>> All rise.

Hear ye hear ye hear ye the

Supreme Court of Florida is now

in session.

Give attention and ye shall be

heard.

God save these United States,

the great state of Florida and

this honorable court.

>> Ladies and gentlemen, the

Supreme Court of Florida.

Please be seated.

>> Good morning and welcome to

the Florida Supreme Court.

The first case on our docket

today is the Amendment to the

rules regulating the Florida

bar.

Counsel, please proceed.

>> Good morning.

May it please the court.

I am Andrew Sasso

>> Please keep your voice up.

I can't hear you at all.

I think if you --

>> Thank you.

>> That's great, thank you.

We are getting a little hard of

hearing up here.

[LAUGHTER]

Some of us.

>> Thank you.

I am here on behalf of the

Florida bar is a current member

of the Florida governors from

the Sixth Circuit and immediate

past chair of the disciplinary

procedure committee of the

board.

I also would like to take a

moment to introduce other

attorneys that are here today to

address the rules.

We have first Floyd, member of

the special committee on medical

lien resolution here to address

any comments or concerns

regarding rule 4-145.

Laurie -- is here.

She is director of licensing practice of law for the Florida bar.

She is here to address any questions regarding rule 1-310, 1-312 and 4-4.5.

Finally we have Ralph Articlaire who is immediate past chair of the Florida legal specialization education and he is here to address questions regarding rule 6-3.8 and I'm here as immediate past chair of DPC to address any questions regarding rules 3-4.1, 3-4.2, 3-7.12 and 5-1.2 and I believe those are all the rules of the court has asked to be addressed today.

There are three other people I would like to briefly introduce that are here in case we can't answer any questions and that is Kathy Bibel, who is advertising Council lawyer regulation for the Florida bar, Ken Marvin,

director of lawyer regulations
for the Florida bar, and
Elizabeth Tarbert, Essex
County, for the Florida bar.
We don't have any specific
comments for the court but we
are here to answer any questions
regarding any of these rules.
>> Who is going to start?
>> I would like to address two
issues.
I think one of my colleagues
would also.
With regard, number one, to
out-of-state lawyers practicing
in Florida and whether we
believe that we can enforce and
monitor that sufficiently.
That is the first one, and then
also I would like to hear with
regard to the workouts of liens
and those things to be sure that
we know where we are and that we
are not letting the public he
charged twice for work that

should be done the first time
around and then we have read all
the comments and those things
but those are just two general
areas of concern that I have if
there is no formal presentation.
>> Attorney Holcombe can address
the first one, justice and
Attorney Faglie the second
issue.
>> Good morning.
Your question is about the
enforcement of the
multijurisdictional practice of
law rules I am guessing 1-3.10.
>> Primarily the out-of-state
lawyers the command in the
provision to providing
representation on disasters and
all these kinds of things and
things are quite hectic during
those periods of time.
And just that generally.
>> The disaster rule is also
commonly known as the Katrina

rule.
That is the Amendment to 1-3.12
and that would allow under
limited circumstances and
attorney from another state to
come into Florida to either
provide services to Florida
residents as part of a pro bono
program or to come to Florida
and basically continue their law
practice.
If you will recall with Katrina
a lot of the attorneys in New
Orleans didn't have an office
anymore and several actually
came here and wanted to continue
representing their Louisiana
clients.
When you have someone under the
1-3.12 if they are coming into
Florida to provide services to
the Florida residents they would
have to do it as part of an
organized pro bono program.
>> I'm more concerned about how

you monitor the lawyers coming
and representing citizens for
compensation and how that is
monitored.
>> Just a regular 4-4.5.
That would be the
multijurisdictional practice of
law rule.
If they are coming to court they
would have to file and a copy of
that motion comes to the Florida
bar.
If they engage in any unethical
conduct and we actually have had
to just a few more entries and
cases about it then they are
under the jurisdiction of the
Florida bar end of this court,
and if complaint came in they
would be processed the same way
and the complaint would be
processed against a bar member.
The sanctions are little bit
different.
Because they are treated as a

