

1 BY MR. BART:

2 Well, of course it is because  
3 your interpretation is as good as mine, is as  
4 good as Mr. Stanley's or anybody else. But if  
5 you think of your car as a physical location  
6 and read that rule, you'll perfectly comply.

7 BY MR. HANTHORN:

8 And the truth is it is, with a  
9 laptop computer, a portable printer, and pocket  
10 PC and a cell phone.

11 BY MR. BART:

12 And are you a lawyer that's  
13 regularly and routinely present in that  
14 physical location?

15 BY MR. HANTHORN:

16 I absolutely am.

17 BY MR. BART:

18 Bingo. There you go.

19 BY MR. HANTHORN:

20 I have literally signed up people  
21 at the last minute in Shoney's in Butte, went  
22 to the parking lot to type up their  
23 administrative hearing and filed it in Williams  
24 Boulevard Post Office three minutes before the  
25 close to save their driver's license. So he's

1 absolutely right. My car is my office more  
2 than anything else.

3 BY MR. BART:

4 There you go. Problem solved.

5 BY MR. LEMMLER:

6 Are you suggesting that we amend  
7 the rule to include both vehicle and --

8 BY MR. BART:

9 Well, I just think there might  
10 be --

11 BY MR. LEMMLER:

12 -- vehicle identification --

13 BY MR. STANLEY:

14 These comments, I think, are all  
15 extremely helpful. I've been jotting them  
16 down. I mean, we've got --

17 BY MR. BART:

18 We need to recognize technology  
19 in today's society. I mean, every other  
20 industry recognizes it and embraces it. And  
21 the thought of a physical office, I think, is an  
22 outdated concept.

23 BY MR. STANLEY:

24 I think it's a valid point. And  
25 I think -- you know, we want to get these but

1 we want to also keep moving through this.

2 BY MR. LEMMLER:

3 Yes, Mr. Hingle.

4 BY MR. HINGLE:

5 Mike Hingle. I live on the  
6 Northshore. We may be overlooking the young  
7 attorney, the person that's trying to crack  
8 into this business. Advertising is allowed,  
9 and many people who didn't have the opportunity  
10 to market in the old-fashioned, whatever it  
11 was, market through TV and all the other  
12 electronic means. There are telephone books  
13 out there that you can get a half,  
14 three-quarter page ad for in the county  
15 parishes all over South Louisiana that are  
16 presented to me all the time, the Pelican  
17 Pages, some other telephone books that I don't  
18 even know and I don't even advertise in.

19 But what happens if some young  
20 guy or young girl wants to invest \$75 or \$150 a  
21 month in those telephone books all over South  
22 Louisiana, and like this gentleman over here,  
23 they're willing to travel to go and get that  
24 business so they can have some money and they  
25 can earn some money to support their family and

1 pay their \$150,000 debt that it took them to go  
2 to Tulane?

3 BY MR. STANLEY:

4 I think as currently written, all  
5 they'd have to say is we'll come to you. Our  
6 physical location is here, but we'll come to  
7 you. But, I mean, I think we've heard  
8 everybody's point here that maybe the physical  
9 location idea is outdated and something that we  
10 need to revisit.

11 BY MR. LEMMLER:

12 Any further comments on this?  
13 Okay. Let's move forward. Thank you. Good  
14 comments. 7.2(b): Prohibited Statements and  
15 Information Overview. It's broken down into  
16 statements about legal services, misleading or  
17 deceptive factual statements, descriptive  
18 statements, prohibited visual and verbal  
19 portrayals, advertising areas of practice and  
20 stating or implying LSBA approval.

21 And I think we have slides that  
22 go through one at a time on this. A lawyer  
23 shall not make or permit to be made a false,  
24 misleading or deceptive or unfair communication  
25 about the lawyer, the lawyer's services or the

1 law firm services. I would note for you that  
2 in Florida's recent revision, they have removed  
3 the word "unfair." And I suspect that the  
4 committee will be looking at that since the  
5 ABA's general phraseology is false, misleading  
6 or deceptive and which is our current rule. I  
7 think that's the basic underlying rule probably  
8 for most of this. As the slide says, same as  
9 the current Louisiana Rule 7.1 except more  
10 enumerated than that. Any comment on this?  
11 Mr. Bart?

