The Florida Bar Re: Becker & Poliakoff, P.A.

GOOD MORNING, AND WELCOME TO THE ORAL ARGUMENT CALENDAR OF THE FLORIDA SUPREME COURT. FIRST CASE ON THE DOCKET THIS MORNING IS FLORIDA BAR RAY BECKER AND POLIAKOFF, AND WE WILL HEAR FROM MR. RICH MAN, ARE YOU GOING TO PROCEED?

MAY IT PLEASE THE COURT. I AM GERALD RICHMAN, AND I AM HERE ON BEHALF OF BECKER AND POLIAKOFF. WE REPRESENT THE FLORIDA BAR AND THE GREAT STATE OF FLORIDA. THIS, I UNDERSTAND, IS BEING RECORDED. TO FILE OUR BRIEFS IN THIS CASE, WE HAD TO FILE DISKS WITH OUR BRIEF. THE COURT HAS ENACTED MANY TRENDS OF THE FUTURE. WHAT WE HAVE, TODAY, IS INTERPRETATION OF THE RULE 456 OF THE FLORIDA BAR, BASICALLY IN AN ARCHAIC WAY THAT IGNORES THE ECONOMIC REALITY OF THE PRACTICE OF LAW. WHAT WE ARE TO ENSURE IN URGING IS THAT THE COURT ADOPT THE MAJORITY OPINION IN HOWARD VERSUS BAKER, DECIDED IN THE SUPREME COURT OF CALIFORNIA, MUCH MORE APPROPRIATE, TO PROTECT THE PUBLIC AND PROFESSION AND AVOID INSTABILITY OF A LAW FIRM.

GO AHEAD. I AM SORRY.

I WAS JUST WONDERING, HAVE WE HAVE DONE THIS BEFORE?

THE COURT HAS NOT SPECIFICALLY ADDRESSED THIS ISSUE, TO MY KNOWLEDGE, YOUR HONOR.

AND HOW DO WE GET IT IN THIS POSTURE, BEFORE US, AT THIS TIME?

WHAT BASICALLY HAPPENED IN THIS CASE IS THAT THE -- GOING BACK IN HISTORY, HERE, WITH REGARD TO THE RULE, THE RULE HAS BEEN AROUND A LONG TIME. THE MODEL CODE WAS ADOPTED BY THE FLORIDA BAR, I BELIEVE, IN 1986.

NOT TO INTERRUPT YOUR ANSWER, BUT WE ARE TALKING ABOUT HOW DOES THIS COURT HAVE JURIES DISTINCTION OF THIS MATTER? COULD YOU -- I REALIZE THERE HAS BEEP A SUBSTANTIAL INVESTMENT, ALREADY, AS FAR AS THE ENERGY AND YOU HAVE OUTLINED IT, IN A WAY,, TO BEGIN WITH, BUT WE ARE INTERESTED AS TO HOW WE HAVE JURISDICTION OF THIS MATTER, SO COULD YOU ENLIGHTEN US ON THAT?

SURE. BASICALLY THE WAY IT STARTED WAS WE FILED A LAWSUIT.

YOU ARE OUTLINING, I THINK, IN A FACTUAL WAY. WHAT WE ARE INTERESTED IN IS WHAT DOES THE FLORIDA CONSTITUTION TELL US ABOUT OUR JURISDICTION, AND WHATTIC ALREADY ON-WHAT PARTICULAR PART -- WHAT PARTICULAR PART OF OUR JURISDICTION ARE YOU ASSERTING FOR US TO HANG OUR HAT ON THIS CASE.

THE RULE OF THE SUPREME COURT OVER THE FLORIDA BAR.

WHAT DOES THE FLORIDA CONSTITUTION SAY ABOUT THAT, IN TERMS OF OUR JURISDICTION, TO MAKE DECISIONS?

MY UNDERSTANDING IS THAT THE FLORIDA BAR, ITSELF, IS A CREATION, IN EFFECT, OF THIS COURT. THIS COURT, THE JUDICIAL BRANCH SUPERVISES THE FLORIDA BAR. WHEN WE FILED OUR ACTION IN STATE COURT, THE FLORIDA BAR COUNSEL SAID, IN EFFECT, THIS IS GOING TO BE UP

HERE. IT IS GOING TO GET HERE. IT IS A SUPERVISORY ISSUE. WHY DON'T YOU SIMPLY FILE AN ORIGINAL PETITION TO THE SUPREME COURT, WHICH HAS BEEN DONE BEFORE, WITH REGARD TO THE INTERPRETATION OF THE RULE, AND THAT IS EXACTLY WHAT WE DID.

I WOULD COUCH IT A LITTLE BIT DIFFERENTLY, AND THAT IS, AND CERTAINLY WE HAVE JURISDICTION WITH THE FLORIDA BAR. WE HAVE JURISDICTION IN RESPECT TO PROMULGATION OF RULES, DISCIPLINARY RULES. HOWEVER, THIS COURT HAS BEEN CIRCUMSPECT ABOUT MAKING DETERMINATIONS AS TO ACTUAL CONSTITUTIONAL ISSUES, IN RESPECT TO THE ADOPTION OF RULES AND AS PREFERRED, TO HAVE THESE MATTERS COME TO US, AS A CASE IN CONTROVERSY. SO THAT WE HAVE REAL PARTIES IN INTEREST, WHO HAVE ACTUAL LITIGATION GOING ON, IN ORDER TO TEST THESE THINGS, AND HERE, WHAT WE HAVE, IS MERELY AN ADVISORY OPINION OF A COMMITTEE OF THE BAR. AND SO WHAT, FIRST OF ALL, WHAT BINDING EFFECT DOES THAT HAVE, AND SECONDLY, WHY SHOULD THIS COURT INTERJECT ITSELF INTO SOMETHING THAT IS NOT ACTUALLY A CASE IN CONTROVERSEY?

ANSWERING THE FIRST QUESTION, THE ADVISORY OPINION HAS A CHILLING EFFECT, IN TERMS OF THE PRACTICE OF LAW, AND WHAT LAWYERS CAN DO. IT IS AS MUCH AS STATE ACTION WOULD BE, AS IF A CIRCUIT COURT ENTERED A RULING. GIVE YOUR HONOR AN EXAMPLE. WHEN I SERVED AS VICE CHAIR OF THE FLORIDA BAR COMMITTEE ON PROFESSIONAL ETHICS, I ISSUED OPINION, WITH REGARD TO WHETHER OR NOT LAWYERS COULD JOIN LABOR UNIONS. AS A RESULT OF THE FILING OF THAT OPINION, AN ACTION WAS FILED AGAINST THE FLORIDA BAR, WITH REGARD -- RAISING CONSTITUTIONAL ISSUES, AS TO WHAT THE BAR COULD DO. THE CHILLING EFFECT, WE COULD ISSUE OPINIONS AS A RESULT OF THAT. EVERY OPINION THAT IS ISSUED, BY THE FLORIDA BAR, THOUGH, IT IS CALLED ADVISORY, AND HAS A REAL SUBSTANTIVE EFFECT ON THE PRACTICE OF LAW, AND WHAT HAPPENED IN THIS CASE IS THAT, AS SOON AS OPINION 93-4 WAS ISSUED, THE LAWYER, MR. WEAN, WHO IS A NONEQUITY PARTNER OF BECKER AND POLIAKOFF, USED THAT OPINION, AS A BASIS TO GO AHEAD AND DEPART FROM THE FIRM AND TAKE WITH AM ONE OF THE OTHER LAWYERS, AFTER THE FIRM HAD MADE A SUBSTANTIAL INVESTMENT AND SET HIM UP, BECAUSE HE WANTED TO GO TO ORLANDO. THEY WENT AHEAD AND SET HIM UP IN PRACTICE IN ORLANDO. IN SETTING HIM UP IN PRACTICE IN ORLANDO, THEY MADE A VERY SUBSTANTIAL INVESTMENT. THERE IS A CONTROVERSY, IN THE SENSE OF THE BECKER AND POLIAKOFF FIRM IS BEING INJURED AND CHILLED, AS A RESULT OF WHAT HAPPENED, BY THE ISSUANCE OF THIS OPINION, AND THERE ARE THINGS THAT ARE ACTUALLY HAPPENING. NOW, WE FILED, BASICALLY, AGAINST THE FLORIDA BAR WITH REGARD TO THAT OPINION, AND WHAT WE ARE TALKING ABOUT, HERE, IS THE INTERPRETATION OF THE RULE OF THE ADVISORY OPINION THAT HAS A REAL AND PRACTICAL EFFECT, IN TERMS OF THE PUBLIC AND IN TERMS OF THE PRACTICE OF LAW.

