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Amendments to Rules Regulating The Florida Bar

CHIEF JUSTICE: THE AMENDMENT TO THE RULES OF THE FLORIDA BAR RAY RULES OF PROFESSIONAL CONDUCT. GOOD MORNING.

GOOD MORNING. IF IT PLEASE THE COURT, I AM MICHAEL McMAHON WITH THE ACRE MAN SENTERFITT LAW FIRM. I APPEAR HERE TODAY IN MY CAPACITY AS CHAIRMAN ON SPECIAL INSURANCE PRACTICES. WE ARE HERE TO ANSWER ANY QUESTIONS THE COURT MAY HAVE WITH REGARD TO RULE PROPOSALS. I WOULD FIRST ADD THAT WE HAVE NO OPPOSITION, WE HAVE NO OPPOSITION WITH REGARD TO AN AREA OF LEGAL SERVICES THAT HAS BEEN TRADITIONALLY, HIGHLY EMOTIONAL, AND HAS ATTRACTED GREAT ATTENTION FROM ALL CORRIDORS. I BELIEVE WE HAVE NO OPPOSITION, TODAY, FROM EITHER ANY OF THE SEGMENTS OF THE PROFESSION NOR FROM ANY MEMBER OF THE INSURANCE INDUSTRY, BECAUSE WE HAVE ATTEMPTED TO HEED THE COURT'S TEACHINGS IN 1969, WHEN THE COURT SAID, WHEN THE FLORIDA BAR LOOKS AT THIS AGAIN, FOCUS ON WHAT IS IN THE PUBLIC INTEREST AND WHAT IS NEEDED TO SERVE CONSUMERS. LET'S NOT DISCRIMINATE AMONG DIFFERENT SEGMENTS OF THE PROFESSION. THAT IS WHAT WE HAVE ATTEMPTED TO DO, AND I BELIEVE THE LACK OF ANY OPPOSITION TO THESE PROPOSALS EVIDENCE THAT WE HAVE SUCCEEDED, TO SOME SIGNIFICANT DEGREE.

MY ONLY QUESTION TO YOU AS RELATED TO THAT, AND THAT IS ABOUT THE THOROUGHNESS OF THE VENTING OF THIS ISSUE AMONGST THE VARIOUS CONSTITUENCIES, AND CAN YOU GIVE US SOME THUMBNAIL SKETCH OF HOW THAT HAS TAKEN PLACE IN THIS CONTEXT, SO THAT WE FEEL GREAT CONFIDENCE, THEN, THAT INDEED ALL OF THE CONSTITUENCIES OR INTEREST GROUPS OUT THERE HAVE HAD THAT OPPORTUNITY TO EXAMINE THE BAR'S PROPOSAL AND, INDEED, THAT WE ARE IN THE HAPPY STATE OF WHERE YOU HAVE STATED HERE. COULD YOU GIVE US SOME THUMBNAIL SKETCH OF THAT.

SURE. FIRST, THE MEMBERSHIP WAS DIVERSE. WE HAD MEMBERS OF THE COMMISSION WHO WERE INDEPENDENT INSURANCE DEFENSE ATTORNEYS, AND WHO ARE STAFF ATTORNEYS. WE HAD MEMBERS OF THE COMMISSION WHO ARE PART OF THE PLAINTIFF'S BAR. WE HAD ATTORNEYS WHO HAVE NO INSURANCE PRACTICE OR PERSONAL INJURY-RELATED PRACTICE WHATSOEVER, MYSELF BEING ONE. WE, ALSO, HAD MEMBERS OF THE INSURANCE INDUSTRY WHO PARTICIPATED REGULARLY, AS NONMEMBERS, ADVISING ON BUSINESS ASPECTS OF WHAT OCCURRED, SO WE HAD A GOOD APPRECIATION OF THE REALITY OF WHAT THEY DO, AND HOW IT IMPACTS ON THE INSURANCE BUSINESS. WE REACHED OUT TO THE AC ADD MILE OF TRIAL -- ACADEMY OF TRIAL LAWYERS, TO THE ASSOCIATION OF DEFENSE ATTORNEYS, TO THE BAR AT LARGE, THROUGH NORMAL NOTICES, BUT WE SPECIFICALLY CONTACTED THE LAWYER ORGANIZATIONS THAT ARE GEARED PRIMARILY TO PLAINTIFFS PERSONAL INJURY REPRESENTATION AND TO INSURANCE DEFENSE REPRESENTATION, SPECIFICALLY TO GET THEIR VIEWS AND THEIR INPUT. WE HAD MUCH OF THEIR INPUT PREVIOUSLY. AS THE COURT IS AWARE, WE ORIGINALLY HAD A SPECIAL COMMISSION, A SPECIAL COMMITTEE THAT LOOKED AT OTHER ASPECTS OF INSURANCE PRACTICE, TWO YEARS AGO, AND WE HAD MUCH OF THE INFORMATION FROM THAT TIME THAT WAS DELIVERED TO US, WE WERE CONCERNED THAT, IF THERE WAS ANYTHING MISSING, THAT WE WOULD DO IT. THE WORD WE GOT BACK REPEATEDLY WAS YOU HAD EVERYTHING. WE CAN ADD TO IT OR HERE IS OUR INPUT, HERE ARE OUR AREAS OF CONCERN. THERE ARE CERTAINLY CONCERNS ABOUT MEMBERS OF THE PUBLIC BEING MISLED. THERE ARE CONCERNS AS TO WHETHER OR NOT THERE COULD BE A MISREPRESENTATION, COULD IT AFFECT THE TRUTH-FINDING PROCESS IN COURT IN SOME WAY. THESE CONCERNS WERE ADDRESSED. THEY CAME, WE