12 BY MR. BART:

13 Well, a couple things. First of  
14 all -- Morris Bart, New Orleans. Since you  
15 bring up Florida, I do not want to mention that  
16 my friends there tell me that the rules have  
17 just been liberalized and so has the  
18 interpretation.

19 As a quick example, Florida has  
20 prohibited testimonials without regard to the  
21 content. They now interpret that to allow  
22 testimonials if the content doesn't deal with  
23 past results. So, in other words, if a client  
24 were to get on and say I recommended Morris  
25 Bart and recommend anybody see him for an

1 injury case, that's permissible now under  
2 Florida's rule even though that's a  
3 testimonial. If a client were to get on and  
4 say Morris Bart got me \$100,000, that would not  
5 be permissible.

6           So I think Florida is more  
7 properly looking at the content as opposed to  
8 the style, which is my objection with the  
9 example you enumerate here because, you know,  
10 we all know -- and I'm sure the Committee has  
11 looked at it -- that First Amendment,  
12 protective commercial free speech, and as such,  
13 that's given a high accord and a high degree of  
14 protection, meaning that the state has to show  
15 a specific harm and then you can only prohibit  
16 that conduct with the narrowest means possible.

17           The problem with your rule as  
18 proposed here is it's so overly broad that  
19 whenever you have broad bans, it does not pass  
20 Constitutional muster. So if you look at (b),  
21 for instance, contains any reference to past  
22 successes or results, that apparently the  
23 drafter simply deems that if you have a  
24 reference to a past success or result, that in  
25 and of itself is misleading, which a broad ban

1 like that, again, I don't think will pass  
2 Constitutional muster.  
3           And then, which is as vague and  
4 overly broad as you can get it, or is otherwise  
5 likely to create an unjustified expectation  
6 about results. Well, now does that tell me  
7 what to do or where to go? It doesn't give me  
8 any specific guidance.

9           I think what you're dealing with  
10 here is the style versus content issue, that  
11 this is a certain style that the drafter of  
12 these rules don't like, similar to if the Court  
13 were to decide that everybody that goes to the  
14 court must wear button-down shirts and  
15 regimental-striped ties, that's appropriate  
16 wear. You can't regulate style. It's  
17 appropriate to regulate content. But when you  
18 get into these broad standards like this, you  
19 can't do it.

20           The second defect, which is an  
21 overall defect in all of these rules we might  
22 as well put on the table now is, the  
23 Constitution mandates that you have to  
24 establish a record. And there's case law  
25 holding that a record must be established in

1 the state to show the harm before you enact  
2 these rules that restrict our right to  
3 commercial free speech on the First Amendment.

4 Now, you were just enacting the  
5 Florida rules. I think it would be worthwhile  
6 for this Committee to realize that before those  
7 Florida rules were enacted, they did poling in  
8 the state, they did research, they did surveys,  
9 they spent hundreds of thousands of dollars  
10 doing a massive scientific study and research  
11 project to document the perception of attorney  
12 advertising among the citizens of that specific  
13 state. And then they drafted rules that they  
14 could back up with their records to show the  
15 harm.

16 You're not doing that. I mean,  
17 having a session like this which is not really  
18 a public hearing. It's more an informational  
19 session which we get CLE credit for, that's not  
20 addressing any harm. You're not showing --  
21 you're not establishing a record. You're not  
22 showing any specific harm to the citizens of  
23 the state by advertising.

24 To the contrary, Charles  
25 Plattsmier would tell you -- because for the 20



1 years I was on the Bar Association Committee on  
2 advertising this would come up -- the push-pull  
3 that we would always go through is we would say  
4 it's not the rules, it's the enforcement of the  
5 rules. And then Plattsmier would truck down to  
6 New Orleans and come to our committee. And we  
7 would ask him, we'll say, now, how many  
8 complaints do you get on attorney advertising?  
9 And it way maybe one or two a year. And that's  
10 the way it's been for the last 10 or 15 years,  
11 so I would assume it's the still the same  
12 today. I can't imagine it's changed that much  
13 in the last year since I've been off the  
14 committee.