AFTER THIS OPINION, WHICH, BASICALLY, SAYS THAT YOUR -- THE BECKER-POLIAKOFF AGREEMENT IS IN VIOLATION OF TWO OF THE RULES, HAVE -- HAS THIS AGREEMENT, THEREAFTER, BEEN SIGNED, OR WHAT IS THE -- WHAT IS THE STATUS OF THE PRESENT AGREEMENT THAT --

IT IS NOT BEING USED. AND AS RESULT OF IT NOT BEING USED, AFTER MR. WEAN LEFT, THERE IS ANOTHER LAWYER THAT LEFT, IN 1999.

IT CAN'T BE USED, BECAUSE IF THIS LAWYER WERE TO SIGN THIS, THEY WOULD BE IN VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT?

ABSOLUTELY, AND IF YOU GO BACK, YOUR HONOR, TO THE HISTORY OF THIS, IN 1989, THIS LAW FIRM HAD A GRIEVANCE FILED AGAINST IT, AND WHEN THE GRIEVANCE WAS FILED AGAINST IT, IT DEALT WITH IT PROFESSIONALLY. THERE WAS A NPC, AND IN THE NPC, THEY AGREED TO REVISE THEIR AGREEMENT. THAT IS NOTED IN THERE, IN THE FINDING OF THE GRIEVANCE COMMITTEE, AS A MITIGATING CIRCUMSTANCE, A REVISING AND CHANGING THE AGREEMENT.

WHAT WAS THE CHANGE? I DIDN'T SEE IT IN THE RECORD. A CHANGE OF THE PERCENTAGE? THERE IS TWO PARTS OF YOUR AGREEMENT. ONE IS THAT IT SAYS YOU CAN'T COMPETE FOR TWO YEARS, AND THAT IS -- AND THEN THERE IS THE FEE-SHARING PORTION, WHICH IS, IN ONE FORM OR ANOTHER, I IMAGINE, IS VERY COMMON TO A LOT OF EMPLOYMENT AGREEMENTS. DID THE INITIAL, THE FIRST AGREEMENT, HAVE A DIFFERENT FEE SPLITTING?

CANDIDLY, I DO NOT KNOW WHAT IT PROVIDED BEFORE, BUT I KNOW IT WAS CHANGED, AND WHEN IT WAS CHANGED, THIS IS WHAT APPEARED TO HAVE THE PERMATTER OF THE FLORIDA BAR, AND WHAT MR. ROGOW, I KNOW THIS COURT IS FAMILIAR WITH, OPINED IS IN CONFORMITY WITH THE RULE, AND IN RELIANCE ON THAT, THAT WAS USED, UNTIL THE OPINION CAME OUT, IN 1999 A.

WELL, YOU ARE, ALSO, SEEKING A CHANGE IN THE RULE OF PROFESSIONAL CONDUCT, AND I GUESS, GOING BACK TO THIS JURISDICTIONAL ISSUE WHICH WE ARE CONCERNED WITH, TODAY, IS WHAT IS THE WAY THAT RULES OF PROFESSIONAL CONDUCT GET CHANGED, WITHIN THE STATE? AREN'T WE COMING IN THE BACK DOOR, ALSO, IN THIS -- IN THAT WE ARE LOOKING AT AN ADVISORY OPINION, BUT YOU ARE, ALSO, ASKING RELIEF, CONCERNING A RULE OF PROFESSIONAL CONDUCT.

FIRST OF ALL, WE ARE NOT ACTUALLY ASKING THAT THE RULE, ITSELF, HAS TO BE CHANGED. THE RULE HAS BEEN INTERPRETED. IT IS THE INTERPRETATION OF THE RULE, IN THE PROPOSED ADVISORY OPINION, THAT CAUSE THE PROBLEM. IF THE RULE WERE TO BE INTERPRETED, IN LIGHT OF THE MODERN REALITY OF PRACTICE, THEN YOU WOULD NOT NEED TO CHANGE THE RULE. THE RULE SAYS THAT YOU CAN'T DO ANYTHING THAT RESTRICTS THE RIGHT OF A LAWYER TO PRACTICE, AND THE QUESTION IS WHETHER, IN EFFECT, WHETHER YOU WANT TO CALL IT A FEE-SPLITTING AGREEMENT, WE WOULD CALL IT, BASICALLY, A NONINTERFERENCE AGREEMENT, THAT PROTECTS THE ECONOMIC INVESTMENT OF THE LAW FIRM, IS PERMITTED BY THE RULE. DOES THAT, REALLY, RESTRICT THE RIGHT OF THE LAWYER TO PRACTICE? DOES IT RESTRICT THE RIGHT OF A CLIENT TO CHOOSE, WHICH IS CERTAINLY NOT AN IN VIOLET RIGHT. THE CLIENT AND LAWYER RIGHT IS INFLUENCED BY A NUMBER OF THINGS, INCLUDING WHETHER THE CLIENT WANTS TO HIRE THE LAWYER AND WHETHER THE LAWYER WANTS TO TAKE THE CASE. WHEN I BEGAN PRACTICING, IT WAS ABSOLUTELY UNHEARD OF TO HAVE A REFERRAL FEE THAT DIDN'T RELATE TO THE KIND OF WORK THAT WAS BEING DONE ON THE CASE, AND THAT IS RECOGNIZED TODAY. WE ARE TALKING ABOUT, HERE, A 50 PERCENT RULE. FIFTH PERCENT MIGHT NOT BE THE EXACT NUMBER, BUT IF 25 PERCENT IS REASONABLE FOR NO WORK, 50 PERCENT OUGHT TO BE REASONABLE, FOR ALL OF THE WORK THAT THE LAWYER DOES, TODAY, IN TERMS OF MARKETING. THERE IS A WHOLE SECTION OF THE FLORIDA BAR THAT IS SET UP, WITH REGARD TO MARKETING AND ECONOMICS OF THE PRACTICE OF LAW. TODAY, I HAVE BEEN APPOINTED TO SERVE ON THE AMERICAN BAR ASSOCIATION'S RESPONSIBILITY WITH REGARD TO GOVERNMENT, A WHOLE OTHER NAME FOR THE PRACTICE OF ADVERTISING, AND WHAT ITS FUNCTION IS TO PROVIDE REGULATION WITH REGARD TO ADVERTISING, BUT IF YOU LOOK AT THE STRUCTURE OF THE FLORIDA BAR, IF WE WERE HERE FOR A RULE CHANGE, THERE IS A PROVISION TO GO AHEAD AND MOVE, SPECIFICALLY, FOR A RULE CHANGE. THE PROBLEM WE HAVE, HERE, IS A DIFFERENT PROBLEM. THE FLORIDA BAR HAS A STRUCTURE SET UP, WHERE IT ISSUES INFORMAL STAFF OPINIONS. THEN IT ISSUES FORMAL ADVISORY OPINIONS. THEN THERE IS SOMETHING CALLED THE BOARD REVIEW COMMITTEE, WHICH REVIEWS -- CAN REVIEW AND OVERRULE ETHICS OPINIONS. WHERE DO YOU GO FROM THERE, TO GET TO THIS COURT, IF THEY HAVE, BASICALLY, MADE A MISTAKE?

