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**In re: Florida Bar Rules – Computer Access to Communications**

**SC08-1181**

FLORIDA SUPREME COURT  
TUESDAY, JANUARY 06, 2009

CASE NO. SC08-1181

IN RE: AMENDMENTS TO THE RULES  
REGULATING THE FLORIDA BAR

>>> PLEASE RISE.

LADIES AND GENTLEMEN, THE  
FLORIDA SUPREME COURT.  
PLEASE BE SEATED.

>> THE LAST CASE ON OUR AGENDA  
FOR TODAY IS THE AMENDMENTS  
TO THE RULES REGULATING THE  
FLORIDA BAR RULE 4-7.6.

>> GOOD MORNING --

>> MAY IT PLEASE THE COURT.

I AM CHOBEE EBBETS ON BEHALF OF  
FLORIDA BAR ACCOMPANIED BY BAR  
COUNSEL ELIZABETH CLARK  
TARBERT.

>> YOU ARE A PROPONENT OF THIS  
PROPOSED --

>> YES I WAS -- I WAS VICE CHAIR  
OF THE -- A LITTLE BIT OF  
HISTORY QUICKLY, IF I MAY, YOUR  
HONOR.

I WAS VICE CHAIR OF THE  
ORIGINAL TASK FORCE ON  
ADVERTISING.

THAT WAS IN 2004.

I WAS BEFORE THIS COURT IN  
2006, TO BRING THOSE  
RECOMMENDED CHANGES TO THE  
COURT.

>> COULD YOU BECAUSE --  
ORIGINAL TASK FORCE WANTED TO  
TAKE -- AS I RECALL, THEY  
WANTED TO HAVE ALL-- WHAT THEY  
HAVE, HOME PAGES BE JUST EXEMPT  
FROM ADVERTISING.

>> WELL, SPECIFICALLY, WE WERE  
GOING TO REFERENCE IT AS  
INFORMATION UPON REQUEST.

>> AND, THEREFORE --

>> BUT WERE YOU GOING TO  
TREAT IT AS IF THE CLIENT HAD  
-- SOME --

>> YES, YOUR HONOR.  
>> WOULD IT HAVE EXEMPTED  
IT?  
>> YES, YOUR HONOR.  
>> WAGNER FILED A COMMENT, AND  
-- IT WAS -- THEN, OKAY, GO FROM  
THERE.  
>> THAT IS WHAT -- AND I  
APPRECIATE YOU LETTING ME DO  
THAT, YOUR HONOR.  
I REALLY THINK  
IT IS IMPORTANT FOR ME TO GIVE  
A LITTLE BIT OF HISTORY.  
I, ALONG WITH ELIZABETH, WE HAVE  
LIVED THROUGH THIS 3 1/2  
YEARS.  
>> WHILE GIVING THIS, I REALLY  
WANT YOU TO -- TELL US WHY IN  
A SITUATION WHERE THE  
POTENTIAL CLIENT IS GETTING  
EVEN MORE INFORMATION THERE IS  
NO -- WHY YOU BELIEVE THERE  
SHOULD BE NO SUBMITTAL TO THE  
BAR, AND WE ARE LETTING EVEN  
MORE INFORMATION IN THAT IS  
--  
>> I WILL ABSOLUTELY ADDRESS  
THAT.  
>> I THINK IT WOULD BE HELPFUL  
IF COULD I USE A COUPLE MINUTES  
OF TIME FOR HISTORY.  
I THINK  
IT IS SO IMPORTANT.  
THE ORIGINAL TASK FORCE WAS  
CHARGED WITH LOOKING AT THE  
OVERALL ISSUE OF LEGAL  
ADVERTISING.  
WE HAD A COMMITTEE MADE UP OF  
STATEWIDE MEMBERS OF THE BAR,  
VERY BRIGHT PEOPLE.  
AND WE SPENT MANY, MANY HOURS  
REVIEWING THE ISSUES.  
I WAS VICE CHAIR OF THAT TASK FORCE.  
THAT IS WHY I PRESENTED ARGUMENT TO  
THIS COURT PREVIOUSLY.  
I WILL TELL YOU, AS THE VICE  
CHAIR THE MOST DIFFICULT ISSUE  
THAT WE GRAPPLED WITH AS A  
TASK FORCE WAS WEEKS, AFTER  
HOURS AND HOURS AND HOURS OF  
DEBATE WE COULD NOT  
LAND ON ACCEPTABLE COMPROMISE,  
AND THAT IS HOW IT FELL INTO  
THAT WE MUST THEN TREAT IT

AS INFORMATION UPON REQUEST,  
THAT WAS THE ONLY THING WE  
COULD REACH CONSENSUS ON.  
WE THEN WENT TO OUR BOARD OF  
GOVERNORS AND, AS POINTED OUT  
IN THE BRIEF FOR THE BAR, WE  
HAD TWO LOUD RESPONSES TO THAT  
SUGGESTION AND RECOMMENDATION.  
ONE WAS FROM OUR CITIZENS  
FORUM, AND I PRESENT THAT TO  
YOU BECAUSE I AM A STRONG  
ADVOCATE OF THE IMPORTANCE OF  
THE CITIZENS FORUM TO THE  
FLORIDA BAR.

AND I HAVE BEEN  
HISTORICALLY ON COMMUNICATION  
ACADEMY INTERACTING WITH THEM  
FOR THE LAST EIGHT YEARS, AND  
I WILL TELL YOU -- THAT THEY  
HAVE REPEATEDLY SAID PLEASE, AS  
CONSUMERS, AS CITIZENS, PROTECT  
US AS MUCH AS YOU CAN WITH THE  
INTEGRITY OF YOUR PROFESSION  
FROM FALSE, MISLEADING  
INFORMATION, THEIR REACTION TO  
THE PROPOSAL, BE IT INFORMATION  
ABOUT REQUEST WAS WE THINK  
YOUR WEB SITES SHOULD BE  
TREATED JUST AS THE REST OF  
YOUR LEGAL ADVERTISING IS,  
THAT WOULD BE OUR THOUGHTS, AS  
YOUR CITIZEN FORUM.

WE THEN PRESENTED THAT TO THE  
BOARD OF GOVERNORS, AND THE  
BOARD OF GOVERNORS SAID WE DO  
NOT ACCEPT IT BEING  
INFORMATION UPON REQUEST.

THE SPECIAL COMMITTEE WAS  
APPOINTED, I WAS APPOINTED ITS  
CHAIR, WE HAD 12 MEMBERS,  
AGAIN, THROUGHOUT THE STATE OF  
FLORIDA --

>> SPECIAL COMMITTEE WAS THEN  
JUST TO STUDY.

>> JUST 4.7, YES, YOUR HONOR,  
JUST FOR THE WEB SITE, SO WHEN  
WE CAME BEFORE THIS COURT AND  
PRESENTED TO YOU OVERALL  
ADVERTISING RULE CHANGES, IN  
YOUR DECISION YOU STATED WE  
ARE NOT GOING TO ADDRESS WEB  
SITE ADVERTISING, AS LONG AS  
THE FLORIDA BAR HAS NOW  
APPOINTED A SPECIAL COMMITTEE

TO DO THAT WE WANT TO HEAR  
WHAT THE SPECIAL COMMITTEE HAS  
TO SAY.

FRANKLY, WHEN I WAS  
BEFORE THIS COURT PREVIOUSLY,  
WITH THE OVERALL RULES  
EXPECTING A LOT OF QUESTIONS  
ABOUT OTHER ASPECTS OF THE  
RULE CHANGES WE PROPOSED, YOUR  
HONOR PRESENTED MOST OF THE  
TIME IN QUESTIONING ON THIS  
VERY SUBJECT OF WEB SITES.  
SO NOW LET ME ANSWER THE  
CHIEF'S QUESTIONS.