15           And then we would say, now, with  
16 those committees, have you ever one time had a  
17 prosecution for an attorney advertising  
18 violation that you couldn't prosecute because  
19 the rules were too vague? The answer is never.  
20 Never in his history has he ever had a  
21 prosecution that he couldn't go forward with  
22 because the rules were too vague. If that were  
23 the case, it would be a different story. He  
24 would come here and say, look, guys, you've got  
25 to give me some rules with teeth because

1 there's all these violations and I can't  
2 prosecute. But that's not the case.  
3           So let's look at it, because  
4 that's the problem we always had on the  
5 committee. If you don't have a record and  
6 you're not showing any harm to the citizens of  
7 this state -- and nobody, to be honest, is even  
8 interested among the citizens because it's old  
9 news. My God, it's been going on for 25 years  
10 or so. People get it. They understand  
11 attorneys advertising. It's not that special.

12           And on the second hand, you --  
13 your own disciplinary counsel testified it's a  
14 non issue with me. I don't have any  
15 complaints. I don't have any prosecutions. I  
16 don't have any prosecutions I can't do because  
17 of these rules. Where is your record that will  
18 uphold if you have a Constitutional challenge?  
19 You couldn't just adopt the Florida rules.  
20 What are you going to do, say, oh, well, the  
21 harm to the citizens in Florida is the same  
22 thing here and that study was done 15 years  
23 ago? The whole thing is defective.

24           And then specifically -- those  
25 are kind of general comments. But specifically

1 just to -- here's a subline: Contains a  
2 testimonial. Well, the Supreme Court has  
3 mandated you have to look at the content. You  
4 can't do blanket bans. Well, you can do a  
5 blanket ban on a testimonial. We recognize  
6 that there can be testimonials that contain non  
7 deceptive truthful speech. When you do a  
8 blanket ban on all testimonials regardless of  
9 the content, that's unconstitutional.

10           And then here's one of my  
11 favorites here, No. 4: Prohibitive visual and  
12 verbal portrayal. That really gives me a lot  
13 of guidance. Visual or verbal descriptions,  
14 depictions or portrayals of persons, things or  
15 events shall not be deceptive, misleading or  
16 manipulative. Persons, things or events. So I  
17 don't know. You do an ad. It could be  
18 interpreted any way. Who is going to staff it?  
19 I mean, we're not a rich Bar like Florida is.  
20 So are we going to hire law clerks? Are we  
21 going to have law students? Are we going to  
22 have secretaries that are going to look at all  
23 these ads and make the decision? I mean,  
24 that's something you have to grapple with.

25           BY MR. LEMMLER:

1           Look at (c)(5): Fees paid,  
2   that's what --

3           BY MR. BART:

4           Well, it's very expensive. And,  
5   Richard, when you look at Florida, look at the  
6   Florida experience, because I've been there  
7   from the very beginning. And Florida was  
8   flabbergasted when they first put their rules  
9   into effect 15 years ago at the cost of it.  
10   They were just overrun by the costs. And they  
11   were doing the very things I'm saying where  
12   they had secretaries and volunteer law students  
13   who were looking at these ads trying to  
14   determine if there are violations and then  
15   giving it to a committee of a few lawyers that  
16   would go over to the Bar once a week to meet  
17   and look at the problem.

18           So it's only fair to us if we try  
19   to comply with these rules and pay the fees, as  
20   you all have mentioned, are very expensive that  
21   you're going to have a very astute system. And  
22   I think to preserve the credibility of this  
23   system, if these rules are passed, the Supreme  
24   Court or somebody needs to assure us for the  
25   money we're spending that there's going to be

1 people that look at them.

2           And they also need to realize,  
3 which I think is one of the most significant  
4 comments I'm going to make tonight, that before  
5 you pass these rules you better have a record  
6 and you better talk to Plattsmier to see what  
7 kind of violations you have, because if you  
8 don't have a record, you're wide open for  
9 attack.

10           BY MR. LEMMLER:

11           Thank you. Let me take two  
12 general points of, I guess, information with  
13 respect to what you said. I'm not trying to  
14 debate you at all. I'm not sure what the  
15 enforcement policy in Florida is right now  
16 regarding the newest revision with respect to  
17 testimonials since it just went into effect  
18 last week. I'm not sure exactly how they're  
19 enforcing it yet. But the new revision does  
20 still specifically include the testimonials as  
21 a prohibition, something you cannot do.