WHY CAN'T YOU, IF YOU HAVE GOT AN ACTION WHICH IS IN BREACH OF A CONTRACT, WHICH YOU BELIEVE IS IN COMPLIANCE WITH THE RULE BUT CONTRARY TO THE ADVISORY OPINION, IT SEEMS TO ME THAT THE WAY THAT YOU COULD DO IT WOULD BE THAT YOU WOULD SUE THE PERSON THAT WASN'T FULFILLING THE CONTRACT, IN THE CIRCUIT COURT. AND -- FOR BREACH CONTRACT, AND THEN, IF -- LIKE HAPPENED IN THE FIFTH DISTRICT. AND THEN, IF THE COURT,

TRIAL COURT, WOULD MAKE A DETERMINATION AS TO ENFORCEABILITY OF YOUR CONTRACT, AND THAT WOULD PROCEED THROUGH THE USUAL CHANNELS, AS EVERY CASE IN CONTROVERSY TO US.

THAT IGNORES THE REALITY OF THE FACT OF THE CHILLING EFFECT OF THE OPINION AND THAT THE LAW FIRM IS, THEN, SUBJECT TO A GRIEVANCE PROCEDURE BROUGHT AGAINST IT, AND THAT IS EXACTLY THAT THE THREAT WAS MADE HERE. THE LAW FIRM HAS GOT A GO-AHEAD AND -- HAS GOT TO GO AHEAD AND DEFEND ITSELF WITH REGARD TO A GRIEVANCE PROCEEDING, IF IT DOES ANYTHING AT ALL TO ENFORCE THE OPINION. THAT IS WHY WE TOOK THIS ROUTE, AND WE DID FILE IN CIRCUIT COURT.

THAT OCCURS, DOES IT NOT, EVERY TIME AN ADVISORY OPINION IS ISSUED, AND WHAT WE ARE TALKING ABOUT, HERE, WE ARE CONTEMPLATING, NOW, OF COURSE, ANY LAWYER THAT ASKS FOR AN OPINION LIKE THAT IS GOING TO BE AFFECTED BY IT, AND THE PRACTICAL EFFECT, ORDINARILY, IS I AM NOT GOING TO TAKE THE RISK OF GOING AGAINST THAT OPINION. IT IS GOING TO HAVE A CHILLING EFFECT. BUT WE, HERE TO FORE, HAVE NOT SET UP A PRACTICE, WHERE THIS COURT WILL ROUTINELY ACCEPT, JURISDICTIONALLY, THE REVIEW OF THOSE ADVISORY OPINIONS. WE ARE TALKING ABOUT ANOTHER SUBSTANTIAL LAYER OF REVIEW OR JURISDICTION OF THIS COURT, IF WE EMBRACE THAT CONCEPT IN THIS WAY.

I UNDERSTAND YOUR HONOR'S CONCERN IN THAT REGARD. THE QUESTION IS WE DO HAVE, IN FACT, A CASE IN CONTROVERSY HERE. I MEAN, IF YOU LOOK AT THE UNDERLYING ISSUE ON HERE, THE WAY THIS AROSE, AND IF YOU LOOK AT THE INTERESTED PARTY'S BRIEF, THERE IS, OUT THERE, A POTENTIAL ACTION AGAINST MR. WEAN, WITH REGARD TO THE POSITION HE TOOK AND WHAT HE DID WITH REGARD TO THE FIRM. THAT ACTION HASN'T BEEN PURSUED, BECAUSE OF THE THREATENED GRIEVANCE ACTION. IT IS INVOLVED IN THIS CASE. ANALOGY COST MILLER DECISION.

DOES MR. WEAN HAVE A CONTRACT?

YES.

DID HE SIGN YOUR CONTRACT?

YES, YOUR HONOR, HE DID, AND THAT IS PRECISELY WHAT CREATED THE ISSUE. HE JOINED THE FIRM, SIGNED THE CONTRACT, AND THEN HE ENDS UP -- HE SIGNS THE CONTRACT, WHEN HE BECOMES A NONEQUITY SHAREHOLDER. WE WANT TO EMPHASIZE WE ARE NOT TALKING ABOUT THIS APPLYING TO ASSOCIATES BUT APPLYING, BASICALLY, TO PARTNERS. THAT IS THE POSITION OF THE LAW FIRM, IN ITS INTERPRETATION. SO NONEQUITY PARTNER GOES AHEAD AND SIGNS IT. AFTER THEY SIGN IT, THEN THEY COME OUT WITH THIS ADVISORY OPINION. HE TURNS AROUND AND TAKES, IN THE OFFICE HE HAS SET UP IN ORLANDO AND GOES AHEAD, SETS OUT HIS OWN PRACTICE, TAKES HIS CLIENTS, AND YOU ARE TALKING ABOUT A BIG BASE OF ASSOCIATION CLIENTS, WHERE BECKER POLIAKOFF'S SPERCKT IS COMMUNITY ASSOCIATION LAW, WHERE THEY GO AHEAD AND CONSULT -- AND CULTIVATE 30 TO 100 ASSOCIATIONS IN ANY CITY, AND THAT IS THE DIFFERENCE. YOU TAKE A PARTNER AND GOES AHEAD AND ESSENTIALLY IN GRAYISH YATES HIMSELF -- INGRATIATES HIM SELF WITH THESE PEOPLE. THIS IS A MAN THAT SPENDS $400,000 A YEAR ON COMPETERS, AND GOES -- COMPUTERS, AND GOES AHEAD AND TAKES THAT BASE.

WHY NOT HAVE IT GO AHEAD AND BE ANALYZED BEFORE COMING THIS COURT. WE ARE NOT IN THE FACT-FINDING BUSINESS, AND IT SEEMS AS THOUGH WE HAVE BEEN PROVIDED WITH REAMS OF FACTUAL INFORMATION IN SUPPORT. HOW CAN WE REALLY VALIDATE THE FACTS WITHIN THAT MATERIAL, WHEN WE ARE NOT IN THAT KIND OF POSTURE, AND ISN'T IT MORE PRUDENT, TO HAVE THAT DONE, BEFORE IT GETS TO THIS LEVEL?

IF YOUR HONOR LOOKS AT THE INTERESTED PARTY'S BRIEFS COMMENTS, THEY SAY,

ESSENTIALLY, THAT THE FACTS ARE IRRELEVANT. THE FACTS THAT ARE NEEDED, FOR PURPOSE OF MAKING THE DECISION, HERE, ARE, REALLY, UNCONTESTED.

BUT YOU HAVE BEEN ARGUING FACTS ALL MORNING TO US. YOU ARE THROWING OUT THE NUMBERS OF HOW MANY THOUSANDS OF DOLLARS ARE SPENT AND THIS IS THE FIRM'S PRACTICE AND THOSE KINDS OF THINGS. IT JUST SEEMS TO ME THAT WE NEED TO HAVE SOME TESTING IN THIS, MAYBE NOT JUST FOR THIS CASE, BUT FOR OTHER CASES THAT ARISE.

WE DID FILE A MEETINGS TO SUPPLEMENT THE RECORD -- A MOTION TO SUPPLEMENT THE RECORD, WHICH HAS NOT BEEN ANSWERED BY THE COURT. THE FACT OF THE MATTER IS THAT, ON THESE BASIC ISSUES, WE THINK THAT THE COURT HAS ENOUGH BEFORE IT TO LOOK AT THE CALIFORNIA DECISION AND THE CONTRACT AND THE OPINION, TO BE ABLE TO MAKE THE DECISION ON WHAT IS HERE. THE COURT CAN CERTAINLY TAKE JUDICIAL NOTICE OF THE REALITY OF THE PRACTICE OF LAW TODAY, AND THAT IS WHAT THE CALIFORNIA COURT DID. THE CALIFORNIA COURT DID NOT HAVE A LOT OF OTHER THINGS BEFORE IT, THAT IT CITED IN THAT OPINION. IT LOOKED AT THE PRACTICE OF A LAW, ACROSS THE BOARD, AND SAID YOU CAN'T HAVE, IN EFFECT, A COMPLETE PROHIBITION AGAINST NONCOMPETITION. YOU HAVE GOT TO BE ABLE TO HAVE SOME REASONABLE RESTRICTIONS, AND WHAT WE ARE TALK ABOUT IS A VERY IMPORTANT PRINCIPLE, WHICH IS THE STABILITY OF THE SMALL AND MEDIUM-SIZED LAW FIRMS, VERSUS IF YOU CONTINUE THE PRESENT TREND, AND YOU DON'T HAVE SOME REASONABLE AGREEMENTS THAT LAW FIRMS ARE ALLOWED TO ENTER INTO, YOU ARE GOING TO HAVE, EITHER SOLE PRACTITIONERS, WHO HAVEN'T HAD THE BENEFIT OF PRACTICE AND WORKING IN A LAW FIRM, OR YOU ARE GOING TO HAVE, ON THE OTHER HAND, ENORMOUS LAW FIRMS. YOU ARE GOING TO HAVE THE HOLLAND & KNIGHT'S AND THE GREENBERG-TRAURIGS, AND THAT IS GOING TO BE THE DECISION FOR THE CLIENTS. THAT IS WHERE THEY ARE GOING TO GO, AND THAT IS WHY THIS CASE IS IMPORTANT IN THIS ISSUE, BECAUSE MEDIUM-SIZED LAW FIRMS CAN'T SURVIVE.

