

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR RE
PETITION TO AMEND RULES
REGULATING THE FLORIDA BAR –
RULE 4-7.6, COMPUTER ACCESSED
COMMUNICATIONS

CASE NO. SC08- ____

COMMENTS OF FLORIDA BAR MEMBER TIMOTHY P. CHINARIS

COMES NOW Florida Bar member Timothy P. Chinaris, who files the following comments in response to The Florida Bar’s Petition requesting that this Court amend Rule 4-7.6 of the Rules Regulating The Florida Bar, and states:

1. The undersigned is a member in good standing of The Florida Bar.
2. These comments are filed in response to the Notice published in the January 15, 2008, issue of the *Florida Bar News*.
3. The undersigned served as a member of the Florida Bar Special Committee on Website Advertising Rules. The following comments, however, are those of the undersigned individually.
4. The Florida Bar (the “Bar”) has petitioned this Court to amend the rules governing lawyers’ websites. According to the Bar, the proposed rules take an “intermediate position between full application of all lawyer advertising rules and no regulation of websites under the lawyer advertising rules.” Bar’s Petition, p. 2.

Although this “intermediate” position is a unique one in the context of lawyer advertising regulation, it is very appropriate for website regulation. Websites are a unique form of communication that should have specially tailored regulations. The Bar is to be commended for recognizing this reality.

5. This Court should approve the Bar’s proposal that websites not be required to be filed with the Bar for review. Because websites can be changed daily (or even more often) and can contain an almost limitless amount of information, such a requirement would be unduly burdensome and costly for filers, Bar staff, the Standing Committee on Advertising, and the Board of Governors.

6. This Court should approve allowing lawyers’ websites to contain information regarding past results, testimonials, and statements that describe or characterize the quality of the legal services being offered. This information, however, should be allowed to appear anywhere on the website. The Bar’s proposed Rule 4-7.6(b) makes a distinction between the homepage of the website (where such information would not be allowed) and all other pages of the website (where such information would be allowed). It is not clear from the Bar’s petition and accompanying documents why this distinction has been drawn. The undersigned would suggest that this distinction is not warranted.

7. Testimonials and information about past results can be very valuable information to prospective clients. Prospective clients want this information.

Existing Bar rules recognize this by allowing lawyers to provide this information to prospective clients who request it. Rule 4-7.1(f). Surveys of the public consistently show that most people would prefer to find a lawyer through a personal referral. Why do they prefer this method? Most likely it is because a personal referral allows the prospective client to hear a testimonial from someone who has used that lawyer and to obtain information from that person about the results that the lawyer achieved for him or her. Bar rules should permit lawyers to make this desired and useful information available through their websites.

8. It is possible, of course, that testimonials and information about past results could be misused by an advertising lawyer. This potential problem can be cured through the use of a required disclaimer statement, as the Bar has recommended in proposed Rule 4-7.6(b)(2).

9. Completely prohibiting websites from containing truthful, non-misleading testimonials and information about past results, even when accompanied by an appropriate disclaimer, would needlessly keep valuable and desired information from prospective clients. The United States Supreme Court has indicated that reasonable alternatives are preferable to a complete ban on a certain type of information. In *Bates v. State Bar of Arizona*, 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977), the Court rejected the Arizona State Bar's argument that an advertising prohibition was needed because advertising did not

provide a complete foundation on which to base a decision about hiring a lawyer.

The Court noted:

[I]t seems peculiar to deny the consumer, on the ground that the information is incomplete, at least some of the relevant information needed to reach an informed decision. The alternative – the prohibition of advertising – serves only to restrict the information that flows to consumers. Moreover, the argument assumes that the public is not sophisticated enough to realize the limitations of advertising, and that the public is better kept in ignorance than trusted with correct but incomplete information. We suspect the argument rests on an underestimation of the public. In any event, we view as dubious any justification that is based on the benefits of public ignorance. . . . Although, of course, the bar retains the power to correct omissions that have the effect of presenting an inaccurate picture, *the preferred remedy is more disclosure, rather than less.*

Bates, 433 U.S. at 374-75 (footnote and citation omitted) (emphasis added).

Although the *Bates* Court was dealing with price and availability information, the rationale of the decision is equally applicable to truthful testimonials and information about a lawyer's past results. See also *Shapiro v. Kentucky Bar Association*, 484 U.S. 466, 108 S.Ct. 1916, 100 L.Ed.2d 475 (1988) (targeted direct mail advertising by lawyers constitutionally may be subject to reasonable regulations but may not be categorically banned).

10. This Court should consider retaining the current requirement that lawyers' websites disclose the jurisdictions in which the lawyers are licensed to practice law. It is not necessary that this information appear on the homepage (as the current rule requires). The Bar has asked this Court to completely eliminate this disclosure requirement, stating that it proposes to do so "because of the

relative sophistication of computer users, who are conversant with the nature of the world wide web and unlikely to be misled that the lawyer may practice anywhere.” Bar’s Appendix C. While it is probably true that a viewer will not assume that the lawyer is licensed everywhere, the current disclosure requirement helps avoid any misunderstanding by assuring that useful information will be provided to the viewer without unduly burdening lawyers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by

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CERTIFICATE OF TYPE SIZE AND STYLE

I HEREBY CERTIFY that this document is typed in 14 point Times
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