22           BY MR. BART:

23           But it's interpretation.

24           BY MR. LEMMLER:

25           I said I don't know what the

1 interpretation is. But the rules -- the  
2 Supreme Court enacted the rule, again, to  
3 include testimonials.

4 BY MR. BART:

5 I want to suggest to you, a  
6 friend of mine in Miami who's the largest  
7 advertiser there has told me for the last month  
8 now he's gotten approved by the Florida Bar a  
9 testimonial where the people in the testimonial  
10 recommends him as a lawyer but he was told they  
11 can't say results.

12 BY MR. LEMMLER:

13 Okay. That's fine. But I did  
14 want to point out that the rule still does  
15 contain the word testimonial. The other point,  
16 which I've lost at this point, I'll just skip  
17 and go forward. Ms. Alston, I think, was next.  
18 And, folks, let me just say this again. We  
19 have ten rules to go through. We're only  
20 through two at this point. If you have  
21 comments of a more general nature, we're happy  
22 to have them. I'd encourage you to submit  
23 them, perhaps, in writing so we can kind of get  
24 through this in a fairly quick process to allow  
25 everyone to get an opportunity to say something

1 about every rule.

2 BY MS. ALSTON:

3 Well, Bart is right. I read the  
4 1999 order of the Florida Supreme Court today  
5 whereby they adopted certain rules that the Bar  
6 had recommended. And one of the rules that the  
7 Bar had recommended was a ban on trade names.  
8 And the Court specifically declined to  
9 implement such a ban because the statistical  
10 data, the focus groups and the interviews that  
11 had been conducted showed no harm or misleading  
12 effect upon the consumer public. So the  
13 Florida Bar decided -- or the Florida Supreme  
14 court decided not to adopt that ban.

15 Also, on this back table here I  
16 found two Federal Court cases in New Mexico and  
17 Ohio where the absolute ban on testimonials  
18 were challenged in court and the rules were  
19 changed. We have documented proof that Ohio  
20 changed it as a result of a Constitutional  
21 challenge by a lawyer there in exchange for  
22 that lawyer dropping the lawsuit. It appears  
23 that the same thing happened in New Mexico.

24 BY MR. LEMMLER:

25 Thank you. Yes, sir.

1 BY MR. RICHARDSON:

2 I'm Jeff Richardson with Adams  
3 and Reese. And I just wanted to note an  
4 objection to one of the rules that Mr. Bart  
5 talked about, (b)(1)(B) contains reference to  
6 past success. And I think there's -- I see two  
7 types of reasons that this rule not only does  
8 not make sense to me but I think it actually  
9 goes against what these rules should be about.

10 If the point is for people who  
11 are trying to choose a lawyer to know whether  
12 that's the lawyer they want to choose, that  
13 lawyer's experience is very relevant. So, you  
14 know, there are types of clients that we bring  
15 on as a larger firm, the fact that we may run  
16 an ad that we closed some big transaction,  
17 that's directly relevant to other businesses  
18 that have other transactions that they might  
19 want to close and that would be of interest to  
20 them.

21 And additionally, as I read the  
22 rules, 7.6 says that websites, through 7.9 have  
23 to comply with 7.2, which means, for example,  
24 that on our website, many of our individual  
25 attorneys, including myself, we have examples



1 of cases that we've worked on. You know, in  
2 this case, I defeated class certification on a  
3 nationwide case. And that is -- not only is it  
4 not confusing to potential clients, it actually  
5 helps potential clients understand, oh, this  
6 attorney is someone who has handled five cases  
7 and reported decisions in the F2nd or the  
8 Southern Second on exactly that kind of issue.

9 So to pass a rule that would bar  
10 that would not ultimately not protect the  
11 clients, it would actually hurt the clients and  
12 prevent them from hiring a lawyer that knows --  
13 that has experience in this area.

14 BY MR. STANLEY:

15 Well, Jeff, I meant to read all  
16 these before I came in today, and I didn't.  
17 But my recollection is that websites are  
18 different.

19 BY MR. RICHARDSON:

20 Well, 7.6 says that websites have  
21 to comply with 7.9, which is information  
22 provided on request. And 7.9 says that you  
23 have to -- 7.2 applies unless 7.9 says  
24 otherwise. And I didn't see anything in 7.9  
25 that says that any of the (B)(1) things don't

1 apply.