YOU ARE WELL INTO YOUR REBUTTAL.

THANK YOU, YOUR HONOR.

MR. RICHARDS.

MAY IT PLEASE THE COURT. MY NAME IS BARRY RICHARD, AND I AM COUNSEL FOR THE FLORIDA BAR. SITTING WITH ME AT COUNSEL TABLE IS JOHN LEEB MAN, WHO -- LIEBMAN, WHO REPRESENTS THE PARTIES IN THE INITIAL BRIEF. IF THERE IS TIME REMAINING, AT THE CONCLUSION OF MY PRESENTATION, MR. LIEBMAN HAS SOME ADDITIONAL MATTERS THAT HE WOULD LIKE TO ADDRESS.

YOU NEED TO KEEP TRACK OF YOUR TIME.

MY UNDERSTANDING WAS WITH MR. LIEBMAN WAS THAT, IF I AM FINISHED AND HE HAS TIME, THEN --

THAT IS UP TO YOU ALL.

THE COURT SPENDS MORE TIME AND DESIRES MORE TIME, THEN HE WILL HAVE NOTHING LEFT, SO WE WILL SEE WHAT HAPPENS. LET ME, IF I MAY, ADDRESS THIS QUESTION OF JURISDICTION. I FEEL COMPELLED, ON BEHALF OF MR. RICHMAN, TO DO SO, BECAUSE I WAS THE PERSON WHO SUGGESTED TO HIM THAT THIS WAS AN APPROPRIATE ROUTE TO TAKE. I DON'T REALLY THINK THIS IS A QUESTION OF JURISDICTION, SO MUCH AS DISCRETION. THERE IS CERTAINLY NO QUESTION THAT THIS COURT HAS THE JURISDICTION TO ADDRESS THIS, NOT IN ITS ADD JUDD CAMETORY CAPACITY BUT IN -- ADJUDICATORY CAPACITY BUT IN ITS ADMINISTRATIVE CAPACITY, WHERE IT HAS JURISDICTION OVER THE FLORIDA BAR. AN ADVISORY OPINION IS

REVIEWABLE BY THE BOARD OF GOVERNORS, AND THE RULES PROVIDE THAT ALL CONDUCT AND ACTIONS OF THE FLORIDA BAR ARE SUBJECT TO REVIEW AND ACTION BY THE THAT FLORIDA SUPREME COURT.

BUT WHAT WE ARE CALLED HERE, TODAY, TO DO, IS TO RENDER AN ADVISORY OPINION UPON AN ADVISORY OPINION, AND WOULDN'T IT BE A SOUNDER WAY TO PROCEED, TO ALLOW THESE MATTERS TO BE DEVELOPED, AS JUSTICE LEWIS ALLUDED TO, ON THE BASIS OF A FACTUAL RECORD AND ON THE BASIS OF HAVING REAL PARTIES IN INTEREST DETERMINE AND SEE WHETHER THIS OPINION THAT HAS BEEN ISSUED BY THIS COMMITTEE OF THE FLORIDA BAR HAS ANY LEGAL EFFICACY OR NOT. IT MAY BE THROWN OUT BY THE CIRCUIT COURT.

I THINK THAT IS APPROPRIATE IN SOME CASES, WHERE YOU ARE TALKING ABOUT THE FACTS OF A GIVEN CASE THERE. IS NO QUESTION THAT THIS COURT HAS THE JURISDICTION, SHOULD IT SO DESIRE, TO ADDRESS ONE OF THESE ISSUES, WITHOUT TAKING THAT ADVERSARY ROUTE. THE QUESTION IS I BELIEVE THERE MAY BE INSTANCES IN WHICH THE PUBLIC POLICY IS AN OVERRIDING MAGNITUDE, THAT THE COURT CAN REVIEW IT AND DECIDE WHETHER OR NOT IT WANTS TO CHANGE THE ADVISORY OPINION OR CHANGE THE RULE. MY SUGGESTION TO MR. RICHMAN WAS THAT, IF HE FELT THAT THIS WAS ONE OF THOSE OPINIONS, WHICH HE DID. HE FELT THAT THIS IMPLICATED A MUCH BROADER POLICY ISSUE, REGARDING THE FLORIDA BAR, PARTICULARLY AS A RESULT OF THE CALIFORNIA CASE, THAT HE OUGHT TO MAKE THAT KNOWN TO THIS COURT, THROUGH THE PETITION, AND THE COURT WOULD DECIDE WHETHER OR NOT IT CONSIDERED THIS ONE OF THOSE CASES. I BELIEVE THAT THE MORE APPROPRIATE WAY TO HANDLE THIS IS BY A PROPOSED RULE CHANGE. I THINK THAT IS WHAT WE ARE, REALLY, DEALING WITH HERE. I FRANKLY DON'T THINK THAT THIS IS A CASE THAT IS -- THAT INVOLVES THE PARTICULAR FACTS OF THIS PARTICULAR CASE. I THINK MR. RICHMAN AND HIS CLIENTS ARE TRYING TO RAISE MUCH BROADER POLICY ISSUE, WHICH EMNIGHTS FROM THE FACT THAT -- EMANATES FROM THE FACT THAT CALIFORNIA IS THE ONLY STATE IN THIS COUNTRY THAT HAS CHOSEN TO ABANDON A RULE OF PROFESSIONAL CONDUCT THAT HAS BEEN ADOPTED SINCE 1961, WHEN IT WAS FIRST PROPPED PROPOSED BY THE ABA, BY VIRTUE OF JURISDICTION. THAT WAS THE IMPETUS OF THIS.

BACK TO THIS AGREEMENT. THERE IS TWO PORTIONS. ONE SAYS THEY CAN'T COMPETE FOR TWO YEARS, AND THE OTHER SAYS, IF THEY LEAVE, WE HAVE GOT TO GET 50 PERCENT, SO THAT IS THE FEE-SPLITTING PART. THE ONE PART IS CLEARLY IN VIOLATION OF WHAT, NOW, IS RULE 4-5.6. THE OTHER PART IS AN INTERPRETATION, BASED ON THIS ADVISORY OPINION, THAT 50 PERCENT IS TOO MUCH. CORRECT?

THAT'S CORRECT, YOUR HONOR.

SO IS IT THE BAR'S POSITION, AND IT IS AN ADVISORY OPINION, THAT THE PERCENTAGE, THERE COULD BE A PERCENTAGE THAT IS APPROPRIATE. CORRECT?

I THINK --

WHAT I KIND OF WONDER IS HOW DOES A RULE CHANGE WON'T CHANGE THE FACT THAT THERE IS GOING TO BE SOME SITUATIONS, WHERE.

PERCENT IS TOO MUCH. SOME MAY BE THAT IT IS NOT TOO MUCH. SO HOW WOULD THAT BE ADDRESSED IN A RULE CHANGE?

I SUPPOSE YOU COULD ADDRESS IT IN A RULE CHANGE, THE SAME AS WE DID WITH RESPECT TO CONTINUED FEES, BY CREATING SOME PERCENTAGE. THE BAR HAS NOT ADDRESSED THAT, SO I AM RESPONDING TO YOU, IN TERMS OF WHAT I THINK IS CONCEIVABLE.

