

1 based upon the United States Supreme Court decisions to  
2 this point. They allow that kind of communication. So I  
3 think I've accurately described it, and we've done all we  
4 can do with the rule that we have.

5           MR. PLATTSMIER: That's correct. Thus far  
6 we are within the bounds of what the U.S. Supreme Court  
7 has described as the parameters of permissible  
8 regulation. Florida Bar versus Went for It decision  
9 was a case that actually upheld the Florida Bar's efforts  
10 to ban direct mail solicitation during the first 30 days  
11 and reaffirmed the U.S. Supreme Court's earlier decision  
12 that allowed lawyers to engage in direct mail  
13 solicitation.

14           MR. LEMMLER: I'll note for you as well in  
15 our current rule and in this proposal there is still the  
16 condition that the lawyer who is sending a written  
17 communication that is prompted by a specific occurrence  
18 has to disclose how the lawyer obtained the information  
19 that was prompting the communication. So if you're going  
20 down to the sheriff's office and getting a list of recent  
21 arrestees, you have to include something saying I got  
22 your name off of the list of recent arrestees and that's  
23 why I'm sending you this communication. It doesn't  
24 prevent it, but at least it discloses a little more  
25 information to the person as to how they happened to know

1 this.

2 MR. MOUTON: And Mr. D'Anna was mentioning  
3 a runner from the city to get accident reports. So if  
4 you had somebody working in an emergency room and they  
5 tipped you, anybody that would operate that way, you  
6 could potentially just say that that's how you got the  
7 information and that would save you under the rule?

8 MR. PLATTSMIER: Well, you might run  
9 afoul on a different concern there at that point.

10 MR. MOUTON: I understand, but wait 30  
11 days and --

12 MR. PLATTSMIER: It's a felony for someone  
13 to run cases.

14 MR. MOUTON: You know, I know that there's  
15 all kinds of practices that go on, not that -- you know,  
16 I don't do that sort of area of law anyway.

17 MR. LEMMLER: The specific facts are  
18 always going to control and the devil is always in the  
19 details, but generally I think that's what's allowed in  
20 the rules, and your situation, as Mr. Plattsmier said, I  
21 think there could be other concerns. But let's try to  
22 move forward.

23 Rule 7.5. Basically what we're talking  
24 about here is TV and radio. Advertisements in the  
25 electronic media other than computer accessed

1 communications. There's a separate rule 7.6 that deals  
2 with web sites and e-mail and so forth. And as it says,  
3 computer-based ads subject to 7.6, including but not  
4 limited to television and radio, are subject to the  
5 requirements of Rule 7.2. The permissible and -- I'm  
6 sorry, prohibited conduct, the general stuff, false,  
7 deceptive or misleading that we've talked about already.

8           Essentially appearance on TV and radio  
9 prohibited content. Section one. Television and radio  
10 advertisements shall not contain any feature that is  
11 deceptive, misleading, manipulative, or that is likely to  
12 confuse the viewer or listener. I think in Florida's  
13 revision again they have actually adopted the false,  
14 deceptive or misleading language again and modified this  
15 slightly.

16           Any spokesperson's voice or image that is  
17 recognizable to the public and the community where the  
18 advertisement appears. Lawyers who are not members of  
19 the advertising law firm speaking on behalf of the  
20 advertising lawyer or a law firm. These things are  
21 prohibited from your TV or radio ads. Any background  
22 sound other than instrumental music.

23           Permissible content. Things you can put  
24 in your TV and radio ads that are presumptively approved.  
25 Images that otherwise conform to the requirement of these

1 rules. A lawyer who is a member of the advertising firm  
2 personally appearing to speak regarding the legal  
3 services of a lawyer or law firm that they are available  
4 to perform, the fees to be charged for such services and  
5 the background and experience of the lawyer or law firm.  
6 Things that are truthful, facts, or you can have a  
7 non-lawyer spokesperson speaking on behalf of the lawyer  
8 or law firm as long as the spokesperson's voice or image  
9 is not recognizable to the public in the community where  
10 the advertisement appears. And that spokesman shall  
11 provide a spoken disclosure identifying the spokesperson  
12 as a spokesperson and disclosing that the spokesperson is  
13 not a lawyer.