member of the Florida bar they
can actually be suspended or
disbarred but really what
happens is some sort of sanction
would be entered in the state
would take reciprocal
discipline.
>> Again --
I am concerned about employers
around the state.
You are suggesting they can come
in and represent Florida
citizens and Florida disputes in
Florida is what you are saying
and they have not been asking
the Florida bar who knows what
they do know I do not know about
Florida law.
I consider quite different with
regard to citizens in their own
state.
But this is so broad that it
allows him to come in is what it
basically seems to me.
>> Are you talking about the

disaster one or the existing
rule?
>> In the entire area of foreign
lawyers coming into Florida
representing Florida citizens.
>> You are correct, it would let
them do that and the safeguard
is that they have been found
competent by their home state.
They have gone through a process
where they have been licensed
etc. which is why it is limited
to attorney licensed in
another -- in the United States
rather United States rather than
a foreign country.
[INAUDIBLE]
>> Yes, this and that is an
issue that was actually
discussed during Katrina and it
was ironic because Katrina
happened shortly after this
court adopted 4-4.5 which is a
multi-jurisdictional practice of
law rule.

One way that acts as the
safeguard is it only allows the
attorney to come in on a limited
and temporary basis.
Katrina ruled or the 1-3.12
Amendment also had safeguards
because you would have to be
doing it under an organized
legal aid organization.
>> You keep going back to the
pro bono issue.
I am talking specifically for
compensation.
>> The 1-3.12 only allows you to
do a pro bono.
4-5.5 would allow you to do
it for compensation in that role
which was adopted by this court
in 2006 or 2008, that you can
only do on a limited and
temporary basis.
>> I don't mean to be facetious
about this but why do we need
this?
We are going on 90,000 lawyers

in the state of Florida.
Florida geographically the way
it is laid out you could have a
disaster like Katrina.
Katrina went through Miami
before it hit -- and the rest of
the state was not touched by it
-- and why can't the lawyers of the
part of the state not affected
come in and help the areas that
are affected?
Why do we need out-of-state
lawyers to come in?
>> They could and you might not
need the out-of-state lawyer.
That is why this rule says the
court has to make this
determination.
Katrina, what happened was the
Louisiana attorneys didn't have
an office and they needed to go
someplace.
Pensacola is right there.
There was no way for them to
actually establish an office in

Florida to continue to assist
their Louisiana clients.
>> That one I don't -- that is a
little different.
We had the case recently where
somebody was using Florida.
They were living in Florida and
they had an office in Florida
but they weren't practicing law
in Florida.
That was just their address.
I mean, if you decide an
out-of-state resident lawyer and
you practice in California you
want to live in Florida.
>> Right.
>> All you are doing is
representing clients in another
state?
>> Under 4-4.5 you cannot have
an office or regular presents
for the practice of law in
Florida.
>> Even if you are not doing
anything to represent -- you

have an office.

Someone comes in who is a

Florida lawyer and says I can't

represent you.

Under the existing rules you

could not do that.

You cannot have an office here

in the practice of law unless

you are a member of the Florida

bar.

Be an Amendment 2-3.12 and then

the counterpart, the little

sentence and 4-4.5 would allow

that person to come in here and

have that office for the limited

time of the disaster so it would

have allowed the Louisiana

attorney to come to Florida and

to provide services to their

clients.

This court actually let them do

that.

We kind of bent the 4-4.5 at the

time.

>> I'm not sure how even had

that already prevented someone
from living in Florida and
practicing law someplace else
but anyway -- you are saying
that would solve a particular
problem?
>> Correct.
>> They cannot have a Florida
client.
>> Correct.
>> We want to make that clear.
>> This would be so bad if there
law was wiped out and again
recall the Katrina rule, but go
back to Katrina if there was no
way they could physically
practice in their state, they
could come to Florida, continued
to serve their Louisiana clients
or their Oklahoma clients or
their Texas clients wherever
what happened to be be and again
this court would first have to
make that determination.
13 states have adopted the rule.

Is based on an ABA model rule,
16 states including Florida are
considering the rule.
The safeguard is there again
because the person who has the
office here is not providing
services to Florida residents.
They are continuing their
practice.
>> The question is do we have
enough people to monitor that
kind of situation?
>> Well, I would think we would
because they would have to file
a certificate with the bar.
It is just like with anything
else we are totally complaint
driven.
If there was an issue we would
hear about it and I really think
again, because this court has to
declare there is this disaster
and say attorneys from say Park
city Maryland could come to
Florida and do this, there would

be that control.

