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CLERK, SUPREME COURT
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Chief Deputy Clerk

IN THE SUPREME COURT
STATE OF FLORIDA

Appellant/Respondent

Case No.: 80,701

vs.

The FLORIDA BAR,

Appellee/Complainant.

ON APPEAL FROM THE FINAL ORDER OF THE HONORABLE KERRY I. EVANDER ACTING AS REFEREE IN THE DISCIPLINARY ACTION BY THE FLORIDA BAR AGAINST THE RESPONDENT

REPLY BRIEF OF APPELLANT/RESPONDENT

Original

Appellant/Respondent

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RULES:

Rule 4-7.2(n)(9) of the Rules Regulating the Florida Bar	1, 2, 3, 4, 5, 7, 14, 15
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PREFATORY STATEMENT

With the permission of this Honorable Court, the parties will be referred to as they stood before the Referee. The Appellant, was the Respondent and the Appellee, The Florida Bar, was the Complainant.

In this brief, designations to the transcript of the trial before the Referee shall be indicated by "TT." This designation will thereafter be followed by a number which would indicate the page number of the trial transcript where the material immediately preceeding the designation appears.

Designations to Requests for Admissions shall be indicated by "RA" followed by the number of the request whereat the material cited appears.

Designations to other documents shall be as listed on the index to the Trial Transcripts. Documents introduced by the Florida Bar shall be designated "FBTE" (Florida Bar Trial Exhibit) followed by exhibit number listed on the index of the trial transcript. Documents introduced by Respondent shall be designated "RTE" followed by the exhibit number.

Reference to the Answer Brief of the Bar will be by (AB) followed by the page number whereat said information appears.

Rules 4-7.1 to 4-7.8 of the Rules Regulating the Florida Bar shall be referred to as the "Rules Regulating Advertising" or simply the "Rules" where appropriate.

Reference to the Referee's Final Order shall be by "RR" followed by the page number of the Order whereat the material appears.

SUMMARY OF ARGUMENT

ISSUE I

The State did not address the issue of what constitutes either an "advertisement" or "public service announcements" for which there are no clear, definate and objective standards set forth in the Rules. Rule 4-7.2(n)(9) allows attorneys to sponsor "public service announcements" and to list themselves as sponsors. It was unfair for the Bar and Referee to use the fact of Respondent's listing as a sponsor, to find the article "implicitly" (not expressly) advertised Respondent's services.

ISSUE II

No response is necessary since the Bar merely asserted, incorrectly, this was "commercial speech" and not overbroad.

ISSUE III

The Bar misrepresented that Respondent failed to comply with the Rules "even after notification." Other attorneys similarly situated have not been punished. Selective enforcement because the Rules are vague violates the rights of attorneys.

ISSUE IV

The Bar did not explain its authority to adopt substantive criteria or why that adoption did not constitute an amendment.

ISSUE V

No response is necessary since Bar's response is adequately rebutted in the initial brief.

ISSUE VI

There were insufficient facts to find Respondent guilty in the absence of any standard by which the Referee could judge whether the article was a public service announcement.

ISSUE I

WHETHER THE RULES REGULATING ADVERTISING ARE VAGUE AND AMBIGUOUS SO AS TO INFRINGE UPON ATTORNEYS' SECTION 4 AND FIRST AMENDMENT RIGHTS

The Florida Bar brief fails to discuss the issues herein. The Bar simply declares this to be "commercial speech" and from that the Rules are claimed to be proper. Left unanswered is how a lawyer in Winter Garden can read these rules and tell whether the article he wrote is an advertisement subject to regulation or is a "public service announcement" exempt from regulation.

The Bar says "the rules are sufficiently clear here to put attorneys on notice that all forms of commercial speech are regulated." (AB 9) That great to say, but how does one tell what is "commercial speech" <u>regulated under these Rules</u>.

Any public discussion or act by an attorney could be claimed by someone to be "commercial speech," e.g. sponsoring a little league team, contributing to the opera, having a radio talk show, or writing letters to editors could all be ways whereby attorneys raise standing and visibility in a community in order to advertise their services and obtain business.

If regulation is based on whether some person or segment of the public "feels" one's acts are commercial speech, then the rules certainly violate constitutional standards for definiteness under the First Amendment. This lack of any clear, objective, and definate standards as to what is regulated thereunder (or not) makes these Rules unconstitutional.