14 I note for you in Florida the Florida Bar  
15 was proposing to modify this and somewhat liberalize it  
16 and said that you only have to identify non-lawyer  
17 spokespersons when it is not obvious from the  
18 advertisement that they are indeed non-lawyer  
19 spokespersons. The Florida Supreme Court said, no, we  
20 like it the way it is. We believe it is very clear.  
21 It's an unequivocal statement of what you can or cannot  
22 do and we're not going to change it. So that was  
23 rejected by the Florida Supreme Court. The proposal that  
24 you see here is very much in keeping with what they have  
25 right now.

1           Rule 7.6. Computer-accessed  
2 communications. This is essentially, as I said, the  
3 Internet presence your web site or your e-mail, not TV or  
4 radio. All of these things are also subject to the  
5 location requirements of 7.2 indicating a bona fide  
6 office address telling them where you are.

7           Skipping ahead a bit. And I note for you  
8 that -- before I go back to 7.6, that the distinction  
9 made in the proposal is that Internet web sites are  
10 considered much like information that's provided to a  
11 client upon request. You can indicate a lot more  
12 information on your web site than you could in an  
13 unsolicited e-mail. An unsolicited e-mail would be  
14 treated much like a targeted direct written solicitation,  
15 and you have to disclose a lot more information, put in  
16 advertisement and so forth in the subject line.

17           Moving forward again. Skipping a few  
18 rules to get to the balance of the substantive rules,  
19 information provided upon request in Rule 7.9. I will  
20 note for you that Florida in its newest revision has  
21 basically removed this entire rule and moved it forward  
22 into a general exception in the beginning of all of the  
23 rules in 7.1. They recognize it as a per se exception  
24 and no need to have a special rule to delineate what  
25 those conditions might be. We'll, I'm sure, be looking

1 at that in our review of the comments and the Florida  
2 revisions. Under the proposal though it's information  
3 provided upon request must still comply with 7.2 unless  
4 it is otherwise provided. You can provide information as  
5 deemed valuable to assist your client if you provide an  
6 engagement letter -- I'm sorry, you can provide an  
7 engagement letter, but if you provide a contingency fee  
8 contract it has to indicate that it's a sample and have  
9 the words do not sign displayed on it so they are not  
10 confusing it with an actual contract.

11           It may contain factually verifiable  
12 statements concerning your past results. This is where  
13 you can tell people about what you've done and your  
14 successes and so forth if they ask for that information.  
15 Must disclose intent to refer to another lawyer or law  
16 firm if that's the case.

17           And then Rule 7.10 which Florida again has  
18 moved up into its Rule 7.9 since they have moved 7.9 up  
19 into the general exceptions. 7.10 is essentially what we  
20 have right now in our own Rule 7.5 which tells you what  
21 you can put in your firm name and letterhead and so forth  
22 and the trade names you can use and so forth.

23           That's the bulk of substantive rules.  
24 The proposed procedural rules now would provide for two  
25 options. Effectively you can get an advanced written

1 advisory opinion which you can actually get right now on  
2 your advertising. Nothing new really. We do that all  
3 the time, or whether you get the advanced written  
4 advisory opinion or not, whenever you file an ad, unless  
5 it falls under the safe harbor provisions and is exempt  
6 from the filing requirements you would be required to  
7 file it with the Bar.

8           Under 7.7(b), the advance written advisory  
9 opinion, the details, I won't go into all of them, but  
10 effectively at least 30 days before you're going to run  
11 the ad you can send it to us at the Bar. We'll review  
12 it, we'll work with you, we'll make recommendations and  
13 suggestions. If you don't understand something or you  
14 disagree with it we'll work with you on that and try to  
15 figure out something that we believe can be useful as  
16 well as work under the rules, and again before you spend  
17 any real money on your advertisement. That would be the  
18 point of this process, and we would hope that lawyers  
19 would be wanting to take advantage of that. We  
20 understand that the lawyers in Florida actually welcomed  
21 that process.

22           MR. MOUTON: And what would be the  
23 proposed fee for that advisory service?

24           MR. LEMMLER: The fee right now has not  
25 been set. Under the proposal it's left to the Supreme

1 Court to set. To give you just as example, Florida right  
2 now, their fee for filing is \$150. Texas I think is \$75.  
3 And that's per filing. Again, for doing the advanced  
4 written advisory leg of this as opposed to just filing  
5 it. And let me explain that, if I can. You can do  
6 either track. You can do the advanced written advisory  
7 opinion. Once that filing is approved or once you get to  
8 the point where you say I like the ad and we say it's a  
9 good ad, you don't have to refile it. It suffices as the  
10 actual filing. The advantage though is that you get to  
11 work with us all along and get it right and feel  
12 comfortable with it and we feel comfortable with it.