WE HAVE  
NEVER, FIRST OF ALL, EVER ASKED  
FOR A WEB SITE, SO-CALLED WEB  
SITE REALLY SHOULD BE INTERNET  
BASED COMMUNICATIONS -- AND  
SO-CALLED LEGAL ADVERTISING.  
WE HAVE NEVER ASKED LAWYERS TO  
SUBMIT THEIR WEB SITES TO THE  
BAR EXCEPT FOR A BRIEF PERIOD  
WERE WE DIDN'T HAVE A RULE.  
AND DURING THAT PERIOD THE  
OPINIONS FROM THE BAR WERE  
THAT UNTIL WE HAD A RULE  
LAWYERS WOULD HAVE TO SUBMIT  
THEIR PROPOSALS, BUT IT NEVER  
WAS SOMETHING THAT ACTUALLY  
WENT INTO PLAY.

BECAUSE THERE WAS NO WAY TO  
ENFORCE SUBMISSIONS OF TENS OF  
THOUSANDS OF WEB SITES.

>> WHAT'S INTERESTING, YOUR  
PROPOSAL THAT IS ON WEB SITES,  
THEY CAN DO THREE THINGS THAT  
THEY CAN NOT DO IN OTHER  
ADVERTISING.

>> ABSOLUTELY RIGHT.

>> THEY CAN HAVE TESTIMONIALS,  
THEY CAN HAVE RESULTS THAT  
HAVE BEEN OBTAINED, AND THE  
OTHER ONE ESCAPING ME RIGHT  
NOW.

BUT SINCE WE ARE ALLOWING  
THOSE -- AND YOU DON'T EVEN THINK  
IT IS FEASIBLE TO SEE THOSE  
BEFORE THEY ARE PUT ON A WEB  
SITE?

>> WELL, HERE IS -- NO, THE  
ANSWER IS WE HAVE -- IF  
WE DID WE WOULD HAVE TO ASK  
LITERALLY 30 OR 40,000 LAWYERS

TO SUBMIT, IF THAT IS WHAT THEY CHOOSE TO DO, THEIR PORTION OF A WEB PAGE THAT COULD BE -- LET ME GO THERE FOR A MINUTE, YOUR HONOR.

I THINK THIS IS VERY IMPORTANT.

I WANTED TO GIVE THAT HISTORY.

WE HAVE COLLECTIVELY LOOKED AT THAT, 25 LAWYERS, BOARD OF GOVERNORS WITH COUNTLESS HOURS ANSWERING THESE QUESTIONS FOR OURSELVES.

EXAMPLE.

FOR THAT QUESTION, A WEB PAGE OR A WEB SITE IS NOT JUST ONE PAGE, AS WE CALL THE HOME PAGE, IT IS THE FIRST PAGE, IT CAN BE TENS OR HUNDREDS OF PAGES BEHIND IT, DEPENDING ON HOW LARGE THE FIRM IS OR JUST HOW MUCH INFORMATION THEY WOULD WANT TO PUT BEHIND IT.

SO, THEORETICALLY, WITH LARGE LAW FIRMS, WITH MANY LAWYERS, WITH MANY BIOGRAPHICALS, MANY DIFFERENT EXPERIENCES, MANY DIFFERENT CASE RESULTS, THERE COULD BE UNLIMITED INFORMATION. IT WOULD BE COUNTLESS HOURS FOR JUST REVIEWING ONE WEB SITE, IT IS REVIEWING ONE WEB SITE, PHYSICALLY IMPOSSIBLE TO

--

>> [INAUDIBLE]

I YOU KNEW YOU WERE GOING TO SAY THAT, YOUR HONOR; YOU DID THE LAST TIME.

>> I KNOW FOR SOME REASON, FOR SOMETHING THAT IS ONE THING, BUT TO SAY LOOK, THIS IS --

>> I KNEW I WOULD WALK INTO THAT --

>> -- [INAUDIBLE] RADIO, EVERYTHING THAT -- IF THIS IS A UNMANAGEABLE PROCESS, ONE, AND TO SAY -- THE REASON FOR THIS -- CAN'T DO THAT, TO ME NOT A LEGAL SOUND REASON, SO IT IS A REASON THAT 25 LAWYERS CAME UP WITH, CITIZENS AT THE STATE SAY WE WANT --

[INAUDIBLE]

>> WELL, JUSTICE LEWIS, I KNEW THAT, I UNDERSTOOD THIS. I'VE BEEN HERE BEFORE, AND I KNEW THAT WAS GOING TO BE THE REACTION OF THE COURT.

OR AT LEAST PART OF THE COURT, AND I UNDERSTAND WHAT YOU ARE SAYING.

BUT WE HAVE TO LOOK AT THE -- LET ME TELL YOU WHAT I DID AS CHAIR.

I SAID TO THE COMMITTEE MEMBERS I WANT TO DIVIDE US INTO FOUR AREAS, THIS -- I WANT TO UNDERSTAND HOW IMPORTANT, LET'S HAVE A CONSTITUTIONAL REVIEW.

SEVERAL LAWYERS LOOKED AT CONSTITUTIONAL ISSUES, PRESENTED ARGUMENT TO US --

>> [INAUDIBLE]

>> I SAID, LET'S LOOK AT WHAT OTHER STATES ARE DOING, LET'S KNOW EVERYTHING THE OTHER STATES ARE DOING IN THE ABA. LET'S HAVE AN INTER -- TRADITIONAL STATE REVIEW, THEN LET'S LOOK AT THE ENFORCEMENT ISSUES, AND WE ASKED PEOPLE TO EXAMINE THAT AND THEN WE ASKED LAWYERS WITH

TECHNICAL ABILITIES ASKED OUR I.T., PEOPLE GIVE US THE TECHNOLOGICAL COMPLICATIONS OF ISSUES AS MUCH AS IT COULD BE LOOKED AT, IT WAS LOOKING AT IN MULTIDISCIPLINED APPROACH, IN THE DISCIPLINED APPROACH, IN THE END I GO BACK TO WHAT I SAID TO YOU.

THAT IS: ASKING LAWYERS WHO HAVE WEB SITES TO SUBMIT THEIR TESTIMONIALS, AND THE OTHER THING IS PAST RESULTS, OR -- YOU KNOW.

>> QUALITY OF THEIR --

>> [INAUDIBLE]

>> SORRY, YOUR HONOR.

>> THE QUALITY OF THEIR LEGAL SERVICES.

>> THE THIRD THING THAT YOU ARE NOW ALLOWING TO GO ON WEB PAGES THAT CAN'T GO ON OTHER

THINGS, I MEAN THAT IS WHAT YOUR PROPOSAL IS.

>> OUR PROPOSAL IS THIS.

I KNOW IT -- I'M NOT TRYING TO BE OVERLYSIMPLISTIC.

OUR PROPOSAL IS THAT THE HOME PAGE WOULD BE -- WHICH IS WHAT THE WORLD SEES, WHEN YOU FIRST ACCESS A LAW FIRM OR LAWYER'S WEB SITE THE HOME PAGE WOULD MEET REQUIREMENTS OF THE FLORIDA BAR THERE WOULD NOT BE TESTIMONIALS ON IT, THERE WOULD NOT BE TEST RESULTS, THERE WOULD NOT BE "WE ARE AN OUTSTANDING FIRM" OR QUALITY OF SERVICES ASSURANCES.

WE LOOKED AT THAT AND SAID THAT THAT PART CAN BE FOUND ACCIDENTALLY, IF I

MAY FOR A VERY BRIEF

EXAMPLE, MY NAME IS EBBETS, FROM EBBETS FIELD.

YOU COULD PUT EBBETS, LOOKING FOR EBBETS FIELD AND FIND CHOBEE EBBETS, ATTORNEY.

PEOPLE GET TO LAWYERS

BY PIT BULL, IF YOU WILL.

IN THE PAST WHEN YOU DEALT WITH --

>> TO THAT I THINK -- LET ME -- YOU HAVE A LIMITED TIME I KNOW YOU ARE -- WHAT YOU WOULD DO IF THEY GET PAST THAT THEN --

>> THEN TREAT THAT AS INFORMATION UPON REQUEST.