WELL, ARE THERE OTHER ADVISORY OPINIONS THAT SAY 25 PERCENT IS OKAY?

NO. I KNOW OF NO OPINION THAT ADDRESSES IT ON THE BASIS AFTER PERCENTAGE. I WILL TELL YOU WHAT I THINK THE BROAD POLICY IMPLICATION IS OF THIS QUESTION OF PERCENTAGES. THE RULE, ITSELF, DOESN'T SAY, DOESN'T PROHIBIT, AN AGREEMENT THAT SAYS A LAWYER DID CANNOT PRACTICE IN COMPETITION. WHAT THE RULE SAYS IS THAT LAWYERS ARE NOT ALLOWED TO PARTICIPATE IN AN AGREEMENT THAT RESTRICTS THE RIGHTS OF A LAWYER TO PRACTICE. THAT IS WHAT THE RULE SAYS. NOW, GIVEN THE WORDING OF THAT RULE AND, ALSO, GIVEN REALITY, I THINK THAT THE ADVISORY OPINION IS A CORRECT ONE. I THINK THAT ANY AGREEMENT THAT I AM POESZ UPON A -- IMPOSES UPON A LEAFING LAWYER, SUCH A DRACONIAN OBLIGATION AS TO RETURN 50 PERCENT OF ANY FUTURE FEE, HAS, IN REALITY, THE EFFECT OF PROHIBITING HIM, IN MOST INSTANCES, FROM CONTINUING TO REPRESENT THOSE CLIENTS.

LET ME ASK YOU THIS. DOES THE BAR TAKE THE POSITION THAT THERE ARE TYPES OF AGREEMENTS THAT WOULD NOT BE IN VIOLATION OF THIS RULE?

I CAN'T SPEAK FOR THE BAR ON SOMETHING THAT THE BAR HAS NOT ADDRESSED, AND I KNOW OF NO ADVISORY OPINION BY WHICH THE BAR HAS ADDRESSED THAT QUESTION.

BUT, THEN, DOESN'T THAT BRING US BACK TO THE WHOLE ISSUE OF WHETHER OR NOT THIS SHOULD HAVE BEEN -- GONE THROUGH THE COURT, THE TRIAL COURT, TO DEVELOP SOME FACTS? BECAUSE IT CONCERNS ME THAT WE DON'T KNOW EXACTLY WHAT THIS PARTICULAR AGREEMENT IS ABOUT. DOES IT HAVE THOSE SAME KINDS OF CATEGORIES THAT WERE TALKED ABOUT IN THE MILLER CASE? ARE THERE SOME CATEGORIES THAT ARE OKAY TO PUT IN AN AGREEMENT, AND OTHERS THAT ARE NOT, AND SO THAT IS WHAT CONCERNS ME. WE DON'T HAVE ANY OF THAT KIND OF INFORMATION BEFORE US, IN ORDER TO MAKE A DECISION IN THIS PARTICULAR SITUATION.

I ENTIRELY AGREE WITH YOU, WITH RESPECT TO THIS PARTICULAR INSTANCE. THE ONLY QUESTION THAT JUSTIFIES OUR APPEARING HERE, TODAY, IS WHETHER THE COURT WANTS TO ADDRESS THE BROADER POLICY ISSUE OF THESE TYPES OF AGREEMENTS.

IF, TOMORROW, AN ASSOCIATE SIGNED THE AGREEMENT THAT WAS THE SUBJECT OF 93-4, WOULD THE BARB IN A POSITION, THEN, TO PROSECUTOR TO BRING GRIEVANCE PROCEEDINGS AGAINST THE FIRM?

YES, YOUR HONOR, IT WOULD BE.

SO MY CONCERN ABOUT, AND I AM TRYING TO FIGURE OUT HOW YOU GET TO THE FACTS AND GET A GOOD RECORD ON THE FACTS, BUT THE MILLER CASE, SPECIFICALLY, REFERS TO THE -- THAT THERE COULD BE A DIFFERENCE BETWEEN WHAT IS ETHICAL AND WHAT IS ENFORCEABLE, AND SEEMS TO SAY THAT IT IS UP TO THE ATTORNEY TO MAKE A DECISION, BEFORE THEY ENTER INTO AGREEMENT, WHETHER SOMETHING IS ETHICAL, BUT, THEN, ONCE THEY HAVE ENTERED INTO IT, MIGHT BE ENFORCEABLE. GIVEN THAT DICHOTOMY, THE -- A CASE IN CONTROVERSY AGAINST AN ASSOCIATE, REALLY, MAY NOT SOLVE THE PROBLEM, BUT, YET AGAIN, WE DON'T REALLY HAVE A GOOD AMERICANISM HERE, BECAUSE -- MECHANISM HERE, BECAUSE THERE IS NO RECORD FOR REVIEWING A SINGLE OPINION, AND, AGAIN, WHAT IS THE PRECEDENT FOR, WE ARE GOING TO START REVIEWING EVERY SINGLE OPINION. WHERE IS THE -- HOW DO YOU GET TO A SEPARATION BETWEEN ETHICS, WHAT IS ETHICAL AND WHAT IS ENFORCEIBLE, WITHOUT HAVING A RECORD, HERE, TO MAKE THAT DECISION, ANYWAY?

LET ME SAY PARENTHETICALLY I DON'T AGREE WITH THE MILLER CASE, BUT WE DON'T NEED TO ADDRESS THAT ISSUE RIGHT NOW, AND I SUGGEST TO THE COURT THAT YOU ARE ASKING ME FOR A RESPONSE THAT IS DIRECTED TO THE WRONG PERSON. I AM NOT ASKING THIS COURT TO TAKE THE CASE FOR THE PURPOSE OF ADJUDICATING THE ISSUE BETWEEN BECKER AND POLIAKOFF AND THE FLORIDA BAR, AND I ENTIRELY ALONG DEGREE WITH -- AND I ENTIRELY AGREE WITH

EVERYONE WHO HAS SUGGESTED THAT THAT HAD BETTER BE ADDRESSED FIRST, IN THE FIRST INSTANCE, IN AN EVIDENTIARY FORUM. I AGREE WITH YOU. THE ONLY REASON THAT I THINK THAT IT IS JUSTIFIABLE FOR US TO BE ADDRESSING THE COURT IN THIS FIRST INSTANCE IS, IF THE COURT DESIRES TO EXERCISE ITS DISCRETION TO ADDRESS THE BROADER POLICY QUESTION RAISED PIE THIS RULE.

WHAT WOULD BE THE ACTION THAT THEY COULD BRING AGAINST THE FLORIDA BAR IN CIRCUIT COURT?

WELL, I BELIEVE -- I DON'T KNOW THAT THEY COULD BRING AN ACTION AGAINST THE FLORIDA BAR. LET ME TELL YOU, THE WAY THIS INITIALLY AROSE IS THAT THE FLORIDA BAR BROUGHT A DISCIPLINARY ACTION AGAINST BECKER AND POLIAKOFF. IT WAS THE DETERMINATION OF THE BAR AND BECKER AND POLIAKOFF FILED AN ACTION IN FEDERAL COURT, TO ENJOIN THE BAR FROM PROCEEDING. WE FILED A MOTION TO DISMISS, BASED UPON LACK OF JURISDICTION. THAT IS THE PROCEDURAL MECHANISM BY WHICH WE ARRIVED AT THE POINT THAT THE PETITION WAS, THEN, FILED HERE.

IS THERE A GRIEVANCE PROCEEDING CURRENTLY PENDING AGAINST THE FIRM?

NO, MA'AM. BECAUSE THE BAR AGREED THAT, IF BECKER AND POLIAKOFF DECIDEDED TO FILE A PETITION WITH THIS COURT, AND IF THEY AGREED NOT TO ATTEMPT TO ENFORCE THEIR AGREEMENT, UNTIL THEY RECEIVED SOME AUTHORITATIVE DETERMINATION, THAT WE WOULD ABATE THE DISCIPLINARY PROCEEDING. THE PARTIES AGREED TO DISMISS THE FEDERAL ACTION, AND BECKER AND POLIAKOFF FILED THIS PETITION.

