

APPENDIX D

FINAL REPORT TO THE BOARD OF GOVERNORS BY THE SPECIAL COMMITTEE ON WEBSITE ADVERTISING RULES



THE FLORIDA BAR

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March 14, 2007

MEMORANDUM

TO: Florida Bar Board of Governors Officers and Members

FROM: Elizabeth Clark Tarbert, Ethics Counsel

RE: Recommended Rules Changes from Special Committee on Website Advertising Rules

The Special Committee on Website Advertising Rules was appointed in July 2005, at the direction of The Florida Bar Board of Governors. The Advertising Task Force 2004 recommended changes to virtually all of the lawyer advertising rules (4-7.1 through 4-7.11, Rules Regulating The Florida Bar). The Board declined to adopt the task force's recommendation regarding websites, which would have exempted websites from all of the advertising rules. The Board instead approved a recommendation that would keep the status quo, while appointing another committee to continue studying the issue of how the lawyer advertising rules should be applied to websites. The Supreme Court of Florida declined to adopt any changes to rule 4-7.6 pending recommendations of the Special Committee on Website Advertising Rules. *In re: Amendments to the Rules Regulating the Florida Bar - Advertising*, 31 Fla. L. Weekly S767 (Fla. Nov. 2, 2006), Case No. SC05-2194. The bar has filed a motion to reconsider the Supreme Court of Florida's ruling relating to websites.

The special committee studied the issue for over a year, meeting numerous times both in person and via conference call. The special committee divided into four subcommittees: one that studied constitutional issues, one that compared Florida's rules with other states and the American Bar Association, one to study the issues related to enforcement of the rules, and one to study the technological issues related to the area. The special committee was assisted by Dubravko Kakarigi, from the bar's Information Systems Department regarding technological issues and by outside counsel Barry S. Richard regarding constitutional issues. The special committee ultimately determined that websites should be subject to the same regulation as other forms of media, with the exception of the requirement that they be filed for review with The Florida Bar

At its December 2006 meeting, the Board of Governors reviewed one alternative recommended by the special committee, the recommended alternative plus commentary that was drafted at the board meeting, and alternatives that were not recommended by the special committee. The board voted against adopting the alternative as recommended by

the special committee. After reviewing commentary drafted at the board meeting, a motion to adopt the alternative recommended by the special committee with the additional drafted commentary was made, seconded, and failed 18-26.

At its January 26, 2007 meeting, the board of governors voted to publish proposed changes to Rule 4-7.6 in the bar *News* that would require homepages to comply with general advertising regulations found in Rule 4-7.2, and would require the remainder of the website to comply with the same regulations but with 3 exceptions: in any part of the website except the homepage, lawyers would be permitted to contain truthful information regarding past results, testimonials, and statements characterizing the quality of legal services and disclaimers would be required for the first 2 exceptions.

The board draft required specific disclosure language. The Rules Committee has reviewed and approved the rule as drafted. However, the Rules Committee has also reviewed, approved, and recommends adoption of an alternative draft that requires a disclaimer, but does not require that the disclaimer appear verbatim from the rule, allowing for some flexibility for bar members in posting an appropriate disclaimer.

Attached is the draft approved by the board at its January 26, 2007 meeting. Also attached is the alternative proposal by the Rules Committee. I have also attached the prior proposals considered and rejected by the board: 1) Alternative One is the recommendation of the Special Committee on Website Advertising Rules that requires websites to comply with all general advertising regulations found in Rule 4-7.2; 2) Alternative One with Commentary is a prior proposal that requires websites to comply with all general advertising regulations found in Rule 4-7.2, but adds commentary on how to construct portions of the website that would not be subject to the advertising rules and that would be accessible only via a complying portion of the website; 3) Alternative Two would treat websites as information on request, which would not be subject to the lawyer advertising rules, but would be subject to the general prohibition against conduct involving dishonesty, deceit, fraud, or misrepresentation; and 4) Alternative Three lists all the general lawyer advertising regulations within the rule on websites (Rule 4-7.6(b)) from which the board could pick and choose which regulations should apply to websites. All alternatives are in legislative format from the rules as adopted by the Supreme Court of Florida to be effective January 1, 2007.

Also attached are:

- 1) minutes of the special committee meetings
- 2) the February 15, 2006 bar *News* article regarding the board's proposal with the full text of the rule included; [Provided in this petition in Exhibit A]
- 3) examples of websites that do not comply with the lawyer advertising rules (obtained from complaints to the Lawyer Regulation Department, which has indicated that these are now public);
- 4) examples of websites that do comply with the lawyer advertising rules; and
- 5) comments from Florida Bar members on various rules proposals. [Provided in this petition in Exhibit E]

E.C.T.

RULE 4-7.6 COMPUTER-ACCESSED COMMUNICATIONS

(a) Definition. For purposes of this subchapter, "computer-accessed communications" are defined as information regarding a lawyer's or law firm's services that is read, viewed, or heard directly through the use of a computer. Computer-accessed communications include, but are not limited to, Internet presences such as ~~home pages or World Wide Web sites~~ websites, unsolicited electronic mail communications, and information concerning a lawyer's or law firm's services that appears on ~~World Wide Web~~ Internet search engine screens and elsewhere.

(b) Internet Presence.

(1) Home pages. All ~~World Wide Web sites and~~ home pages accessed via the Internet that are controlled or sponsored by a lawyer or law firm and that contain information concerning the lawyer's or law firm's services:

~~(1) shall disclose all jurisdictions in which the lawyer or members of the law firm are licensed to practice law;~~

~~(2) shall disclose 1 or more bona fide office locations of the lawyer or law firm, in accordance with subdivision (a)(2) of rule 4-7.2; and~~

~~(3) are considered to be information provided upon request and, therefore, are otherwise governed by~~ subject to the requirements of rule ~~4-7.94-7.2:~~

(2) Websites Except for Home pages. Except for the home page, all websites accessed via the Internet that are controlled or sponsored by a lawyer or law firm and that contain information concerning the lawyer's or law firm's services are subject to the requirements of rule 4-7.2 except:

(A) notwithstanding the provisions of subdivision (c)(1)(F) of rule 4-7.2, websites may contain factually verifiable statements concerning past results obtained by the lawyer or law firm, if, either alone or in the context in which they appear, such statements are not otherwise misleading and the statements are accompanied by the following disclaimer: "Not all results are provided, the results are not necessarily representative of results obtained by the lawyer, and a prospective client's individual facts and circumstances may differ from the matter in which the results are provided.";

(B) notwithstanding the provisions of subdivision (c)(1)(J) of rule 4-7.2, websites may contain testimonials if, either alone or in the context in which they appear, such statements are not otherwise misleading and the statements are accompanied by the following disclaimer: "Not all clients have provided testimonials, the results are not necessarily representative of results obtained by the lawyer, and a prospective client's individual facts and circumstances may differ from the matter in which the testimonials are provided."; and

(C) notwithstanding the provisions of subdivision (c)(2) of rule 4-7.2, websites may contain factually verifiable statements describing or characterizing the quality of the lawyer's services if, either alone or in the context in which they appear, such statements are not otherwise misleading.

(c) Electronic Mail Communications. A lawyer shall not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, an unsolicited electronic mail communication directly or indirectly to a prospective client for the purpose of obtaining professional employment unless:

(1) the requirements of subdivisions (b)(1), (b)(2)(A), (b)(2)(E), (b)(2)(F), (b)(2)(G), (b)(2)(I), and (b)(2)(J) of rule 4-7.4 are met;

(2) the communication discloses 1 or more bona fide office locations of the lawyer or lawyers who will actually perform the services advertised, in accordance with subdivision (a)(2) of rule 4-7.2; and

(3) the subject line of the communication states "legal advertisement."

(d) Advertisements. All computer-accessed communications concerning a lawyer's or law firm's services, other than those subject to subdivisions (b) and (c) of this rule, are subject to the requirements of rule 4-7.2.

Comment

Advances in telecommunications and computer technology allow lawyers to communicate with other lawyers, clients, prospective clients, and others in increasingly quicker and more efficient ways. Regardless of the particular technology used, however, a lawyer's communications with prospective clients for the purpose of obtaining professional employment must meet standards designed to protect the public from false, deceptive, misleading, or confusing messages about lawyers or the legal system and to encourage the free flow of useful legal-related information to the public.

The specific regulations that govern computer-accessed communications differ according to the particular variety of communication employed. For example, a lawyer's Internet ~~web site~~website is ~~accessed by the viewer upon the viewer's initiative and, accordingly, the standards governing such communications correspond to the rules applicable to information provided to a prospective client at the prospective client's request~~subject to most of the requirements of rule 4-7.2. Websites cannot be easily categorized as either information at the request of the prospective client, which is subject to no regulation under this subchapter but is subject to the general prohibition against dishonesty, or as advertising in a medium that is totally unsolicited and broadly disseminated to the public, such as television, radio, or print media. Although some steps must be initiated by the viewer to access a website, the viewer might not necessarily be

attempting to access that law firm's website, or a law firm website at all. It is therefore inappropriate to treat websites as information upon request, because it is not the same as direct contact with a known law firm and requesting information. On the other hand, the viewer is unlikely to access a lawyer or law firm website completely accidentally. Therefore, websites are treated at an intermediate level and are subject to most of the general regulations set forth in rule 4-7.2. Websites generally contain much more information than can be included in the context of a television, radio, or print advertisement.

A lawyer who provides information about past results, testimonials, or statements characterizing the quality of the lawyer's services on a website must make only true, factually verifiable statements that are not misleading either alone or in the context in which those statements are made. To avoid misleading the prospective clients, such statements must be accompanied by appropriate disclaimers as set forth in the rule so that prospective clients will not be misled to believe that the lawyer can achieve similar results when the facts and circumstances in their cases may vary greatly from the ones in which the past results and testimonials are provided. A lawyer providing information about past results or testimonials on the lawyer's website must have the informed consent of the affected client. See rule 4-1.6.