>> TREATING --

>> -- [INAUDIBLE]

HUNDRED MEMBERS -- AND BAR DOES NOT GO INTO -- LAW

[INAUDIBLE] EVERYONE --

>> THAT IS RIGHT.

>> WE HAVE THE STATEMENT THAT COMES IN FROM THE MEMBERS OF THE BAR THAT I PROVIDE WITH THE RULES, AND SOMEBODY DOES NOT, THEN TAKES WHEN WE HAVE PROBLEMS I THROW THAT OUT TOO, IT IS IMPOSSIBLE TO REALLY --

[INAUDIBLE] WE CAN'T --

THEREFORE, THERE IS NO VALID REASON TO --

>> I AM GOING -- I AM REALLY GOING TO SAY THIS AND TRY TO EXPRESS MYSELF DIRECTLY.

FIRST OF ALL, IF WE TREAT IT AS INFORMATION UPON REQUEST, A LAWYER IS ALLOWED TO SEND, A CLIENT SAYS I WOULD LIKE INFORMATION ON YOUR LAW FIRM. A LAWYER IS ALLOWED TO SEND TO THAT PERSON, WELL, HERE'S OUR LAWYERS, BY THE WAY, WE HAVE GOTTEN PAST RESULTS.

WE DON'T ASK THE LAWYERS TO SUBMIT THOSE --

>> I THINK WHY JUSTICE LEWIS JUMPED ON YOU, WHAT YOU SEEMED TO SAY, THE REASON WE DECIDED NOT TO PERMIT IT, THIS, BECAUSE IT WAS ABOUT THE FEES, IF -- NOW MY

ARGUMENT ON THIS WOULD BE, WHEN YOU GET PAST THE HOME PAGE I THINK YOU WERE GETTING THERE -- YOU GET PAST THE HOME PAGE, INTO THE INDIVIDUAL PARTS OF THE INTERNET, IT IS MORE LIKELY THAT AT THAT POINT THE PROSPECTIVE

CLIENT IS LOOKING FOR INFORMATION ABOUT THE PERSON, AND IN THAT INFORMATION CAN BE PAST RESULTS, AND ALL OF THOSE OTHER THINGS.

I THINK THAT WHAT I WOULD LIKE TO KNOW -- QUICKLY -- YOU COULD FIND IN YOUR 12-MEMBER COMMISSION, AND WHATEVER YOU -- DID YOU REVIEW WEB SITES TO SEE IF THERE LOOKED TO BE ABUSES IN TERMS OF EXAGGERATIONS?

DID YOU HEAR FROM CITIZENS WHO SAID THAT THEY HAD BEEN MISLED? DID YOU THINK ANY KIND OF TESTIMONY ABOUT THE PUBLIC FORUM ASPECT OF THOUSANDS OF WEB SITES THAT ARE ON -- DO WE HAVE ANY THAT HAVE THAT IN THE RECORD?

THAT WOULD BE THE THING THAT WOULD CONCERN ME MOST AS TO WHAT KIND OF REGULATION WE NEED, AND THERE IS NOBODY HERE AGAINST THIS, SO IT IS KIND OF -- DIFFICULT FOR US.

DID YOU  
GET TESTIMONY PUBLIC HEARINGS  
SO WE KNOW IF IN FACT  
THESE WEB SITES ARE BEING USED  
IN A RESPONSIBLE WAY -- BASIC  
FOR PEOPLE THAT ARE LOOKING  
FOR A LAWYER, OR THEY ARE  
BEING USED IRRESPONSIBLE --  
>> WE DON'T HAVE THAT  
EMPIRICAL DATA.

WE DID  
EXTENSIVE PUBLICATION INVOLVED,  
ASKED CITIZENS AND THE LAWYERS TO  
ATTEND PUBLIC MEETINGS OF THE  
COMMITTEE.

WE DID HAVE  
RESPONSES, WE HAD IT THE FIRST TIME  
WITH A TASK FORCE, WE HAD IT  
THE SECOND TIME WITH A SPECIAL  
COMMITTEE --  
>> WHEN YOU WERE LOOKING AT WHAT  
OTHER STATES WERE DOING --

>> OTHER STATES HAVE TREATED --  
JUSTICE WELLS, ALL STATES,  
VIRTUALLY ALL STATES ARE  
LOOKING AT INTERNET BASED OR  
WEB BASED -- COMMUNICATIONS AS  
LEGAL COMMUNICATIONS, AND  
SUBJECT TO SOME TYPE SIMPLIFIED  
RULE.

AND MANY STATES ARE GRAPPLING  
WHIT WHAT WE ARE  
GRAPPLING WITH TODAY IN VARIOUS  
FORMS.

OUR PROPOSAL IS A UNIQUE  
LOOK AT TRYING TO TREAT THE  
HOME PAGE AS THE PLACE WHERE  
PEOPLE FIRST HAVE ACCESS AND  
TREATING THE REST OF THE WEB  
SITE AS INFORMATION UPON  
REQUEST.

>> WHY COULDN'T YOU DO WHAT  
JUSTICE LEWIS MIGHT BE  
SUGGESTING, REQUIRE A  
STATEMENT EVERY YEAR BY THE  
LAWYER WHEN THEY SEND IN THEIR  
THING, THAT WE ARE KEEPING  
THIS WEB SITE -- HERE IS OUR  
ADDRESS, AND WE AFFIRM THAT WE  
ARE IN COMPLIANCE IN THIS WAY.  
THAT WAY, IT IS NOT A  
SUBMISSION IT IS -- 40,000 A  
YEAR, IT IS -- IF COMPLAINTS  
YOU HAVE THEIR SWEARING THAT

THEY HAVE BEEN ACTING APPROPRIATELY, YOU HAVE THEIR AFFIRMATIVE OBLIGATION THAT WE ARE TAKING THIS SERIOUSLY SO THAT --

>> WE ACTUALLY -- JUSTICE PARIENTE, WE ACTUALLY DID. ACTUALLY, JUSTICE LEWIS, WE LOOKED AT THAT, MANY TIMES, WHEN WE ARE GRAPPLING WITH RULES LIKE THIS, WE COULD ADD ALMOST TO EVERY RULE THAT A LAWYER AGREES TO GOVERN HIMSELF OR HERSELF BY THAT CLAUSE, I PROMISE I WILL KEEP MY TRUST ACCOUNT, I PROMISE I WILL NOT DO IMPROPER ADVERTISING, I PROMISE I WILL NOT --

>> WHAT PERCENTAGE OF THOSE? WHAT PERCENTAGE?

>> SORRY, YOUR HONOR?

>> DO YOU HAVE ANY IDEA AS --

>> HOW MANY PEOPLE HAVE WEB SITES?

>> NO, HOW MANY PEOPLE SIGN THAT CERTIFICATE AND SUBMIT IT TO THE FLORIDA BAR?

BECAUSE THE LAST TIME THAT CAME UP WHILE I'VE BEEN HERE, EIGHT OR NINE YEARS AGO, IT WAS A SMALL PERCENTAGE OF PEOPLE THAT ACTUALLY SIGNED THAT FORM.

>> I'M NOT -- ELIZABETH, DO YOU HAVE INFORMATION ON THAT?

>> I DON'T KNOW THE ANSWER TO THAT QUESTION, JUSTICE WELLS, BUT DO I KNOW THAT WE DO PUT IT ON THE MEMBERSHIP FEES STATEMENT EVERY YEAR, WE DO GET A SIGNIFICANT PORTION OF THOSE THAT ARE RETURNED.

I DO KNOW THAT.

ALSO THAT WE GET A SIGNIFICANT PORTION THAT ARE NOT RETURNED, SIGNED PROPERLY.

>> UNDER THE PROPOSED RULES CAN UNSOLICITED E-MAILS BE SENT WITH LINKS TO THE WEB SITE?

>> THE -- I DON'T THINK SO.