The Rules say an attorney can communicate with the public through a "public service announcement" [Rule 4-7.2(n)(9)];

through simple advertisements [Rule 4-7.2(n)(1-8)]; or through more complex advertisements requiring disclosure and filing. Additionally, the Bar asserts an attorney can communicate through "personal opinion" (AB 11) and as an "editorial expression" (AB 19) and not be regulated. (Although neither of these latter catagories are mentioned in the Rules.)

Having set up these options, the Bar is now whining because Respondent choose an option the Bar did not prefer or expect. If the Bar did not want "public service announcements" such as herein, it should have omitted that option from the Rules or narrowly defined the term. It did neither. Thus, there were no warnings to Respondent about any limits on doing a public service announcements in his area of practice, paying to publish it, using bold face type, discussing legal rights, or any of the the Bar's other complaints it now wants read into the Rules.

But Respondent was told by this Court that he could sponsor a public service announcement and that it would be exempt from Bar regulation. Rule 4-7.2(n)(9). In the absence of any objective standards, Respondent applied his understanding of the term "public service announcement."

In addition to a lifetime of public service messages on television (including those of Jacob & Goodman, p.a.), the Respondent had seen phamplets published by the Florida Bar which gave legal advice and which expressly stated they were printed as a "public service" for the consumers. (TT 69-70) Respondent thought these were a type of "public service" announcement and sought to duplicate their nature. (TT 70)

The Bar says you cannot compare these to Respondent's article. (AB 18) But cut the Florida Bar name off its phamplets, and Repondent's name off his article, and Respondent challenges anyone to tell how the content of his article herein differs logically in form or nature from the phamplets by the Bar. If the body of the Bar phamplets are a "public service" then certainly the body of Respondent's article herein is a "public service", i.e. "public service announcement." They both inform persons of their rights which <u>the Bar has deemed</u> to be a "public service."

Yet now, the Bar wants to determine whether a communcation constitutes a public service announcement based in part on whose name appears thereon as the sponsor, i.e. The Bar argues Respondent's name is on the article, hence the public knows an attorney sponsors it, and from this the public may infer that the article "impliedly" advertises Respondent's services.

This argument ignores the fact that <u>this Court invited</u> the Respondent to put his name on the public service announcement herein. Rule 4-7.2(n)(9) says that an attorney may list his name and "geographic location" as the sponsor of a "public service announcement." The term "geographic location" (also another undefined term) certainly means identification or locational information, i.e. address and telephone number. Obviously placement pursuant to Rule 4-7.2(n)(9) of an attorney's name and locational information on what otherwise is clearly a public service announcement, cannot as a matter of law change that public service announcement into an advertisement.

Yet, that is exactly what the Bar and Referee herein have

done in using the fact that Respondent is the listed sponsor as the basis for arguing the pubic would infer this to be an advertisement. The Bar even goes so far as to expressly argue that inclusion of Respondent's address and telphone number makes it an "advertisment" and presumably not a public service announcement. (AB 11, 18) This is the equivalent of telling a defendant he has the right to remain silent, yet when he exercises that right, the State then arguing the defendant's silence indicates guilt. That simply is not fair.

But for the presence of Respondent's name on the article, none of Referee's findings as to what was "implicitly suggested" by the article would stand. If the public did not know a lawyer had written it, could they ever "impliedly" read into this article the Referee's finding that the writer would vigorously defend them or that the writer was holding out his availibility to perform DUI services. (See Appendix A where the same article with the Florida Bar's name thereon has an entirely different look.)

The Referee's order even acknowledges use of this permitted information as the basis for finding the "implicit suggestion"

> "Respondent is available to represent individuals charged with DUI (as indicated by the listing of Respondent's occupation, address and phone number.)"

(emphasis added, RR 3-4) Its doubtful the same finding would have been made, if the Bar was listed as the sponsor. Since Rule 4-7.2(n)(9) allows an attorney to include this information, the Referee erred in using the fact of Respondent's sponsorship as a basis for finding the article "implicitly" was an ad.

The only fair test as to whether an article is a "public service announcement" is to cut off the name and locational information and replace it with a known public service organization. If the article herein is a "public service" announcement with the American Bar Association or other charity listed as the sponsor, then that finding should be conclusive as to the nature of the article. The body of an article should stand by itself as to whether it is or is not a public service announcement. Subsequent inclusion of the attorney's name and location information under Rule 4-7.2(n)(9), should be held as a matter of law, not to change the nature of the public service announcement into an advertisement, implicit or otherwise.