TRIED TO INVESTIGATE THEM AS THOROUGHLY AS WE COULD, AND WE TRIED TO FIND ANY EXAMPLES OF REAL WORLD HARM, AND THIS WAS THE REAL, BECOME THE REAL FOCUS.

OCTOBER. WHEN THIS RULE BECOMES EFFECTIVE, WHAT IS THE DEFENSE, WHAT CHANGE, SPECIFICALLY, IS THE DEFENSE LAWYER GOING TO HAVE TO UNDERTAKE, IN ORDER TO ONLY COMPLY WITH THIS RULE? IT IS NOT IN REGULAR PRACTICE AT PRESENT.

THE, THERE ARE A NUMBER OF INSURANCE DEFENSE STAFF FIRMS THAT DO NOT GIVE NOTICE ON THE RECORD IN COURT, AT THE TIME OF THEIR FIRST APPEARANCE. IT WOULD NOW BE REQUIRED IN EVERY CASE. SO THAT THERE IS DISCLOSURE IN EVERY CASE ON THE RECORD. THE DISCLOSURES THAT OCCURRED GENERALLY, TODAY, ARE ON LETTERHEAD, ON OFFICE SIGNAGE ON, BUSINESS CARDS, BUT NOT NECESSARILY IN TELEPHONE LISTINGS AND BAR LISTS, THINGS OF THAT NATURE, SO THE DISCLOSURE REQUIREMENT BECOMES MUCH MORE PERVASIVE THAN IT WAS BEFORE, BUT I THINK THE KEY ELEMENT IN WHAT WE HAVE PROPOSED AND THE ONE THAT WILL CAUSE, PARTICULARLY MANY OF THE SMALLER INSURANCE COMPANIES SOME CHALLENGES, IS MAKING IT SO CLEAR NO ONE CAN IGNORE IT, THAT IMPUTEED DISQUALIFICATION RULES APPLY TO INSURANCE STAFF FIRMS. THIS COURT, IN 1969, BASICALLY SAID, INSURANCE DEFENSE STAFF ATTORNEYS AND THE INSURANCE COMPANY CAN EXIST ALL TOGETHER UNDER ONE ROOF. AND WHAT WE ARE SAYING IS, IF YOU ARE GOING TO HAVE AN INSURANCE DEFENSE STAFF FIRM, YOU ARE GOING TO BUILD A WALL THAT SEPARATES THAT FIRM FROM THE REST OF THE LAWYERS IN THE INSURANCE COMPANY.

LET ME ASK YOU WHAT PLANS HAVE, ARE IN EXISTENCE FOR MAKING CERTAIN THAT THE WORD IS OUT THAT THIS IS SOMETHING THAT IS NOW GOING TO BE REQUIRED?

WORD IS WELL-KNOWN WITHIN THE INSURANCE INDUSTRY AND AMONG THEIR STAFF FERPS. I KNOW THERE ARE SEVERAL REPRESENTATIVES OF INDUSTRY ORGANIZATIONS IN THE AUDIENCE TODAY.

IS THERE ANY EFFORT, THOUGH, BEING MADE TO DO A CONTINUING LEGAL EDUCATION SEMINAR THAT WOULD SPECIFICALLY FOCUS ON THIS AND, REALLY, YOU KNOW, GET, SORT OF GET THE TRAVELING SHOW ON THE ROAD?

