether we will
2 recommend these rules, and what content our
3 recommendation will take, will be heard in
4 the House of Delegates on January 20th, at
5 which point, whatever our decision is will
6 be transmitted to the Court, which will then
7 take action in the Court. Historically, the
8 Court has moved fairly slowly. In this
9 particular circumstance, the Court has been
10 requested by the legislature to move forward
11 on this issue, and there is a sense of a
12 little bit more urgency about it. I would
13 anticipate March 1.

14 UNIDENTIFIED SPEAKER:

15 For the rules to be in effect, or for
16 the Supreme Court --

17 MS. SCHABEL:

18 For them to be adopted and with an
19 effective date in -- shortly thereafter,
20 would be our thought, which also means, you
21 know, from the Bar Association's
22 perspective, if it moves forward as

23 proposed, that we've got to change a lot of
24 what we're doing to be able to accommodate
25 people's needs.

1 UNIDENTIFIED SPEAKER:

2 And I have a question, as -- as you go
3 to Lafayette, Shreveport and New Orleans and
4 you hear the same questions being asked on
5 the same three or four issues that brought
6 me here, are -- is that -- is it likely that
7 the rule -- what you recommend would be
8 changed?

9 MS. SCHABEL:

10 The answer to that is, that,
11 historically, when we did the ethics 2000
12 trip around the state, very much like this,
13 we thought the comments were invaluable and
14 they were indeed incorporated. The
15 thoughtful ones were very -- were indeed
16 incorporated into what we ultimately came up
17 with and I haven't heard anything here today
18 that I didn't think was thoughtful, with
19 certain possible exceptions, but -- Beth and
20 I are friends. I apologize.

21 MS. ALSTON:

22 I did that on purpose.