

IN THE SUPREME COURT OF FLORIDA

**In Re: Rules Regulating the Florida
Bar – Advertising Rules**

Case Number: SC05-2194

**Comment and Notice of Objection to Amendment of Bar Rules Regarding
Website Regulation; Request for Oral Argument; and Incorporated
Memorandum of Law**

Counsel was selected to serve on the Advertising Task Force. Current Bar Rules and the Advertising Task Force determined that web inquiries are considered to be information provided upon request and, therefore, are otherwise governed by the requirements of rule 4-7.9. The Board of Governors differs and proposed additional rule changes seeking to regulate the content of websites.

Summary

Efforts to restrict content on the Internet beyond the truthfulness standard and beyond compliance with all other bar rules are Unconstitutional. There is absolutely no record of complaints or bar grievances based upon existing websites. The Bar has no substantial interest in regulating an area where there is no record of harm.

History of Advertising Regulation

In 1995, the United States Supreme Court required regulation of lawyers' commercial speech to "directly and materially" advance a substantial interest in protecting the public from unlawful or misleading communications. Florida Bar v. Went For It, Inc., 515 U.S. 618, 624 (1995). In the matter before this Court there is no record of complaints regarding unlawful or misleading communications from websites. Even if there were such a record, the new regulations are not necessary, since existing Bar rules already address falsity.

In 1999, this Court rejected some amendments to the Advertising Rules. This Court rejected some amendments proposed by the last Advertising Task Force, after the Bar attempted to create a record of harm. The Task Force hired a

marketing firm and created the "Magid Study." In re; Amendments to Rules Regulating the FL Bar-Adver. Rules, 762 So.2d 392, 401 (Fla. 1999). This Court cautioned that "the rules we adopt today are as far as we can go under the established commercial free speech principles enunciated by the United States Supreme Court. To go further as suggested by the dissent would, in my view, threaten the validity of the entire regulatory scheme." Id at 404 (Overton, J. concurring). Mindful of this precedent and Justice Overton's warning, the Bar now risks invalidation of the entire advertising regulatory program in an unprecedented effort to regulate the Internet and communications between attorneys, their clients, and prospective clients.

In 2006, in order to Constitutionally further restrict free speech, there must be a substantial interest in addressing a likely harm. In the amendment process before this Court, there is no record of harm. There is no record of a complaint by a consumer or potential consumer of legal services. Consequently, there is no substantial interest, and thus no legal basis for restricting protected commercial speech. Where, as in some personal injury and common disaster cases, unsolicited information rained down upon vulnerable victims and their families; the newly proposed rules attempt to regulate content of information provided by attorneys to those who have willingly solicited or made inquiries about legal matters.

Internet Technology and the Definition of: HTTP

"[HyperText Transfer Protocol is t]he communications protocol used to connect to servers on the Web. Its primary function is to establish a connection with a Web server and transmit HTML pages to the client browser or any other files required by an HTTP application. Addresses of Web sites begin with an http:// prefix; however, Web browsers typically default to the HTTP protocol. For example, typing www.yahoo.com is the same as typing http://www.yahoo.com.

HTTP is a "stateless" request/response system. The connection is maintained between client and server only for the immediate request, and the connection is closed. After the HTTP client establishes a TCP connection with the server and sends it a request command, the server sends back its response and closes the connection . . ."

http://www.pcmag.com/encyclopedia_term/0,2542,t=HTTP&i=44501,00.asp

Users of the internet are requesting information and websites are responding to the requests. Interference in the communications between a person seeking legal

information and an attorney, without a showing of actual harm, treads into the content of attorney client communications.

Weblogs, Attorneys, and Free Speech

Weblogs are also websites. Many are published by attorneys. Sarasota's Robert Lincoln and St Petersburg's Matt Conigliaro are two notable Florida Attorney-Bloggers. Mr. Lincoln is Board Certified in Appeals. Mr. Conigliaro's website became an important source of information on the politically and legally charged Terry Schiavo case.

The Bar now seeks to regulate thousands of pages of core First Amendment speech including what these lawyers have written or will write to those requesting information about issues of the day.

Conclusion

I object and request oral argument before this Court

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and 9 copies were submitted to this court, that an electronic copy was submitted to efile@flcourts.org, and that a true and correct copy of the foregoing was served by mail on January 31, 2006, upon the following.:

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CERTIFICATE OF TYPE SIZE AND STYLE

Counsel hereby certifies that this petition is typed in 14 point Times New Roman Regular type.

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