>> Under 1-3.12C, not the pro bono ruling of section B but under subsection C, the law would prevent out-of-state lawyers from coming in and practicing in Florida representing clients in Florida.

>> We would hope that they wouldn't do that.

I guess that is the best thing we can say.

The rule allows them to come in and to represent their clients.

>> What is says is legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction.

That is pretty broad.

So someone come in and says I'm a commercial litigator and I did that in Louisiana and that is what I'm doing in Florida, why would that be okay under that

rule?

>> Because it is not related to the jurisdiction where they are their license to practice.

>> Doesn't this rule -- I guess I'm a little concerned because when this rule allow the lawyer to say, an out-of-state lawyer, Louisiana for example, to represent clients who have now moved to Florida?
They are no longer Louisiana residentce.
They have now moved to Florida.
They are Florida residents now and the lawyer from Louisiana can now represent them?

>> No, they can only represent their Louisiana clients for the temporary period of time that they are here while the disaster --

>> While who is here?

>> While the Louisiana attorney is here.

>> So if the client moves to
Florida, the Louisiana lawyer
can no longer represent that
client?
>> If it is a matter of
Louisiana law they were
continuing the representation.
If it was a matter Florida law,
no they couldn't.
>> If it is a Louisiana court
they can represent them and if
it is a Florida court they
cannot?
>> Correct.
>> What Attorney Holcombe said
is this the model ABA rule?
It clearly meant only to allow
this to have an office here, not
represent clients in Florida?
>> Correct.
>> I can suggest we can craft a
lot better rule than that.
[LAUGHTER]
>> It does track the ABA
model rule.

Again it has been adopted by 13 states and thankfully no one has had to use it.

Became about right after Katrina which was after the multijurisdictional practice in the ABA and the conference of chief Justices approved it.

They endorsed the rule.

Thankfully no one has had to use it.

Again some states have declined it.

It has been adopted by 13, considered by 16 and rejected by six.

>> The six that rejected, I'm still working on this idea that if they're not going to be representing Florida clients, their office is just a building.

It wouldn't be putting out the license in Louisiana because there is no reason to because it is not attracting anyone.

They are just using space.

>> Correct.

>> Why does that even need --

they are not formally

establishing a law office.

They are just using an address

in Florida and representing a

client in another state, what if

they had you know, winter

residence?

Why is that the practice of law

here if they are not doing

anything in terms of

representing Florida citizens or

its use in Florida?

>> Because if they are here

holding out as an attorney with

a Florida address their holding

out is a member of the Florida

bar.

>> They're really not.

They are using that address.

With their certificate of

service they have their address

and e-mail.

It is going to be totally
irrelevant where they are
because they are able to do that
electronically.
>> Under the existing rules and
case law they cannot do.
If you want them to be able to
do it than the rule has to
change.
Under the existing rules of this
court is says an attorney cannot
have an office or regular
presence for the practice of law
in Florida unless you are a
member of the Florida bar.
If you have an office or regular
presence for the practice of
law -- now if you are in your
home three months out of the
year.
>> Isn't that statement
ambiguous?
You said the office for the
practice of law in Florida.
The whole point it is not the

practice of law in Florida.
Does the practice of law
somewhere else removed from
Florida.
>> Again based on what this
court has said and what the rule
says, you can't have that office
here.
If you have a Florida address
and and and you were holding out
as an attorney, you have to be a
member of the Florida bar or you
have to have a --
>> What we are saying is that
there is an attorney from
another state practicing law in
their home state there wouldn't
be a need for them to have an
office in Florida, to have a
place other would have space but
would have law offices and
telephones etc..
>> That's different.
Again the example is --
snowbirds.

You are coming to Florida for an extended vacation, you are coming three months of the year and your clients don't know you are here.

They are still sending everything to Ohio, your phone is ringing in Ohio and your mail is going to Ohio in your office is forwarding it to you.

Your client still think you are in Ohio.

That's fine.

In the problem with that.

And your clients know you were here and they are coming to you here in some form or another under this court the existing rules, you need to be a member of the Florida bar part of an interstate practice and even then you can only be here on a transitory basis.

So change the rule if you want to allow it on a broader scale.

That is what you would need to

do.