Further the Bar asserts that "intent is not an issue" but then argues that Respondent is merely seeking to "circumvent" the rules, citing The Florida Bar v. Doe, 550 So.2d 1111 (Fla. 1989). Clearly, the Bar's argument is based on intent. If the Bar can argue Respondent attempted to circumvent the Rules, then certainly evidence of Respondent's prior public service can prove the public service nature of Respondent's article.

If the Rules offer several proper and authorized means of communicating with the public, how can utilizing any one of these be an attempt to "circumvent the Rules." Certainly no one would argue that an attorney who publishes a simple ad under Rule 4-7.2(n)(1-8) is "circumventing" the disclosure and filing requirements. Why then would an attorney who accepts this Court's invitation under Rule 4-7.2(n)(9) be seen as doing so?

The Bar also in effect argued we can just apply "common sense" (obviously theirs) in deciding whether this is commercial

speech, citing Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626, 105 S.Ct. 2265, 85 L.Ed.2d 652 (1985). That Court did not apply a "common sense" doctrine to determine whether a particular article was commercial speech. In dicta the Court referred to its overall policy of treating all commercial speech differently as compared to traditional protected speech, based in part on a "common sense" understanding that the purpose of commercial speech is different from other speech.

While agreement may exist that commercial speech in general differs from traditionally protected speech in general, trying to apply a "common sense" approach to individual cases would be chaos because each person has a different "common sense" as to what is, and is not, commercial speech. The devil is in the details. Just look at Congress where most want universal health care, but opinions vary greatly on which plan accomplishes that.

There is no indication the Supreme Court intended to give up the "bright line" requirements set forth in N.A.A.C.P. vs. Button, 371 U.S. 415, 9 L.Ed.2d 405, 83 S.Ct.328 (1962) or other cases cited in Respondent's initial brief or that this Court should recede from such cases as Spears v. State, 337 So.2d 977 (Fla. 1976). The Constitutions requires an express boundary be articulated between prohibited conduct and that which is not. This is particularly important in the area of the First Amendment rights because these rights are so easily chilled.

Other cases such as State v. Dye, 346 So.2d 538 (Fla. 1977) which the Bar cites are not controlling. Even this case requires that the statute give warning "measured by common

understanding and practices." The Bar's own staff admits with all their resources they could not come up with even a broadcast industry standard as to what constituted a "public service announcement." (See Appendix B) Hence, there is neither clear statutory language as to what "public service announcement" means under Rule 4-7.2(n)(9) nor a "commonly understood" definition or practice in the general population.

The Bar seeks to minimize the inadequacy of the Rules it wrote by failing to address why it was necessary for its own staff attorneys to be furnished criteria as to what constitutes a "public service announcement." (Appendix B) If Rules are clear as to that term, why are these opinions necessary - "non-binding" or otherwise. We are not dealing here with some ordinary ethical question, e.g. neglect of legal duties, which the attorney has not constitutional right to do. This is the First Amendment rights of attorneys which requires a "bright line" between regulated and unregulated speech, so as to inform one of prohibited acts, prevent arbitrary enforcement and avoid the "chilling" effect of vague regulations.

The Bar's assertion that enforcement is not left to individual discretion defies logic. The Bar's adopted criteria

> Does the announcement serve the pecuniary interest of the attorney more than the publics' interest in hearing it.

clearly is an individual, subjective determination based on whether the reader feels the message is proper. As discussed in the initial brief, the probability exists that those messages not "politically correct" or "unpopular" will be found to have little public interest and hence will be held to be ads.

The Bar admitted the term "public service announcement" was vague and undefined in discovery. Now it seeks to defuse its admission by claiming Respondent took the Bar's answers out of context and that its "answers were based on respondent's self-serving use of the term in discovery." (AB 17) Is the Bar kidding since the request for admissions included the following:

21) That if Respondent's article was a "public service announcement" under the Rules Regulating Advertisements he would not be required to include therein the disclosure under Rule 4-7.2(d).

90) If this article met the requirements under the Rules Regulating Advertisements for a "public service announcement" the Respondent would not be required to file same with the Standing Committee on Advertising under Rule 4-7.5.

To both of the above and other discovery the Bar answered:

"Unable to admit or deny since the term "public service announcement" is undefined. The rules do not specifically distinquish between public service announcements and advertisements and are directed toward all communications from a lawyer regarding his services."