>> WELL, YOU -- YOU MAY SEND AN UNSOLICITED E-MAIL, BUT

MUST FOLLOW THE UNSOLICITED  
E-MAIL RULES WHICH SAY THAT --  
THEY ARE VERY STRICT.  
THEY REQUIRE YOU TO TAKE THE SAME  
PROCESSES AS YOU WOULD  
BASICALLY WITH DIRECT MAIL.  
>> CAN HAVE A LINK TO --  
>> THERE IS NO PROHIBITION IN  
RULES WOULD STOP YOU FROM  
HAVING A LINK.  
>> SEEMS LIKE IF WE'RE GOING  
TO HAVE A WEB SITE THAT HAS  
BEHIND-THE-HOME-PAGE  
TESTIMONIALS, OBVIOUSLY, YOU CAN  
NOW PUMP VIDEOS, AND AUDIOS LIKE  
WATCHING TV OR RADIO, SO IT IS  
GOING JUST LIKE AN INFOMERCIAL.  
SO IF YOU HAVE AN UNSOLICITED  
E-MAIL GOING TO SOMEONE WITH A  
LINK, SOMEONE CLICKS ON IT AND  
ALL OF THE SUDDEN RIGHT THERE,  
RIGHT THERE IN THE WEB SITE,  
LOOKING AT THE SAME THING AS  
WHAT YOU WOULD SEE ON TV OR  
RADIO, THAT SEEMS THAT -- DID THE  
COMMITTEE ADDRESS THAT  
TYPE OF SITUATION AT ALL?  
>> JUSTICE POLSTON, I THINK AS  
JUSTICE PARIENTE IS POINTING OUT,  
THERE IS AN ELEMENT OF VOLITION  
THERE, YOU HAVE TO CLICK, TO GO TO THE  
WEB SITE YOU HAVE TO TAKE AN  
ADDITIONAL STEP TO LOOK AT  
ITEMS.  
THAT IS ONE REASON, IN  
ADDITION TO RESOURCES, THIS  
YEAR AS TO WHY THE TASK FORCE  
AND ULTIMATELY THIS SPECIAL  
COMMITTEE DECIDED TO TREAT IT AS  
INTERMEDIARY --  
>> AT SOME LEVEL IT STARTS TO  
SEEM LIKE WATCHING TV OR RADIO  
YOU HAVE TO TAKE AN AFFIRMATIVE  
STEP, TURNING YOUR TV ON AND  
YOU HAVE TO TAKE THE AFFIRMATIVE  
STEP OF SITTING THERE WATCHING  
IT SO THERE IS SOME TYPE OF  
AFFIRMATIVE ACTION REQUIRED  
IN EVERYTHING.  
IF YOU GET  
UNSOLICITED E-MAIL, AND IT HAS  
A LINK RIGHT THERE, IT SEEMS A  
LITTLE CLOSER TO WATCHING TV  
OR LISTENING TO THE RADIO.

IS THAT --

>> YOU STILL DO HAVE TO TAKE THAT AFFIRMATIVE STEP GOING TO THE WEB SITE, CLICKING ON THAT LINK, YOU CAN ALSO TAKE THE AFFIRMATIVE STEP OF DELETING IT.

>> [INAUDIBLE] I KNOW, DOESN'T SEEM SOUND LOGICAL SOUNDING REASONS -- WE NEED TO DO THIS BECAUSE WE NEED TO DO IT.

>> FORMER JUSTICE CANTERO RAISED IN THE LAST ARGUMENT THAT VERY QUESTION, WHAT IS THE REAL DIFFERENCE BETWEEN YELLOW PAGES AND WEB SITE, AND I LISTENED, AND ELIZABETH LISTENED.

WE WENT BACK TO THE COMMITTEE.

WE DEBATED THAT VERY SUBJECT, AND THE MAJORITY OF LAWYERS IN THE BOARD AS WE ARGUED THESE TOPICS SAW A -- AND IT IS IN OUR BRIEF, DISTINGUISHED YELLOW PAGES FROM A WEB SITE.

THE -- THE --

>> [INAUDIBLE] DIFFERENCE BETWEEN -- LISTENING, FIRST PAGE, AND SOMETHING THAT SAYS YOU HAVE TO GO -- DIFFERENT PAGE TO SEE [INAUDIBLE]

>> HOME PAGE, FOR EXAMPLE, TO ANSWER YOUR QUESTION, A LINK BY GRAPHICALS, A LINK TO PAST SUCCESSES, THE CONSUMER --

>> [INAUDIBLE] YELLOW PAGES -- YOU WANT TO SEE MORE, YOU HAVE TO TURN THE PAGE.

>> NO, NO, THE YELLOW PAGES SAYS CALL US, THEN WE WILL TALK TO YOU --

>> YELLOW PAGES SAYS SEE OUR -- SUBSTANTIVE --

>> THE AD WOULD NOT HAVE TESTIMONIALS, WOULD NOT HAVE PAST SUCCESSES.

>> ARE YOU -- DETERMINE, YELLOW PAGES, TO GET -- YELLOW PAGES TO GET TO THE AD.

>> ANOTHER DIFFERENCE JUSTICE LOUIS, THAT THERE IS A VERY LIMITED SPACE IN THE YELLOW PAGES, WITH A WEB SITE, THERE

IS VIRTUALLY UNLIMITED SPACE.  
SO THERE IS A LOT MORE  
OPPORTUNITY FOR A LAW FIRM TO  
EXPLAIN YES, IT IS.  
I MEAN YOU HAVE --  
>> OPPORTUNITIES, TO  
MISLEAD, OPPORTUNITY FOR  
MORE VIDEOS -- MUSIC --  
WHY IS -- I KNOW, I KNOW.  
>> WE DID.  
>> WE -- THE CITIZENS FORUM  
SAID PLEASE DO NOT TREAT THIS  
AS JUST INFORMATION UPON  
REQUEST.  
PLEASE GO BACK, AND PROVIDE A  
SET OF RULES AND LOOK, AND  
AGAIN LET ME TELL YOU WHAT WE  
DID AT COMMITTEE LEVEL AT THE END  
WE TOOK OUR VOTE, WE TOOK THE  
SUBSTANTIVE RULES, THE ISSUES  
THAT ARE COMMON TO ALL  
ADVERTISING.  
AND WE SAID CAN WE DISTINGUISH  
IT.  
AND, BY THE WAY, TO A PERSON  
ON THE COMMITTEE, WE COULD NOT  
DISTINGUISH, I MEAN COULD NOT  
DISTINGUISH LOGIC OR REASONING  
WHETHER YOU ARE ASKING ME -- WE  
INTELLECTUALLY FOUND THE SAME  
PLACE, THEN WE HAD TO SAY OKAY  
WE ARE THERE, AND SO WE WENT  
TO THE -- TO THE BOARD OF  
GOVERNORS, AND SAID WE WANT TO  
HAVE THE ADVERTISING RULES  
APPLYING ACROSS THE BOARD EXCEPT  
FOR FILING.  
WHEN YOU HIT ME  
WITH A FILING ISSUE I'LL TELL  
YOU THAT HAS NEVER BEEN  
PRESENTED BY THE BOARD OF  
GOVERNORS AS AN ALTERNATIVE WE  
HAVE NEVER LOOKED AT THE AS --  
AT WEB ADVERTISING BEING A  
FILING REQUIREMENT IN ANY OF  
THE LAST 3 1/2 YEARS OF WORK.  
>> [INAUDIBLE] TO CERTIFY --  
>> I'M SORRY, YOUR HONOR.  
YOU INITIALLY ASKED COULD WE --  
YOU WERE UPSET BECAUSE I SAID WE  
COULDN'T ASK LAWYERS TO SEND  
IN 30,000 --  
>> I WAS UPSET BECAUSE YOUR  
ARGUMENT --

>> NO, BUT WE -- WELL THAT WAS PART OF WHAT WE HAD TO GRAPPLE WITH. THE ENFORCEMENT. WE COULDN'T -- WE'D SAY IT WAS NOT POSSIBLE TO ENFORCE TO CERTIFICATION ISSUE. I HAVE TO ANSWER YOUR QUESTIONS, YOU WOULD ADD THAT TO A BAR, DUES STATEMENT? I DON'T KNOW IF IT HAS TEETH OR NOT. BASED ON WHAT JUSTICE WELLS SAID, I KNOW LAWYERS TAKE AN OATH, WHEN LAWYERS ARE PRESENTED WITH MISCONDUCT -- LET ME GO BACK TO WHATEVER WE HAVE DONE HERE. WE HAVE SAID IT IS SUBJECT TO OVERALL ADVERTISING -- EXCUSE ME -- OVERALL LEGAL REQUIREMENTS. NOTHING A LAWYER DOES MAY BE FALSE, MISLEADING DECEPTIVE. IF IT IS IT IS PUNISHABLE.