13           However, if you don't like that process  
14 and you feel comfortable about your advertising you can  
15 simply file it at the time that you want to use it or  
16 prior to that time without getting the advisory opinion.  
17 It's still the same fee. Mr. Plattsmier?

18           MR. PLATTSMIER: Chuck Plattsmier for the  
19 record. And this is a question I can probably ask you  
20 off the public record, but I think the information that  
21 I'm asking you might be useful to be placed in the public  
22 record.

23           At least as I've been told, many lawyers  
24 who advertise today, particularly in the public media of  
25 radio and television of course do not obviously draft



1 their own advertisements. They have used professionals  
2 designed to do that for them. Will the ethics advisory  
3 service interact with representatives of the lawyer who  
4 are media consultants or those who write or draft or sell  
5 advertising packages for lawyers? Is that what is  
6 contemplated?

7           MR. LEMMLER: I don't think that is what  
8 is envisioned, at least not that direct form of  
9 interaction. I'm just speaking from what I understand.  
10 I'm not speaking for the committee or the Bar or the  
11 Supreme Court, but the way I understand the proposal it  
12 would function the same essentially as the ethics  
13 advisory service for the Bar functions rights now. We  
14 deal with the lawyers. We deal with lawyers and their  
15 own prospective conduct.

16           Right now someone who is in advertising, a  
17 third party who the lawyer is dealing with to produce a  
18 commercial calls, we say, well, have the lawyer call it  
19 us, or have the lawyer work up the copy and have the  
20 lawyer send it to us and we'll work with the lawyer. And  
21 of course that person is probably talking to a lawyer at  
22 the same time, but, you know, our policy is essentially  
23 to deal with the lawyer, the member of the Bar  
24 Association because this is a service provided by the Bar  
25 association.

1           Now, I do understand in speaking to the  
2 folks in Texas, and I suppose they probably do this in  
3 Florida as well, they try, in order to encourage lawyers  
4 to comply with the process and understand the process,  
5 they do a number of continuing legal education programs.  
6 In Texas, according to the guy in Texas, they actually do  
7 CLEs, if you will, for members of the advertising  
8 community to try to help them help the lawyers to do  
9 better ads and ads that are more in compliance with the  
10 rules.

11           So again, just from my own perspective, I  
12 can foresee that as being something beneficial to our  
13 members by helping the people who help them understand  
14 what they need to do to comply with the rules, but I  
15 don't think that's the direct contact between me or my  
16 office or the Bar and the members of the advertising  
17 community is contemplated under the rules the way they  
18 are right now.

19           Okay. In either instance, whether you do  
20 the advanced written advisory opinion or whether you file  
21 your ad without getting the advisory opinion the  
22 submission requirements would effectively be the same.  
23 You would be submitting a fee, and again the fee would be  
24 set under the proposal by the Supreme Court. A copy of  
25 the advertisement and a sample envelope that you would

1 intend to use, a typewritten copy of a transcript. I'd  
2 note for you that Florida has also now included the need  
3 to have that transcript in English if the ad is in  
4 another language. Presumably the people who are going to  
5 be reviewing this are English speaking and so they want  
6 to have that in the rule. Statement concerning the type  
7 of media, frequency and duration of the advertisement.

8           Any questions about this? Then there's a  
9 list in Rule 7.8 of things that are considered except  
10 from the filing requirement, things that you don't have  
11 to submit to the Bar, things that you don't have to pay a  
12 fee to use in your ads or to use as ads. The basic one  
13 is if you follow the safe harbor content of what's in  
14 7.2(c)12, the plain vanilla stuff. If that's all that's  
15 in your ad and that's how you're doing it, then you're  
16 exempt from the filing requirement.

17           Brief announcements identifying the lawyer  
18 as a sponsor for charitable events provided that no  
19 information is given with the name and location of the  
20 sponsoring law firm. Again I note for you that Florida  
21 has expanded that and said that if you include in your  
22 sponsoring announcement any of the safe harbor content or  
23 only the safe harbor content, rather, that that is  
24 presumed to be exempt from the filing requirement. You  
25 are not precluded from putting these other things. You

1 are not restricted to just putting the name and location  
2 of the sponsoring law firm.

