

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:

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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.

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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

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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:

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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

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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 --

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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

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

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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

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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:

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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

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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

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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.

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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:

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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

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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

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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

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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

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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,

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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

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