This rule only does it in a

limited circumstances with

disasters.

>> I have a question about

another subject.

>> Okay.

>> Signing checks, trust

accounts.

>> That would be Mr. Sasso.

>> My question is a concern

which I would like you to

respond to.

I am concerned that this

proposal with respect to the

limitations on a trust account

checks could impose an undue

burden on fellow practitioners,

and the fellow practitioners who

might have for instance a real

estate practice in a difficult

position where they really can

never go away.

While they have got business

going forward in their offices,
and what have a solo
practitioner --
What has the bar done to get
input from solo practitioners to
determine this would impose such
an undue burden on them?
>> You know we did carefully
consider that issue and it was
unbalanced of course.
You know these rule proposals
are published in the Florida bar
dues and we did get a few
attorneys responding.
The vast majority of attorneys
who had contacted me about it
left comments such as they
thought their art he was a rule
for anybody but lawyers signing
trust account checks.
The few that did object to it,
the real estate was concerned.
Lawyers talked in terms of you
know wanting to do real estate
closings when they were out of

town or in any office.
So we can see that could be an inconvenience for some lawyers however when you balance that against the desire to put some more safeguards in place to protect clients and clients funds, the bar decided this was a better way to go.
There are a lot of things that lawyers can't validate.
You can't have a non-lawyer assigned pleadings are are good at depositions when you are out-of-towner and vacation we felt this was important.
We also balance the fact that our trust accounting rules are very specific on things lawyers have to do.
You have to have certain journals, you have to have ledger cards for each client and you have to reconcile on a monthly basis and an annual

basis and it seems the most
important thing is who is going
to sign the check?
We say anybody can do that.
Again it was a balance but we
thought this was the best way to
protect the clients especially
with all the options available.
If you are out of town,
obviously checks can be
overnighted back and forth.
If somebody wants to do a
closing --
>> Another rule, the real estate
-- someone is earning a fee to
represent somebody opposing and
they are not representing the
closing.
That wouldn't be very
sympathetic.
>> I agree.
Justice Pariente.
I think that was the decision of
the full board.
Closings probably shouldn't go

forward unless they lawyers
present to take care of those
last-minute details and to
delegate all that responsibility
right down to signing checks.
There have been a lot of cases
that have come for -- forth and
the bar's response where lawyers
have done to things where they
have signed multiple checks that
are blank and that is something
that would be prohibited.
>> Was there any discussion with
regard to -- those are the two
extremes, either nothing or
anybody can sign them.
Were there any discussions in
the middle that the committee
came up with thoughts or
discussions may be that you have
to have on file with the bar or
something?
Were there any middle grounds
discussed?
Could you address those?

>> Yes, Justice Lewis.
Those issues were discussed and
debated quite a bit at the
committee level and at the
board, and again it was felt
that this was an important
enough issue that nonlawyers
should not be signing trust
account checks just again as
they shouldn't be allowed to
sign pleadings.
>> Could you have is the middle
ground that the person be
bonded?
This way if they steal the
money, they can go to prison
etc..
>> Yes, we did discuss bonding
and the problem arises there
are, it is hard to purchase a
bond unless you know how much is
in the account.
[INAUDIBLE]
>> I guess you are suggesting
the rule would say you have to

post a bond for the full amount
of the assets in your trust
account at all times.
>> The reality is people who
steal money, they would steal it
anyway and it does happen.
It is not as if once it is in
place no one will steal money
from the trust account.
It is not the non-lawyer who
does this, the lawyer does a.
>> There is no question that
this will stop all theft in
trust accounts.
We wish we could come up with
will rule that would do that but
this is an additional safeguard.
Many states already of this rule
in existence.
>> Let me ask you about the rule
about permanent retirement.
If we have a rule that says if
you have permanent retirement
why do you have a section that
talks about being reinstated at

some point or retaking the bar?

I thought permanent manned you

were out forever.

That is rule 1-3.17.

Is there some reason that we are

allowing readmission if you call

it a permanent retirement?

You can answer if you have the

answer to that.

>> We do have a rule that allows

retirement and it allows the

lawyer to be reinstated in the

practice within five years.

>> But what about the permanent

retired?

I thought the rules had

permanent retirement.