3           Listing or entry in a law list or bar  
4 publication. I think that the common example there is  
5 like the Martindale-Hubbell, something of that nature.  
6 That's presumed to be exempt from the filing requirement.  
7 A communication mailed only to existing clients, former  
8 clients or other lawyers. I'd note for you that Florida  
9 has made had presumptive exemption for communications  
10 mailed to the family members of the lawyer. That's  
11 exempt from filing and that's exempt probably from most  
12 of those rules if you're mailing communications to your  
13 own family members. I think that's probably understood  
14 and accepted right now, but they felt it necessary to put  
15 that in the rule to let everybody know.

16           Any written communications requested by a  
17 prospective client. Florida has again now, in its newest  
18 provisions, moved this up to 7.1 or 7.2 saying that this  
19 is a presumptive exemption. You don't have to comply  
20 with a lot of this stuff if you're providing it to  
21 prospective clients. Professional announcement cards  
22 mailed to other lawyers, relatives, former or current  
23 clients, and close friends. You know, pleased to  
24 announce that the new law firm of so and so is being  
25 formed, something of that nature.

1           Computer-accessed communications is  
2 described in subsection (b) of Rule 7.6. Again, web  
3 sites. That's exempt from filing. If you're changing  
4 your web site on a daily basis that's exempt from a  
5 filing requirement. Obviously, we wouldn't want to try  
6 to keep up with you and that and you wouldn't want to be  
7 constrained by that. So what's on your web site,  
8 whatever the public is going to is considered to be like  
9 the information that is provided to people upon request.  
10 So if they want to see it, it's their active need to see  
11 it. So we're not going to make you file that.

12           And that's pretty much the rules. That's  
13 the proposed rules that we have in this packet. I think  
14 the committee has envisioned a phase-in period for this.  
15 Obviously, if the court would adopt it, and we're  
16 recommending to the Court that they consider that, that  
17 it would be very difficult, if not impossible for lawyers  
18 overnight to change many of their ads and most of their  
19 ads, particularly those that are published on only an  
20 annual basis like a telephone directory and so forth.  
21 You can't be expected to change that when you have no  
22 control over that except on an annual basis perhaps. So  
23 those types of things would perhaps be grandfathered in.  
24 Otherwise, we envision at least a 90 day phase-in period  
25 for ads that are currently in use. That's what our

1 recommendation would be to the Court.

2           Future work plan. This is the last of the  
3 four public hearings that we've had. We've gotten great  
4 comments from all of them. Just to note for you, because  
5 I don't think I mentioned it earlier, we also have on the  
6 bar's web site an online comment form where we encourage  
7 people to go in and log in and put in their comments, and  
8 we're keeping track of those and will be considering  
9 those as well. So that's available to you whether you've  
10 made it to a public hearing or not, and we're getting  
11 quite a number of comments on that.

12           Special rules of debate.

13           MR. PLATTSMIER: There's a question back  
14 here.

15           MR. LEMMLER: I'm sorry, ma'am. I wasn't  
16 looking.

17           THE WITNESS: Jacqueline Scott. I just  
18 have a question. I advertise -- and I got here late -- I  
19 apologize -- but in the phone book, and one of the things  
20 I've advertised is they have a magazine here that the  
21 lawyers vote for lawyers, and one of things is like they  
22 select a top ten. I use it to my advantage, and I was  
23 just trying to see if that -- you know, how does that  
24 affect -- you know, is it going to be affected with the  
25 laws, with the new proposal?

1 MR. LEMMLER: Larry?

2 MS. SCOTT: And there are certain things  
3 that I advertise, you know, in this advertisement, but of  
4 course I only handle certain cases. So which means it's  
5 not like I'm -- you know, I don't mean to just distract,  
6 you know, being in the top ten, but it was -- you know,  
7 it happened, you know, in Shreveport, an advantage, and  
8 I'll call it an edge, to be honest, and so I just wanted  
9 to know if -- you know, with this proposal how is that  
10 affected or would that be affected in the way I  
11 advertise?