Self-Serving? Out of context? Pray tell Florida Bar how is that?

Clearly the Bar was either being "cute" in discovery with this answer, only to be caught at trial and forced to concede there is a distinction (TT 142), or having truthfully answered "undefined" and "vague", the Bar is now trying to weasel out of it prior statements. In either event, hardly the conduct one would expect of the Bar which should exemplify proper conduct.

The Bar also makes the ludicrous assertion that Rule 4-7.5(b) requires the Respondent to file his article in order to "obtain the definiton he seeks." (AB 16) How could the Bar argue that vagueness can be corrected by a provision for Bar review, without admitting that constitutes prior restraint.

If the Bar thinks for one minute that attorneys should have

to undergo Bar review to see if their public communications are regulated, it needs to read the Constitution and its history. The Bar's attitude that attorneys can just check with it as to whether their communications are commercial speech, smacks of the worst of Nazi or Communist Chinese censorship.

Finally, the Bar skirts the overboard constitutional issue of whether the undefined and vague terms herein infringe upon protected speech. (AB 14) It never explains how if "advertising" and "public service announcement" are not defined, we can be sure the Rules will not intrude into, or chill, protected speech.

Instead the Bar just repeatedly argues that the article does not contain "respondent's opinions or views." (AB 11) It then asserts that if it were a "true editorial" or "personal speech" it would not be governed by these Rules. (AB 11, 19) Where in the Rules is that written? How can Respondent know to write such an article, when the Rules (written by the Bar) never even mention that category. Now suddenly its an option.

Equally absurd is the Bar's claim the Respondent has the editorial pages of the local newspaper to express his opinions. (AB 1[illegible]) Making local editors the gatekeepers on whether an attorney can get his opinion published hardly meets constitutional requirements. Realistically, how could unpopular opinions or persons get their view into print. Yet, it is to protect such veiws that the First Amendment exists. Dept. of Ed. v. Lewis, 416 So.2d 455 (Fla. 1982) This suggestion, just shows the Bar's insensitivety to First Amendment rights of attorneys.

ISSUE III

WHETHER THE FLORIDA BAR SELECTIVELY PROSECUTED RESPONDENT SO AS TO VIOLATE DUE PROCESS AND EQUAL PROTECTION RIGHTS

The Florida Bar deliberately misrepresented the facts by stating in its Answer Brief:

> The Bar prosecuted the respondent because he failed to comply with the Rules Regulating the Florida Bar even after notification that his advertisement did not appear to be in full compliance with the rules. (emphasis added)

(AB 20) That is simply a falsehood. A review of the entire court file will not find any evidence to support that statement.

The undisputed facts, which the Bar knows to be true, are that Respondent published his article twice in December, 1991 as planned (see letter attached as Appendix C). He never published that article or any other public service announcement again. It was ONLY AFTER PUBLICATION of his article, that Respondent was first contacted by the Bar concerning the alleged impropriety of his public service announcement. At that point, all violations, if any, had occurred since it was too late to change the article, add a disclosure, or file it with the Bar "prior to or concurrent with...first dissemination" as required by the Rules.

While Respondent vigorously argued his prior publication was proper, and defended his First Amendment right to so publish, Respondent took no acts which were in non-compliance with the Rules after being contacted by the Bar.

The improper practice of the Bar in trying to convert disagreement with it into an ethical violation was condemned by Judge Barkett in her concurring opinion in The Florida Bar v. Pasco, 526 So.2d 912 (Fla. 1988). Although Mr. Pasco had not

run his advertisement since being informed of its alleged impropriety, the Florida Bar stated:

> [Mr. Pasco] did reject the Bar's pronouncement that it was an inappropriate ad and should not be used. That subjects him, pursuant to Bar policy, to disciplinary proceedings.

526 So.2d at 914. Judge Barkett then correctly wrote that such disagreement is protected by the First Amendment and is not violative of the rules of ethics:

> Punishment is for conduct, not for exercising a first amendment right to express an opinion which may differ from the Bar's or anyone else's views, including ours.

526 So.2d at 914. The Bar is attempting the same thing herein.

It is the epitomy of arrogance for the Bar to say that an attorney's disagreement with it on interpreting the Rules constitutes "non-compliance" therewith. It is reprehensible for the Bar to then misrepresent and deceive this Court by stating Respondent failed to comply with the Rules "even after notification" when all he did was disagree on interpretation.

