

**IN THE SUPREME COURT OF FLORIDA**

THE FLORIDA BAR RE  
PETITION TO AMEND RULES  
REGULATING THE FLORIDA BAR 4-7.1  
LAWYER-TO-LAWYER AND LAWYER-TO-  
CLIENT COMMUNICATIONS

CASE NO. SC09-394

**COMMENTS OF BILL WAGNER  
AND REQUEST FOR CONSIDERATION OF  
PREVIOUS FILED COMMENTS**

Comes now Bill Wagner a member of The Florida Bar in good standing and respectfully submits the following.

On January 27, 2009, The Florida Bar submitted a “Report to the Court on Rule 4-7.1-Lawyer-to-Lawyer and Lawyer-to-Client Communications” (Case No. SC05-2194). On February 10, 2009, the undersigned submitted Comments of Bill Wagner to The Florida Bar’s Report to the Court on Rule 4-7.1-Lawyer-to-Lawyer and Lawyer-to-Client Communications and thereafter, on March 6, 2009, the undersigned submitted a supplement to the above comments (SC05-2194).

On April 1, 2009, a Notice was filed in *The Florida Bar News* advising that the Court invites all interested persons to comment on The Florida Bar’s proposed amendments to Rule 4-7.1(e) and Rule 4-7.1(g)(as re-designated in the proposal). These Comments are in response to the published proposal of April 1, 2009.

## **REQUEST FOR CONSIDERATION OF PREVIOUS SUBMISSIONS**

The undersigned respectfully requests that the Court consider as a part of this response, the Comments of Bill Wagner and the Supplement to the Comments of Bill Wagner described above, a copy of which are attached hereto as Exhibit A and Exhibit B.

## **SUPPLEMENTAL COMMENTS TO THE PROPOSAL**

The Florida Bar's now formally submitted Proposal, in addition to the deficiencies noted in the above-referenced Comments, suffers from a further deficiency created, and potentially amplified, by The Florida Bar's refusal to complete a comprehensive study and review of current regulation regarding "advertising" in the more modern framework of lawyer "marketing" of legal services.

"Communications between lawyers" of necessity include not only personal communications between lawyers known to each other by reason of previous legal relationships, but also the mass produced, mass delivered, hard sell, solicitation of business so commonly seen today in marketing efforts through brochures, magazines, and the internet. It is hard to see how these latter marketing efforts can be lumped together with the more usual communications between lawyers without a recognition that to do so condones and authorizes potentially the most outlandish marketing schemes conceived by marketing experts to reach not only 70,000

Florida lawyers, but potentially hundreds of thousands of lawyers throughout the country and, thereby, “market” lawyer services not only to lawyers, but to the clients of those lawyers nationwide.

To a somewhat lesser extent, the same comments might apply to “communications” with current clients, particularly in circumstances in which the “current clients” may include thousands and thousands of clients by reason of class action representation.

As noted in the above-referenced previous submissions, the unrestricted solicitation of business from former clients whether in the hundreds or potentially thousands, is also different than the examples suggested by The Florida Bar dealing with bringing former clients up to date with news of recent changes in the laws involved in previous representation of the former clients. Many communications with such former clients indeed are intended by marketing specialists to reach the families and extended families of former clients, their friends, their neighbors and their fellow workers.

### **CONCLUSION**

The Court should reject the proposed amendments and direct that The Florida Bar acknowledge the existence of aggressive marketing activities directed to lawyers, clients, and former clients, and distinguish that type of solicitation for

business from other more acceptable and more reasonable “communications”  
between lawyers, current clients, and former clients.

Respectfully Submitted:

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**BILL WAGNER**  
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Fla. Bar No 038998

CERTIFICATE OF SERVICE

I certify that a copy of the above was served by mail on \_\_\_\_\_, upon the following.:

Elizabeth Clark Tarbert  
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Bill Wagner

CERTIFICATE OF TYPE SIZE AND STYLE

Bill Wagner HEREBY CERTIFIES that this petition is typed in 14 point Times New Roman Regular type.

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