BUT THAT WOULD BE IF WE HAD -- NOT THAT THEY WANT TO BE THE SUBJECT OF A GRIEVANCE PROCEEDING, BUT IF THERE IS A GRIEVANCE PROCEEDING, THEN THERE IS A REFEREE, THEN ALL OF THIS FACTUAL RECORD GETS DEVELOPED BY THE REFEREE.

YOU ARE CORRECT. I HAVE NO DISPUTE WITH ANY SUGGESTION FROM THIS COURT THAT, IF WE ARE TALKING ABOUT -- IF THE COURT IS NOT PREPARED, AT THIS TIME, IF IT DOES NOT CONSIDER THE BROADER QUESTION TO BE OF SUFFICIENT MAGNITUDE TO JUSTIFY ITS ATTENTION AT THIS TIME, I WOULD AGREE WITH YOU THAT WE ARE LEFT WITH NOTHING BUT AN INDIVIDUAL DISPUTE, WHICH IS BETTER HEARD IN THE FIRST INSTANCE, IN AN EVIDENTIARY FORUM. I ENTIRELY AGREE WITH THAT. SO THE REASON WE ARE HERE IS, IN MY MIND, BECAUSE BECKER AND POLIAKOFF FELT THAT IT WOULD LIKE TO, FIRST, SEE WHETHER THE COURT DESIRED TO TAKE UP THE BIG POLICY QUESTION AND THE BAR WAS PREPARED TO ALLOW THEM TO DO THAT, BEFORE WE PROCEEDED IN ANY OTHER FORUM. AND THAT IS WHY WE ARE HERE. NOW --

MR. RICHARD, WOULD IT NOT BE BETTER TO COME TO THAT POLICY CONCLUSION, BASED UPON THE AVAILABLE INFORMATION, AND SECONDLY, IT APPEARS TO ME, IF WE ARE LOOKING AT THE POLICY ASPECT, THIS, REALLY, IS THE CLASSIC NONPYREACY KIND OF CLAUSE THAT YOU SEE EVERYDAY. IT ISN'T, REALLY, A FEE SPLITTING. IT IS A NONPIRACY, IS IT NOT? TO DISCOURAGE THE TAKING OF CHRIGETS. THAT IS WHAT YOU WOULD SEE IN ANY AGENCY -- IN ANY STANDARD AGENCY TYPE OF CONTRACT, THAT YOU REACH THAT CONCLUSION.

WE CONCLUDED, LONG AGO, THAT LAWYERS ARE DIFFERENT. AND WHILE THERE CAN BE NO QUESTION THAT THERE WILL BE INSTANCES IN WHICH A LAWYER'S LEAVING AND TAKING CLIENTS WITH HIM OR WITH HER WILL HAVE AN ECONOMIC DISADVANTAGE TO THE FIRM THAT IS BEING LEFT. THERE IS NO QUESTION ABOUT THAT. THE AMERICAN BAR ASSOCIATION SUITED, IN 1961, AND THIS STATE, ALONG WITH VIRTUALLY ARRIVE OTHER STATE, EMBRACED THE PRINCIPLE THAT THERE IS AN OVERRIDING ISSUE THAT PLACES CLIENTS' INTERESTS AHEAD OF THE LAWYER'S ECONOMIC INTERESTS, AND BY THE WAY, THAT IS NOT THE ONLY INSTANCE IN WHICH WE DO THAT. THERE ARE A NUMBER OF INSTANCES IN WHICH WE DO IT. THE RESTRICTIONS UPON FEES, WHICH THE RULES IMPOSE UPON LAWYERS, REQUIRE LAWYERS TO MAKE A SACRIFICE THAT

PRACTITIONERS, PROFESSIONALS, TRADES MEN, AND VIRTUALLY EVERY OTHER FIELD, DON'T FACE, THE RESTRICTIONS ON CONFLICT, PLACED UPON US, IMPOSITIONS THAT TRADES MEN AND OTHER PROFESSIONALS DON'T FACE, WITH REGARD TO ECONOMIC REALITY, SO WE ASSUME THAT ALL THE TIME. IT SEEMS TO ME THAT THE QUESTION THAT IS BEFORE THE COURT, IF THE COURT DECIDES TO ADDRESS THE POLICY QUESTION, IS THAT REALITY. JUST AS IT IS UNDENIABLY TRUE THAT THERE WILL BE SOME ECONOMIC DISADVANTAGE TO SOME FIRMS, ALTHOUGH I QUESTION THE DEGREE OF IT, BUT THERE, CERTAINLY, WILL BE, IT IS, ALSO, UNDENIABLY TRUE THAT THERE WILL BE CLIENTS, AS A RESULT OF THIS, WHO HAVEING GAINED TRUST AND CONFIDENCE IN A PARTICULAR LAWYER, WHO, HAVING ENABLED A LAWYER TO CRAFT THEIR LEGAL INTERESTS AND HAVING BECOME DEPENDENT UPON THAT LAWYER, WILL FIND THEMSELVES ABANDONED IN MIDSTREAM. THAT IS EQUALLY TRUE. AND INTERESTING, A QUESTION WHICH ARISES IS, IF THIS COURT TAKES THE PATH THAT CALIFORNIA TOOK AND DECIDES TO RECEDE FROM THIS FOUR-DECADE-OLD RULE, WHAT NOTICE WILL WE, THEN, REQUIRE OF LAWYERS, WHO JOIN THESE FIRMS AND SIGNS AGREEMENTS, SO FAR AS THEIR CHRIGETS ARE CONCERNED. WILL THE LAWYER BE OBLIGATED TO TELL THE CLIENT, UP-FRONT, I MAY ABANDON YOU, IF I DECIDE TO LEAVE THIS FIRM AT SOME POINT OR LEAVE IT, WILL THE CLIENT BE CONCERNED.

THE GREATER POLICY ISSUES ARE THAT, THERE COULD BE, AGAIN, MAYBE A SLIDING SCALE OF WHAT IS APPROPRIATE OR NOT APPROPRIATE, DEPENDING ON THE TYPE OF FIRM AND THE TYPE OF PRACTICE THAT THERE IS. CERTAINLY PERSONAL INJURY FIRM. THERE ARE DIFFERENT ISSUES THAN THERE MAY BE IN A LARGER FIRM. I GUESS WHAT I AM GETTING AT, NOW WHAT I AM STARTING TO THINK ABOUT IS WHY HASN'T THE FLORIDA BAR CONSIDERED ADDRESSESING THIS -- ADDRESSING THIS, IN THE SAME WAY THAT IT WAS ADDRESSED, WHEN THE WHOLE FEE SPLITTING, TO GIVE FIRMS IN THE FUTURE SPECIFIC GUIDANCE, SO THAT YOU DON'T HAVE TO GUESS, IF 40 PERCENT OR -- TO COME UP WITH SOME STANDARDS AS TO WHAT IS ACCEPTABLE, GIVEN THE REALITIES OF THE MORE THAN WORLD.

PERCENT IS TOO MUCH. IS 40 PERCENT OKAY -- FIFTH PERCENT IS TOO MUCH? IS 40 PERCENT OKAY? I DON'T SEE HOW, TODAY, WE COULD MAKE THAT DECISION, WHEN THAT IS SOMETHING THAT, REALLY, NEEDS INPUT FROM THE BAR, AS WHOLE, AS TO WHAT IS THE REALITY, OUT THERE, AND WHAT IS APPROPRIATE.

MY BELIEF IS THAT THE REASON THE BAR HASN'T ADDRESSED IT IS BECAUSE THERE SIMPLY HAS BEEN NO GROUND SWELL OF DESIRE ON THE PART OF THE LAWYERS IN THIS STATE, TO BRING ABOUT A CHANGE. I THINK THAT THE VAST MAJORITY OF LAWYERS IN THIS STATE HAVE EMBRACED AND ACCEPTED THIS RULE, ALONG WITH OTHERS THAT REQUIRE SACRIFICES OF LAWYERS.