In my mind that means wherever

you would be barred from being a

member of the the Florida bar

yes there is a provision that

talks about coming back into the

Florida bar.

>> There shouldn't be for the

permanent retirement part.

That is permanent.

That is agreed to.

There have been a few different situations where lawyers have received either a diversion or minor misconduct with conditions.

They haven't complied with those conditions.

We have contacted them.

The individuals have indicated they are no longer interested in practicing law in Florida.

If they permanently retire, then the public would be -- the public protection would be preserved from those lawyers and there wouldn't be any need for any future proceedings.

We have had some situations where lawyers had been in advanced age, 50 years of practice with no discipline and we have had discipline cases, minor discipline cases but

nonetheless, we have been able
to resolve those cases with a
permanent retirement and
dismissed the discipline case.
It just seems to be the way to
protect the public without
putting a blemish on an attorney
who has practiced for a long
number of years.
>> I think Justice Quince under
1--- those who have been
permanently retire show not be
reinstated under the rule and
must be readmitted upon
application to an approval by
the Florida bar examiners, so
why is there a readmission
procedure for those who are
permanently retired?
>> We could eliminate that.
It would be like a permanent
disbarment.
>> It we use the word
permanent --
>> We need somebody to address

the issue of the medical liens
and whether there is any
professional fee being charged.
I think that is another major
area.
>> Yes, my name is Mr. Faglie
and I'm a member of the special
committee.
>> When many of us practice
seeing in resolving liens or
part of what you did to earn
your contingency, is this going
to allow or have a situation
where a lawyer is going to be
able to over and overread above
the contingency or negotiating
complex liens?
>> Not the attorney who has the
primary representation in a
personal injury matter, no Your
Honor.
>> So at the beginning, the
lawyer is telling the client if
it is complex I will get my fee
and you will go to somebody else

and you will have to pay another
fee for resolving the liens?
>> That's right Your Honor.
The special committee in
reviewing this issue and
studying this issue determined
the personal injury attorneys
primary responsibility is the
pursuit of damages.
The resolution of liens has
become incredibly complex over
the last decade or so.
>> When you are negotiating the
amount of the settlement, you
know what is going on with the
liens.
In fact you probably need to be
negotiating those lanes before
you figure out whether you can
settle something.
If somebody has a 100,000-dollar
hospital lien and you are going
to be settling the case for
200,000 you are not going to be
taking a 40% contingency until

you find out if that lien is
going to take up the rest of the
money.
I am very concerned.
This can be misused to the
disadvantage of especially those
that are very injured and there
is limited insurance coverage.
>> Limited insurance is often
the reason why the case settles
for the mound does.
The lien may be large in
comparison to that.
>> About what you are saying is
the lawyer can take contingency
on the entire amount of the
settlement which could be the
policy limit and then referred
the lien work which is going to
be the major part of the person
being able to recover anything
and someone else who will then
charge an additional fee?
>> No, Your Honor.
The primary attorney could take

reasonable steps to negotiate
the lien.
Negotiable through normal
negotiation, standard
negotiations, the primary
attorney should do that.
>> What is happening now?
I remember as I left the
practice of law, these liens
were becoming complex but my
concern is there maybe some
lawyers out there who are not,
who are settling the case and
just turning the file over to
the client and have a client
fend for themselves on these
lien negotiations.
Is that what is happening?
Is that why we want on the
contract the fact of the client
should know who is going to
negotiate in who is not going to
negotiate?
>> That is part of the benefit
of this.

The rule provides that the
primary attorney's
responsibility concerning liens
is to be delineated in the
contract.
>> So a lawyer could actually
contract himself or herself --
>> Out of all responsibility.
The responsibility to do
standard negotiations and take
ordinary steps to resolve the
lien.
Some liens are easy.
Some liens, the lien order does
not have that great of a legal
right and they will work with
the attorney.
Those are the cases the personal
attorney should resolve.
>> What I'm saying is you come
in to see me on a personal
injury case and I'm the
attorney.
I hand you a contract to sign in
the contract revives a

provision.

It says either lawyer will not

handle any lanes at all

whatsoever.

My job is to negotiate a

settlement in your case.

I get $100,000 for you and I

take my 33% or whatever it is

plus my cost.

Here is your money, go deal with

this.

You cannot do that.

>> That is not what this rule

contemplates but.