What this all comes down to is that Respondent would not knuckle under to the Bar. Even the Bar at trial said: "If Mr. Hall had acknowledged his wrongdoings, ... the case would have resulted in dismissal." (TT 127-128) Since he did not agree with the Bar and said so, Respondent was persecuted by the Bar.

Moreover, the Bar's assertion that Respondent's attitude "sets him apart" from other undisciplined attorneys smears the men and women who fought for our First Amendment rights. Since when did standing up for our Constitutional rights constitute an

"attitude" subjecting one to prosecution and punishment? Standing up for one's rights is significantly different than a cavalier attitude toward criminal conduct as cited by the Bar in Florida Bar v. Thompson, 500 So.2d 1335 (Fla. 1986).

Finally, even the Referee questioned the Bar's lack of prosecution of other similarly situated attorneys. (RR 5) It does seem strange that the Bar approves of Jacob & Goodman, p.a. "public service announcements" when they a) identify the firm as personal injury attorneys, b) feature Sam Vincent (former Orlando Magic player), c) use dramatizations, and d) are interspaced with the firms regularly televised ads.

Likewise when the Chairmen of the Grievance Committee is not prosecuted for his article because the Bar discovers a new, unmentioned, unregulated category: "editiorial expression of public opinion," when Gary Shader is not prosecuted for his nearly identical article, when the Standing Committee chair and the local bar attorney say they can consider whether the content serves a public purpose (RA 101, RA 97, RTE 8), it certainly seems enforcement is based on who you are, who you know and whether the Bar likes your content, i.e. selective enforcement.

The Bar's example is inapplicable, because a police officer who cannot stop all violators differs significantly from a court, for instance, which gives special treatment to some persons, but selectively punishes others who have been caught. Respondent has not argued he should get away with it because others have, only that this indicates other attorneys have similarly interpreted the Rules and that disparate treatment indicates selective enforcement based on the article's content.

ISSUE IV

WHETHER THE BAR IMPROPERLY ADOPTED SUBSTANTIVE CRITERIA USED TO PROSECUTE RESPONDENT AND WHICH TAINTED HIS PROSECUTION IN VIOLATIONS OF HIS DUE PROCESS RIGHTS

The Bar's only response was that it adopted criteria only for internal prosecution uses only. Yet, the Bar failed to explain its authority to adopt criteria for enforcement purposes about which there is not one word in the Rules, e.g. payment to publish can make an article an advertisement. Also not explained was how the Bar could apply these criteria to Respondent's article written months before the Bar had even adopted that criteria. (December publication - March adoption).

While such ad hoc, after the fact type of modification might be proper in areas of regulation where attorneys have no constitutional rights (neglecting legal matters), such changes do not meet constitutional requirements of definateness. The Bar cannot just go around filling in the blanks it forgot to write when it drafted these Rules. If it wanted these criteria, it should have included them. It is ludicrous to now claim these criteria, unmentioned in Rules, can be used in prosecution without admitting the Bar has in effect amended the rules.

If members of this Court were permitted by rule to speak out on public issues, and you did so in reliance on that rule, wouldn't you feel that the JQC had exceeded its authority when it (after the fact) started prosecuting you for speaking to newspaper reporters or on certain issues, if none of the alleged restrictions were even mentioned in the rule. Respondent feels no less deceived and persecuted by the Bar's acts herein.

ISSUE VI

WHETHER THERE WAS SUFFICIENT FACTS TO SUPPORT THE REFEREE'S FINDING OF GUILTY HEREIN

The Referee's decision was in error because he had no standard against which to measure whether Respondent's article was a public service announcement. Not knowing the scope and nature of this exemption under rule 4-7.2(n)(9), how could the Referee legally conclude that the article was not exempted from the disclosure and filing requirements. This is particularly true since the article said it was not an advertisement and was found to be one solely on what the Referee felt the article "implicitly suggested" to the public.

This obviously caused the Referee concern since he stated:

> 2. Respondent further argues that subject rules defining advertising are unconstitutonally vague, ambiguous. . . .
>
> However, this Referee would respectfully suggest that the Florida Supreme Court address Respondent's arguments and consider enacting rules setting forth criteria to be used in distinguishing betwenn an advertisement and a public service announcement. (emphasis added)

(RR 4-5) Without a standard against which to measure, the Referee erred in reaching his conclusion. (Can one tell if a six foot man is "too short" to play sports without knowing whether the sport calls for a basketball player or a jockey.)

