IN THE
SUPREME COURT OF FLORIDA

Case No. SC11-1327

In Re: The Florida Bar's Petition to Amend
Rules Regulating The Florida Bar – Rule 4-7.6,
Computer Accessed Communications

Additional Comment of Carlton Fields, P.A., and Bilzin Sumberg Baena Price & Axelrod LLP Regarding Rules Proposed July 5, 2011

Introduction

Bilzin Sumberg and Carlton Fields are two of a group of 8 large firms that have filed extensive comments to the proposed rules and predecessor rules. This separate comment does not detract from our endorsement of the comments of the larger group.

The Proposed Rules Significantly Disadvantage Florida Lawyers

Bilzin Sumberg and Carlton Fields are essentially Florida-based firms, not national firms with substantial Florida offices. We write to point out that the proposed rules put Florida-based firms at a competitive disadvantage in the furnishing of information to sophisticated clients seeking representation who do not confine their search exclusively to Florida lawyers.

Both firms, and many other Florida-based firms, regularly are employed on matters centered in other states (and many non-Florida firms are employed on matters centered in Florida) in areas such as white collar criminal representation or advice, securities matters, tax matters, corporate mergers, international transactions, anti-trust matters and the like. Florida lawyers are known nationally because of matters of high profile in the media, but more important because of contributions to the profession through the American Bar Association, legal writing or other activities. A general counsel of an Alabama company in need of white collar criminal advice or an international transaction is as likely to seek help from a firm with a nationally known criminal or international practice as he is to seek it from an Alabama firm despite the fact that Alabama is where the case is pending or the client is located. Scenarios such as these are a substantial part of our practices. The clients are choosing from a national list of law firms, whether for work pending in New York or in Miami.

A client seeking such representation is almost certainly going to visit the websites of the firms he or she may be considering. Until now, with the courts uniformly treating such websites as information sought by the client, all firms are on a level playing field in providing information of use to such a client. With the proposed rule not permitting Florida lawyers to make truthful statements of fact on the website unless they are "objectively verifiable", the Florida firms may be at a

disadvantage, depending on what "objectively verifiable" means. If "objectively verifiable" means that the firm must be able to prove its statements to be true to the satisfaction of the Bar if requested, the problem disappears. A statement that a practice area of the firm has successfully negotiated a settlement in 20 tax cases can be established as true by an interview, reference to redacted client information, or, with client permission, a client interview. But if "objectively verifiable" means "able to be verified without reference to the firm making the statement", then the Florida-based firms are at a big, and unfair, disadvantage.

As an example of how this disadvantage would occur, suppose a Florida-based firm has a 10-person White Collar Criminal Law Practice Group and a National firm has a similar sized practice group centered in Washington D.C. Suppose that both practices are nationally recognized as among the best in the country and both regularly handle federal cases in a number of states. Suppose also that their practice groups have identical experience and both have websites that describe: (a) 50 cases tried to verdict in the last 10 years, 40 acquittals; (b) 50 cases settled without incarceration, and satisfactorily to the clients; (c) 50 cases handling corporate response to government investigations to the satisfaction of clients; (d) 50 private corporate investigations for independent board committees of clients. All statements are true and all are important information to a sophisticated corporate client requiring advice in the field.

Under the new rules, the Florida-based firm would have to remove information that is not "objectively verifiable" from its website. If that means that only the reported cases are "objectively verifiable" and the settled cases, confidential investigations and government investigations are not, then the Florida-based firm is at a disadvantage by that limitation in its presentation of its experience in the practice area. A corporate client seeking information on that practice area in a search of the website would not see such information on the website of the Florida firm but would see it on the website of the D.C. firm. As a result, the D.C. firm would appear to the prospective client to be preferred and may become the focus of the potential client's search to the exclusion of the Florida firm, whether the case/matter is in Florida or elsewhere.

This problem does not exist presently where the website is treated as information requested by the potential client. The website is not an "advertisement", meaning material reaching out to potential clients rather than matter searched for by the potential clients.

We understand the efforts of the proposed rules to accommodate constitutional problems with trying to apply Florida restrictions to non-Florida lawyers in national firms. However, multi-state firms with Florida offices can "get around" the above described Florida disadvantage by limiting its Florida lawyer's

biographies, but being expansive in its description of a practice group centered in D.C. of which its Florida lawyer is a member.

We continue to believe that the preferred rule is the present rule that treats websites – which a potential client after all must find and choose to search – should be treated as information sought by the client. The requirement that statements on the website be truthful and not misleading is already a given. The undersigned also asks that the Court note that the surveys of the public about "internet advertising" rarely differentiate between the irritating pop-up or banner ads and actual websites, and even where a member of the public has visited only one website. The crippling of all website information is not the solution.

If the Court is to apply advertising rules beyond the requirement of truthfulness to websites, the requirement that statements be "objectively verifiable" should be changed or defined to mean "provable to the satisfaction of the Bar if requested" or similarly to avoid a profound disadvantage to Florida lawyers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Additional Comment of Carlton Fields, P.A. and Bilzin Sumberg Baena Price & Axelrod LLP Regarding Rules Proposed July 5, 2011, has been furnished by U.S. Mail this 3rd day of August, 2011, to:

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CERTIFICATE OF COMPLIANCE
REGARDING TYPE SIZE AND STYLE

I HEREBY FURTHER CERTIFY, this 3rd day of August, 2011, that the type size and style used throughout the foregoing Additional Comment of Carlton Fields, P.A. and Bilzin Sumberg Baena Price & Axelrod LLP Regarding Rules Proposed July 5, 2011, is Times New Roman 14-Point Font.

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