>> Wait a minute, it can have

that effect, can't it?

>> Ours is the same question.

That can happen right?

As long as you make that

contract.

>> The comment talks about the

attorney on the primary measure

to ascertain and resolve the

lien.

>> See the problem I have with

it, who is going to determine
how complex -- maybe it is one
of these advertisers who has
some kind of vague you know gets
all these cases end and for them
everything is complex.
And so they got Joe blow.
He does or she does the lien
negotiation now and I'm not even
able to do this as a referral
situation so that my clients
doesn't have to pay anything
more.
So who decides that, whether it
is ordinary or extraordinary?
>> Well, I guess the parties in
their contract.
>> The severely injured and we
are having them sign this
contract.
We don't even know how much
insurance coverage there is.
I mean, I am very concerned
about this rule.
People taking advantage of a

client unless we had some kind
of court approval process that
would say if you are going to
take away that responsibility,
and it is different if it is
bankruptcy.
We are talking about estate
planning and bankruptcy.
Nobody assumes that is covered
within your contingency but the
resolution is the single most
critical factor.
In determining the settlement
you are about to reach can be a
settlement that is fair for the
client.
>> There might even be a
determinative as to whether or
not you will contact an
attorney.
If the liens are such that the
amount of the settlement why
wouldn't the --
[INAUDIBLE]
>> That is very true.

Oftentimes the lien can cover a large portion.

Let me talk about one case assigned by the 11th circuit of appeals.

Bradley versus live videos.

This is an example of how much work goes into resolving a lien and what it can be to the crime.

This involves the death of an individual in 2005, a wrongful death claim that settled for posthumous for $50,000 shortly thereafter and Medicare claimed and demanded payment of $22,500 roughly.

They refused to negotiate further down.

They refuse to cooperate and through four levels of administrative appeals with Medicare, one appeal in the District of Florida, the plaintiff was not successful in reducing that lien.

Took many years for that to occur and eventually in 2010 the 11th circuit determined that the lien to be recovered from approximately $700 in settlements.

That is a tremendous result for the client's.

>> How much attorney fees were paid for that?

What did the client end up with?

You paid the initial lawyer their third or 40% or whatever it is depending on whether it is settled or goes to trial and then you have got to pay another third of whatever is allowed to another lawyer to negotiate.

To reduce that.

That is what is of concern.

The client ends up with nothing.

>> We review that issue in our committee and we felt the reduction, the client should be afforded the opportunity.

Personal injury attorneys, there are gray.

They understand how to recover damages from viable -- liable parties.

>> So why wouldn't he do this then?

If there is a case where what is the most difficult legal work is the resolution of the lien, in those cases, a lawyer who is only going to handle the case can only receive a 10% contingency or some reduce contingency.

Sometimes you look out and you get this huge settlement and you get this amount of money.

Other times you have to go to trial.

It is on appeal.

We are not saying that is the time that someone else bailed because it is going to be really hard to earn your money.

That that is when you are
earning your money.
So, anyway I'm not happy with
this situation.
>> The committee also reviewed
that the resolution is not part
of recovering the damages of the
client.
>> If you have got a huge amount
of medical, that is what
enhances the value of the claim.
It is not their debts.
It is part of what you are
recovering from the tour to
seize.
>> Well that's true but the
creditor isn't willing to work
with you and reduce under normal
circumstances and extraordinary
steps are needed.
If this is a separate matter
outside of the recovery of
damages yes, but oftentimes
settlements are confined by
policy and other considerations

outside the value of the damage

is.

>> It seems as though we have

done away with the practice for

a number of years but the

definition of what is complex

and what is part of your

obligation as a lawyer seems to

me -- I don't understand why

that has changed over the years.

I used to specifically, because

of the Orissa issues that used

to come up, never ever was there

additional fees charged to no

one ever said just did that

fighting with Medicaid, Medicare

or local hospitals was something

so complex that the lawyer

responsible for the case who

earns a fee on the amount that

they have to collect from a

hospital somehow was so complex

that they couldn't handle at.