In contrast, unsolicited electronic mail messages from lawyers to prospective clients are functionally comparable to direct mail communications and thus are governed by similar rules. Additionally, communications advertising or promoting a lawyer's services that are posted on search engine screens or elsewhere by the lawyer, or at the lawyer's behest, with the hope that they will be seen by prospective clients are simply a form of lawyer advertising and are treated as such by the rules.

This rule is not triggered merely because someone other than the lawyer gratuitously links to, or comments on, a lawyer's Internet ~~web site~~website.

RULE 4-7.6 COMPUTER-ACCESSED COMMUNICATIONS

(a) **Definition.** For purposes of this subchapter, "computer-accessed communications" are defined as information regarding a lawyer's or law firm's services that is read, viewed, or heard directly through the use of a computer. Computer-accessed communications include, but are not limited to, Internet presences such as ~~home pages or World Wide Web websites~~, unsolicited electronic mail communications, and information concerning a lawyer's or law firm's services that appears on ~~World Wide Web~~ Internet search engine screens and elsewhere.

(b) **Internet Presence.**

(1) Homepages. All ~~World Wide Web sites and home pages~~ homepages accessed via the Internet that are controlled or sponsored by a lawyer or law firm and that contain information concerning the lawyer's or law firm's services:

~~(1) shall disclose all jurisdictions in which the lawyer or members of the law firm are licensed to practice law;~~

~~(2) shall disclose 1 or more bona fide office locations of the lawyer or law firm, in accordance with subdivision (a)(2) of rule 4-7.2; and~~

~~(3) are considered to be information provided upon request and, therefore, are otherwise governed by~~ subject to the requirements of rule 4-7.2.

(2) Websites Other Than Homepages. Other than the homepage, all websites accessed via the Internet that are controlled or sponsored by a lawyer or law firm and that contain information concerning the lawyer's or law firm's services are subject to the requirements of rule 4-7.2 except:

(A) notwithstanding the provisions of subdivision (c)(1)(F) of rule 4-7.2, websites may contain factually verifiable statements concerning past results obtained by the lawyer or law firm, if, either alone or in the context in which they

appear, such statements are not otherwise misleading and the statements are accompanied by a disclaimer that not all results are provided, the results are not necessarily representative of results obtained by the lawyer, and a prospective client's individual facts and circumstances may differ from the matter in which the results are provided;

(B) notwithstanding the provisions of subdivision (c)(1)(J) of rule 4-7.2, websites may contain testimonials if, either alone or in the context in which they appear, such statements are not otherwise misleading and the statements are accompanied by a disclaimer that not all clients have provided testimonials, the results are not necessarily representative of results obtained by the lawyer, and a prospective client's individual facts and circumstances may differ from the matter in which the testimonials are provided."; and

(C) notwithstanding the provisions of subdivision (c)(2) of rule 4-7.2, websites may contain factually verifiable statements describing or characterizing the quality of the lawyer's services if, either alone or in the context in which they appear, such statements are not otherwise misleading.

(c) Electronic Mail Communications. A lawyer shall not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, an unsolicited electronic mail communication directly or indirectly to a prospective client for the purpose of obtaining professional employment unless:

(1) the requirements of subdivisions (b)(1), (b)(2)(A), (b)(2)(E), (b)(2)(F), (b)(2)(G), (b)(2)(I), and (b)(2)(J) of rule 4-7.4 are met;

(2) the communication discloses 1 or more bona fide office locations of the lawyer or lawyers who will actually perform the services advertised, in accordance with subdivision (a)(2) of rule 4-7.2; and

(3) the subject line of the communication states "legal advertisement."

(d) Advertisements. All computer-accessed communications concerning a lawyer's or law firm's services, other than those subject to subdivisions (b) and (c) of this rule, are subject to the requirements of rule 4-7.2.

Comment

Advances in telecommunications and computer technology allow lawyers to communicate with other lawyers, clients, prospective clients, and others in increasingly quicker and more efficient ways. Regardless of the particular technology used, however, a lawyer's communications with prospective clients for the purpose of obtaining professional employment must meet standards designed to protect the public from false, deceptive, misleading, or confusing messages about lawyers or the legal system and to encourage the free flow of useful legal-related information to the public.

The specific regulations that govern computer-accessed communications differ according to the particular variety of communication employed. For example, a lawyer's Internet ~~web site~~website is accessed by the viewer upon the viewer's initiative and, accordingly, ~~the standards governing such communications correspond to the rules applicable to information provided to a prospective client at the prospective client's request~~subject to most of the requirements of rule 4-7.2. A website cannot be easily categorized as either information at the request of the prospective client, which is subject to no regulation under this subchapter but is subject to the general prohibition against dishonesty, or as advertising in a medium that is totally unsolicited and broadly disseminated to the public, such as television, radio, or print media. Although some steps must be initiated by the viewer to access a website, the viewer might not necessarily be attempting to access that law firm's website, or a law firm website at all. It is therefore inappropriate to treat a website as information upon request, because it is not the same as direct contact with a known law firm and requesting information. On the other hand, the

viewer is unlikely to access a lawyer or law firm website completely by accident. Therefore, a website is treated at an intermediate level and is subject to most of the general regulations set forth in rule 4-7.2. Websites generally contain much more information than can be included in the context of a television, radio, or print advertisement.

A lawyer who provides information about past results, testimonials, or statements characterizing the quality of the lawyer's services on a website must make only true, factually verifiable statements that are not misleading either alone or in the context in which those statements are made. To avoid misleading prospective clients, such statements must be accompanied by appropriate disclaimers as set forth in the rule so that prospective clients will not be misled to believe that the lawyer can achieve similar results when the facts and circumstances in their cases may vary greatly from the ones in which the past results and testimonials are provided.

For websites containing verifiable statements of past results, the following disclaimer ordinarily will comply with subdivision (b)(2)(A): "Not all results are provided, the results are not necessarily representative of results obtained by the lawyer, and a prospective client's individual facts and circumstances may differ from the matter in which the results are provided."

For websites containing testimonials, the following disclaimer ordinarily will comply with subdivision (b)(2)(B): "Not all clients have provided testimonials, the results are not necessarily representative of results obtained by the lawyer, and a prospective client's individual facts and circumstances may differ from the matter in which the testimonials are provided."

For websites containing both verifiable statements of past results and testimonials, the following disclaimer ordinarily will comply with subdivisions (b)(2)(A) and (b)(2)(B): "Not all results are provided and not all clients have provided testimonials, the results are not necessarily representative of results obtained by the lawyer, and a prospective client's

individual facts and circumstances may differ from the matter in which the results and the testimonials are provided."

A lawyer providing information about past results or testimonials on the lawyer's website must have the informed consent of the affected client. See rule 4-1.6.

In contrast, unsolicited electronic mail messages from lawyers to prospective clients are functionally comparable to direct mail communications and thus are governed by similar rules. Additionally, communications advertising or promoting a lawyer's services that are posted on search engine screens or elsewhere by the lawyer, or at the lawyer's behest, with the hope that they will be seen by prospective clients are simply a form of lawyer advertising and are treated as such by the rules.

This rule is not triggered merely because someone other than the lawyer gratuitously links to, or comments on, a lawyer's Internet ~~web site~~website.

PRIOR RULES PROPOSALS

[Alternative One: Subject to General Advertising Regulations Except Filing Requirement Recommended by Special Committee on Website Advertising Rules and Approved by Rules Committee with minor changes]

4 RULES OF PROFESSIONAL CONDUCT

4-7 INFORMATION ABOUT LEGAL SERVICES

RULE 4-7.6 COMPUTER-ACCESSED COMMUNICATIONS

(a) Definition. For purposes of this subchapter, “computer-accessed communications” are defined as information regarding a lawyer’s or law firm’s services that is read, viewed, or heard directly through the use of a computer. Computer-accessed communications include, but are not limited to, Internet presences such as ~~home pages or World Wide Web sites~~websites, unsolicited electronic mail communications, and information concerning a lawyer’s or law firm’s services that appears on ~~World Wide Web~~Internet search engine screens and elsewhere.

(b) Internet Presence. All ~~World Wide Web sites and home pages~~websites accessed via the Internet that are controlled or sponsored by a lawyer or law firm and that contain information concerning the lawyer’s or law firm’s services:

~~———(1) shall disclose all jurisdictions in which the lawyer or members of the law firm are licensed to practice law;~~

~~———(2) shall disclose 1 or more bona fide office locations of the lawyer or law firm, in accordance with subdivision (a)(2) of rule 4-7.2; and~~

~~———(3) are considered to be information provided upon request and, therefore, are otherwise governed by subject to the requirements of rule 4-7.94-7.2.~~

(c) Electronic Mail Communications. A lawyer shall not send, or knowingly permit to be sent, on the lawyer’s behalf or on behalf of the lawyer’s firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer’s firm, an

unsolicited electronic mail communication directly or indirectly to a prospective client for the purpose of obtaining professional employment unless:

(1) the requirements of subdivisions (b)(1), (b)(2)(A), (b)(2)(E), (b)(2)(F), (b)(2)(G), (b)(2)(I), and (b)(2)(J) of rule 4-7.4 are met;

(2) the communication discloses 1 or more bona fide office locations of the lawyer or lawyers who will actually perform the services advertised, in accordance with subdivision (a)(2) of rule 4-7.2; and

(3) the subject line of the communication states “legal advertisement.”

(d) Advertisements. All computer-accessed communications concerning a lawyer’s or law firm’s services, other than those subject to subdivisions (b) and (c) of this rule, are subject to the requirements of rule 4-7.2.