12 MR. SHEA: This is Larry Shea. I think  
13 there are certain aspects of this proposal that would  
14 affect that.

15 MR. GREGORIO: This is Sam Gregorio. I  
16 actually think you would be prohibited. And if I'm  
17 reading my numbers right, 7.2(b)(1)(d) which compares  
18 lawyer's services with another's services. There may be  
19 another provision also, but I just noticed that at the  
20 moment.

21 MR. SHEA: There is a provision that  
22 pertains to references to where you have been listed with  
23 respect to certain entities that you are allowed to  
24 reference, but I'm not sure that what you're referring  
25 to, the SB magazine, I'm not sure that that's one that

1 would necessarily comply with the list of groups that you  
2 are permitted to reference, okay? That's my comment on  
3 it, and it has a lot to do with the processes that are  
4 utilized by the group in terms of selection and things of  
5 that nature.

6 MS. SCOTT: Would the same thing -- and  
7 like say, for instance, you have TV and we have lawyer  
8 advertisements, well, he got me a million dollars and --

9 MR. SHEA: These rules would specifically  
10 prohibit that.

11 MR. GREGORIO: Can I add one thing? I'm  
12 sorry. And I'm responding to Larry's comments since we  
13 have the public record here. This is Sam Gregorio. The  
14 committee specifically had some nice long discussions  
15 about those types of listings, and my personal feeling  
16 and the committee's feeling is that they would be  
17 prohibited by these rules more than just -- in other  
18 words, I'm saying it stronger than you stated it.

19 MR. SHEA: Right. But it was not all  
20 listings. And it does reference those that -- I think it  
21 accurately describes what the committee determined would  
22 be listings that would be permissible. And Mr.  
23 Plattsmier you may recall. I think it does.

24 MR. PLATTSMIER: I think it does as well.

25 MR. GREGORIO: And just to make sure that



1 we're all together. I think we're all saying the same  
2 thing, that, for example, we discussed specifically the  
3 SB magazine listing and we all thought that that would  
4 probably not be permitted. There are some others such as  
5 Martindale-Hubbell that would be permitted, and I think  
6 we're all saying that same thing as I understand you  
7 guys.

8 MR. PLATTSMIER: Yes.

9 MR. SHEA: Yes.

10 MR. D'ANNA: This is John D'Anna. That  
11 was my question, following up on the SB magazine thing  
12 because what they do, as you know, they just send out  
13 forms, and then you're allowed to pick somebody. It  
14 could even be somebody in your own firm or you get  
15 somebody to nominate you and you nominate somebody else,  
16 and lo and behold you're one of the top ten lawyers in  
17 that area, and if you pay an additional thousand dollars  
18 you get to have a picture ad right behind it which really  
19 is somewhat misleading.

20 MR. GREGORIO: Whether you are selected or  
21 not.

22 MR. D'ANNA: Right. If you're not  
23 selected you're there -- you can buy a whole page and you  
24 can be first in line behind the top best lawyers in the  
25 area. So what I'm hearing is that under these rules

1 participation in that program would be a violation.

2 MR. GREGORIO: That is my understanding

3 and that was the committee group thought.

4 MR. SCOTT: To participate or to

5 advertise?

6 MR. D'ANNA: To participate in the top

7 best lawyer survey under that scenario.

8 MR. GREGORIO: You mean advertise? Is

9 that what you mean?

10 MR. D'ANNA: Well, they send everybody who

11 was in it the year before a form.

12 MR. GREGORIO: But I don't think it's

13 impermissible to participate. I do think it would be

14 impermissible under these rules to advertise.

15 MR. D'ANNA: So you could still -- Okay.

16 I was hoping it would prohibit that participation because

17 I think that's a very misleading publication.

18 MR. PLATTSMIER: There may be a

19 distinction between whether or not folks within your

20 community in theory have voted you one of the top lawyers

21 in your committee over which you have no control versus

22 then the use of that information in an advertising format

23 which I believe the rules would probably prohibit. But

24 this is a fact driven inquiry that you've raised, and I'm

25 not prepared to tell you on a blanket statement that all

1 events such as the one that you're describing here that  
2 may have taken place in the past in Shreveport would  
3 necessarily in every event implicate misconduct by the  
4 lawyer, nor am I suggesting that it would exempt a lawyer  
5 from scrutiny if it were found that they took an active  
6 role in perpetuating this sort of program when it wasn't  
7 factually based on rational information.