>> Over the last decade lien

holders have sold their debts to

others to collect and there are
law firms --
>> But that doesn't change the
nature of the lien, does it?
It is just a lien they have
transferred to someone else for
a value.
>> It is change the ability of
the plaintiffs to negotiate.
>> The willingness to settle at.
It just makes a recalcitrant
opponent that you are dealing
with.
>> It also calls for these ERISA
plans to strengthen their
language.
>> But again -- okay.
I understand.
If we don't shoot messengers, we
are just trying to get to the
bottom of it.
>> Please don't.
>> We are just trying to get to
the bottom of something that
seems like -- there something

wrong with this.

This is just not quite right

yet.

>> Did you look at alternatives

such as getting in those

situations, if they are not

going to negotiate, but they're

contingency there are

contingency would be reduced

then to 10% or 15%, something

much smaller, court intervention

to see if this is truly one of

these extraordinary situations,

something that would protect

clients?

Are there any other options to

consider?

Again what you are saying is

this is mostly a big concern and

a policy limits case and in

those cases then the lawyer

shouldn't be taking the full

amount of the contingency

because they haven't had to do

too much.

They got the $100,000 because
their client had a million
dollars in medical bills and yet
we are not -- them.
>> We looked at alternatives.
Re-review this matter
extensively.
They are both plaintiffs and
attorneys representing both
sides.
>> Did they win?
>> No, no, they did not.
We did have one lien holder who
showed up and protested the idea
that a specialist could be
involved and he be paid for
their services.
We looked at these options and
we also look at what other
states are doing.
Ohio endorsed this.
New York City Bar Association
has issued an opinion allowing
this.
They see the value of the

service.

>> It seems to me the client would -- nothing in this kind of situation where you have got one lawyer doing this then you go to the other one to negotiate.

It just does not seem like a workable solution to me.

>> Would the client prefer to pay the full lien and get nothing or hire someone who can reduce their debt?

>> But my problem is, the lawyers in the position have more knowledge about these lien positions.

Wouldn't you think?

You get the bills etc. and you say okay if it recovers this is going to be a problem.

[INAUDIBLE]

You might have a negative balance.

>> The personal injury attorney should be ascertained the lanes

that are out there keeping up

with a.

>> But should we just let him

out, say you sign the contract

and you are out?

>> No, we should not.

The rule does not contemplate

that.

The attorney should take steps

to ascertain and negotiate liens

that are negotiable.

And do that work.

It is the extraordinary

difficult cases where the client

can benefit from any net

recovery that is possible to

bring others to help.

>> We thank you.

We have gone over about 18

minutes and I think we have gone

through that for now so we will

now go to --

>> May it please the court?

My name is Tim Chinaris and I'm

a Florida bar member from

Montgomery Alabama and I'm here
to speak against the barge
proposed rule 5-1.2D concerning
signing trust account checks.
I would like if I may briefly
address some of the comments at
the court has had about this as
I pointed out in my comments I
do think this would impose an
undue burden on solo
practitioners and lawyers and
small firms.
The court asked about the issue
of the input from people that
might be affected in addition to
the publication of the bar news.
I contacted the bars general
practice solo and small firm
section and at their September
meeting, all of the members of
the executive Council who were
present voted to support the
position that I'm I am
advocating to the bar so they
are in favor of them.

>> What about it was suggested
by Justice Perry some kind of
bonding situation because
anecdotally, most trust account
problem cases are not from the
larger firms that have lawyers
watching one another but they
tend to be the smaller firms, so
what would be the problem?
I guess it is an additional cost
he would say to do business but
to protect the public and to
accomplish the same goal?
Certainly we understand it is a
laudable goal but the bar is
trying to accomplish and why not
some kind of bonding?
It becomes a common kind of
requirement.
One would hope that premiums
would be competitive.
What is wrong with that idea?
>> Well, I would agree are going
to think that is something that
is acceptable from my

standpoint.
I think it would then give the
lawyers who want to take
advantage of the flexibility of
having a trusted nonlawyer
employee sign on trust account
checks.
They would have a way to do that
if they chose to do it and I
think it is certainly prudent to
bond the employees who would be
in that position anyway.
>> In fact it would be a smart
thing to do.
>> At asked about a middle
ground and I think the
middleground really is one that
isn't expressed by the ethics
committee when they first
considered this in 1964 and
again in 1987 when they
concluded it is appropriate to
have a trusted nonlawyer
employee, not somebody outside
of the firm, draw checks on the

trust account upon proper
authorization and under
appropriate supervision and
perhaps the bonding aspect is
one.
>> We have that in a case.
That 1964 ethics opinion, you
know I think to me, I was
surprised to learn that we were
allowing under our current rule
and nonlawyer -- in the lawyer
situation, do we have an idea
how many trust account checks
are actually by an average
practitioner being signed?
>> I certainly don't, Your
Honor.
I would imagine it is not a real
pervasive practice because many
lawyers have said the same thing
to me that they weren't even
aware that this was an option.
>> Okay so now we are really
going from something where most
lawyers assume they have to sign

their checks.