Comment

Advances in telecommunications and computer technology allow lawyers to communicate with other lawyers, clients, prospective clients, and others in increasingly quicker and more efficient ways. Regardless of the particular technology used, however, a lawyer’s communications with prospective clients for the purpose of obtaining professional employment must meet standards designed to protect the public from false, deceptive, misleading, or confusing messages about lawyers or the legal system and to encourage the free flow of useful legal-related information to the public.

The specific regulations that govern computer-accessed communications differ according to the particular variety of communication employed. For example, a lawyer’s Internet ~~web site~~ website is accessed by the viewer upon the viewer’s initiative and, accordingly, the standards governing such communications correspond to the rules

~~applicable to information provided to a prospective client at the prospective client's request~~ subject to the requirements of rule 4-7.2.

In contrast, unsolicited electronic mail messages from lawyers to prospective clients are functionally comparable to direct mail communications and thus are governed by similar rules. Additionally, communications advertising or promoting a lawyer's services that are posted on search engine screens or elsewhere by the lawyer, or at the lawyer's behest, with the hope that they will be seen by prospective clients are simply a form of lawyer advertising and are treated as such by the rules.

This rule is not triggered merely because someone other than the lawyer gratuitously links to, or comments on, a lawyer's Internet web site.

**Alternative One with Commentary (Website Special Committee Recommendation
Plus Commentary)**

RULE 4-7.6 COMPUTER-ACCESSED COMMUNICATIONS

(a) Definition. For purposes of this subchapter, “computer-accessed communications” are defined as information regarding a lawyer’s or law firm’s services that is read, viewed, or heard directly through the use of a computer. Computer-accessed communications include, but are not limited to, Internet presences such as ~~home pages or World Wide Web sites~~ websites, unsolicited electronic mail communications, and information concerning a lawyer’s or law firm’s services that appears on ~~World Wide Web~~ Internet search engine screens and elsewhere.

(b) Internet Presence. All ~~World Wide Web sites and home pages~~ websites accessed via the Internet that are controlled or sponsored by a lawyer or law firm and that contain information concerning the lawyer’s or law firm’s services:

~~(1) shall disclose all jurisdictions in which the lawyer or members of the law firm are licensed to practice law;~~

~~(2) shall disclose 1 or more bona fide office locations of the lawyer or law firm, in accordance with subdivision (a)(2) of rule 4-7.2; and~~

~~(3) are considered to be information provided upon request and, therefore, are otherwise governed by~~ subject to the requirements of rule ~~4-7.94-7.2~~.

(c) Electronic Mail Communications. A lawyer shall not send, or knowingly permit to be sent, on the lawyer’s behalf or on behalf of the lawyer’s firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer’s firm, an unsolicited electronic mail communication directly or indirectly to a prospective client for the purpose of obtaining professional employment unless:

(1) the requirements of subdivisions (b)(1), (b)(2)(A), (b)(2)(E), (b)(2)(F), (b)(2)(G), (b)(2)(I), and (b)(2)(J) of rule 4-7.4 are met;

(2) the communication discloses 1 or more bona fide office locations of the lawyer or lawyers who will actually perform the services advertised, in accordance with subdivision (a)(2) of rule 4-7.2; and

(3) the subject line of the communication states “legal advertisement.”

(d) Advertisements. All computer-accessed communications concerning a lawyer’s or law firm’s services, other than those subject to subdivisions (b) and (c) of this rule, are subject to the requirements of rule 4-7.2.

Comment

Advances in telecommunications and computer technology allow lawyers to communicate with other lawyers, clients, prospective clients, and others in increasingly quicker and more efficient ways. Regardless of the particular technology used, however, a lawyer’s communications with prospective clients for the purpose of obtaining professional employment must meet standards designed to protect the public from false, deceptive, misleading, or confusing messages about lawyers or the legal system and to encourage the free flow of useful legal-related information to the public.

The specific regulations that govern computer-accessed communications differ according to the particular variety of communication employed. ~~For example, a lawyer’s Internet web site is accessed by the viewer upon the viewer’s initiative and, accordingly, the standards governing such communications correspond to the rules applicable to information provided to a prospective client at the prospective client’s request.~~

Generally, a lawyer or law firm website described in this rule is subject to the advertising regulations set forth in rule 4-7.2. Those regulations include prohibitions against statements characterizing the quality of legal services, information about past results, testimonials, and manipulative portrayals, among others. Information on request is not subject to the advertising regulations found in subchapter 4-7, but is subject to the general misconduct rule prohibiting conduct involving fraud, deceit, dishonesty and misrepresentation. See rules 4-7.1 and 4-8.4(c). A lawyer or law firm website may contain information that would be considered information on request if the information is not accessible through a general Internet search but is only accessible by the viewer taking a specific affirmative action from a portion of the website that complies with rule 4-7.2.

In contrast, unsolicited electronic mail messages from lawyers to prospective clients are functionally comparable to direct mail communications and thus are governed by similar rules. Additionally, communications advertising or promoting a lawyer's services that are posted on search engine screens or elsewhere by the lawyer, or at the lawyer's behest, with the hope that they will be seen by prospective clients are simply a form of lawyer advertising and are treated as such by the rules.

This rule is not triggered merely because someone other than the lawyer gratuitously links to, or comments on, a lawyer's Internet web site.

**[Alternative Two: Information on Request with No Additional Regulation
Approved by Rules Committee]**

4-7. INFORMATION ABOUT LEGAL SERVICES

RULE 4-7.1 GENERAL

(a) **Permissible Forms of Advertising.** Subject to all the requirements set forth in this subchapter 4-7, including the filing requirements of rule 4-7.7, a lawyer may advertise services through public media, including but not limited to: print media, such as a telephone directory, legal directory, newspaper or other periodical; outdoor advertising, such as billboards and other signs; radio, television, and computer-accessed communications; recorded messages the public may access by dialing a telephone number; and written communication in accordance with rule 4-7.4.

(b) **Advertisements Disseminated in Florida.** Subchapter 4-7 shall apply to lawyers admitted to practice law in Florida who solicit or advertise for legal employment in Florida or who target solicitations or advertisements for legal employment at Florida residents.

(c) **Advertisements by Out-of-State Lawyers.** Subchapter 4-7 shall apply to lawyers admitted to practice law in jurisdictions other than Florida:

(1) who have established a regular and/or permanent presence in Florida for the practice of law as authorized by other law; and

(2) who solicit or advertise for legal employment in Florida or who target solicitations or advertisements for legal employment at Florida residents.

(d) **Advertisements Not Disseminated in Florida.** Subchapter 4-7 shall not apply to any advertisement broadcast or disseminated in another jurisdiction in which the

advertising lawyer is admitted if such advertisement complies with the rules governing lawyer advertising in that jurisdiction and is not intended for broadcast or dissemination within the state of Florida.

(e) Communications With Family Members. Subchapter 4-7 shall not apply to communications between a lawyer and that lawyer's own family members.

(f) Communications at a Prospective Client's Request. Subchapter 4-7 shall not apply to communications between a lawyer and a prospective client if made at the request of that prospective client, including websites sponsored by a lawyer or law firm that contains information about the lawyer or law firm's services.

(g) Application of General Misconduct Rule. The general rule prohibiting a lawyer from engaging in conduct involving dishonesty, deceit, or misrepresentation applies to all communications by a lawyer, whether or not subchapter 4-7 applies to that communication.

Comment

To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. The public's need to know about legal services can be fulfilled in part through advertising that provides the public with useful, factual information about legal rights and needs and the availability and terms of legal services from a particular lawyer or law firm. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. Nevertheless, certain types of advertising by lawyers create the risk of practices that are misleading or overreaching and can create unwarranted expectations by persons untrained in the law. Such advertising can also adversely affect the public's confidence and trust in our judicial system.

In order to balance the public's need for useful information, the state's need to ensure a system by which justice will be administered fairly and properly, as well as the state's need to regulate and monitor the advertising practices of lawyers, and a lawyer's right to advertise the availability of the lawyer's services to the public, these rules permit public dissemination of information concerning a lawyer's name or firm name, address, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other factual information that might invite the attention of those seeking legal assistance.

Regardless of medium, a lawyer's advertisement should provide only useful, factual information presented in a nonsensational manner. Advertisements utilizing slogans or jingles, oversized electrical and neon signs, or sound trucks fail to meet these standards and diminish public confidence in the legal system.

These rules do not prohibit communications authorized by law, such as notice to members of a class in class action litigation.

These rules apply to advertisements and written communications directed at prospective clients and concerning a lawyer's or law firm's availability to provide legal services. These rules do not apply to communications between lawyers and their own family members, or communications with a prospective client at that prospective client's request, including websites sponsored by a lawyer or law firm that contains information about the lawyer or law firm's services.

RULE 4-7.6 COMPUTER-ACCESSED COMMUNICATIONS

(a) Definition. For purposes of this subchapter, "computer-accessed communications" are defined as information regarding a lawyer's or law firm's services that is read, viewed, or heard directly through the use of a computer. Computer-accessed communications include, but are not limited to, Internet presences such as ~~home pages or World Wide Web sites~~ websites, unsolicited electronic mail communications, and information concerning a lawyer's or law firm's services that appears on ~~World Wide Web~~ Internet search engine screens and elsewhere.

(b) Internet Presence. All ~~World Wide Web sites and home pages~~ websites accessed via the Internet that are controlled or sponsored by a lawyer or law firm and that contain information concerning the lawyer's or law firm's services:

~~(1) shall disclose all jurisdictions in which the lawyer or members of the law firm are licensed to practice law;~~

~~(2) shall disclose 1 or more bona fide office locations of the lawyer or law firm, in accordance with subdivision (a)(2) of rule 4-7.2; and~~

~~(3) are considered to be information provided upon request and, therefore, are otherwise governed by~~ not subject to the requirements of rule 4-7.9 subchapter 4-7.