That the Referee "felt" the article turned out to be an ad does not rebut Respondent's assertion he was not advertising his services as the Bar asserts. (AB24-25) The testimony was that this was intended to be a public service announcement. (TT 105) Cases cited by the Bar only show misconduct can be punished.

CONCLUSION

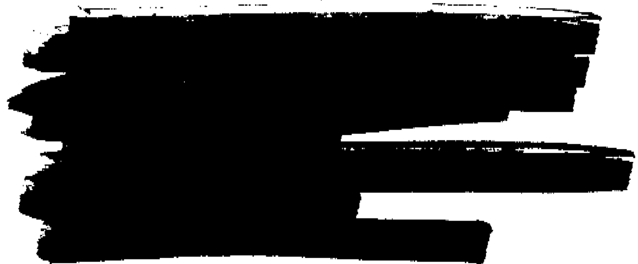
It is difficult to tell this Court its rules need to be amended because they are vague. Yet, even the Referee herein felt there was a need for change and clarification in this area.

Respondent tried to comply with the Rules in disseminating this information to the public. Rule 4-7.2(n)(9) authorizes public service announcements and the listing of Respondent as the sponsor. He did what that Rule permitted and should not be punished just because someone (using criteria adopted after the fact) subjectively feels the article "implicitly" advertises his services. Respondent attempted to make clear it was not an ad.

Respondent complied with the Rules and is only guilty of standing up for the First Amendment rights of attorneys. That the Florida Bar now seeks to discipline him for doing so and for disagreeing with it as to what this Rule means, just shows why Florida attorneys have such little respect for the Bar.

Please reverse the decision herein, but more importantly help Respondent and other attorneys by making the Rules clear as to what is and is not regulated. Do not leave that to ad hoc, piece meal, subjective interpretation by the Bar. Thank you.

I HEREBY CERTIFY that a true and correct copy of the forgoing has been served by mail upon the Florida Bar, Jan Wichrowski, Esq., 880 North Orange Avenue, Suite 200, Orlando, Florida 32801 this 4th day of November, 1993.



IN THE SUPREME COURT
STATE OF FLORIDA

[redacted]

Appellant/Respondent

Case No.: 80,701

vs.

The FLORIDA BAR,

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______________________________/

ON APPEAL FROM THE FINAL ORDER
OF THE HONORABLE KERRY I. EVANDER ACTING
AS REFEREE IN THE DISCIPLINARY ACTION BY
THE FLORIDA BAR AGAINST THE RESPONDENT

APPENDIXES TO REPLY BRIEF OF APPELLANT/RESPONDENT

APPENDIX A

This Appendix contains the Respondent's article with the name and locational information of the Bar included thereon as if the Bar had published this article.

In reading this example, the reader should answer the following questions which are based on the Referee's findings as to what Respondent's article "implicitly suggested:"

a) Does this implicitly suggest the Florida Bar is knowledgeable in the area of DUI;

b) Does this implicitly suggest that the Florida Bar would vigorously defend an individual charged with DUI;

c) Does this implicitly suggest that the Florida Bar is aware of various possible factual and legal defenses to a DUI charge; and

d) Does this implicitly suggest that the Florida Bar is available to represent individuals charged with DUI.

Unless you answered "yes" to all of the above questions, you have just proven the Respondent's was not guilty herein. What you have verified is that people, including the Referee, determined public service status not based on the article but on the fact that Respondent, an attorney, had sponsored it (and hence was "impliedly" advertising his services).

Yet, Rule 4-7.2(n)(9) allows attorneys to sponsor, and list themselves as sponsors, of public service announcements. If an article appears to be a public service announcement when published by the Bar or other such organization, then certainly fairness and due process precludes ruling that adding information about an attorney sponsoring it [as authorized under Rule 4-7.2(n)(9)] somehow can "implicitly" convert that "public service announcement" into an advertisement.

STOPPED FOR DRUNK DRIVING KNOW YOUR RIGHTS

Around every holiday, people are mistakenly accused of drunk driving (DUI). No one can guarantee they will not be falsely accused of this crime. Knowing your rights and what to expect can make the difference between going free and being arrested for DUI.

Your license and freedom are important. Do your part to protect them. Clip and save these tips.