THIS IS ONE OF OUR COMMISSION'S RECOMMENDATIONS, YOUR HONOR. THE, IT WAS RECOMMENDED ORIGINALLY TWO YEARS AGO THAT THERE BE A SPECIFIC EDUCATIONAL PROGRAM DEVELOPED, GEARED TO THE NEEDS OF INSURANCE DEFENSE COUNSEL, BOTH IN-HOUSE AND INDEPENDENT COUNSEL. BECAUSE OF THE VERY DIFFICULT ISSUES THAT CAN ARISE. AND THE NEED FOR PEOPLE TO BE CONSCIOUS. THAT PROGRAM HAS NOT BEEN DEVELOPED BY THE BAR. IT WAS AWAITING THE ADOPTION OF THE INSURED CLIENT STATEMENT OF RIGHTS, WHICH CAME OUT THIS PAST SUMMER. I UNDERSTAND THAT PRELIMINARY WORK HAS BEEN DONE. IT WOULD CERTAINLY BE THE COMMISSION'S HOPE THAT THAT BORK WOULD BE BROADENED AND -- THAT THAT WORK WOULD BE BROADENED AND WOULD INCLUDE THE ROLE OF STAFF COUNSEL, AS WELL AS THE OTHER ISSUES THAT INSURANCE COUNSEL HAVE TO FACE, AND IT SHOULD BE A VERY THOROUGH EDUCATIONAL PROGRAM. WE VERY MUCH BELIEVE ON THE COMMISSION, AS WE LOOKED AT ALL OF THE COMPETING INTERESTS, THAT THE NUMBER ONE WAY TO MAKE SURE THAT THE PUBLIC IS PROTECTED IS FOR THE PUBLIC TO HAVE KNOWLEDGE OF THEIR RIGHTS AND FOR LAWYERS TO HAVE A CLEAR UNDERSTANDING OF THE DUTIES THEY HAVE IN THE SITUATIONS THAT ARISE, DAY IN AND DAY OUT.

ONE OF MY CONCERNS ABOUT RULES OF THIS KIND, AS IT IS WITH THE CONTINGENCY FEE RULE AND THE STATEMENT OF CLIENTS' RIGHTS UNDER THE CONTINGENCY FEE RULE, IS THAT, IF WE HAVE RULES LIKE THAT, THAT THEY ARE, HAVE TO BE ENFORCED, BECAUSE IF THEY ARE NOT ENFORCED, THEN ONLY THE LAWYERS THAT COMPLY ARE THE ONES THAT, IN EFFECT, I, ARE LIMITED IN WHAT THEY DO -- IN THE RULE. SO I THINK THAT THE WORD, I WOULD HOPE THAT THE

BAR WILL TAKE A VERY ACTIVE PART IN CIRCULATING THE INFORMATION THAT WE EXPECT WHATEVER RULES OF THIS KIND ARE ON THE BOOKS, THAT THEY ARE GOING TO BE ENFORCED. SO THAT THERE WILL NOT BE ANY MISUNDERSTANDING ABOUT THAT.

I THINK YOUR HONOR'S WORDS HAVE BEEN HEARD.

AND CLEARLY IT WOULD APPEAR THAT THE VOLUNTARY ASSOCIATIONS AMONGST THE MEMBERSHIP OF THE PARTICULAR INTEREST GROUPS, YOU MENTION THE DEFENSE LAWYERS AND THE PLAINTIFFS LAWYERS GROUPS AND EVERYTHING, SHOULD BE ENCOURAGED TO PARTICIPATE IN THIS EDUCATIONAL EFFORT. OBVIOUSLY IT IS TO THEIR CONSTITUENCIES' WELL-BEING TO DO THAT. ALL RIGHT.

I JUST HAD ONE QUESTION ABOUT THE, PART OF THE RULE THAT WOULD REQUIRE THE FIRM OR WHATEVER GROUP OF LAWYERS IT IS, TO MAKE SURE THAT, ON ALL OF THEIR LETTERHEAD, ADVERTISEMENTS, THOSE KINDS OF THINGS, THAT THEIR ASSOCIATION WITH THE INSURANCE COMPANY BE KNOWN. HOW, YOU CONTEMPLATE, THEN, AND SAY IT IS XYZ, PA, AND ON AN AD THEY WOULD SAY WORKING FOR ALLSTATE OR STATE FARM OR WHATEVER INSURANCE COMPANY IT IS, IS THAT WHAT WE ARE LOOKING AT?

A COMPLETE DISCLOSURE, AND A TYPICAL DISCLOSURE USED TODAY WOULD BE TO LIST THE FIRM NAME AND IMMEDIATELY UNDER IT, IN NOT TINY TYPE BUT IN VERY LEDGEABLE -- LEGIBLE TYPE, EXCLUSIVELY COUNSEL FOR XYZ INSURANCE COMPANY OR LAW DIVISION OF XYZ INSURANCE COMPANY, EMPLOYEES OF XYZ INSURANCE COMPANY, SO THAT IT IS VERY CLEAR THERE IS A EMPLOYMENT RELATIONSHIP, AND IT IS A UNITED RELATIONSHIP WITH THAT INSURANCE COMPANY, NOT A SEPARATE LAW FIRM. TODAY WE, YEARS AGO I THINK THERE WAS A REAL ISSUE ON THE BUSINESS CARDS AND LETTERHEAD. TODAY WE DO NOT FIND AN ISSUE ON THAT, IN TERMS OF THE DISCLOSURE. THE DISCLOSURE ISSUES THAT COME UP ARE MORE RELATED TO THOSE PERSONS WHO WOULD SEE A FIRM NAME IN A LISTING OR A DIRECTORY, AS OPPOSED TO THOSE WHO HAVE BEEN REFERRED TO THE LAWYERS THROUGH THE INSURANCE COMPANY.