>> IF YOU GOT ON A LINK TO THAT SECOND PAGE, AND WE ARE -- WE -- TESTIMONIAL, WHATEVER, WOULD IT BE DIFFERENT THAN -- WHAT IS ON TV?

IT COULD BE MORE CAN THEY USE LIKE A TV STAR TO SAY THAT JOE BLOW IS A GREAT GUY?

>> WOULD IT BE DIFFERENT BECAUSE TV WE'RE NOT ALLOWED TO USE TV STARS, TV -- DOES NOT HAVE TESTIMONIALS.

>> -- UNLESS --

>> IF -- A PAST RESULT IF SOMEONE REPRESENTED A MOVIE STAR COULD SAY THIS WAS MY LAWYER.

>> -- CAN YOU -- LIKE, AN AD THAT WOULD IMPERMISSIBLE NOT TO WHERE IT IS HI, THIS GUY GOT ME A MILLION DOLLARS, BUT THIS GUY IS THE GREATEST PERSONAL INJURY LAWYER.

>> COULD YOU DO THAT?

THAT IS WHAT I'M HAVING TROUBLE WITH. IN OTHER WORDS, I CAN SEE BECAUSE I HAVE HAD SOME TROUBLES WONDERING WHY

SHOULDN'T PAST RESULTS BE --  
FOR ADVERTISING, BUT I FOR THE  
LIFE OF ME DON'T UNDERSTAND  
WHY WE WOULD ALLOW, YOU KNOW --  
INFORMATION, LOTS OF USEFUL  
THINGS, WHY WOULD YOU ALLOW  
TESTIMONIALS ON THE WEB SITE  
AS BEING COMPLETELY  
UNREGULATED?

WHAT WAS THE NEED  
FOR THAT?

MAYBE THAT IS WHERE  
WE ARE GOING JUST BECAUSE  
EVERYONE -- WE'RE GOING TO  
ALLOW IT?

OR WHAT IS THE PUBLISHED  
REASON THAT WILL HELP EDUCATE  
ABOUT THE LEGAL PROFESSION, I  
GUESS -- MAYBE THAT IS  
TROUBLING ME.

I DON'T MIND PAST  
RESULTS GOING ON -- FRANKLY, BUT  
TESTIMONIALS, DOING SOMETHING  
-- IT IS BAD ENOUGH ALLOWED  
WHATEVER WE ALLOW IT TO BE,  
BUT WHY ARE WE GOING TO STOOP  
TO THAT LEVEL ALLOWING LAWYERS  
TO DO THAT ON THEIR WEB  
SITES?

>> AM I ALLOWED TO RESPOND TO  
THAT?

>> YES, YOU CAN RESPOND TO  
THAT, THEN I BELIEVE SOMEONE  
ELSE IS PRESENTING HERE.

>> SHORT TIME.

>> IT WAS ALSO ON THE  
COMMITTEE, THE VERY BRIEFEST  
ANSWER THE TESTIMONIAL MUST BE  
TRUTHFUL, IF A PERSON GOT ON  
THERE WITH COMMENTS ABOUT THIS  
PERSON DID THIS FOR ME, AND  
THEY OBTAINED THIS RESULT, AND  
I WAS PLEASED WITH SERVICES, IT  
MUST BE A TRUTHFUL  
REPRESENTATION.

THAT IS WHAT  
OTHER STATES ARE FALLING BACK  
TO.

IN OUR INTERSTATE REVIEW  
OVERRIDING REQUIREMENT A  
LAW'S COMMENTS, COMMUNICATION  
IN THE FORM OF ADVERTISING BE  
TRUTHFUL, NONDECEPTIVE,  
NONMISLEADING, WOULD MEET THAT

TEST.

IF THE TESTIMONIAL DIDN'T  
MEET THAT TEST THE LAWYER  
COULD BE DISCIPLINED.

IF IT WAS PRESENTED TO THE  
BAR, I WOULD SAY WOULD BE --

>> YOU COULDN'T DISTINGUISH,  
YOU SAID YOU COULDN'T  
DISTINGUISH IT FROM REGULAR  
ADVERTISING.

SO WHAT IS THE RATIONALE FOR  
ALLOWING A TESTIMONIAL ON A  
WEB SITE THAT IS NOT BEING  
ALLOWED IN REGULAR  
ADVERTISING?

>> BECAUSE WE WOULD ALLOW A  
TESTIMONIAL, AND A REQUEST FOR  
INFORMATION, IF A PERSON ASKED  
A LAW FIRM CAN YOU SEND ME  
SOMETHING ABOUT YOUR LAW FIRM  
WE WOULD ALLOW THEM TO HAVE A  
TESTIMONIAL.

>> SO THEN IT IS NOT  
ADVERTISING, THAT IS WHAT --  
YOU KNOW, IF YOU WENT  
BACK TO YOUR ORIGINAL  
POSITION, WHICH WAS TREATING  
IT AS INFORMATION UPON REQUEST,  
THEN WE WOULDN'T BE HERE.

>> WE -- WE -- TO TRY TO MEET  
THE CITIZEN FORUMS' CONCERN TO  
MEET OUR CONCERNS, THE BOARD OF  
GOVERNORS, BY THE WAY, DIDN'T  
WANT THAT EITHER.

THE BOARD OF  
GOVERNORS VOLUNTEERED AGAINST  
IT BEING INFORMATION UPON REQUEST,  
BOARD OF GOVERNORS WANTED  
REGULATION.

THIS IS A  
COMPROMISE TO MAKE THE WEB SITE  
SUBJECT TO THE REQUIREMENT TO MAKE  
THE MATTERS BEHIND THIS WEB  
PAGE INFORMATION ABOUT REQUEST.  
THAT IS WHERE WE ARE, THE  
COMPROMISE.

>> THE TRUTH OF THE MATTER IS  
AFTER PAST THE MAIN PAGE, IT IS  
NOT ADVERTISING ANYMORE, YOU  
ARE SAYING NOT MAIN PAGE, JUST  
INFORMATION -- [INAUDIBLE]

>> THAT IS THE SIMPLEST WAY I CAN  
EXPLAIN IT TO YOU.

>> OKAY.

>> MAY IT PLEASE THE COURT.  
MY NAME IS TIM CHINARIS, BAR  
MEMBER IN MONTGOMERY, ALABAMA.  
I HAD THE PRIVILEGE OF SERVING ON THE  
WEB SITE ADVERTISING COMMITTEE  
WITH MR. EBBETS, ALSO HAVE HAVE  
EXPERIENCE IN THE LAWYER  
ADVERTISING AREA, I WAS FOR  
EIGHT YEARS ETHICS DIRECTOR,  
WAS IN CHARGE OF THE  
ADVERTISING REVIEW PROGRAM  
WITH THE BAR, SO MY COMMENTS  
THOUGH ARE MADE ON MY OWN  
BEHALF, NOT ON ANYONE  
ELSE'S.

I DO SUPPORT MOST OF THE BAR'S  
POSITIONS, I HAVE A COUPLE  
DIFFERENCES OF OPINION THAT I  
WOULD LIKE TO ADDRESS.

