

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

THE FLORIDA BAR’S RESPONSE TO COMMENTS

The Florida Bar (the bar), through its undersigned counsel, respectfully requests that this court accept the bar’s response to comments filed on the bar’s report to the court on Rule 4-7.1 (lawyer-to-lawyer and lawyer-to-client communications) in case number SC05-2194. As grounds, the bar states as follows:

I.

The bar filed its report to the court on Rule 4-7.1 (lawyer-to-lawyer and lawyer-to-client communications) in case number SC05-2194 on January 27, 2009.

II.

Comments were filed by Mr. Bill Wagner on or about February 10, 2009.

III.

This court directed that an official notice of the proposed rule changes appear in the Florida Bar *News*, which was published on April 1, 2009.

IV.

This court directed that bar members be given until May 1, 2009 to file comments on the proposed rule amendments.

V.

Comments were filed by Professor Timothy P. Chinaris and the law firm of Searcy, Denney, Scarola, Barnhart & Shipley, P.A. which support the bar's position regarding the proposed rules amendments.

VI.

This court directed that the bar file any response to comments on or before May 21, 2009.

VII.

The bar provides the following response to the comments. No response is required regarding the comments in support of the bar's position. Mr. Wagner contends that the bar has done nothing to comply with this court's December 2007 order, in which this court requested that the bar "undertake an additional and contemporary study of lawyer advertising, which shall include public evaluation and comments about lawyer advertising, as recommended by Mr. Bill Wagner in his written and oral comments to the Court." *In re: Amendments to the Rules Regulating the Florida Bar - Advertising*, 971 So. 2d 763 (Fla. 2007 Case No. SC05-2194).

In Mr. Wagner's dissent to the final report of the Advertising Task Force 2004, Mr. Wagner states that the Board of Governors should:

- (a) Collect empirical information and other valid evidence about the current status of legal advertising and expected developments in the reasonable future.
- (b) Develop guidelines for the determination of the need for and extent of regulation of advertising by the legal profession. Tentative approval of the guidelines developed should be sought from the Board to assist in the balance of the labors which follow.
- (c) Evaluate the need for a complete revamp of current regulations governing legal advertising, and if such need is determined, propose revised Rules.

In response to Mr. Wagner's suggestions and the order of this court, the bar has done the following:

(a) Collection of Empirical Information

The bar's Board of Governors has approved a budget amendment to contract with the Florida Survey Research Center at the University of Florida to undertake a random sample telephone survey of adults in the state of Florida to determine contemporary public attitude towards lawyer advertising. Bar staff has conducted initial meetings with the Florida Survey Research Center and compiled information for the Florida Survey Research Center to assist it in formulating a questionnaire. Work continues on this project, and the bar expects results by the end of this fiscal year. Additionally, bar staff has polled other state bars on the availability of empirical information from other states.

b) Development of Guidelines on Advertising Regulation

The bar has sought and received input on the issue of goals of advertising regulation from the Citizens Forum, which advises the Board of Governors.

Additionally, the Board Review Committee on Professional Ethics, a subcommittee of the Board of Governors, has begun discussion on the same issue.

c) Evaluation of the Need to Revamp Current Advertising Rules

Bar staff has undertaken an internal review of the bar's processes to review attorney advertising. The Standing Committee on Advertising was informed of staff's progress and some initial recommendations at its September 11, 2008 meeting in Tampa. Bar staff continues this internal review and expects to report to the board, at which point, the board will determine whether to appoint a special committee or task force. The bar expects this study to be a lengthy process.

Mr. Wagner criticizes the survey of bar members regarding lawyer-to-lawyer communications. The bar's survey was not intended to address the issue of mass communications. It was intended to address the very narrow issue of communications from one lawyer to another regarding the first's services.

Lawyers therefore are the persons who would be able to respond to questions regarding such communications, as they are the intended recipients. Mr. Wagner also appears to criticize the methodology of the survey. The survey was conducted by the bar's Research, Planning and Evaluation Department. The director of that

department is trained in conducting surveys that are empirically sound. That department developed the actual questions used in the survey, conducted the survey of bar members on a random basis, and verified, coded, and tabulated the results.

Finally, Mr. Wagner contends that the bar should not be permitted to submit any further proposals regarding lawyer advertising regulation until the contemporary study requested by this court is complete. There are proposals already pending before the court on advertising rules amendments: the bar's report in this case, the bar's request for clarification and rehearing in case number SC08-1181, and the master rules package filed on October 7, 2008 (Case Number SC08-1890). The bar respectfully suggests that this court would provide a great service to the public and to bar members to determine those matters without delaying to obtain the results of the study. Additionally, the bar at this time has no intent to file amendments to the lawyer advertising rules out of cycle (other than those matters currently pending). Therefore the bar does not expect to request any amendments to the lawyer advertising rules beyond those pending until this court rules on the pending master rules package in case number SC08-1890, at the earliest. However, should an emergency arise, the bar respectfully suggests that neither this court nor the bar should be hampered by Mr. Wagner's suggestion that

no further amendments be made until a full and complete contemporaneous study of lawyer advertising regulation is accomplished.

WHEREFORE, the bar respectfully requests that this court enter an order accepting The Florida Bar's response to comments and respectfully requests that this court amend Rule 4-7.1, Rules Regulating The Florida Bar, in the manner requested in the bar's original petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed to the following this 21st day of May, 2009.

Elizabeth Clark Tarbert
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CERTIFICATE OF TYPE SIZE AND STYLE

THE FLORIDA BAR HEREBY CERTIFIES that this notice of appearance is typed in 14 point Times New Roman Regular type.

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