

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR RE
PETITION TO AMEND RULES
REGULATING THE FLORIDA BAR -
ADVERTISING RULES

CASE NO. SC09-394

**SUPPLEMENT TO
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**

Comes now Bill Wagner and respectfully submits this Supplement described above.

REASON FOR SUPPLEMENT

This Supplement is triggered by the Courts several decisions in *In Re: Amendments to the Rules Regulating the Florida Bar - Rule 4-7.6, Computer Accessed Communication*, SC08-1181, issued February 27, 2009.

The Opinions in the above case generated some oral comments to the undersigned to the effect that “the Court doesn’t understand how the Internet works.” The problem is that my request for elaboration of such comments brought forth very contradictory explanations. What one speaker praised as “clear understanding” the other criticized as “clear misconception.” Very likely this was the result of very different basic philosophies which burdened the thinking of the speakers involved. It of course may have been the result of ignorance on the part of the speakers, or even a failure of the speakers to understand how the Court works.

A few reasonable conclusions that could be reached from reading the opinions are:

(1) The Board of Governors' Citizens Forum, made up of non-lawyer members of the public, frequently reached conclusions which were in basic disagreement with interim and final proposals of various Bar committees and the Board itself.

(2) The Bar's final proposal represented a "compromise" solution reached by the Board, which solution was heavily influenced by compromise solutions reached by various committees of lawyers.

(3) There is scarce information presented to the Court about the expertise of those arguing for or against any proposed solution, and literally no objective evaluation of the real practical effect of any proposed solution on those intended to be protected by Rules presented to the Court; the general public.

(4) Faced with the confusion outlined above, the Court, thankfully, decided to do nothing.

AMENDED ARGUMENT

But the real issue facing the Court now is not one of "Computer Accessed Communications", or "Lawyer-to Lawyer and Lawyer to Client Communications" or even the narrow subject of "Advertising". What the Court

faces is the problem of a rapidly changing world of lawyer “Marketing” which involves all these subjects, and more¹.

While the original Comments mainly argued for the Court to require the Board to conduct broad based studies suggested by the Court in the past, the undersigned is now convinced that the real challenge the to Court is different. It is to devise a means by which fresh and current objective evaluations of the problems, if any, involving the marketing of lawyer services, can be made, and reasonable solutions presented to the Court to solve real problems.

The means selected should avoid if possible the solutions being tainted by the compromise that too frequently comes from well meaning but specially interested people serving on elected or appointed bodies which are attempting to self regulate their own profession. In the past the Court has adopted a solution to the problem. The Court, for instances, removed the jury instruction effort from the Board of Governors, allowing only comment and argument to be presented regarding submissions by specially appointed rules committees. In certain respects the admission of new lawyers is removed from Board participation as are amendments to the admissions rules. Clearly regulation of marketing is a

¹ Attached are two short articles on the subject from “The American Trial Lawyer Magazine” to which the undersigned subscribes. The undersigned is not a member of the American Trial Lawyers Association which publishes the magazine.

subject that involves not only unique expertise, but removal, as far as possible, from special interest influence.

AMENDED ADDITIONAL RECOMMENDATION TO THE COURT

The Court should create a specific Court supervised body charged with the Responsibility of studying, and to the extent necessary, recommending the regulation of lawyer marketing, and the enforcement of such regulations when needed. The inclusion of qualified members of the public should be considered.

Respectfully Submitted:

BILL WAGNER
601 Bayshore Boulevard
Suite 910
Tampa, FL 33606
813-225-4000
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
The Florida Bar
651 East Jefferson
Tallahassee, FL 32399

Timothy P. Chinaris
P.O. Box 210265
Montgomery, AL 36121

William Frederick "Casey" Ebasary, Jr.
P.O. Box 1550
Tampa, FL 33601

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.

BILL WAGNER
601 Bayshore Boulevard
Suite 910
Tampa, FL 33606
813-225-4000
Fla. Bar No 038998