2 BY MR. LEMMLER:

3 I think if you look further in  
4 7.9(b) -- and we're jumping way ahead, but  
5 we'll try to answer the question -- it says  
6 whenever a potential client shall request  
7 information regarding a lawyer or a law firm  
8 for the purpose of making a decision, regarding  
9 the employment of the lawyer or law firm -- and  
10 I'm skipping ahead now to No. 3 --  
11 notwithstanding the provisions of subdivision  
12 (b)(1)(B) of Rule 7.2, information provided to  
13 a potential client in response to a potential  
14 client's request may contain factually  
15 verifiable statements concerning past results  
16 obtained by the lawyer or law firm, if either  
17 alone or in the context in which they appear,  
18 such statements are not otherwise misleading.

19 In 7.6 --

20 BY MR. RICHARDSON:

21 All websites then --

22 BY MR. LEMMLER:

23 Yes, a website is basically a  
24 safe harbor.

25 BY MR. RICHARDSON:

1           But not in an advertisement that  
2 you put in a national publication?

3           BY MR. STANLEY:

4           Generally, I think that's -- I  
5 think that distinction is correct the way it's  
6 written down. And I think we deviated on that  
7 from some other Bars. New York, for instance,  
8 wraps the website into the advertising. We  
9 didn't go that far. I mean, we thought about  
10 that and said no, no, no. If they go to your  
11 website, they're walking into your tent and  
12 they can see whatever you want to put up on  
13 that website.

14          BY MR. LEMMLER:

15          And I'll note for you that in the  
16 recent revision, the Court's order for Florida,  
17 the Bar had actually recommended stricter  
18 enforcement on the websites, and the Court said  
19 we want to see more information about it. So  
20 they have not changed that in Florida at this  
21 point. Ms. Alston?

22          BY MS. ALSTON:

23          Just a question. So does that  
24 mean that testimonials can go on websites?

25          BY MR. STANLEY:

1 I'd have to read it carefully,  
2 Beth, you know. But it's essentially  
3 websites --

4 BY MS. ALSTON:

5 I'm not sure it's really that  
6 clear, but I'll look at it again.

7 BY MR. STANLEY:

8 I think websites are essentially  
9 viewed as a tent that if they walk in, they see  
10 what they get. That was my understanding.

11 BY MR. CHAPMAN:

12 I'd like to -- I'm Nathan Chapman  
13 from the Marketing Center. I'd like to suggest  
14 that we cut the word manipulative. I'm not  
15 sure what that means. Everybody's goal is to  
16 get somebody to call to advertising. And I'd  
17 like to urge --

18 BY MR. STANLEY:

19 Nathan, what rule in particular  
20 are you --

21 BY MR. CHAPMAN:

22 Wasn't that the one we just read?

23 BY MR. STANLEY:

24 I was looking at the (b)(1)(B).  
25 We can find it.

1 BY MR. CHAPMAN:

2 7.5.

3 BY MR. LEMMLER:

4 We haven't even touched on 7.5.

5 But if you want to cut it from 7.5, we'll note

6 it for the record.

7 BY MR. STANLEY:

8 Thank you.

9 BY MR. CHAPMAN:

10 I'd like to also ask that we cut  
11 the section ban testimonials. I think what --  
12 what we don't like -- I've seen some tacky  
13 testimonials. But what I don't like is the  
14 tacky part, but of course that's the part  
15 that's hard to regulate. I think there's a  
16 presumption that all testimonials are tacky.  
17 And I will tell you that in my work, I've done  
18 some beautiful ones in a way they're nice. I  
19 have some really good clients who are really  
20 caring people that they can't stand up there  
21 and say I'm a really caring person. But I  
22 don't see -- if that's really part of their  
23 character, I don't see anything wrong, just  
24 like you might have a letter of reference, to  
25 have somebody else to describe their character

1 I think would be a very positive and a very  
2 good thing.

3 BY MR. LEMMLER:

4 Thank you.

5 BY MR. HANTHORN:

6 So you're -- are you allowed to  
7 have testimonials in other forms of advertising  
8 other than the written communications?