(c) Electronic Mail Communications. A lawyer shall not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, an unsolicited electronic mail communication directly or indirectly to a prospective client for the purpose of obtaining professional employment unless:

(1) the requirements of rule 4-7.2 and subdivisions (b)(1), (b)(2)(A), (b)(2)(E), (b)(2)(F), (b)(2)(G), (b)(2)(I), and (b)(2)(J) of rule 4-7.4 are met;

(2) the communication discloses 1 or more bona fide office locations of the lawyer or lawyers who will actually perform the services advertised, in accordance with subdivision (a)(2) of rule 4-7.2; and

(3) the subject line of the communication states "legal advertisement."

(d) Advertisements. All computer-accessed communications concerning a lawyer's or law firm's services, other than those subject to subdivisions (b) and (c) of this rule, are subject to the requirements of rule 4-7.2.

Comment

Advances in telecommunications and computer technology allow lawyers to communicate with other lawyers, clients, prospective clients, and others in increasingly quicker and more efficient ways. Regardless of the particular technology used, however, a lawyer's communications with prospective clients for the purpose of obtaining professional employment must meet standards designed to protect the public from false, deceptive, misleading, or confusing messages about lawyers or the legal system and to encourage the free flow of useful legal-related information to the public.

The specific regulations that govern computer-accessed communications differ according to the particular variety of communication employed. For example, a lawyer's Internet ~~web site~~website is accessed by the viewer upon the viewer's initiative and, accordingly, ~~the standards governing such communications correspond to the rules applicable to information provided to a prospective client at the prospective client's request~~subchapter 4-7 is not applicable, although the general prohibition in rule 4-8.4(c) against conduct involving dishonesty, fraud, deceit or misrepresentation is applicable.

In contrast, unsolicited electronic mail messages from lawyers to prospective clients are functionally comparable to direct mail communications and thus are governed by similar rules. Additionally, communications advertising or promoting a lawyer's services that are posted on search engine screens or elsewhere by the lawyer, or at the lawyer's behest, with the hope that they will be seen by prospective clients are simply a form of lawyer advertising and are treated as such by the rules.

This rule is not triggered merely because someone other than the lawyer gratuitously links to, or comments on, a lawyer's Internet ~~web site~~website.

RULE 4-7.8 EXEMPTIONS FROM THE FILING AND REVIEW REQUIREMENT

The following are exempt from the filing requirements of rule 4-7.7:

(a) any advertisement in any of the public media, including the yellow pages of telephone directories, that contains neither illustrations nor information other than permissible content of advertisements listed in rule 4-7.2(b).

(b) a brief announcement in any of the public media that identifies a lawyer or law firm as a contributor to a specified charity or as a sponsor of a public service announcement or a specified charitable, community, or public interest program, activity, or event, provided that the announcement contains no information about the lawyer or law firm other than permissible content of advertisements listed in rule 4-7.2(b) and the fact of the sponsorship or contribution. In determining whether an announcement is a public service announcement for purposes of this rule and the rule setting forth permissible content of advertisements, the following are criteria that may be considered:

(1) whether the content of the announcement appears to serve the particular interests of the lawyer or law firm as much as or more than the interests of the public;

(2) whether the announcement contains information concerning the lawyer's or law firm's area of practice, legal background, or experience;

(3) whether the announcement contains the address or telephone number of the lawyer or law firm;

(4) whether the announcement concerns a legal subject;

(5) whether the announcement contains legal advice; and

(6) whether the lawyer or law firm paid to have the announcement published.

(c) A listing or entry in a law list or bar publication.

(d) Professional announcement cards stating new or changed associations, new offices, and similar changes relating to a lawyer or law firm, and that are mailed only to other lawyers, relatives, close personal friends, and existing or former clients.

~~(e) Computer accessed communications as described in subdivision (b) of rule 4-7.6.~~

Comment

In *The Florida Bar v. Doe*, 634 So. 2d 160 (Fla. 1994), the court recognized the need for specific guidelines to aid lawyers and the bar in determining whether a particular announcement in the public media is a public service announcement as contemplated in this rule and rule 4-7.2. Subdivisions (b)(1)-(6) of this rule respond to the court's concern by setting forth criteria that, while not intended to be exclusive, provide the needed guidance. With the exception of subdivision (b)(3), these criteria are based on factors considered by the court in *Doe*.

**[Alternative Three: Specific Rules Requirements Listed in Rule
Approved by Rules Committee]**

RULE 4-7.6 COMPUTER-ACCESSED COMMUNICATIONS

(a) Definition. For purposes of this subchapter, "computer-accessed communications" are defined as information regarding a lawyer's or law firm's services that is read, viewed, or heard directly through the use of a computer. Computer-accessed communications include, but are not limited to, Internet presences such as ~~home pages or World Wide Web sites~~ websites, unsolicited electronic mail communications, and information concerning a lawyer's or law firm's services that appears on ~~World Wide Web~~ Internet search engine screens and elsewhere.

(b) Internet Presence. All ~~World Wide Web sites and home pages~~ websites accessed via the Internet that are controlled or sponsored by a lawyer or law firm and that contain information concerning the lawyer's or law firm's services:

~~(1) shall disclose all jurisdictions in which the lawyer or members of the law firm are licensed to practice law;~~

~~(2) shall disclose 1 or more bona fide office locations of the lawyer or law firm, in accordance with subdivision (a)(2) of rule 4-7.2; and~~

~~(3) are considered to be information provided upon request and, therefore, are otherwise governed by~~ subject to the following requirements of rule 4-7.9:

(1) Required Content of Websites.

(A) Name of Lawyer or Lawyer Referral Service. All websites provided for under these rules shall include the name of at least 1 lawyer or the lawyer referral service responsible for their content.

_____ Yes

_____ No

(B) Location of Practice. All websites provided for under these rules shall disclose, by city or town, 1 or more bona fide office locations of the lawyer or lawyers who will actually perform the services advertised. If the office location is outside a city or town, the county in which the office is located must be disclosed. A lawyer referral service shall disclose the geographic area in which the lawyer practices when a referral is made. For the purposes of this rule, a bona fide office is defined as a physical location maintained by the lawyer or law firm where the lawyer or law firm reasonably expects to furnish legal services in a substantial way on a regular and continuing basis.

_____ Yes

_____ No

(2) Prohibitions and General Regulations Governing Content of Advertisements and Unsolicited Written Communications.

(A) Statements About Legal Services. A lawyer shall not make or permit to be made a false, misleading, or deceptive communication about the lawyer or the lawyer's services. A communication violates this rule if it:

(i) contains a material misrepresentation of fact or law;

_____ Yes

_____ No

(ii) is false or misleading;

_____ Yes _____ No

(iii) fails to disclose material information necessary to prevent the information supplied from being false or misleading;

_____ Yes _____ No

(iv) is unsubstantiated in fact;

_____ Yes _____ No

(v) is deceptive;

_____ Yes _____ No

(vi) contains any reference to past successes or results obtained;

_____ Yes _____ No

(vii) promises results;

_____ Yes

_____ No

(viii) states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;

_____ Yes

_____ No

(ix) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or

_____ Yes

_____ No

(x) contains a testimonial.

_____ Yes

_____ No

(B) Descriptive Statements. A lawyer shall not make statements describing or characterizing the quality of the lawyer's services in advertisements and unsolicited written communications.

_____ Yes

_____ No

(C) Prohibited Visual and Verbal Portrayals and Illustrations. A lawyer shall not include in any website any visual or verbal descriptions, depictions, illustrations, or portrayals of persons, things, or events that are deceptive, misleading, manipulative, or likely to confuse the viewer.

(D) Advertising Areas of Practice. A lawyer or law firm shall not advertise for legal employment in an area of practice in which the advertising lawyer or law firm does not currently practice law.

_____ Yes

_____ No

(E) Stating or Implying Florida Bar Approval. A lawyer or law firm shall not make any statement that directly or impliedly indicates that the communication has received any kind of approval from The Florida Bar.

_____ Yes

_____ No

(F) Communication of Fields of Practice. A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state or imply that the lawyer is "certified," "board certified," a "specialist," or an "expert" except as follows:

(i) Florida Bar Certified Lawyers. A lawyer who complies with the Florida certification plan as set forth in chapter 6, Rules Regulating The Florida Bar, may inform the public and other lawyers of the lawyer's certified areas of legal practice. Such communications should identify The Florida Bar as the certifying organization and may state that the lawyer is "certified," "board certified," a "specialist in (area of certification)," or an expert in (area of certification)."

(ii) Lawyers Certified by Organizations Other Than The Florida Bar or Another State Bar. A lawyer certified by an organization other than The Florida Bar or another state bar may inform the public and other lawyers of the lawyer's certified area(s) of legal practice by stating that the lawyer is "certified," "board certified," ~~or a~~ "specialist in (area of certification)," or an "expert in (area of certification)" if:

a. the organization's program has been accredited by The Florida Bar as provided elsewhere in these Rules Regulating The Florida Bar; and,

b. the member includes the full name of the organization in all communications pertaining to such certification.

_____ c. Certification by Other State Bars. A lawyer certified by another state bar may inform the public and other lawyers of the lawyer's certified area(s) of legal practice and may state in communications to the public that the

lawyer is "certified," "board certified," a "specialist in (area of certification)," or an "expert in (area of certification)" if:

d. the state bar program grants certification on the basis of standards reasonably comparable to the standards of the Florida certification plan as set forth in chapter 6, Rules Regulating The Florida Bar, as determined by The Florida Bar; and,

e. the member includes the name of the state bar in all communications pertaining to such certification.