BUT YOU -- AGAIN, TODAY, YOU DO ACKNOWLEDGE THAT, PROBABLY, AS A COMMON PART OF MANY EMPLOYMENT AGREEMENTS, ARE SOMETHING ABOUT THAT, IF THE LAWYER LEAVES, THIS WILL BE THE FEE SPLITTING OF CASES.

WELL, YES. BUT THERE IS A BIG DISTINCTION BETWEEN THE SPLITTING OF CASES THAT WERE WORKED UPON BEFORE THE LAWYER LEFT AND THE REQUIREMENT TO PAY FEES ON MATTERS TAKEN THAT HAD NOTHING TO DO WITH THE FIRM BEFORE HE LEFT. IT IS COMMONPLACE AND PERMITTED BY THE RULE AND NECESSARY FOR FIRMS TO HAVE AN AGREEMENT, EITHER BEFORE THE LAWYER LEAVES, WHICH IS PREFERABLE, OR AFTER HE LEAVES, AS TO HOW THEY ARE GOING TO SHARE THE FEES FROM WORK THAT WAS DONE WHILE HE WAS IN THE FIRM. NO QUESTION ABOUT THAT. OR CASES THAT CONTINUE, THAT OVERLAP THE TIME THAT THE LAWYER LEAVES. I DON'T THINK ANY OF US ARE TALKING ABOUT THAT, AND THE BAR HAS, NEVER, SUGGESTED THAT THAT WAS AN I AM PERMISSIBLE AGREEMENT. WHAT THE BAR HAS HELD, IN THE ADVISORY OPINIONS, IS THAT IT IS I AM PERMISSIBLE FOR A LAWYER IN A FIRM TO ENTER INTO A AGREEMENT THAT SAYS, IF YOU LEAVE THIS FIRM, AND YOU, THEN, LATER, TAKE WORK WITHIN A GIVEN PERIOD OF TIME, FROM FORMER CLIENTS OF THIS FIRM, YOU MUST SHARE, WITH US, THE

FEES THAT YOU RECEIVED. THAT NOT ONLY VIOLATES THE RULE THAT WE ARE TALKING ABOUT HERE, 4-A.6. IT, ALSO -- 4-5.6. IT, ALSO, VIOLATES THE RULE AGAINST FEES WITH A LAWYER IN A FIRM, WHICH HAS NO WORK DONE OR THE RESPONSIBILITY SHARED BY ANOTHER FIRM. THAT VIOLATES BOTH OF THOSE RULES, BUT THAT IS ENTIRELY DISTINGUISHABLE FROM SHARING FEES FOR SOMETHING THAT WAS DONE BEFORE, AND SO I AGREE WITH YOU. THAT IS NOT AN ISSUE HERE, I DON'T THINK, WITH ANY OF US. I HAVE BEEN TALKING ABOUT THE REALITIES OF WHAT THIS CHANGE WOULD BRING ABOUT. ONE OTHER THING I WANTED TO MENTION IS THAT -- TWO OTHER THINGS. FIRST IS THAT IT UNDOUBTEDLY WOULD RESULT IN THE REDUCTION OF AVAILABLE LEGAL SERVICES, PARTICULARLY IN SMALLER COMMUNITIES, PARTICULARLY WHEN WE ARE DEALING WITH A SMALL NUMBER OF LAWYERS HAVING A SPECIAL EXPERTISE, AND THESE ARE THE CIRCUMSTANCES IN WHICH WE ARE MOST LIKELY TO SEE THESE TYPES OF AGREEMENTS COME ABOUT. AND THE RESULT WILL BE THE FACT THAT CLIENTS WILL BE EFFECTIVELY FORCED TO GO TO THE ONLY GAME IN TOWN. AND I THINK THE FINAL REALITY OF THIS WOULD BE A FURTHER OCEAN OF PUBLIC CONFIDENCE, IN LAWYERS AND IN OUR LEGAL SYSTEM, BECAUSE OF THE PERCEPTION OF WHAT MR. RICHMAN, FOR THE BEST PURPOSES, I THINK, BUT NEVERTHELESS SEEMS TO ENDORSE, WHICH IS THAT TEAMS HAVE -- TIMES HAVE CHANGED, AND THEREFORE WE NEED TO BEGIN PUTTING THE ECONOMIC INTERESTS OF ESTABLISHED LAW FIRMS AGAINST THE INTEREST OF CLIENTS.

I AM INTERESTED IN YOUR OPENING REMARKS ABOUT THAT YOU HAD EVALUATED THIS AND THOUGHT, PERHAPS, IT, REALLY, SHOULD BE THE TOPIC OF A POTENTIAL RULE CHANGE. AND I WOULD LIKE TO EXPLORE THAT A LITTLE BIT FURTHER. WE HAVE JUST -- OBVIOUSLY WE ARE, STILL, GOING THROUGH AN ONGOING DEBATE ABOUT MULTIDISCIPLINARY PRACTICE OUT THERE. AND IT HAS, REALLY, MUCH OF THE SAME ECONOMIC KINDS OF ISSUES AND SIGNALS THAT WE ARE TALKING ABOUT, TODAY, WITH REFERENCE TO THIS RULE. LET ME READ, BRING THIS BACK TO YOU. WHY WOULDN'T THIS, AND HOPEFULLY THAT MR. RICHMAN WILL ADDRESS THIS, TOO, WHY WOULDN'T THE BETTER PROCESS BE TO GO AND HAVE A DEBATE WITHIN THE BAR, ABOUT CHANGING THIS RULE?

IF I MAY --

AND LET THAT BE VIGOROUSLY DEBATED, WITH OPPORTUNITIES FOR ALL KINDS OF, EITHER, PARADE OF ORABLES OR THE REALITIES OF ECONOMIC PRACTICE TODAY, ALL OF THESE ISSUES. WHY WOULDN'T THAT BE THE APPROPRIATE FORUM?

I THINK THAT WOULD BE THE MORE APPROPRIATE FORUM TO ADDRESS THIS ISSUE, IN ANY INSTANCE IN WHICH WE ARE SPEAKING ABOUT A RULE CHANGE, UNLESS THIS COURT BELIEVES IN ITS DISCRETION THAT THE ISSUE IS SUFFICIENTLY COMPELLING, BOTH FROM A SUBSTANTIVE AND A TIME STANDPOINT, THAT IT WISHES TO TAKE IT UP IMMEDIATELY, RATHER THAN GO THROUGH THE FAIRLY LENGTHY PROCESS OF A RULE CHANGE. I DO WANT TO COMMENT -- I AM SORRY. WERE YOU GOING TO --

ONE OF THE CONCERNS THAT I HAVE IS THAT THE NUMBER OF PEOPLE AND PARTIES AND INTERESTS AND EVERYTHING PARTICIPATING IN THIS DEBATE BEFORE US TODAY, THAT IS, WE REALLY DON'T HAVE THAT WIDE ARRAY THAT WE USUALLY HAVE, WHEN WE CONTEMPLATE IMPORTANT RULE CHANGES, AND THE MULTIDISCIPLINARY PRACTICE DEBATE IS A GOOD EXAMPLE OF THAT. EVERYBODY HAS COME IN, YOU KNOW. HERE WE, REALLY, HAVE VERY, VERY LIMITED INPUT.

I AM NOT SURPRISED. AS A MATTER OF FACT, ONE OF THE THINGS THAT I WAS LEADING TO, WHEN I HAD COMPLETED MY DISCUSSION OF THE REALITIES, IN TERMS OF THE BAD ASPECTS OF THIS, WAS THE NEXT QUESTION BEING IS THERE ANY COMPELLING NECESSITY FOR THIS COURT TO MAKE THIS CHANGE, AND THE POINT I WAS GOING TO MAKE IS THAT, IN THE FOUR DECADES SINCE THE AMERICAN BAR ASSOCIATION PROPOSED THIS, AND THIS STAYED SHORTLY

THEREAFTER, ALONG WITH MOST OTHERS ADOPTED IT, THERE HAS BEEN NO ABANDONMENT BY ANY STATE, OTHER THAN CALIFORNIA, AND I AM NOT AWARE OF ANY PETITION EVER HAVING BEEN FILED BY ANY COMMITTEE OR ANY INDIVIDUAL LAWYER, TO CHANGE THIS RULE. SO I DON'T KNOW THAT THERE IS ANY PARTICULAR INTEREST, AND MY PERSONAL BELIEF IS --

THANK YOU, MR. RICHMAN. YOUR TIME IS UP.