HELPFUL TIPS IF YOU ARE STOPPED:

- **INSPECT YOUR CAR** - a broken light is an invitation to be stopped. **OBEY THE TRAFFIC LAWS** - don't speed, roll through stop signs, or frequently change lanes.
- **HAVE BREATH MINTS** or chewing gum in your car. Upon seeing the police lights **TAKE A BREATH MINT** and pull completely off the road.
- **TELL YOUR PASSENGERS TO PAY ATTENTION** to your movements and conversation with the officer. They may be your witnesses later.
- **HAVE YOUR DRIVER'S LICENSE, REGISTRATION AND INSURANCE CARD IN HAND BEFORE THE OFFICER COMES TO YOUR CAR.** This eliminates any assertion that you were fumbling through your wallet for them. Better yet, keep them handy while you drive - clipped to visor, etc.
- **ASK THE OFFICER WHY HE PULLED YOU OVER** (listen - don't argue). Be polite - show respect.
- **DON'T TALK MORE THAN NECESSARY.** Keep your statements short and don't discuss your drinking. The officer listens for guilty statements and slurred speech, as well as smelling for the odor of alcohol. The more you speak, the more you may incriminate yourself.
- If requested, **GET OUT BUT DO SO WITHOUT LEANING ON THE CAR** for support. Stand up straight - avoid shuffling your feet or swaying.
- Politely **REFUSE TO TAKE ANY FIELD SOBRIETY TESTS** (finger to nose, walk the line) unless you are positive you can pass them. Usually though, they are the basis for your arrest. **YOU ARE NOT REQUIRED BY LAW TO TAKE THEM.** Unlike the breath test, there is no penalty for refusing the field sobriety tests.
- Once arrested, you will be taken to a testing area and videotaped. Politely **DECLINE TO TAKE ANY FIELD SOBRIETY TEST.** You are not required to take these tests on camera and you will not be penalized for refusing.
- You will be asked to take a breath test. Refusing to take the breath test will result in the loss of your license. Taking the test, however, can result in loss of license anyway and more severe penalties and an easy conviction. **YOU SHOULD DECIDE BEFORE DRIVING WHETHER TO TAKE THE BREATH TEST.**
- Your license will **IMMEDIATELY** be taken if 1) you refuse to submit to a breath, urine or blood test, or 2) your blood alcohol reading is over the legal limit of 0.10%. **THUS, YOU SHOULD NOT TAKE THE BREATH TEST SIMPLY TO AVOID THE IMMEDIATE LOSS OF YOUR LICENSE BECAUSE A HIGH READING WILL RESULT IN ITS IMMEDIATE LOSS ANYWAY.** The officer will take your license unless your reading is less than the legal limit - 0.10%.
- **FIRST OFFENDERS PROBABLY SHOULD TAKE THE BREATH TEST,** if they drank little and do not plan to fight the charge. In contrast, one who faces stiff jail time, long license suspension or who plans to fight the ticket, such as **MULTIPLE DUI OFFENDERS, SHOULD NOT TAKE THE BREATH TEST** if at all in doubt as to ability to pass it.
- **ALSO ANYONE DRINKING HEAVILY SHOULD NOT TAKE THE BREATH TEST** since a 0.20% reading, 1) doubles the fine, 2) extends by [illegible] months the possible jail sentence and 3) eliminates any plea to a lesser charge, e.g. reckless driving.
- Make sure you understand everything the officer says before you decide. **YOU BURP OR BELCH** stomach juices into your mouth prior to the test, **TELL THE OFFICERS** since that interferes with the test (higher readings). If you tell the officers, they have to wait until you have stopped burping for 20 minutes before they can test you.
- If your reading is over 0.10% or you refuse, **YOUR LICENSE WILL BE TAKEN AND A 7 DAY TEMPORARY WORK PERMIT ISSUED.** This means little since it expires before you get any hearing. No other work permit licenses will be issued until 30 days have passed.
- **YOU HAVE 10 DAYS FROM THE DATE OF ARREST TO REQUEST A FORMAL HEARING** with the DMV. If you do not, you lose important rights. This requires more explanation, thus it is important to consult with your attorney within the first week after arrest.

LAWYER TALK:

This document is provided as a public service to better educate the public as to their rights. It is not an advertisement of legal services and should not be considered as such.

Neither is this document intended to give legal advice as to a specific case or situation. Your situation may differ and you should consult the attorney of your choice for more information.