8           MR. SHEA: And this is Larry SHEA. I  
9 would add that there was much discussion not so much of  
10 SB magazine, but of programs like it that have been the  
11 subject of quite a bit of controversy in other states  
12 where they have actually had disciplinary proceedings  
13 that have related to things like the SB magazine such as  
14 super lawyers. There's a group called super lawyers.  
15 They have been the subject of some ethics proceedings,  
16 disciplinary proceedings in other states. They have  
17 raised questions concerning Best's, and in one state in  
18 discussing super lawyers it even raised questions  
19 concerning Martindale-Hubbell. And so all of this has  
20 been a subject of a lot of litigation.

21           MR. PLATTSMIER: My colleagues across the  
22 country have been hotly debating many of these same  
23 issues, particularly, for example, the reference to so  
24 called super lawyer listings and other publications of  
25 the same kind, and I will tell you it's a topic that is

1 as fresh as last week when the lists or comments were  
2 still flying across the country. It is an area that is  
3 troublesome to many discipline agencies across the  
4 country.

5           MR. LEMMLER: Okay. To note for you  
6 before we wrap it up -- I think we're down to the end of  
7 this -- that there were special rules of debate adopted  
8 by the Louisiana State Bar House of delegates that have  
9 already been adopted that would deal with this proposal.  
10 The proposal is intended to be presented at the next  
11 House meeting which is in January. Resolutions that  
12 would address amendments to this proposal that you see  
13 before you or any subsequent form of the proposal that's  
14 going to go to the House in January, those resolutions  
15 need to be submitted in writing 30 days in advance of  
16 that House of Delegates meeting, and there is a form in  
17 the back with the rules of debate for the House meeting  
18 on there, if you're interested in that.

19           The Supreme Court committee to study  
20 attorney advertising, the Court's own committee, of which  
21 some of the members of the Rules of Professional Conduct,  
22 the Bar committee are members of as well, the Court  
23 committee is presumably going to be looking at this  
24 proposal and our comments and everything that the  
25 committee puts into it after their meeting on the 29th,

1 and then we'll do whatever the Court wants to do I  
2 suppose with respect to these rules. So that's the  
3 process. That's pretty much where we are. Understand  
4 that this is a process that the Court is looking for  
5 input from the Bar right now. We're giving them input,  
6 your comments, our proposal, and the Court is going to do  
7 what it wants to do at that point. Yes, sir?

8 MR. BAILEY: Jack Bailey. If we had an  
9 amendment that we would like to see proposed, what form  
10 should I put that in and send it to you in? Just type it  
11 up in general or --

12 MR. PLATTSMIER: I'd like to respond to  
13 that, if I might. Two things that I think are available  
14 to you, Jack. One, if you have a specific change in  
15 language, I think that both the Supreme Court committee,  
16 as well as the rules committee and its subcommittee would  
17 be delighted to receive any suggested language change or  
18 rule change that you think they should consider.  
19 Secondly, I'm going to have to answer your question by  
20 asking a question. Are you a member of the House of  
21 Delegates?

22 MR. BAILEY: No.

23 MR. PLATTSMIER: All right. If you have  
24 someone that you know who is a member of the House of  
25 Delegates, with whom you have a good rapport, and to the

1 extent that your written proposal to the Supreme Court  
2 committee or that the rules committee of the LSBA is not  
3 perhaps incorporated, under the rules of debate, if you  
4 have a specific provision that you would like to have  
5 debated on the House floor, then it needs to be part of  
6 the package that is turned in by a date certain 30 days  
7 in advance, I believe, of the House of Delegates meeting  
8 which is held at the end of January under the rules of  
9 debate.

10 MR. GREGORIO: Held in the middle of  
11 January.

12 MR. LEMMLER: It's in the middle of  
13 January.

14 MR. PLATTSMIER: Excuse me, middle of  
15 January. And Mr. Shea, for example, is a member of the  
16 House of Delegates, and there may be others from your  
17 area who are members. You may ask them to -- that's  
18 right, Kevin Malloy, Sam Gregorio and number of folks who  
19 are here today could offer on your behalf that sort of  
20 proposed changes if it had the not been previously  
21 incorporated by the committee into the final work  
22 product. So there are at least two avenues available to  
23 you.