_____Yes
_____No

(G) Disclosure of Liability For Expenses Other Than Fees. Every website that contains information about the lawyer's fee, including those that indicate no fee will be charged in the absence of a recovery, shall disclose whether the client will be liable for any expenses in addition to the fee.

_____Yes _____No

(H) Period for Which Advertised Fee Must be Honored. A lawyer who advertises a specific fee or range of fees for a particular service shall honor the advertised fee or range of fees for at least 90 days unless the advertisement specifies a shorter period.

_____Yes _____No

(I) Firm Name. A lawyer shall not advertise services under a name that violates the provisions of rule 4-7.9.

_____Yes

_____No

(J) Language of Required Statements. Any words or statements required by this subchapter to appear in a website must appear in the same language in which the website appears. If more than 1 language is used in a website, any words or statements required by this subchapter must appear in each language used in the website.

_____Yes

_____No

(K) Appearance of Required Statements. Any words or statements required by this subchapter to appear in a website must be clearly legible if written or intelligible if spoken aloud.

_____Yes

_____No

(L) Payment by Nonadvertising Lawyer. No lawyer shall, directly or indirectly, pay all or a part of the cost of a website by a lawyer not in the same firm. Rule 4-1.5(f)(4)(D) (regarding the division of contingency fees) is not affected by this provision even though the lawyer covered by rule 4-1.5(f)(4)(D)(ii) advertises.

_____Yes

_____No

(M) Referrals to Another Lawyer. If the case or matter will be referred to another lawyer or law firm, the website shall include a statement so advising the prospective client.

_____Yes

_____No

(c) Electronic Mail Communications. A lawyer shall not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an

associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, an unsolicited electronic mail communication directly or indirectly to a prospective client for the purpose of obtaining professional employment unless:

(1) the requirements of subdivisions (b)(1), (b)(2)(A), (b)(2)(E), (b)(2)(F), (b)(2)(G), (b)(2)(I), and (b)(2)(J) of rule 4-7.4 are met;

(2) the communication discloses 1 or more bona fide office locations of the lawyer or lawyers who will actually perform the services advertised, in accordance with subdivision (a)(2) of rule 4-7.2; and

(3) the subject line of the communication states "legal advertisement."

(d) Advertisements. All computer-accessed communications concerning a lawyer's or law firm's services, other than those subject to subdivisions (b) and (c) of this rule, are subject to the requirements of rule 4-7.2.

Comment

Advances in telecommunications and computer technology allow lawyers to communicate with other lawyers, clients, prospective clients, and others in increasingly quicker and more efficient ways. Regardless of the particular technology used, however, a lawyer's communications with prospective clients for the purpose of obtaining professional employment must meet standards designed to protect the public from false, deceptive, misleading, or confusing messages about lawyers or the legal system and to encourage the free flow of useful legal-related information to the public.

The specific regulations that govern computer-accessed communications differ according to the particular variety of communication employed. For example, a lawyer's Internet ~~web site~~website is accessed by the viewer upon the viewer's initiative and, accordingly, the standards governing such communications correspond to the rules

applicable to information provided to a prospective client at the prospective client's request subject to most of the requirements of rule 4-7.2. Websites cannot be easily categorized as either information at the request of the prospective client, which is subject to no regulation under this subchapter but is subject to the general prohibition against dishonesty, or as advertising in a medium that is totally unsolicited and broadly disseminated to the public, such as television, radio, or print media. Although some steps must be initiated by the viewer to access a website, the viewer might not necessarily be attempting to access that law firm's website, or a law firm website at all. It is therefore inappropriate to treat websites as information upon request, because it is not the same as direct contact with a known law firm and requesting information. On the other hand, the viewer is unlikely to access a lawyer or law firm website completely accidentally. Therefore, websites are treated at an intermediate level and are subject to most of the general regulations set forth in rule 4-7.2. Websites, generally contain much more information than can be included in the context of a television, radio, or print advertisement

In contrast, unsolicited electronic mail messages from lawyers to prospective clients are functionally comparable to direct mail communications and thus are governed by similar rules. Additionally, communications advertising or promoting a lawyer's services that are posted on search engine screens or elsewhere by the lawyer, or at the lawyer's behest, with the hope that they will be seen by prospective clients are simply a form of lawyer advertising and are treated as such by the rules.

This rule is not triggered merely because someone other than the lawyer gratuitously links to, or comments on, a lawyer's Internet ~~web site~~website.

RULE 4-7.8 EXEMPTIONS FROM THE FILING AND REVIEW REQUIREMENT

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(a) any advertisement in any of the public media, including the yellow pages of telephone directories, that contains neither illustrations nor information other than permissible content of advertisements listed in rule 4-7.2(b).

(b) a brief announcement in any of the public media that identifies a lawyer or law firm as a contributor to a specified charity or as a sponsor of a public service announcement or a specified charitable, community, or public interest program, activity, or event, provided that the announcement contains no information about the lawyer or law firm other than permissible content of advertisements listed in rule 4-7.2(b) and the fact of the sponsorship or contribution. In determining whether an announcement is a public service announcement for purposes of this rule and the rule setting forth permissible content of advertisements, the following are criteria that may be considered:

(1) whether the content of the announcement appears to serve the particular interests of the lawyer or law firm as much as or more than the interests of the public;

(2) whether the announcement contains information concerning the lawyer's or law firm's area of practice, legal background, or experience;

(3) whether the announcement contains the address or telephone number of the lawyer or law firm;

(4) whether the announcement concerns a legal subject;

(5) whether the announcement contains legal advice; and

(6) whether the lawyer or law firm paid to have the announcement published.

(c) A listing or entry in a law list or bar publication.

(d) Professional announcement cards stating new or changed associations, new offices, and similar changes relating to a lawyer or law firm, and that are mailed only to other lawyers, relatives, close personal friends, and existing or former clients.

(e) Computer-accessed communications as described in subdivision (b) of rule 4-7.6.

Comment

In *The Florida Bar v. Doe*, 634 So. 2d 160 (Fla. 1994), the court recognized the need for specific guidelines to aid lawyers and the bar in determining whether a particular announcement in the public media is a public service announcement as contemplated in this rule and rule 4-7.2. Subdivisions (b)(1)-(6) of this rule respond to the court's concern by setting forth criteria that, while not intended to be exclusive, provide the needed guidance. With the exception of subdivision (b)(3), these criteria are based on factors considered by the court in *Doe*.

**MINUTES OF THE
SPECIAL
COMMITTEE ON
WEBSITE
ADVERTISING
RULES MEETINGS**

The Florida Bar
Special Committee on Website Advertising Rules
Minutes
Monday, September 12, 2005
9:30 a.m. until 11:30 a.m.

Chair, Charles Chobee Ebbets presided over the meeting. Twelve committee members attended:

Chinaris	Georges
Cohen	Iaconis
Comisky	McMillen
Downs	O'Keefe
Ebbets (C)	Patterson (V)
Ferraro	Robinson

Staff members Mary Ellen Bateman, Gary Blankenship, John Anthony Boggs, Elizabeth Clark Tarbert, and Arne C. Vanstrum also attended the meeting.

1. The chair asked committee members to introduce themselves.
2. The chair reported on the work of the prior Advertising Task Force, which just concluded its study and made recommendations which were mostly approved by The Florida Bar Board of Governors and which will be filed with the Supreme Court of Florida in the fall. The chair reported on the mission of this special committee, which is to address regulation of websites. The prior task force had numerous discussions on the issue of website regulation. The task force recommended that websites should be exempt from the advertising rules as information on request. The board almost unanimously decided that websites should be regulated. Many board members felt all rules should be consistent, including websites. The discussion at the board focused on many board members' belief that Internet advertising is the wave of the future. Another issue to be dealt with by the special committee is that of testimonials and what constitutes a testimonial. The special committee has been asked by President Bookman to report to the board with recommendations at its June 2006 meeting.
3. The committee heard a report from staff summarizing the history of advertising regulation and current regulations.
4. The committee discussed constitutional issues relating to advertising regulation.
5. The committee discussed resources issues involved in advertising regulation, including whether websites should be filed for review versus complaint-driven review of websites. The committee discussed the possibility of certification of compliance, similar to trust accounting certificates of compliance. The committee discussed the possibility of

periodic bar *News* notices regarding website regulation and which rules apply to websites.

6. The committee discussed technology issues related to advertising regulation, including that illustrations, photographs, and other images on the web are not necessarily static, and that websites can be changed on a daily basis if not more often.
7. The committee directed staff to obtain information from other states on regulations of websites.
8. The committee determined that the chair would appoint four subcommittees: to address constitutional issues, to address technical issues, to compare differences between Florida and other states, and to study enforcement issues.
9. The committee determined that it would meet at The Florida Bar's midyear meeting in January in Miami as its first in-person meeting.
10. The meeting was adjourned.

The Florida Bar
Special Committee on Website Advertising Rules
Minutes
Thursday, January 19, 2006
1:00 p.m. until 5:00 p.m.
Hyatt Regency
Miami, Florida

Chair, Charles Chobee Ebbets presided over the meeting. Eleven committee members attended:

Chinaris	Georges
Cohen	Iaconis
Comisky	McMillen
Downs	O'Keefe
Ebbets (C)	Patterson (V)
Ferraro	

Committee members Downs, McMillen, and Patterson attended the meeting by telephone. Guests President Alan Bookman, President-elect Henry M. Coxe, III, Board of Governors member Lisa Small, and Florida Bar members Bill Wagner and Daniel Perry also attended the meeting. Staff members Mary Ellen Bateman, John Anthony Boggs, Mark Killian and Elizabeth Clark Tarbert, also attended the meeting. The committee took the following actions:

1. Approved the minutes of the September 12, 2005 meeting.
2. There were no comments from members on the informational items.
3. Heard a report from the chair of the Enforcement Subcommittee, Kelly O'Keefe. The Enforcement Subcommittee recommended that the special committee draft a rule requiring registration of websites. The bar's primary problem in dealing with websites is the lack of resources to review websites. The Advertising Task Force 2004 worked to simplify the lawyer advertising rules, finding difficulty in determining what violates the rules and what lawyers can do to correct violations. The other major enforcement issue is keeping up with ever-changing websites. One major goal of enforcement should be simplifying the rules so that all bar members can follow them. The options discussed by the Enforcement Subcommittee included:
 - a) going back to pre-Rule 4-7.6 policy of reviewing only the homepage of a website;
 - b) drafting a simplified set of rules for websites alone; and
 - c) on-line mandatory registration of websites and certification of compliance with the lawyer advertising rules.