You are a solo practitioner.

The settlement statement comes,

you sign the five checks that

they need to sign.

And I don't want, again just as

we heard with the last

situation, I don't want to be

tried to understand a busy solo

practitioner.

I'm trying to understand how

many checks a month am a trust

account checks.

We are not talking about

operating counts, were talking

about trust accounts.

How many trust account checks

are being signed at this is such

an onerous requirement?

>> I don't think it is the

amount Your Honor.

Is the fact that a lawyer who

has a soul practice can't be in

two places at once.

>> Where of the two places.

>> It might be in court and it
might be a real estate closing.
Real estate closings were
mentioned and that gives me the
opportunity to point out that
this rule is inconsistent with
some of the other rules that bar
has with respect to trust
accounts.
For example there are ethics
opinion that say a nonlawyer may
conduct real estate closings
with a lawyer available by
telephone.
>> Why can't you do those?
You can do these checks in
advance.
You look down and you figure out
who gets what in these
transactions.
You do the checks.
You go to the closing with the
checks already made out to the
people that you need to make
them out to in the amount you

need to make them out so what is
the real problem they are?
>> I think that is the common
situation.
Something may change of the
closing and somebody needs to
draw a check and the lawyer is
out of town, which is allowed
under the ethics rule.
>> Again, we are over 90,000
lawyers and I don't know how
many we are swearing in today.
[INAUDIBLE]
I am sure they would be thrilled
to have some money in their
trust account.
I am concerned that we are
sending out a signal that in the
past, everyone assumed you had
to sign it and now we are saying
there has to be a trusted
employee.
I just, so other than a real
estate transaction, what other
situation would present

something that might be unduly
burdensome for a lawyer who has
all these other restrictions on
trust accounts?
>> Well, don't think you would
arise every day but certainly a
situation where maybe a lawyer
is court or out-of-town taking a
deposition and as we were
talking about trying to deal
with our clients are going
client comes in and the money is
available and the client really
needs the money.
Instead of having to wait a week
for the lawyer to get back
somebody who is perhaps bonded,
authorized signatory on the
trust account or somebody who
has worked for the lawyer for 25
years could cut that
10,000-dollar check to the
client.
I think it is a matter of
courtesy to the client.

>> They would have to go back to the bar if there was to be a bonding alternative, to figure out how the wording would be to that?

>> Certainly and I would point out one more rule if I may. The rule dealing with trust account reconciliations is not really a personal role with respect to lawyers. Another example of inconsistency. Points the various reconciliations and procedures and starts out the lawyer shall cause to be made monthly so the lawyer may delegate does. I think it would seem inconsistent to require a lawyer to sign the checks but at the same time can delegate everything else from the trust account or goes.

>> Would you suggest we keep

going under our present -- which
provides an office manager can
sign a check at at the lawyer
understands that he or she is
ultimately responsible for
anything that happens?
>> Yes, Your Honor.
I would agree with that and I
looked at the cases cited by the
bar in other cases and I really
found no case that I thought
would have had a different
result if this rule had been in
place.
>> But we do have cases where
lawyers say, that was my office
manager who signed those checks.
It was a lawyer who was signing
the check, we know we can hold
that lawyer's feet to the fire
because the lawyer actually
signed the check.
>> As you do when anybody else
finds a check as well.
>> Or maybe we should have all

trust accounts bondage.

We have again the biggest

problem is lawyer stealing from

the trust account not

necessarily -- I mean we did

have a case where not even the

employee of the lawyer but --

>> Behind case the court made an

appropriate distinction between

the employee someone who can

supervise and the stranger in

that case.

>> We thank all of you before

your presentations today.

Appreciate your argument.