24 MR. LEMMLER: Just building on what Mr.  
25 Plattsmier said, I think submitting your comments and

1 suggestions at least for amendment of specific provisions  
2 of the rules, the most effective way might be right now  
3 to submit them to the committee, to the rules committee  
4 and court's committee and they can make that change as  
5 part of the package.

6 MR. SHEA: And we actually have a place to  
7 do that on the LSBA site so you don't even have to  
8 prepare a letter or anything. You can just go to that  
9 site and submit it, give your name and submit here's the  
10 language change I would propose be made and that's  
11 LSBA.org.

12 MR. LEMMLER: There's a link on the home  
13 page that will take you to a separate page to do that.

14 MR. SHEA: Yeah, and you just go right  
15 there and you give it everything that comes in there. It  
16 is going to be considered by the rules committee, and if  
17 we, as a group, think it's something that needs to be  
18 done, we will incorporate it.

19 MR. LEMMLER: But any way you want to get  
20 it to us. I mean, you can call me up, you can fax it to  
21 me, you can e-mail it to me, you can mail it in, if  
22 there's time to mail it in. Any way you want to get it  
23 to us, we welcome that, and that would be encouraged as  
24 probably the easiest way to get some specific language  
25 changes at least considered in the proposal rather than

1 waiting to go to the House meeting. You can certainly do  
2 that as well, but I'm just telling you that this is  
3 probably a more perhaps efficient way to handle it.  
4 Yes, sir?

5 MR. MALLOY: I just have a question I  
6 should have probably raised earlier, but with regard to  
7 fees, and it's kind of off the wall, but has there ever  
8 been any discussion in the committee of constitutionality  
9 of having a fee required to comply with these ethical  
10 rules to make free speech -- you know, to take advantage  
11 of free speech rights that we have?

12 MR. SHEA: Yes, there have been -- and  
13 this is Larry SHEA again -- that you can construct an ad  
14 which doesn't require a filing if you stay in the safe  
15 harbor. So it's -- we're not prohibiting you from  
16 advertising within the safe harbor. What it does is if  
17 you're not going to stay right within the safe harbor,  
18 though, it does require the filing, and I believe that's  
19 already been addressed in some prior cases and that's  
20 acceptable.

21 MR. GREGORIO: This is Sam Gregorio. I  
22 also just want to respond to Kevin. This area is not a  
23 free speech area. It's a commercial free speech area --

24 MR. MALLOY: I understand.

25 MR. GREGORIO: -- which has a distinction



1 and different rules and different tests, and I just  
2 wanted to -- when you talk about free speech, I want to  
3 make sure that the record is clear that it's commercial  
4 free speech.

5 MR. LEMMLER: And I would also note for  
6 you that with respect to the constitutional issue of  
7 charging the fee, Florida has been doing this already for  
8 about 12 years. Texas has been doing it I think for ten.  
9 So it's already been in place in other states and  
10 presumably passed constitutional muster there. So the  
11 distinction that Sam has made, plus that, I think that  
12 issue has been addressed or at least viewed anyway.

13 MR. D'ANNA: One quick question. John  
14 D'Anna. And this is just a general question. How do our  
15 rules affect lawyers from other states whose ads are run  
16 in Louisiana say on cable TV, and you see the law office  
17 of so and so and so and so in New York, or do our rules  
18 even effect those guys? You see class action  
19 advertisements, you see serious personal injury  
20 advertisements by the law office of so and so. I mean --

21 MR. PLATTSMIER: Our Rules -- this is  
22 Chuck Plattsmier. Our Rules of Professional Conduct  
23 under Rule 8.5 and Supreme Court Rule 19, Section 6,  
24 expands our jurisdictional base to both lawyers who are  
25 licensed to practice law in Louisiana and who are

1 physically present here and those who are outside of the  
2 State of Louisiana but who offer to provide services here  
3 or seek representation here or seek to advertise by  
4 perception. Is that constitutional? There may not be a  
5 mechanism by which we can prohibit an out of state firm  
6 from providing informational advertising opportunities  
7 within this state, but if they choose to do so they fall,  
8 within my judgment, within the same parameters that we  
9 are proposing for lawyers who are here advertising and  
10 practicing. So they would have to take cognizance of and  
11 imply with the very same rules that you and I will be  
12 obliged to follow shall we advertise.