The Enforcement Subcommittee also concluded that regulation should be on a complaint-driven basis.

The three main conclusions reached by the Enforcement Subcommittee are that the bar should adopt rules that require:

- a) on-line registration of all websites;
- b) certification of website compliance with the lawyer advertising rules; and
- c) complaint-driven regulation.

Issues discussed, but not resolved, by the Enforcement Subcommittee were whether there should be a filing fee for registration and whether websites must be recertified for compliance each time they are updated. The Enforcement Subcommittee also recommended that the bar assign a unique certification number to each website that must be posted on the website. The subcommittee concluded that, with current bar resources, it is virtually impossible to review all websites, but the registration and certification would leave open the possibility of review at a later date.

Committee members Downs and McMillen joined the meeting via conference call. Legal Division Director John Anthony Boggs entered the meeting.

Committee member Comisky noted his concern with differentiating this rule from other rules and why lawyers should have to certify compliance of their websites with the lawyer advertising rules, when the rules do not require certification of compliance with other rules (with the exception of the trust accounting rules). He further commented that the bar should be concerned with firms with multijurisdictional practice and how much the bar can regulate the websites of firms from other states who happen to have Florida Bar members. He commented that outreach and education might better serve bar members.

Committee member McMillen asked if a law firm has 9 attorneys, only 1 of whom is a Florida Bar member, must that firm's website be registered. Subcommittee member Iaconis responded that if the Florida Bar member holds himself or herself out as a Florida Bar member, then the website should be regulated by the Florida Bar rules. If the Florida Bar member does not hold him or herself out as a Florida Bar member, then the website does not have to comply with Florida Bar rules. Committee member McMillen responded that the bar must consider multi-state law firms who must follow the rules of multiple states. Committee vice-chair Patterson commented that perhaps the bar should consider allowing for some sort of variance for multi-state firms. Committee member Iaconis responded that a variance is unnecessary and undesirable: a multi-state law firm must then follow the most restrictive rules applicable.

Committee member Iaconis spoke in favor of the registration and certification requirements, stating that websites are so numerous and voluminous that the bar lacks the resources to review them all. If the bar approaches the issue in a different way, by

registration and certification, the bar can deal with the issue of websites. Certification makes lawyers aware of the lawyer advertising rules.

Committee member Downs commented that the board has clearly indicated that the issue of lack of resources is one to be addressed by the board. The board wants the special committee's recommendation on what policy should apply.

Committee member Chinaris commented that the committee is skipping the question that must be addressed first: what constitutes advertising. Not every communication by a lawyer or law firm or that mentions a lawyer or law firm is advertising.

Committee member Cohen spoke against the proposal for registration and certification, commenting that having to re-register and re-certify for every change made to a website is burdensome. The problem is that the current model does not fit the technological advances that have been made. Websites are not inherently evil and are equalizers for lawyers who do not have large advertising budgets.

Committee member McMillen commented that instead of certifying every time a change is made, the rules could require annual certification, like with trust accounting.

4. Heard a report from the chair of the Technical Issues Subcommittee, Martin Cohen. He commented that the Internet is the great equalizer because anyone can develop a website and it is inexpensive. Burdens are borne more by solo and small firm practitioners. Search engines find websites on the Internet via text and metatags (key words that the website creator lists for the site). Some people pay search engines for priority in listing the search results. Similarly, some lawyers pay for television advertisements and some do not. The bar should not penalize lawyers who pay for priority or restrict their websites more than others. From a technological point of view, there are also banner ads, pop-ups, and e-mail, which are regulated by other rules. Another issue created by technology is linked websites where one website serves as a feeder to another.

Committee member Georges entered the meeting.

Committee chair Ebbets asked about chat rooms and blogs. Committee member Georges responded that a blog is just a website that is updated in chronological order, and each post alters the website. He commented that prior review is impossible for websites, and any regulation should be limited to registration and certification of compliance.

Committee member Cohen commented that he attended the meeting of an organization of small law firms in Broward county. Of the one hundred people who attended, all had websites, and none wanted additional regulation.

Committee member McMillen asked about the value of certification. Committee member O'Keefe responded that it reminds lawyers periodically that there are rules that must be followed. Committee member Downs commented that it can be an educational tool and

asked committee members what problems arise with the certification model. Committee member Georges responded that regulation without functional and valid purpose is bad. Lawyers already feel overregulated. Many attorneys do not publish their own websites and do not know the content that has been posted to their websites.

Committee member McMillen proposed that the bar consider a certification of compliance for all advertisements.

Committee member Georges asked whether websites could truly be regulated, noting that it has previously been treated as information on request. Committee chair Ebbets noted that viewpoint has been resoundingly rejected by the board.

5. Heard a report from the chair of the Comparison Subcommittee, Ian Comisky, who noted that there is no uniformity among states. Some states have rules, some have bar counsel decisions, and some have ethics opinions. The Florida Bar is ahead of the curve in actually adopting rules to address the issue of Internet. The majority of states that have addressed the issue, whether by rule, decision, or opinion, have found the lawyer advertising rules applicable to websites.

Committee member McMillen noted that although other states may treat websites the same as other advertisements, other states' rules are not the same as Florida's for advertisements.

6. The committee went into executive session to discuss advice of counsel on constitutional issues.

7. Heard a report from the Constitutionality Subcommittee. Discussed whether websites should be treated differently than other forms of advertising. Committee member Georges commented that to the extent it is not practicable or feasible to review websites, they must be treated differently than other forms of advertisements. The same rules can be applied while treating websites differently from a regulatory standpoint.

Guest Dan Perry commented that he has had a blog for many years. It is inevitable that no matter what steps the bar takes to regulate, technology will make an end-run around the regulations. He, like most bar members, will live with whatever regulations are adopted, but it makes more sense to treat websites as information on request.

Guest Bill Wagner commented that the committee must determine the evil that is being protected against first, then decide whether regulations actually protect against that evil.

Committee chair Ebbets asked the committee if it wanted to create a separate set of substantive rules for websites. Committee member Downs responded that she preferred dividing the issue into 2 inquiries: that websites would be treated the same from a substantive standpoint, but differently in terms of review, such as with the certification process. Committee member Georges agreed that the division would be appropriate, because all advertisements should be measured against the same standard.

Committee member McMillen commented that the committee should consider separating the types of information on websites. Perhaps not all information posted on a website should be considered an advertisement. Thus, the home page, offers to provide legal services, and attorney biographies would clearly be regulated, while informational pages would not.

Committee member Iaconis responded that the committee must define advertising. A website is nothing but an advertisement. The reason to have a website is to attract business – that is why lawyers are on the Internet. Therefore, the content of the website, which is advertising, must be regulated. If the committee cannot agree on that, the committee will not be able to agree on other issues.

Committee vice-chair Patterson agreed that all the information is advertising. Conceptually, the committee should consider having 2 types of information. One type is a safe harbor, in which there is no review, just a certification of compliance. 75% of lawyers will not need to have more information than that allowed in the safe harbor. The Florida Bar will not prosecute unless there is a complaint.

Committee chair Ebbets stated that advertising is commercial speech, and the U.S. Supreme Court has developed a definition of commercial speech, which is communication that pursues client development, offers commercial transactions, and grows a practice.

Committee member Georges commented that he heard nothing at the meeting to detract from the notion that websites are information provided upon request of the consumer, because consumers are not forced to look at websites. Committee member Cohen added that the answer to the comparison between websites and the yellow pages is that in the yellow pages, a consumer is looking for an attorney, but on the Internet, the consumer is looking for information which may lead the consumer to a lawyer's website. When the consumer reaches the website, the consumer still must make a decision to visit the website, and can make a more informed decision because more information is available on the website.

Committee chair Ebbets asked the committee members whether lawyers should be able to provide information on websites that a lawyer cannot provide in any other media. Committee member Georges responded that the board can determine that, even in information on request, lawyers must follow specified rules such as prohibitions on testimonials, prior results, or statements characterizing the quality of legal services. Committee member O'Keefe pointed out that Florida Bar member Robert S. Cox wrote the committee to state his opinion that prior results should be available.

Committee member Wagner asked the committee members what should be done about television advertisements that state that all information about the firm's past results are available on the firm's website. The notion of information on request is not applicable in

the current world. It is not realistic to say that something is not advertising just because it is being sent to current clients or attorneys.

Committee member Georges pointed out that consumers must take affirmative steps to reach websites. Committee member Cohen added that the nature of the Internet is that searches may hit on websites that the consumer did not intend to view; everything in society cannot be controlled, and that is not necessarily bad. Committee member Georges further commented that relaxing standards somewhat for websites is not the same as tolerating abuse of consumers.

Committee chair Ebbets pointed out that the bar's legislative position regarding lawyer advertising is that the bar wants the most restrictive advertising regulations that are constitutionally permissible. Committee member Iaconis responded that the special committee's task is then easy and clear: the same rules apply to all forms of media, including websites, building on the board's premise.

