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June 18, 1992

Chief Justice Leander J. Shaw, Jr.
The Florida Supreme Court
500 South Duval Street
Tallahassee, FL 32399-1925

Re: Amendment to Rules regulating the Florida Bar.
Case No. 79,288
~~Rule No. 4-7.2(n)~~ . . . Advertising
Date Argued: June 2, 1992

FILED

SID J. WHITE

JUN 22 1992

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

Dear Chief Justice Shaw:

It has come to my attention that two aspects of the Rule on Lawyer Advertising in the Code of Professional Responsibility have come into consideration. I have a very strong opinion about one aspect of the Rule that is being discussed.

I see that John Griffin, the Director of the Bar's Advertising Department seeks a Rule change so that the Board of Governors of the Bar can set the fee for reviewing commercials. That fee is now set at \$25.00. Apparently the Board of Governors would like to raise it to \$50.00 this year and, who knows how much in the future. I believe that the Supreme Court should be aware that even \$25.00 for a unapproved advertisement at the time of filing is a high amount. Attorneys, like myself, who have every intention of complying with the new Advertising Rules, have had to write many checks for \$25.00 until a particular advertisement is approved. Although I have not kept exact score, I believe I have had about six (6) television commercials approved and about fifteen (15) rejected by the Advertising Committee. All the rejected ads were submitted in good faith and, quite frankly, I was surprised by many of the rejections.

There is no doubt that even the \$25.00 fee has a "chilling effect" on advertising. Certainly, if the Board of Governors was given the authority to raise the fee to \$50.00, then \$75.00, then \$100.00 and, possibly \$200.00 in the immediate future, less and less ads would be submitted. I do not know if the seeking of authority to

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raise the fee is an unconscious effort by the Florida Board of Governors to discourage ethically permissible advertising but, it certainly would have that effect.

It is my belief that the administration fee for the reviewing of ads should be under the purview of the Florida Supreme Court. The Florida Supreme Court has no agenda in setting the fee except the actual costs of administrating the review of advertisements. I believe that the Florida Supreme Court is the best body to make sure that the fee has no "chilling effect" on the First Amendment right to advertise.

One would think that the Advertising Department would, after 1 1/2 years experience reviewing advertisements, have developed a degree of expertise and efficiency whereby the fee should actually go down, not up. Further, if the time came when it could be proven that the costs for reviewing ads had actually risen, let them come to the Florida Supreme Court for an increase of the fee on an ad hoc basis.

Thank you for entertaining this letter on this subject and, I hope you will take it into consideration.

Sincerely,


DAVID W. SINGER
Attorney at Law

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