>> WOULD YOU -- SINCE YOU ARE  
SOMEBODY THAT WE HAVE --  
APPEARED BEFORE US COULD YOU  
GIVE US A BETTER IDEA OF IF  
THERE WAS A STATE THAT TREATED  
WEB SITES CLOSER TO WHERE THE  
CITIZENS FORUM WANTED TO GO IS  
THERE A STATE THAT IS DOING  
THAT MORE RESTRICTIVE THAN  
THESE -- [INAUDIBLE]

>> THERE ARE STATES THAT HAVE  
REQUIREMENTS THAT ARE SIMILAR  
TO SOME OF THE FLORIDA  
REQUIREMENTS, I HAVE TO SAY WE  
ARE PRETTY MUCH STRICTEST IF  
NOT RIGHT IN THERE WITH THE  
OTHER STATES.

TO MY KNOWLEDGE, NO OTHER  
STATES REQUIRE FILING WEB  
SITES.

OF COURSE, WE DON'T  
EITHER.

>> THERE WILL BE NO  
REQUIREMENT AFTER THE HOME  
PAGE, EVERYTHING HERE WILL BE  
INFORMATION UPON REQUEST, SUCH  
-- REGULATION OF THIS, ISSUED  
A TRUTHFUL -- PART OF --  
EVERYTHING --

>> WELL, YOUR HONOR, I THINK THE  
DIFFICULTY EVERYBODY HAS IN  
THIS AREA, THAT IS THE FACT WEB  
UNIQUE MEDIUM COMBINES OTHER  
ASPECTS OF THINGS THAT WERE  
MORE FAMILIAR WITH TELEVISION,

VIDEOS, THINGS LIKE THAT, BUT ON TELEVISION, YOU ARE SITTING THERE WATCHING A FOOTBALL GAME, AND A LAWYER COMMERCIAL COMES ON HERE, YOU WOULD GO TO A LAWYER'S WEB PAGE AND THEN CLICK AFFIRMATIVELY TO SEE MORE INFORMATION.

SO THERE

IS AN ELEMENT OF THAT REQUEST, TRADITIONAL, YOU HAVE TREATED INFORMATION UPON REQUESTS OUTSIDE THE SCOPE OF A LOT OF TECHNICAL ADVERTISING REQUIREMENTS, I THINK ANOTHER ISSUE TO REMEMBER WITH RESPECT TO THE BUSINESS FORUM, AS MR. EBBETS SAID, THEY SEEM TO WANT THIS TREATED LIKE EVERY OTHER TYPE OF -- ADVERTISING, WELL IF YOU LOOK AT THE OTHER TYPES OF ADVERTISING, THEY ARE NOT ALL TREATED THE SAME EITHER, THEIR OWN UNIQUE ASPECTS ARE RECOGNIZED IDENTIFIED IN FULL, FOR CAPITAL DIRECT MAIL HAS CERTAIN REQUIREMENTS YOU HAVE TO HAVE -- FIRST SENTENCE SAYS IF YOU HAVE RETAINED A LAWYER FOR THIS MATTER PLEASE DISREGARD THIS LETTER, INCLUDE A STATEMENT OF QUALIFICATIONS, EXPERIENCE.

TV IS TREATED

DIFFERENTLY, IN ITS OWN WAY BECAUSE, AS YOU APPROVED A WHILE BACK PRESCREENING OF A LAWYER, AS ON TV AND RADIO, WHICH IS NOT REQUIRED IN OTHER TYPES OF ADS, THE PRINT AD DISCLAIMER USED TO SAY HIRING OF LAWYERS IMPORTANT DECISION DOESN'T BASE IT SOLELY ON ADVERTISEMENT.

THAT WASN'T

REQUIRED IN TV, BUT REQUIRED IN PRINT.

I THINK THIS BOARD AND BAR HAS MADE A DISTINCTION BETWEEN THE TYPE OF ADVERTISING AND THE PARTICULAR MEDIUM THAT IS USED AS TO WHAT RULES SHOULD APPLY.

I THINK THAT IS IMPORTANT  
BECAUSE IF WE KEEP IN MIND THE  
GOAL OF WHAT ADVERTISING  
REGULATION IS, THE GOAL TO  
PROVIDE USEFUL, TRUTHFUL  
NONMISLEADING INFORMATION TO  
THE PUBLIC.

>> WELL, ONE OF MY  
POSITIONS IS --

>> [INAUDIBLE]

>> WELL, YOUR HONOR ADDRESSES  
SIMPLY THE HOME PAGE VERSUS  
THE INTERIOR PAGES.

>> YOU MADE A STATEMENT THAT  
THIS IS WHAT WE WANT TO  
GATHER.

IF THAT IS A VALID PRINCIPAL,  
THEN WHY SHOULD IT NOT  
APPLY TO TV, NEWS, MAIN,  
WHATEVER THE MEDIUM IS, IT IS  
BECAUSE IT IS A SUBSTANTIVE -- IT  
IS NOT THE MEDIUM, IT IS THE  
SUBSTANTIVE THAT YOU JUST  
SAID.

>> I THINK IT HAS TO DO WITH  
THE MEDIUM AS WELL, FOR  
EXAMPLE, ON TV, 15-, 30-SECOND  
COMMERCIALS.

THERE IS NO REAL  
OPPORTUNITY FOR ONE, FOR  
RECONSIDERATION GOING BACK AND  
LOOKING AT IT OVER AND OVER  
AGAIN.

IT IS THERE AND IT IS  
GONE.

SO I THINK THAT WARRANTS  
SPECIAL CONSIDERATION, AS THE  
SUPREME COURT SAID I THINK IN  
BATES.

IN --

>> EVEN WORSE, THEN YOU CAN  
PILE ON WHATEVER YOU WANT.  
I MEAN YOU MAY NOT HAVE HAVE  
ALL THE MONEY IN THE  
WORLD TO ADVERTISE FOR TWO  
HOURS.

HERE YOU CAN PUT ON  
ANYTHING YOU WANT.

>> WELL, YOUR HONOR, I DON'T  
THINK THAT IS REALLY TRUE  
UNDER THE BAR PROPOSAL, I THINK  
I WOULD LOOK AT IT

THE OPPOSITE.

I THINK IT IS AN

OPPORTUNITY TO REVIVE MORE USEFUL INFORMATION, ON A TV AD YOU FLASHED UP PAST RESULTS YOU CAN'T EXPLAIN.

THAT RESULT IS UNIQUE TO THAT PARTICULAR CASE, LIKE YOU CAN IN A WEB SITE WHERE YOU HAVE PLENTY OF TIME TO EXPLAIN.

>> LET'S GO TO THE MATTER OF TESTIMONIALS, TESTIMONIALS, THAT I AM FAMILIAR WITH ARE TESTIMONIALS BY MOVIE STARS, JOHN MADDEN, THOSE TYPES OF THINGS, AND WHERE ARE WE NOW IN THE PRESENT STATE OF LAWYER ADVERTISING ON TV, IN FLORIDA WITH OTHERS?

>> TESTIMONIALS ARE PROHIBITED AS ENDOORSMENTS.

I THINK WHAT YOU ARE REFERRING TO MORE CELEBRITY ENDORSES, MEANT SOMETHING TO TESTIMONIAL -- JOHN MADDEN IS

--

>> WELL, WITHOUT TRYING TO DIFFERENTIATE WHETHER TESTIMONIAL OR CELEBRITY, AND ENDORSING -- CAN A FELLOW, THE HEAD OF A MOTORCYCLE CLUB KNOWN THROUGHOUT THE COUNTRY COME ON, AND ONCE YOU REQUEST THE WEB SITE BE SOMEBODY THAT IS ON -- GIVES A STATEMENT THAT IS FAVORABLE TO HIRING HIS LAW FIRM?

>> I THINK, IF THE INDIVIDUAL HAD USED THE LAW FIRM, COULD MAKE A TRUTHFUL NONMISLEADING STATEMENT, I HIRED THEM, THEY RETURNED MY CALL, THEY WERE SUPPORTIVE, TREATED ME AS AN INDIVIDUAL, SURE, I THINK IT SHOULD BE ALLOWED.

>> THE ENDORSEMENT ITSELF, I KNOW THESE -- PEOPLE LIKE MOTORCYCLISTS, CAN THAT BE DONE UNDER THIS IF WE ADOPTED THIS RULE?