8. The committee took a series of straw votes on various issues.

a) On the issue of information on request, committee members Chinaris, Cohen, Comisky, Downs, Ebbets, Georges, O'Keefe, and Patterson indicated that websites should be considered information on request. Committee members Ferraro and Iaconis indicated otherwise.

In response to the chair's request for her to state her views, committee member Ferraro stated that even an article whose purpose is stated to be informational is only placed on the website for the purpose of obtaining business. The legal profession is going down hill incrementally. Many lawyers do not follow the rules, and websites should not be a free-for-all where lawyers can say whatever they wish. She is in favor of certification with random audits.

Committee member Iaconis stated that you cannot start with lax regulation then try to tighten regulation, but you can start with more regulation than is perhaps required and loosen restrictions if it becomes clear the regulation is unnecessary.

Committee member Georges commented that there is a difference between a website that is not intended to generate clients but is aimed at lawyers to address technical legal issues and a website that is aimed at generating business. Those different kinds of websites should be treated differently.

Committee member Iaconis responded that no one is saying that lawyers cannot advertise, including on the Internet. Regulation does not mean that advertising is inherently bad, but is an evolving process that changes to address changing needs.

Committee vice-chair Patterson commented that a recurrent issue for the board is that the public does not like advertising. It is an irrefutable reality that lawyer advertising causes problems for the image of all lawyers. The legislature does not like lawyers and does not

like lawyer advertising. There is a potential here of sinking to the lowest common denominator.

Committee member Chinaris left the meeting.

Committee chair Ebbets recommended that the committee members review *The Florida Bar v. Pape & Chandler*, one of the strongest cases on lawyer advertising. Committee members noted that the behavior that was subject to discipline (use of images of a pit bull and the telephone number 1-800-pit bull) were still in use on the firm website.

Committee member Cohen left the meeting.

Committee chair Ebbets stated that the committee must consider whether some regulation will be required for information on request if the committee determines that websites should be treated as information on request.

b) On the issue of requiring websites to be filed for review, committee members Downs, Ebbets, Ferraro, Georges, Iaconis, O'Keefe, and Patterson agreed that they should not. No committee members expressed a favorable response for a filing requirement.

Committee chair Ebbets asked committee members if there were common issues that the committee members could agree on to protect the public from Internet communications?

Committee vice-chair Patterson suggested that committee members could agree as a threshold that all misleading information should be banned. He commented that there might be additional areas that are so subject to abuse that they should be regulated.

Committee member Georges commented that there should be no problem treating websites the same as yellow pages as far as content restrictions are concerned.

12. Discussed the future meeting schedule. The chair announced that either a conference call or in-person meeting in Orlando would be scheduled in late March or early April.

13. The meeting was adjourned.

The Florida Bar
Special Committee on Website Advertising Rules
Minutes
Tuesday, March 14, 2006
10:30 a.m. until noon
via Conference Call

Chair, Charles Chobee Ebbets presided over the meeting, which was held via conference call. Eight committee members attended:

Chinaris	Ferraro
Cohen	McMillen
Comisky	Patterson (V)
Ebbets (C)	Robinson

Elizabeth Clark Tarbert, Ethics Counsel, also attended the meeting. The committee took the following actions:

1. The committee discussed a possible recommendation to the Board of Governors. The chair noted that at the January 2006 meeting, the committee took a poll of its members, and the general sense of the committee is that it is difficult to construct a rule or set of rules that specifically designed to regulate lawyer advertising on the web. The chair asked for comments from other committee members.

Committee vice-chair Patterson stated that there is no easy solution. A quasi-libertarian approach is tempted to go with a general standard of prohibiting only false or misleading information. In terms of the logistics of review of websites, he is not sure it is possible.

Committee member Cohen commented that he strongly believes that regulation should not go beyond prohibiting false and misleading information. There are so many other issues that must be dealt with, so many other battles that have to be fought that the website advertising is minor component of bar ethics and professionalism problems. He is also opposed to any kind of filing requirement. Exaggeration and self promotion have gotten out of hand. However, e.g., testimonials should be allowed as long as they are true.

Committee member Ferraro joined conference call.

Committee member McMillen commented that he agreed with committee member Cohen. Committee members McMillen and Patterson both commented that review of websites by bar staff should occur only when a complaint is initiated by someone.

Committee member Chinaris commented that he agrees that the filing requirement is not reasonable in this sense due to logistics. The bar should approach the issue from the standpoint that the medium combines aspects of media that the bar is familiar with, but websites are different. There is a lot more room to explain things and include things – such as multimedia.

Regulation should be on the basic false, misleading standard, but that would be a departure from how the bar regulates other media. The committee should consider adding some guidelines via commentary to the rules that lays out what committee is concerned about. To regulate more in a medium that constantly changes, the bar always will be behind.

Committee member Ferraro commented that she still takes the position that filing is not practical, but she is in favor of certification with random audits. She also still thinks all other advertising rules should apply.

Committee chair Ebbets commented that the Board of Governors has said that websites should be regulated the same as other advertisements; however, a majority of the members of this committee believes it is not practicable to regulate web same as other advertisements because they are capable of constant (daily) change. Therefore, it is not practicable to require submission for review or even require retention by members.

Committee member Patterson commented that another way to handle website regulation is to give a template for what is permissible and prohibit all other information similar to a tombstone advertisement; however, that approach is constitutionally suspect.

Committee chair Ebbets commented that at one point historically, the bar treated the homepage differently, regulating the homepage the same as other advertisements and treating the rest as information on request. Committee vice-chair Patterson commented that the former approach is a silly solution, because a search does not go directly to the home page; it goes to the part of the website where the search is directed.

Committee chair Ebbets commented that another issue is the purchase of priority in a search.

Committee member Chinaris commented that there is less need for regulation. Because of the unlimited space on website, concerns regarding misleading information can be resolved by using disclaimers. Websites are unlike billboards or 30 second television advertisements. The solution for misleading information in a website with unlimited content is to require disclaimers rather than prohibit speech.

Committee member Cohen commented that the bar is not going to be able to constitutionally tell firms that they cannot pay for priority on search engines any more than can prohibit law firms from advertising on television. Regulation tends to discriminate against smaller firms.

Committee chair Ebbets commented that another issue to be addressed is what is considered misleading. E.g., is a testimonial misleading? What does the committee want to recommend as a policy?

Committee member Ferraro responded that her recommendation is certification with random audits.

Committee member Chinaris commented that he would approach regulation as a black letter rule of prohibiting false or misleading information, then addressing examples through commentary.

E.g., the problem with testimonials is that they are deemed by some to be misleading unless the content or circumstances are fully explained. Then the bar can review websites based on complaints as to whether the lawyer fulfilled the obligation to fully explain. He would not recommend random audits, which might entail significant resources and create concerns with whether they were truly random or whether specific events might trigger an audit. He has no problem with certification, but if the committee recommends certification of compliance, it should not be limited to websites or even the advertising rules.

Committee member Robinson joined conference call.

In response to a question from committee member Cohen, Ethics Counsel Tarbert responded that testimonials are prohibited in all media.

Committee member Cohen stated that the bar can either prohibit testimonials, or can require a disclaimer that results vary or something to that effect.

Committee member Robinson commented that there is no difference between going on the web and going into a telephone book. Committee member Chinari responded that the main difference is there is more room to explain and provide disclaimers that do not appear in the yellow pages. Websites are qualitatively different and that might be justification for having standards that are not as detailed. E.g., testimonials may be misleading on websites, but they may be fully explained such as to not be misleading, where an explanation of a testimonial may not be permissible on television.

Committee member Cohen commented that an example is the car advertisements on television where the financing disclaimers are so small they cannot be seen. But if on a website, the bar could require any disclaimers to be of specific size. Testimonials are inherently misleading because the facts and circumstances vary to such a degree. Even a pamphlet provided upon request of prospective client should not be using testimonials. The public is often ignorant, and that is one thing the bar could do to show responsible action and to show the bar has really addressed an issue where websites are truly different.

Committee chair Ebbets commented that the committee should note that there can be abuses on websites and the committee should identify those and put restrictions on them. If there are dangers present, rules should be written that apply to them. He asked if there are any other areas of abuse the committee wants to identify.

Committee vice-chair Patterson commented that if testimonials that problematic, why not just prohibit them like prohibit them elsewhere?

Committee member Robinson commented that it is fine to have an opinion on testimonials in general. He thinks it is a problem to view websites significantly different than other forms of media, because in his opinion they are not. The bar should not take different positions on websites than other media. If testimonials are problematic on radio, they should be on a website too.

Committee member Patterson asked committee member McMillen if he used testimonials on his website. Committee member McMillen responded that he does not use testimonials and does not provide prior results because he does not like them. Committee member Patterson asked if the purpose of using them is to be misleading. Committee member McMillen responded that he used to post prior results on his website for about 6 months, but took it off. He wouldn't mind regulation that required a disclaimer that results may vary because every case is unique. He does not think anybody hires a particular lawyer because the prospective client saw a past result on a website unless it is a very specific case that is similar.

Committee chair Ebbets commented that a website gives lawyers an inexpensive opportunity to provide information. They have the ability to use multi media, including videotaping testimonials of former clients. That reality makes the board want the issues examined very carefully.

Committee chair Ebbets asked the committee members if the bar is not going to require review, how the bar should treat websites for purposes of general advertising regulation.

Committee member Chinaris responded that the broader the language, the more flexibility the bar has when things come up that the bar has not thought of. The bar has to go back to nature of medium. The rules are not really different, just more detailed because of the nature of the medium.

Committee chair Ebbets stated that if the bar has a rule that addresses the general principal that the prohibition against false or misleading information applies, then the bar must identify specific examples of abuses as commentary that would assist lawyers in applying general guidelines. Committee member Chinaris commented that is where interpretive commentary would come in.

