

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:

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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.

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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:

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

23 MR. LEMMLER:

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

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1 MS. BILLEAUD:

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

5 MR. GOFORTH:

6 I'm also concerned about --

7 COURT REPORTER:

8 I can not hear him.

9 MR. LEMMLER:

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

12 COURT REPORTER:

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

15 MR. GOFORTH:

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

25 MR. LEMMLER:

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

12 MR. BROUSSARD:

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

15 MR. LEMMLER:

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

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

4 Any comment on that?

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

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

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

13 MR. BROUSSARD:

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

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

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

25 MR. LEMMLER:

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

2 MS. BILLEAUD:

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

17 MR. LEMMLER:

18 Thank you. Yes, sir.

19 MR. HERNANDEZ:

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

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

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

22 MR. LEMMLER:

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

25 MS. SIAS:

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

23 MR. LEMMLER:

24 Thank you. Yes, sir.

25 MR. GOFORTH:

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

5 MR. LEMMLER:

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

13 MR. GOFORTH:

14 (Inaudible).

15 MR. LEMMLER:

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

18 MR. BURGESS:

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

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

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

17 MR. LEMMLER:

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

24 MR. BURGESS:

25 We don't have that now.

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1 MR. LEMMLER:

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

4 MS. BILLEAUD:

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

20 UNIDENTIFIED PERSON:

21 I have a question.

22 MR. LEMMLER:

23 I'm sorry.

24 MR. GORFORTH:

25 (Inaudible).

1 MR. LEMMLER:

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

12 UNIDENTIFIED PERSON:

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

17 MR. LEMMLER:

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

24 MR. GAY:

25 Phelps Gay. The rules provide that you

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

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

4 MR. BROUSSARD:

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

17 MR. DURIO:

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

22 MR. PLATTSMIER:

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

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

5 MR. DURIO:

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

10 MR. LEMMLER:

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

18 MR. BROUSSARD:

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

23 MR. LEMMLER:

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

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

11 MR. GREGORIO:

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

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

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1 MR. LEMMLER:

2 Ms. Billeaud.

3 MS. BILLEAUD:

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

10 MR. BROUSSARD:

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

19 MR. GREGORIO:

20 (Inaudible).

21 MR. BROUSSARD:

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

25 MR. LEMMLER:

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

12 MR. ALLEN:

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

17 MR. PLATTSMIER:

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

24 MR. LEMMLER:

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

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

8 MS. BILLEAUD:

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

23 MR. LEMMLER:

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

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

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

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

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

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

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

12 MR. DURIO:

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

18 MR. LEMMLER:

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

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

13 MR. BURGESS:

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

16 MR. LEMMLER:

17 Moving forward.

18 MR. DURIO:

19 I have a question.

20 MR. LEMMLER:

21 Yes, sir.

22 MR. DURIO:

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

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

5 MR. LEMMLER:

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

18 MR. BURGESS:

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

22 MR. LEMMLER:

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

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

11 MR. BROUSSARD:

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

15 MR. LEMMLER:

16 Supposedly it would.

17 MR. BROUSSARD:

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

22 MR. LEMMLER:

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

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

5 MR. BROUSSARD:

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

8 MR. LEMMLER:

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

11 MR. BROUSSARD:

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

21 MR. PLATTSMIER:

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

24 MR. BROUSSARD:

25 What's that?

1 MR. PLATTSMIER:

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

14 MR. HERNANDEZ:

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

21 MR. BURGESS:

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

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

5 MR. LEMMLER:

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

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

23 MS. BILLEAUD:

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

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