>> ON THE WEB SITE, ON THE INTERIOR PAGES WAS THE WEB SITE IF TRUTHFULLY VERIFIABLE TESTIMONIAL THAT BE DONE.

>> I UNDERSTAND TRUTHFUL

INFORMATION REGARDING PAST RESULTS.

AGAIN, I THINK, TO ME THAT IS -- YOU KNOW, SUBJECT TO THE TRUTHFUL ASPECT IT IS TRUTHFUL, IS THE TERM TESTIMONIAL DEFINED IN THE PROPOSED RULE? WHAT MAY BE -- THAT IS WHAT I'M HAVING TROUBLE WITH. AND EXPLAIN HOW AGAIN IT IS DIFFERENT FROM AN ENDORSEMENT, TESTIMONIAL IS -- THIS GUY IS A GREAT GUY, YOU WILL REALLY LIKE HIM AS A LAWYER. IS THAT A TESTIMONIAL?

>> A TESTIMONIAL IS BASED ON PERSONAL KNOWLEDGE AND EXPERIENCE.

AN ENDORSEMENT IS BASICALLY A STRANGER PAID TO

--

>> YOU CAN'T -- ENDORSE HIM.

>> THAT WOULD BE MY UNDERSTANDING, CORRECT.

>> WE DON'T HAVE --

>> THERE IS A RULE.

DOES THE

RULE ACTUALLY SAY THAT?

DOES THE RULE ACTUALLY EXPLAIN WHAT A TESTIMONIAL IS?

>> A TESTIMONIAL IS NOT DEFINED IN THE RULE, AS I RECALL.

BUT ENDORSEMENTS HAVE ALWAYS BEEN PROHIBITED AS TESTIMONIALS, ARE CURRENTLY --

>> -- THERE CONSTITUTIONAL CASES ADDRESSING WHAT WE HAVE TO REQUIRE OR CAN RESTRICT, CANNOT RESTRICT?

>> I THINK THE CASES, WHEN YOU LOOK AT THEM, DO INDICATE THAT YOU CAN TREAT DIFFERENT MEDIUM -- HAVE MEDIA DIFFERENTLY, BASED ON THEIR OWN PARTICULAR REQUIREMENTS, LIKE THE CHIBRO CASE DIRECT MAIL STATES REQUIRE ADDITIONAL THINGS MAYBE DIDN'T REQUIRE IN PRINT, ADVERTISING IN THE BATES CASE THE COURT REFERRED TO SPECIAL CONSIDERATIONS, MIGHT BE NECESSARY FOR ELECTRONIC, AT THAT TIME TELEVISION ADVERTISING.

>> WE ARE NOT CONSTITUTIONALLY MANDATED TO ALLOW THE PROPOSED RULE.

>> WELL -- I HAVEN'T BEEN -- CONSTITUTIONAL ISSUES, IT HAS ALWAYS BEEN MY VIEW PERSONALLY THAT TRUTHFUL TESTIMONIALS ARE SOMETHING THAT CANNOT BE CONSTITUTIONALLY PROHIBITED. THAT IS MY PERSONAL

--

>> I NOTICE IN THE RULE IF YOU ARE DOING PAST RESULTS, AND TESTIMONIALS, YOU ARE SUPPOSED TO HAVE A DISCLAIMER.

>> YES, MA'AM.

>> ABOUT -- ABOUT THIS MAY NOT BE -- THIS WAS THE RESULT OF -- PERTAINING TO THIS CASE, AND MAY NOT BE TYPICAL, SOME LANGUAGE TO THAT EFFECT. I'M JUST WONDERING IS THIS SUPPOSED TO BE PROMINENTLY DISPLAYED, OR A LOT OF TIMES YOU SEE THE DISCLAIMERS IN VERY SMALL PRINT AS OPPOSED TO, YOU KNOW, THE REST OF THE PRINT. AND DO WE EVEN GET INTO THAT KIND OF --

>> IN THE WAY THE BAR HAS LOOKED AT IT, CERTAINLY A TESTIMONIAL OR -- EXCUSE ME -- THE DISCLAIMER OR EXPLANATION WOULD HAVE TO BE IN SUCH A FORM THAT IT WOULD MAKE THE OVERALL IMPRESSION NOT MISLEADING.

IT WOULD HAVE TO BE -- VISIBLY --

>> WHO IS SUBJECT TO DISCIPLINE UNDER THIS?

>> WE'VE GOT NOW NATIONAL, INTERNATIONAL LAW FIRMS THAT ARE -- SETTING UP WEB SITES, THAT ARE DOING ALL SORTS OF ADVERTISING.

AND IS IT THE FLORIDA-BASED LAWYER OR ONE OF THOSE FIRMS, EVEN THOUGH THAT LAWYER DOESN'T DO ANY -- HAVE ANY CONTROL OVER WHAT IS PUT ON THE WEB?

>> WELL, JUST LIKE IF THE LAW

FIRM RAN AN AD ON TV OR  
YELLOW PAGES, YOU WOULD HAVE TO  
LOOK AT WHO WAS RESPONSIBLE  
FOR THAT AD.

>> -- WE HAVE -- DO WE HAVE ANY  
-- ENFORCEMENT OF -- EXPERIENCE  
WITH ENFORCING THE ADVERTISING  
RULES AGAINST NATIONAL LAW  
FIRMS?

>> I GUESS WE HAVE TO ASK THE  
BAR ABOUT THAT.

TAKE A MOMENT OR TWO.

>> ACTUALLY, WE ARE UNLICENSED  
TO.

THE PRACTICAL LAW DEPARTMENT  
HAS DEALT WITH LAW FIRMS  
THAT ARE NOT FLORIDA LAW  
FIRMS, AND WE DO HAVE RULES  
THAT PERMIT US TO TAKE ACTION  
AGAINST LAW FIRMS WHO ARE  
ADVERTISING IN FLORIDA IF THEY  
ARE NOT AUTHORIZED TO PROVIDE  
THE SERVICES, OUR UNLICENSED  
PRACTICES LAW DEPARTMENT  
CONTACTS THEM, ASKS THEM TO  
STOP ADVERTISING IN FLORIDA, IF  
SERVICES OUTSIDE OF THOSE,  
STATE LAW FIRM IS ACTUALLY  
AUTHORIZED TO AVOID IF THEY  
ARE IN A CERTAIN LIMITED  
CIRCUMSTANCE, THEY MUST  
COMPLY WITH OUR RULES, UNDER  
OUR RULES.

>> WE DON'T HAVE A CASE THAT  
HAS COME --

>> WE ACTUALLY HAVE A  
RULE THAT SAYS THAT OUR RULES --

>> WE DON'T HAVE A CASE  
THAT WE HAVE --

>> I DO NOT BELIEVE --  
ACTUALLY, DO WE HAVE GOULD?

>> GOULD, FLORIDA BAR VERSUS  
GOULD, IN WHICH A NEW YORK LAWYER  
WAS ADVERTISING IN FLORIDA, AND  
THIS COURT TOLD THE LAWYER  
THAT IT -- THAT LAWYER'S  
ADVERTISING WAS MISLEADING  
ALTHOUGH HE PRACTICED  
FEDERAL ADMINISTRATIVE LAW, THE  
ADVERTISEMENT DID NOT CLEARLY  
STATE THAT, DID NOT CLEARLY STATE  
JURISDICTIONAL  
LIMITATIONS.

>> IN LOOKING AT SOMETHING DID

THE SPECIAL COMMITTEE, THIS COMMITTEE RECOMMEND THAT THE WEB SITES SHOULD BE SUBJECT TO ALL THE SUBSTANTIVE LAWYER ADVERTISING RULES?

SHOULD BE EXEMPT SOLELY FROM THE REQUIREMENTS OF --

>> YES, THAT IS CORRECT.