WHAT KIND OF REGULATIONS DO WE HAVE THAT WILL DEFINE THAT DISCLOSURE?

WE HAVE NOT DEFINED IT SPECIFICALLY. WE ARE LEAVING IT TO THE PARTICULAR CIRCUMSTANCE, TO MAKE SURE IT IS FULLY AND ADEQUATELY DISCLOSED. BUT THE EXISTING ETHICS OPINIONS IN FLORIDA AND IN OTHER JURISDICTIONS TAKEN TOGETHER, MAKE CLEAR THAT IT NEEDS TO BE A DISCLOSURE AFTER EMPLOYMENT RELATIONSHIP, AND THAT IT IS A EX-EXCLUSIVE EMPLOYEES OF -- AND THAT IT IS EXCLUSIVE EMPLOYEES OF THAT COMPANY, NOT THAT THEY ARE MERELY CONNECT ODD SOME TYPE OF BASIS.

IS THERE SOME TYPE OF APPROVAL PROCESS, SO THAT ATTORNEYS AROUND THE STATE CAN CLEAR THESE THINGS WITH THE BAR OR WITH THE COMMISSION, BEFORE THEY START MARCHING OUT AND PRINTING UP, GOING TO THE EXPENSE OF PRINTING WHATEVER IT IS THEY HAVE TO DO, SO THAT THE PEOPLE REALLY KNOW WHAT THE RULES ARE?

YES. IT IS NOT A MANDATORY CLEARANCE PROCEDURE. BUT THEY CAN DO SO THROUGH THE NORMAL BAR STAFF ADVISORY SERVICES.

WHAT IS THE, ON THE PLEADING, WHAT WOULD BE THE, HOW DO YOU ENVISION A PLEADING, A LAWYER SIGNS, THERE IS THE BARNUM REQUIRED. WHAT ELSE WOULD BE ON THE PLEADING THAT WOULD DISCLOSE THE FACT THAT THE LAW FIRM IS REALLY A LAW FIRM FOR AN INSURANCE COMPANY?

THE, WE WOULD NOT HAVE THAT DISCLOSURE ON ALL PLEADINGS, BUT WE WOULD AT THE BEGINNING OF EACH CASE, AT THE TIME THE ATTORNEY APPEARS, A SPECIFIC NOTICE T COULD

BE INCORPORATED INTO THE NOTICE OF APPEARANCE OR IT COULD BE A SEPARATE NOTICE, BUT IT WOULD NEED TO SPECIFICALLY STATE THAT SMITH AND ASSOCIATES IS THE LEGAL DIVISION OF XYZ INSURANCE COMPANY, COMPOSED OF SALARIED STAFF ATTORNEYS.

WHAT IS THE PURPOSE BEHIND THAT REQUIREMENT? ANOTHER PURPOSE BEHIND THAT IS, REALLY, TO DEAL WITH SITUATIONS THAT HAVE ARISEN IN DADE COUNTY, WHERE THERE WAS A MISUNDERSTANDING BY A COURT, AS TO THE STATUS OF A LAW FIRM APPEARING IN FRONT OF THE COURT, AND WE FOUND THAT, IN DEALING WITH THE INDUSTRY, THAT THERE IS GREAT CONCERN OF HAVING A GENERAL DISCLOSURE ON PLEADINGS, BECAUSE OF THE RISK OF IT GETTING IN FRONT OF A JURY, BUT THAT MANY OF THEM ALREADY MAKE THAT DISCLOSURE, AND SEEING THAT THERE HAVE BEEN NO ADVERSE EFFECTS, IN TERMS OF JURY DISCLOSURE, FROM THAT KIND OF NOTICE, THE INDUSTRY FOUND IT ACCEPTABLE TO MAKE IT A UNIVERSAL REQUIREMENT, A AND SO WE DID SO. -- AND SO WE DID SO. IT TOOK CARE OF THOSE THAT WERE CONCERNED OF THE COURT GETTING MYSELF LED OR A LACK OF OPENNESS AND CANDOR WITH THE COURT.

CHIEF JUSTICE: ALL RIGHT. THANK YOU VERY MUCH FOR COMING HERE TODAY TO ANSWER OUR QUESTIONS. OKAY. THE COURT WILL NOW STAND IN RECESS.