9 BY MR. LEMMLER:

10 I don't know that we've  
11 established that yet or not. But I think under  
12 the Safe Harbor provisions with respect to  
13 websites and information requested by a client,  
14 as long as it is not otherwise misleading, I  
15 suppose you can make factually verifiable  
16 statements. So whether that's a testimonial or  
17 not, I don't know. Perhaps that's something to  
18 look at.

19 BY MR. HANTHORN:

20 What's the rationale for wanting  
21 to block testimonials in the first place? I  
22 don't understand that.

23 BY MR. LEMMLER:

24 Well, I think it was in Florida's  
25 rules, and we've included them in ours. The

1 Committee has a different take on it, but --

2 BY MR. HANTHORN:

3 Oh, because Florida did it,

4 that's it.

5 BY MR. STANLEY:

6 Look, there are some members of  
7 the Committee that can certainly speak more  
8 eloquently to this, but I think I can say that  
9 there is some feeling that some testimonials --  
10 and Mr. Bart -- Morris's buddy has made a very  
11 good point -- that not all of them -- the  
12 blanket ban maybe needs to be thought through  
13 better. But some testimonials may be  
14 misleading in the sense that if someone says,  
15 hi, I called Rick and I got this big check,  
16 that that's all you have to do. If you call  
17 me, you get a big check. Well, that's not  
18 true. You've got to call me. You've got to  
19 have a case. You've got to have a cause of  
20 action. You've got to have a defendant who can  
21 pay. There's a lot of steps there.

22 So maybe that has some points in  
23 there that need to be cleared up. On the other  
24 hand, if the testimonial is that I went to  
25 Mr. Bart --

1 BY MR. HANTHORN:

2 Well, who did he say --

3 BY MR. STANLEY:

4 Well, no, he said, if I went to

5 Mr. Bart, I was very satisfied. He was a very

6 nice person. He took care of me. If all

7 that's accurate --

8 BY MR. HANTHORN:

9 But that's the content of what

10 was achieved though. Wasn't there some

11 technicality you mentioned?

12 BY MR. BART:

13 Well, the difference was a

14 testimonial on results versus a testimonial on

15 just a recommendation, meaning that the

16 recommendation could be truthful, non deceptive

17 speech.

18 BY MR. HANTHORN:

19 So you can say Scott is a great

20 guy, but I can't tell you what he did or can

21 they say, hey, I was busted for a third offense

22 DWI and Scott got it reduced to a first offense

23 on pre-trial motions and then we went to trial

24 and won. Hire this man. That happens to be a

25 lawyer, because two of my testimonials are from



1 attorneys. So why can't I send that out in my  
2 letter? Since I'm also the only DWI lawyer  
3 who's sending out testimonials in a letter, I  
4 feel like really targeted by this, Rich.

5 BY MR. STANLEY:

6 I'm just the messenger, Scott.

7 BY MR. LEMMLER:

8 I think the comments are noted.

9 BY MR. STANLEY:

10 I think we need to take a look at  
11 it.

12 BY MR. LEMMLER:

13 I think it's a good point. It's  
14 noted. And, again, I invite you to send in  
15 more comments in writing if you want. I just  
16 don't want to keep everybody here until 11:00  
17 tonight. So if we could just move forward, and  
18 it's noted.

19 BY MR. HANTHORN:

20 One last question. How can we  
21 continue to have input and continue to be  
22 effective in blocking these things after this  
23 meeting?

24 BY MR. STANLEY:

25 Well, let me say that -- let me

1 make that point. We have on the Bar website a  
2 comment box. Okay? No, no, I think -- this is  
3 not just -- we want these comments. We want to  
4 get this feedback. This is important. The  
5 Supreme Court Committee wants this feedback.  
6 Go to that comment box with respect to -- you  
7 know, if you have -- if you don't mind doing  
8 it, 7.5, this is the problem with this rule and  
9 it is, A, B, C, D. 7.6 the problem is A, B, C,  
10 D. These comments are going to be grouped,  
11 brought to the committees, looked at, and voted  
12 on hopefully. And we're going to get -- you  
13 know, we're either going to improve -- some of  
14 these rules may disappear, some of them may be  
15 improved, some of them the comments may be  
16 rejected. But it's not -- and this is not an  
17 insignificant process. We're not trying to  
18 just throw this out there and say whether you  
19 like it or not. We really do want the  
20 feedback.