13           MR. SHEA: This is Larry Shea. Just to  
14 let you know, I believe it is the committee's intent by  
15 way of these rules to cover by these rules any  
16 advertisement, any advertising that is directed at  
17 Louisiana residents. So if it is in any way directed to  
18 obtain Louisiana residents as clients, we would consider  
19 it to be within the purview of our rules to say that that  
20 doesn't comply, and the lawyer or lawyers responsible for  
21 it could be subject to whatever could be done to those  
22 lawyers by way of our disciplinary system.

23           MR. LEMMLER: I'd also note for you, with  
24 respect to your comment, that in Florida's latest  
25 provision of their rules in their Rule 7.1 they have now

1 added an additional section which again would be -- I  
2 didn't discuss yet or get to, but they have added an  
3 additional section which says that these rules will apply  
4 to advertisements by out of state lawyers admitted to  
5 practice in other jurisdictions who have established a  
6 regular or permanent presence in Florida for the practice  
7 of law as authorized by other law and who solicit or  
8 advertise for legal employment in Florida or who target  
9 solicitation or advertisements for legal employment at  
10 Florida residents. So presumably the committee will be  
11 looking at this part of Florida's revision as well and  
12 that may address what you're talking about.

13           I think that wraps it up. One more slide.  
14 Online comments, and then CLE credit. You actually get  
15 an hour of ethics CLE for enduring my presentation.

16           MR. BAILEY: This is Jack Bailey again. I  
17 know that we have constitutional issues on commercial  
18 free speech, and of course, as y'all already know, I am a  
19 proponent of the strictest possible regulation of  
20 personal injury advertising that we can have. And I'll  
21 comment I see the bankruptcy advertisements, and I have  
22 to tell you I find absolutely nothing misleading about  
23 them, but I always -- and I have to tell you, even in my  
24 own ads I think that they are probably inherently  
25 misleading to the public.

1           So my question is, as a proponent of the  
2 strictest regulations we can possibly have, has the  
3 committee tried to draw these as close to the  
4 constitutional boundaries as we think we can, or are they  
5 backed away from what we think the constitutional  
6 boundaries are? I mean, are we right up to the line we  
7 think we can have?

8           MR. PLATTSMIER: Jack, I'll speak to it.  
9 As a member of both committees, as each particular  
10 proposed rule was analyzed, my view was always to draft  
11 this on top of the line or as near within its parameters  
12 as is possible for two reasons. I echo your concerns  
13 about lawyer advertising in general and that pertain to  
14 the personal injury field in particular. Second, my view  
15 is that the Florida rules were designed to be an  
16 aggressive -- an attempt at aggressive regulation as  
17 opposed to the perception that the ABA model rules were  
18 less so historically. And third, we are responding in  
19 some measure to a legislative concern expressed within  
20 the Senate hearings and as supported by an overwhelming,  
21 if I'm not mistaken, resounding majority of the Senate  
22 that voted on the bill that something aggressive and  
23 extensive needed to be done to address the public  
24 perception and the legislative perception that lawyer  
25 advertising had heretofore been improperly or

1 inadequately regulated.

2           So all of those things affected my view  
3 and affected my comment and input at that stage. My  
4 perception was that my colleagues around the table shared  
5 much of that concern, and so in the drafting of the rules  
6 the premise was to be as aggressive in the regulation of  
7 lawyer advertising as is constitutionally permitted by  
8 reviewing all of the prior case law. I hope that's a  
9 fair characterization.

10           MR. GREGORIO: This is Sam Gregorio. I  
11 think that's a fair characterization.

12           MR. SHEA: I also agree as a member of  
13 both committees. I agree that we have done that, and I  
14 believe that's what was dictated to us by the legislature  
15 as to what their desire was, but I want to reiterate and  
16 make sure it's clear but we at the same time have not  
17 tried to do anything that we perceived in any way would  
18 be a violation of the commercial free speech rights of  
19 the attorneys to advertise, it being our intention that  
20 they have every bit of the constitutional rights that  
21 they are permitted but for us to regulate to that extent.

22           MR. GREGORIO: I agree with that also.

23           MR. PLATTSMIER: Okay.

24           MR. LEMMLER: All right. I think, unless  
25 there are any other comments, we're concluded. Thank you

1 for coming.

2 (End of hearing.)

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