A PUBLIC SERVICE MESSAGE SPONSORED BY:

THE FLORIDA BAR

650 APALACHEE PARKWAY—TALLAHASSEE

561-5600

1991©

APPENDIX B

FLORIDA BAR STAFF MEMORANDUM INDICATING NO UNIFORM SET OF CRITERIA EXISTS EVEN IN THE BROADCAST INDUSTRY AS TO WHAT PUBLIC SERVICE ANNOUNCEMENT MEANS AND THAT THE STAFF NEEDED "GUIDANCE" AS TO WHAT THAT TERM MEANS UNDER THE RULES

*** PLEASE NOTE THAT THE MEMORANDUM IS IN ERROR WHEN IT STATES THAT THE "RULES DO NOT USE THE TERM 'PUBLIC SERVICE ANNOUNCEMENT'" SINCE THAT EXACT TERM IS EXPLICITELY USED IN RULE 4-7.2(N)(9)

PUBLIC SERVICE ANNOUNCEMENTS

The staff has consistently taken the position that the provisions of subchapter 4-7 governing lawyer advertising were not intended to apply to public service announcements underwritten by lawyers or law firms. Staff's position relies on two factors. First, by their nature the rules govern advertising of legal services, which presumably would not be involved in a public service announcement. Second, Rule 4-7.5(c)(2) specifically provides that a brief announcement of a lawyer or law firm's contribution to or sponsorship of a ". . . community or public interest program, activity or event . . ." is exempt from review by the Committee as long as the announcement contains no information other than the name of the lawyer or firm, the city where the law offices are located, and the fact of sponsorship or contribution. Other than the language in 4-7.5(c)(2), the rules do not use the term "public service announcement" and do not define or otherwise specify what factors should be used in determining what is a public service announcement.

The Committee briefly discussed the issue of what constitutes a public service announcement at its initial meeting in March 1991. No decision was reached as to what criteria would be utilized in determining whether a particular announcement would be considered advertising or a public service spot. Staff was requested to research the area.

Staff has studied the issue, including contacting numerous media representatives as well as the Florida Association of Broadcasters in an attempt to determine if the industry utilizes recognized criteria in deciding if a particular announcement is to be considered a public service announcement.

The responses received indicates that a uniform set of criteria does not apparently exist in the industry, and that the decision on whether to run a spot as a public service announcement is made by the particular station or publisher. A variety of factors or criteria were cited as weighing in the decision. Included among the factors are whether the sponsor has or plans to pay for time or space to run the same spot in another media, and whether the content of the spot appears to serve the interest of the sponsor as much or more than the interest of public in receiving the message.

Staff has recently received several filings that purport to be public service announcements; examples will be shown at the meeting. Guidance is needed from the Committee as to the criteria it wishes staff to utilize in making the initial determination of whether a particular ad is a public service announcement.

APPENDIX C

LETTER FROM RESPONDENT TO THE WEST ORANGE TIMES
FOUR DAYS AFTER SECOND PUBLICATION OF THE ARTICLE
INDICATING THAT PLAN WAS TO PUBLISH ARTICLE ONLY TWICE
AND THAT RESPONDENT WAS ATTEMPTING TO COMPLY WITH
THE RULE RELATING TO PUBLIC SERVICE ANNOUNCEMENTS

LAW OFFICES OF

December 30, 1991

West Orange Times
720 S. Dillard
Winter Garden, Florida 34787

Re: Stopped for Drunk Driving - Know your rights

Dear Sirs:

As I discussed when I initially came in, I wanted to run the above titled Public Service Message two times. Since it has run twice, I do not want to run it anymore at this time.

This letter, though, is also to set on the record my objection to the term "advertisement" being placed within the black boundry of my public service message. I went to great lengths to insure that the public did not preceive this to be an advertisement for legal service. I am attempting to comply with the Florida Bar Rules governing public service announcements.

If any problem arises because of the term "advertisement" being placed within the black borders of my public service announcement, I expect that you will clarify that I never authorized the placement of the term "advertisement" in my public service announcement, that I never saw the term "advertisement" placed within or made a part of the black border around my announcement prior to the publication of last week's paper, and that this was a matter solely within your decision making responsibility.

Thank you for your help. I just wanted it made clear that I was not personally responsible for the term "advertisment" showing up at the top of my public service announcement so that no one can accuse me of advertising.

Cordially,