21           And so that comment box is a  
22 great place, because we're having her  
23 transcribe this so we can capture the oral  
24 comments. But if you could send them in  
25 through that website, it's captured. And it's

1 going to be put in a form that everybody can  
2 read.

3 BY MR. HANTHORN:

4 Thank you.

5 BY MR. LEMMLER:

6 Okay. Yes, ma'am.

7 BY MS. COPPING:

8 Yes, it's Judith Copping with  
9 Jones Walker. I just wanted to confirm,  
10 getting back to publicizing transactions, large  
11 transactions, wins, that sort of thing, can we  
12 advertise that information? Like if we, you  
13 know, in Baton Rouge have -- we have an  
14 advertisement that we publish annually telling  
15 how much our total real estate transactions  
16 added up for that year. Is that something we  
17 can run or are we now limited to what we can  
18 say because of this new rule?

19 BY MR. LEMMLER:

20 Well, I think the rules sort of  
21 drill that down a little further to who your  
22 audience is. If you're sending it to someone  
23 in the public that you've never dealt with  
24 before, probably not. If you're sending them  
25 to past or existing clients, certainly.

1 BY MS. COPPING:

2 So if it's published in the Baton

3 Rouge Public Business report --

4 BY MR. LEMMLER:

5 Under the rules, I don't think

6 so.

7 BY MS. COPPING:

8 And I wanted to make a quick

9 comment since you brought it up, the audience.

10 As I understand it, these rules are trying to

11 cover the whole state of Louisiana. But this

12 gentleman's audience is, you know, the poor man

13 that has had the unfortunate experience of

14 getting a DWI where his interpretation of the

15 advertisements are completely different from,

16 say, a sophisticated Fortune 500 client who has

17 a complete understanding when we publicize our

18 transactions. It's very difficult to define

19 these rules for such a vast audience.

20 BY MR. LEMMLER:

21 Okay. Fair enough. Thank you.

22 Anything else before I move forward?

23 BY MR. STANLEY:

24 Keep rolling.

25 BY MR. LEMMLER:

1           Further examples, and we may have  
2 already touched on this -- we have,  
3 testimonials. Portrayal of a client by a non  
4 client or the reenactment of any events or  
5 scenes or pictures that are not actual or  
6 authentic, includes the portrayal of a judge,  
7 portrayal of a lawyer by a non lawyer, the  
8 portrayal of a law firm as a fictionalized  
9 entity, the use of a fictitious name to refer  
10 to lawyers not associated together in a law  
11 firm, or otherwise implies that lawyers are  
12 associated in a law firm if that is not the  
13 case.

14           Again, I think building primarily  
15 on the false, deceptive or misleading. The  
16 actual examples, I suppose, are subject to  
17 further scrutiny.

18           BY MR. BART:

19           I have some comments on that.  
20 Morris Bart, New Orleans. In regards to  
21 this -- this will be an appropriate time -- I  
22 have two exhibits I'd like to offer and file  
23 into the record. And let me mark it just "A"  
24 and "B." And "A" is a letter from the Federal  
25 Trade Commission dated September 14th, 2006.

1 Quick history on this, the New York rules which  
2 you alluded to, they are being proposed. The  
3 Federal Trade Commission recently weighed in on  
4 it and gave their opinions and their comments  
5 as to why they felt those specific rules were  
6 unconstitutional and the restraint of free  
7 trade and were opposed by the Federal Trade  
8 Commission. Many of those rules are exactly  
9 the same as what we have proposed in Louisiana.

10           And, specifically, they mention  
11 images of non attorney spokespersons  
12 recognizable to the public, depictions of  
13 courtrooms, portrayals of judges and lawyers by  
14 non lawyers, portrayals of clients by non  
15 clients, re-enactments of events. They say  
16 such techniques may be useful to consumers in  
17 identifying suitable providers of legal  
18 services.

19           Without belaboring the point,  
20 they go on that the FTC has a statutory mandate  
21 to prevent rules like this that hinder trade  
22 and are not of a benefit to the consumer. And  
23 I have already been in touch with the FTC about  
24 taking a look at the Louisiana situation. So  
25 this is very close to what's proposed here, and