Committee member Ferraro commented that she is not comfortable with websites being treated as information on request with no regulation under the advertising rules. Websites should be treated generally the same as other forms of advertising. To some degree a person has to search for a website, but websites can also come up when a person is making a general search having nothing to do with legal services. As a practical matter, websites are unable to be reviewed the same as other advertisements, but general rules should apply.

2. Committee member Ferraro made a motion to treat website advertising the same as other advertising, but without review by bar staff. The motion was seconded by committee member McMillen.

Committee member Comisky joined conference call.

3. Committee member McMillen made a substitute motion to recommend that the board treat websites as information on request and subject only to regulations for information on request, which was seconded by committee member Cohen.

Committee members McMillen, Cohen, Chinaris, and Patterson voted in favor of the motion. Committee members Robinson, Ferraro, Comisky voted against the motion.

Committee member Comisky commented that the bar currently takes an intermediate position: websites are subject to some of the rules, but not all.

4. Committee chair Ebbets directed staff to ask those not in attendance to vote on this issue. The committee directed staff to send a copy of the general rules applicable to all ads for committee members to comment on which should apply, not apply, or apply but possibly with disclaimers.
5. The meeting was adjourned.

The Florida Bar
Special Committee on Website Advertising Rules
Minutes
Thursday, June 22, 2006
9:00 a.m. until noon
Boca Raton Resort & Club

Chair, Charles Chobee Ebbets presided over the meeting. Six committee members attended (committee members Cohen and Downs attended by telephone):

Chinaris	Ebbets (C)
Cohen	Iaconis
Downs	Patterson (V)

Elizabeth Clark Tarbert, Ethics Counsel, also attended the meeting. The committee took the following actions:

1. Approved the minutes of the January 19, 2006 and March 14, 2006 meetings.
2. Reviewed Florida Bar *News* articles regarding lawyer advertising.
3. Heard a report from chair Chobee Ebbets regarding the New York Court of Appeals action on lawyer advertising rules. The New York Court of Appeals sua sponte revised the lawyer advertising rules and published them for comment. The published rules include provisions for regulating Internet advertising, including pop-ups, banner and scrolling advertisements.

Committee member Chinaris noted that the Internet advertisements addressed by the proposed New York rules are already covered by Florida Rule 4-7.6, but that further information can be addressed in the commentary to the Florida rule.

4. Heard a report from chair Chobee Ebbets regarding the oral argument at the Supreme Court of Florida on the bar's petition to amend the lawyer advertising rules. He noted that the court had numerous questions regarding websites and seemingly indicated that websites should be regulated in the same manner as other media.

Committee member Downs left the conference call.

5. At the request of the chair, staff provided some statistics on advertising complaints.
6. Discussed the possibility of defining computer-accessed advertisements in the rule. Discussed whether real-time computer-accessed communications should be noted in Rule 4-7.4 (on solicitation) then discussed at greater length in Rule 4-7.6. The committee agreed that all computer-accessed communications should be addressed in Rule 4-7.6. Committee member Cohen commented that he would address websites within Rule 4-7.6, would apply the general

advertising rules to the homepage, but treat the rest of the website as information on request with no regulation under subchapter 4-7.

7. Discussed the proposed New York provision that would require all advertisements to be marked “attorney advertising.”

Committee member Downs returned to the meeting.

Committee member Downs commented that she like the idea of labeling every page of the website as a warning to consumers, because there is no real purpose to websites other than to be a marketing tool for lawyers.

Committee member Patterson commented that an argument can be made that tombstone information with no other information should not have to be so labeled.

Committee member Chinaris commented that general information regarding areas of law might not be considered advertising. Committee member Patterson responded that general information regarding the law is advertising, because it is a means of communicating to the public that the lawyer has special knowledge or experience in that area of law.

Committee chair Ebbets commented that New York’s proposed rules also contained a provision that lawyers cannot use metatags that would violate a disciplinary rule if displayed.

Division Director Mary Ellen Bateman entered the meeting.

8. Discussed alternate discussion drafts prepared by staff for the meeting.

The committee discussed alternative one, which would treat websites as information on request and therefore not subject to the general advertising regulations. No committee member commented favorably on this alternative.

Committee member Chinaris commented that he favored alternative two, which would treat websites as information on request and therefore not subject to the general advertising regulations, but which would provide explanatory commentary indicating which advertising issues could be considered misleading, and whether providing more information in the nature of disclaimers or explanation could “cure” the misleading nature of some statements. He added that this alternative presented a flexible yet realistic approach to regulate website advertising.

The committee then reviewed alternative 3, which addresses websites in Rule 4-7.6 and listed all the general advertising regulations in Rule 4-7.2 for the committee’s consideration of which, if any, should apply to websites.

The committee voted unanimously that websites should be subject to all of the general advertising regulations in Rule 4-7.2 with the following exceptions:

The committee voted 4-1 that the prohibition against “false or misleading” information (line 141) should apply to websites. Committee member Cohen voted against the motion, indicating that he would be in favor of a prohibition against “materially false or misleading” information.

Committee member Iaconis entered the meeting.

The committee voted 5-1 that the prohibition against references to past successes or results (line 158) should apply to websites. Committee member Chinaris voted against the motion, indicating that he would allow such statements with appropriate explanation or disclaimers, partly on constitutional grounds and partly because it is information that consumers would want to know.

The committee voted 5-1 that the prohibition against testimonials (line 176) should apply to websites. Committee member Chinaris voted against the motion, indicating that he would allow such statements with appropriate explanation or disclaimers, partly on constitutional grounds and partly because it is information that consumers would want to know.

The committee voted 5-1 that the prohibition against “any visual or verbal descriptions, depictions, illustrations, or portrayals of persons, things, or events that are deceptive, misleading, manipulative, or likely to confuse the viewer” (lines 186-189) should apply to websites. Committee member Chinaris voted against the motion, indicating that he would vote in favor of a motion prohibiting “any visual or verbal descriptions, depictions, illustrations, or portrayals of persons, things, or events that are deceptive or misleading.”

The committee voted 6-0 that subsection (H) (lines 250-252) should read as follows: “A lawyer who advertises a specific fee or range of fees for a particular service shall clearly specify the dates for which the advertised fee will be honored.”

9. Directed staff to draft and distribute the minutes to all committee members.
10. Discussed the future meeting schedule. Directed staff to arrange a conference call for the committee in July after distributing the minutes of the June meeting.

The Florida Bar
Special Committee on Website Advertising Rules
Minutes
Monday, August 21, 2006
9:00 a.m. until 10:00 a.m.

Chair, Charles Chobee Ebbets presided over the meeting, which was held by teleconference. Six committee members attended:

Cohen
Georges
Ebbets (C)

Iaconis
McMillen
Robinson

Elizabeth Clark Tarbert, Ethics Counsel, also attended the meeting. The committee took the following actions:

1. The committee discussed its June 2006 meeting. Chair Ebbets reiterated his comments at the June meeting that The Florida Bar has to concern itself with the consistency or lack of consistency with the rules. He commented that the Supreme Court of Florida at oral argument on the pending advertising rules petition asked why it was taking so long to harmonize website rules with other advertising rules. He noted that the ABA model rules do not distinguish Internet from other forms of media, but the ABA Model Rules are much more lenient than Florida's rules. The committee took a straw vote in June in which committee agreed that websites should comply with all the general advertising rules except the filing requirement. He commented that the Supreme Court of Florida seemed to be consistent in disliking lawyers touting themselves, and that he expects that court will be willing to adopt more restrictive rules on websites. He asked the committee members for their comments.

Committee member Iaconis commented that the general consensus is that the committee is addressing the Supreme Court of Florida's concerns by making websites consistent with other forms of media. Therefore, the only issue to be addressed is whether the proposed rule as drafted is comprehensive enough and whether the draft leaves anything out.

2. The committee discussed whether the requirement that lawyers retain copies of advertisements for 3 years would apply to websites. Committee member McMillen commented that he is concerned about any requirement that lawyers keep copy of websites because they can make changes to websites daily and because of the potentially large volume of websites.

Committee chair Ebbets responded that the Supreme Court of Florida does not appear to be responsive to arguments regarding lack of resources. Lawyers are responsible for compliance with the rules. As a technological matter, lawyers can save websites to an archive at the click of a button.

Bar Ethics Counsel Elizabeth Tarbert pointed out that the rule regarding retention of advertisements appears in Rule 4-7.7(h). The rule states:

Maintaining Copies of Advertisements. A copy or recording of an advertisement or written or recorded communication shall be submitted to the standing committee on advertising in accordance with the requirements of rule 4-7.7, and the lawyer shall retain a copy or recording for 3 years after its last dissemination along with a record of when and where it was used.

She noted that it is likely that the rule would be interpreted as requiring retention of only those advertisements that must be filed for review.

3. The committee discussed the timetable for a rules change. Bar Ethics Counsel Elizabeth Tarbert reported that the Supreme Court of Florida has imposed a 2-year rules cycle on amendments to the Rules Regulating The Florida Bar. The next bar petition will be filed in January 2007. The next petition after that will be filed in January 2009. In order for a rule change to be included in the January 2007 petition, the board of governors has to have first reading at its September 29, 2006 meeting and second reading at its December 2006 meeting.

4. The committee voted on the draft changes to Rule 4-7.6 provided by staff. Committee member Cohen made a motion to approve alternative 5, which was seconded by committee member Iaconis. Committee member McMillen confirmed that only change to the current rule is that websites would now be prohibited from containing statements referring to past results and statements characterizing the quality of legal services.

The motion passed unanimously.

5. Committee chair Ebbets thanked the committee members for their service.

6. The meeting was adjourned.