THANK YOU, YOUR HONOR.

MR. RICHARDS. RICHMAN.

I JUST WANTED TO SAY, BY THE WAY, IN RESPONSE TO JUSTICE ANSTEAD, I DIDN'T MEAN TO SAY THAT I BELIEVE THERE SHOULD BE A RULE CHANGE. I JUST SAID, IF THERE IS GOING TO BE ONE, THAT IS THE FORUM.

MR. RICHMAN.

IF IT PLEASE THE COURT, I HAVE TO AGREE WITH JUSTICE ANSTEAD THAT THAT IS THE ROUTE THAT COULD BE TAKEN IS A RULE CHANGE. ASIDE FROM THE FACT THAT THAT WOULD BE AN EXTREMELY TIME-CONSUMING PROCESS, I WOULD POINT OUT THAT THE CALIFORNIA COURT DID NOT HAVE A GREATLY-DEVELOPED RECORD. THE CALIFORNIA COURT LOOKED AT THE POLICY ISSUES, AND THE CALIFORNIA COURT HAD THE IDENTICAL LANGUAGE THAT IT LOOKED AT, WITH REGARD TO RESTRICTING THE RIGHT OF A LAWYER TO PRACTICE. IT IS A MATTER OF INTERPRETING THE RULE AS IT CURRENTLY EXISTS, AND THAT IS WHAT THE CALIFORNIA COURT DID, AND THAT IS WHAT THIS COURT CAN DO. WHAT THE COURT -- THE ALTERNATIVE, HERE, IS BECKER-POLIAKOFF FIRM AND, PRESUMABLY OTHER FIRMS, ARE BEING INJURED, DAILY, BUT NOT BEING ABLE TO HAVE SOME TYPE OF A REASONABLE RESTRICTION. WE SEE, OVER AND OVER AGAIN, LAW FIRM BREAK UPS THAT OCCUR. THE GREENBURG-TRAURIGS OF THE WORLD AND THE HOLLAND & KNIGHTS IF THEY LOSE A BRANCH, THEY LOSE A BRANCH. THEY HAVE GOT 600, 800, OR A 1,000 OR MORE LAWYERS -- OR 1,000 OR MORE LAWYERS, BUT IT IS THE LAW FIRM THAT HAS 60, 80, 20 LAWYERS THAT DEVELOPS A PRACTICE IN A FIRM AND ALL OF A SUDDEN THE LAWYER IS GONE AND THE PARTNERS ARE SITTING THERE TODAY. THEY DIDN'T HAVE THIS WHEN I WAS YOUNG. YOU HAVE COMPUTER LEASES AND OTHER LEASES TODAY. YOU HAVE THESE MAJOR RESPONSIBILITIES, AND THEN YOU HAVE LAWYERS THAT CHERRY-PICK OTHER LAWYERS AND HAVE OTHER LAWYERS COME WITH THEM, AND THEN THEY TALK TO THE CLIENTS BEFORE THEY LEAVE, AND THEY FIGURE OUT WHICH CLIENTS THEY ARE GOING TO TAKE BUSINESS WITH THEM. IT IS THE SO-CALLED IF YOU HAVE GOT A GOOD BOOK OF BUSINESS, YOU ARE MORE ATTRACTIVE AS OPPOSED TO GOING OUT AND SETTING UP YOUR OWN FIRM, AS HAPPENED TO MR. WEAN IN THIS CASE. THOSE ARE NOT FACTS THAT HAVE TO BE FULLY DEVELOPED. THAT IS THE REALITY. THAT IS WHAT THE CALIFORNIA COURT RECOGNIZED.

YOU ARE PAINTING, OF COURSE, AS YOU WELL SHOULD, IN ADVOCACY FOR, YOU KNOW, THIS OVERTURNING OF THIS OPINION, ONE PICTURE. OBVIOUSLY THERE IS ANOTHER SIDE OF THAT PICTURE, WHERE YOU CAN HAVE THE HE CAN WITTS, ALL, THE OTHER WAY. THAT THE CLIENT MAKES AN INDEPENDENT JUDGMENT THAT THEY WANT TO HIRE A PARTICULAR LAWYER, AND THEY HAVE GREAT FAITH IN THAT LAWYER, AND WE END UP WITH THE LAWYER IN A POSITION WHERE.

PERCENT OF THE FEES THAT THEY --, WHERE 50 PERCENT OF THE FEES THAT THEY EARNED -- IN OTHER WORDS 50 PERCENT OF THE LABOR IN A CASE IS GOING TO GO TO SOMEBODY THAT DOESN'T DO ANY OF THE WORK IN A CASE, AND THERE ARE ALL KINDS OF RAMIFICATIONS TO THAT, INCLUDING THE PUBLIC APPEARANCE OF THAT. THAT IS THAT SOMEBODY IS GETTING 50 PERCENT OF THE WORK THAT SOMEBODY ELSE IS DOING, BY VIRTUE OF THE FACT THAT THEY INITIALLY CAME IN CONTACT WITH THAT CLIENT OR WHATEVER THE SITUATION WAS. I GUESS I AM JUST COMING BACK, AGAIN, TO THE FACT THAT THERE MUST BE MANY, MANY OTHER

LAWYERS OUT THERE AND INTEREST GROUPS THAT WOULD HAVE AN INTEREST IN THIS DEBATE THAT WE ARE NOT HEARING FROM ABOUT THIS. I SUPPOSE CONDOMINIUM ASSOCIATIONS AND CLIENTS HAVE A STAKE IN THIS, TOO. JUST A CONCERN THAT WE HAVE SO LITTLE INPUT IN THIS PARTICULAR MATTER, AS COMPARED TO WHEN WE HAVE A RULE CHANGE OR, YOU KNOW, SOMETHING AS DRAMATIC AS THAT. AND I REALIZE THAT YOU ALL HAVE TRIED TO WORK THIS OUT, AND I COMPLIMENT ALL OF YOU, FOR THE WAY THAT YOU HAVE TRIED TO RESOLVE THIS, IN A WAY THAT DOESN'T INVOLVE LAWSUITS AND COURT FIGHTS AND WHATEVER. BUT I HOPE YOU SEE OUR CONCERN, TOO. WITH REFERENCE TO OUR --

YOUR HONOR, I DO, AND THAT IS EXACTLY WHAT HAPPENED IN THIS CASE IS WE WERE TRYING TO AVOID A LONG, DRAWN OUT COURT BATTLE ON IT, AND, OF COURSE, IT HAS, ALREADY, BEEN CONCEDED HERE IS WE ARE FACING A GRIEVANCE PROCEEDING, IF WE ATTEMPT TO ENFORCE THE AGREEMENT, WITHOUT ANY QUESTION.

AS IS EVERY LAWYER THAT GETS AN ADVISORY OPINION.

EXACTLY. AND THAT IS MY POINT OF THE CHILLING EFFECT OF ADVISORY OPINIONS. THAT MAY BE SOMETHING ELSE THAT THIS COURT WANTS TO LOOK AT, BECAUSE THE BAR GOES AHEAD AND ISSUES AN ADVISORY OPINION. THERE IS NO PRACTICAL WAY TO GO BACK, BEFORE THE SUPREME COURT. AS I UNDERSTAND IT, ONCE YOU HAVE GONE THROUGH THE BOARD REVIEW COMMITTEE AND THE FLORIDA BAR HAS SAID, NO, WHICH THEY DID IN THIS CASE, OTHER THAN GOING AHEAD AND PETITIONING FOR A RULE CHANGE, WHICH CAN BE A LONG AND CUMBERSOME PROCESS.

YOUR TIME IS UP, MR. RICHMAN. THANK YOU VERY MUCH. COUNSEL, THANK YOU.

THANK YOU VERY MUCH, YOUR HONOR.