>> I GUESS I DIDN'T -- AND THE CITIZENS FORUM AGAIN EVEN AFTER IT TWICE SAID THEY SAID IT SHOULD BE ALSO SUBJECT TO ALL THE REQUIREMENTS, INCLUDING THE SUBMISSION OF -- THE BAR FOR REVIEW, THEY TWICE -- SAID -- IS THAT CORRECT?

>> -- THAT IS WHY I WANTED TO GIVE YOU MY HISTORY OF MY PARTICIPATION ON THE COMMUNICATION.

NO.

WHAT HAPPENED WAS THE CITIZENS FORUM ADDRESSING US IN COMMUNICATIONS COMMITTEE WOULD MEET WITH US, WE TALKED TO THEM ABOUT ISSUES, TELLING WHAT ARE -- WHAT WAS HAPPENING WITH LEGAL ADVERTISING.

THE FIRST GO-AROUND THE TASK FORCE, TELLING THEM THAT WE WERE GOING TO BE TREATING WEB SITES DIFFERENTLY, THEY SAID THEY DIDN'T WANT US TO DO THAT, THAT THEY THOUGHT AS CONSUMERS THEY USE WEB SITES LIKE YELLOW PAGES, WE SHOULD LOOK AT SUBSTANTIVE ISSUES THE SAME AND I -- IN MY CAPACITY AS VICE CHAIR NOW UNDERSTAND THAT TO THE BOARD, OTHER MEMBERS OF THE BOARD WERE FEELING THE SAME WAY.

THERE WAS A LOT OF IMPETUS BEHIND CREATING THE SPECIAL COMMITTEE THAT IS BEFORE YOU.

>> DID THE SPECIAL COMMITTEE NOT RECOMMEND TO THE BAR THAT THE WEB SITES SHOULD BE SUBJECT TO ALL THE SUBSTANTIVE LAWYER ADVERTISING --

>> YES, YOUR HONOR, THAT IS WHAT WE DID.

>> YOU WERE ACTUALLY ADVOCATING A POSITION THAT IS

DIFFERENT THAN WHAT YOUR SPECIAL COMMITTEE CAME UP WITH.

>> ABSOLUTELY.

I'M ADVOCATING

THE POSITION OF THE BOARD OF GOVERNORS, WHICH ON FIRST VOTE WAS 18-26, WENT BACK, AND AFTER EXTENSIVE ARGUMENT A COMPROMISE.

>> CAME UP WITH THESE SHOULD ALL BE SUBJECT --

>> THAT IS TRUE, EXCEPT FOR THE FILING REQUIREMENT.

>> LET ME FOLLOW UP ON A QUESTION ASKED, SOMEONE WANTED INFORMATION FROM A LAW FIRM, COULD THEY SEND IN AND SAY GIVE ME SOME INFORMATION ABOUT YOUR LAW FIRM, AND THEN THE FIRM SENDS A DVD WITH ANYTHING IT WANTS ON THERE?

>> TESTIMONIALS, WHATEVER IT WANTS TO PUT IN?

THE DVD WOULD HAVE TO BE TRUTHFUL, NONDECEPTIVE, NONMISLEADING, WHETHER THEY COULD SEND A DVD, I SUSPECT, IN FACT I KNOW LAW FIRMS DID THAT THAT.

>> BASICALLY WHAT YOU ARE ASKING TO DO SECOND PAGES ON A WEB SITE TO DO THAT?

>> WHAT LAWYERS DO WITH DVDS, YES, YOUR HONOR.

>> IF I MAY, YOUR HONOR, I THINK THAT IS EXACTLY ONE CONSIDERATION HERE, THE FACT IS RIGHT NOW, IF YOU SEE A COMMERCIAL OR AD YOU CAN CALL A LAW FIRM, THEY CAN HAVE THAT INFORMATION CONVEYED TO YOU, YOU CAN GO VISIT THEIR OFFICE, AND YOU CAN SEE ALL THE PLAQUES ON THE WALL ABOUT GREAT --

>> CERTAINLY, TO ME, IT'S SO DIFFERENT, I MEAN YOU HAVE REALLY AFFIRMATIVELY DONE IT, LOTS OF PEOPLE SEARCH THE WEB, THEY MOVE FROM PAGE TO PAGE ON ANY ONE SITE WITHOUT ANY REAL LOOKING AROUND FOR AN ATTORNEY, OR ANY OF THAT KIND OF STUFF. SO IT IS -- I JUST SEE THIS

AS SO DIFFERENT FROM ME  
CALLING A LAW FIRM AND SAYING  
"LOOK, SEND ME SOME  
INFORMATION ABOUT XYZ LAWYER IN  
YOUR FIRM," OR YOUR LAW FIRM.  
>> THAT IS TRUE, THAT IS  
WHY I SAID THAT IS A UNIQUE  
MEDIUM WITH ASPECTS OF BOTH.  
>> BUT MY POINT WAS THAT THE  
INFORMATION THAT IS RIGHT NOW  
GOING TO THAT INDIVIDUAL WHO  
CALLS THE LAW FIRM OR VISITS  
IT IS PRIVATE, PROBLEM  
WATCHING IT, BAR NOT WATCHING  
IT, PUBLIC NOT WATCHING IT,  
THIS MANUFACTURING INFORMATION  
WOULD BE IN PUBLIC I THINK  
ONE THING THAT -- WHO IS  
WATCHING IT?  
>> WELL -- OTHER LAWYERS, I  
CAN SAY FOR SURE, ARE WATCHING  
IT.  
>> THEY HAVE TIME TO GO  
THROUGH THE 80,000  
ADVERTISEMENTS ON THE WEB, BUT  
THE BAR DOESN'T?  
>> I GET CALLS OFTEN FROM  
LAWYERS WHO SAY THAT THEY'VE GOT  
ISSUES WITH THE BAR, RESULT OF  
ANOTHER LAWYER SENDING IN WEB  
PAGES TO THE BAR OR ADS TO THE BAR.  
IT DOES HAPPEN.  
ALSO, THE  
POINT, THOUGH, IS -- WE -- THE  
RULE ITSELF PROPOSES TRUTHFUL  
FACTUALLY VERIFIABLE PAST  
RESULTS, TESTIMONIALS,  
STATEMENTS REGARDING QUALITY.  
>> THAT REALLY SOUNDS GOOD.  
BUT THE PROBLEM WITH IT IS WHO  
IS GOING TO ASK FOR IT TO BE  
VERIFIED?  
I GUESS A CLIENT  
COULD.  
BUT --  
>> SAME PROCESS THAT WORKS NOW  
WHEN THE CALL UP AND GET  
THAT DVD SENT TO THEM, WHICH IS  
BASICALLY WE TRUST CLIENTS TO  
KNOW, AND I THINK WE NEED TO  
GIVE CLIENTS A LITTLE BIT MORE  
CREDIT THAN SOMETIMES AT THE  
BAR WE HAVE GIVEN THEM,  
BECAUSE LAWYERS WILL TELL YOU

THIS IS THE TYPE OF  
INFORMATION THAT CLIENTS ASK  
FOR, THAT IS WHY THEY CALL THE  
FIRM AND SAY WHAT HAVE YOU  
DONE, HANDLE THESE TYPES OF  
CASES.

WHAT THE BAR IS  
PROPOSING I THINK IS TO MAKE  
THAT AVAILABLE TO EVERYONE.

IN THE --

>> YOU SAY --

>> -- USED YOUR TIME.

>> JUST ONE OTHER POINT, REAL  
QUICKLY, RIGHT NOW RULES SAID  
YOU HAD THE JURISDICTIONAL REQUIREMENTS  
WHERE YOU ARE LICENSED TO BE  
ON THE WEB, BAR ASKED THAT TO BE  
MOVED AS A REQUIREMENT.

SHOULD THE COURT RETAIN THAT?

I THINK THAT IS IMPORTANT TO CONSUMER  
INFORMATION AS WELL.

SO THANK YOU VERY MUCH.

THANK YOU, ALL OF YOU, FOR YOUR  
ARGUMENTS HERE TODAY.

THE COURT WILL BE IN RECESS UNTIL  
TOMORROW MORNING.

>> PLEASE RISE.