Hearing transcript in the matter of

**Case:** STUDY COMMITTEE ON LAWYERS ADVERTISING

**Date:** March 1, 2006

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STATE BAR OF NEVADA

STUDY COMMITTEE ON LAWYER ADVERTISING

PUBLIC HEARING

Taken on Wednesday, March 1, 2006

At 10:11 a.m.

At 555 East Washington Avenue, Room 4500
Las Vegas, Nevada

Reported by: Ellen A. Goldstein, CCR 829
lawyer advertising.

We've had an Internet subcommittee look at Internet and how it is affecting their advertising, and I must tell you that lawyer advertising through the Internet is becoming a major source of both business for lawyers but also a major source of concern that it is done appropriately.

And we've also had the concurrent review committee where we've looked at and heard testimony from the Texas administrator of the State Bar with regard to how they handle their lawyer advertising.

What I must say as chair is that the consensus of this commission is that the purpose of lawyer advertising obviously is, one, that lawyers should be allowed to advertise because it is a business and it does in fact by their advertising protect the public, but this commission must also exercise its right to make sure that the public is protected and that the representations are fair and truthful and do not create unreasonable expectations.

I must say also as the chair that it's a balance between the right of free speech under the Constitution, the right to practice as a business person and as a lawyer, and the right of the public to have full disclosure; and the purpose of this commission, if we had to look at one single purpose, is to protect the public with regards to the legal advertisements that we as a Bar place.

I would like everyone on the commission to introduce themselves now going -- starting with my right hand.

MS. HEGEDUIS: Dianna Hegeduis, chief deputy attorney general.

MR. BARE: Good morning, Mr. Chairman, members of the committee. I'm Rob Bare, Bar counsel for State Bar.

MS. EGLET: I'm Tracy Eglet, partner in Mainor, Eglet, Cottle.

MS. PEREZ: Patrice Perez, sole practitioner.

MR. SCOTT: Bryan Scott, assistant city attorney for city of Las Vegas.

MR. MORGAN: Dick Morgan, dean of the Boyd School of Law at UNLV.

MR. MYERS: Richard Myers with Crockett Myers law firm here in Las Vegas.

MR. KENNY: Bradley Kenny with my brother Craig Kenny & Associates.

MR. TURNER: I'm Bill Turner.

MR. MC CONNELL: Terry McConnell, Valley Bank, public member.

MR. HARDESTY: Jim Hardesty, Supreme Court Justice.

MR. CHERRY: Michael Cherry, district judge, Department 17, Eighth Judicial District.

MR. BERNSTEIN: Ed Bernstein, attorney with Bernstein & Associates.

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MR. TURNER: Do we have everybody?
MR. GOODENOW: Mr. Turner, in Reno this is Rew Goodenow representing the State Bar and I'm a lawyer in private practice in Reno.
MR. TURNER: Thank you.
As you can see from the people that have introduced themselves on this commission, we have a wide variety of individuals and lawyers. We have plaintiffs' lawyers who advertise. We have Ed Bernstein, who is probably the lead lawyer who began advertising and the use of advertising in this state. We have a number of defense counsel or people with defense experience. We have the AG' s office involved. We have the dean of the law school. We have two Supreme Court justices. We took this commission and imposed, we thought, a fair balance of individuals from the legal community and also from the community as a whole to make sure that we understood what the needs of the community were.
We have placed over there I think copies of all the information concerning this commission and we have the draft report, which is a draft report, the history of this commission and various other materials that might be useful to you.
This particular commission needs to meet today to discuss the entire draft of the report. There will be a seven-day period for this commission then to review and make final comments. At that point there will be also a 30-day comment by the public, including yourselves. This will also go to the Board of Governors. The Board of Governors must approve this and then the Supreme Court must review this. Once that's done, if the changes are approved and the recommendations are approved, then it will become a matter of regulations that the State Bar can enforce.
This is a public hearing so we'll entertain either statements or questions at the present time. If you do, please identify yourselves and I'd like to hear your comments on this.
Comments? Any comments? Okay, that's fine. Any questions or comments? All right. In Reno I think we have -- do we have someone in Reno who would like to address this commission?
MS. HEGEDUIS: Carson City.
MR. TURNER: Carson City, I'm sorry.
MR. GOODENOW: Mr. Turner, David Bolnick with Kendall Kapitz & Bolnick is present here and I don't know whether he wants to make any comments or not. He's certainly welcome to though.
MR. TURNER: All right. David, do you want to make any comments?
MR. BOLNICK: Well, at this point in time I have no comments to make, but I'd certainly like to reserve that right depending upon how this hearing proceeds.
MR. TURNER: That's fine.
MR. STOKES: I'm attorney Adam Stokes.
MS. HEGEDUIS: Could you come down.
MR. STOKES: Sure.
MS. HEGEDUIS: Without tripping.
Just have a seat.
MR. STOKES: I just wanted to take a moment to raise two issues that we see in our practice, and not having had the opportunity to be present with the committee in its previous meetings we are not sure if this has already been addressed, but the first has to do with -- and this is mostly limited to advertising by -- advertising for personal injury cases.
We see a huge problem and what I believe are very misleading for the public by attorneys who advertise contingency fees on TV or billboards like, for example, 15 percent or 22 percent, only later for the clients to find out that, you know, after they've already gone and signed up with the attorney whom they're trusting to look out for their interest, that that percentage contingency fee would only apply for like 7 days, after which time -- or after 14 days -- after which time the contingency fee is raised; and you might still see it in the fee agreement of course, but it might go up to 30 or 40 or 50 percent.
I believe personally that this is misleading. It is enticing clients away from attorneys who are advertising honestly and fairly and to the offices of attorneys who are not acting that way.
And it's also my experience that when clients go into these law offices where the attorneys are advertising 15 percent or 10 percent or whatever the case may be but -- they're not actually meeting with lawyers because, as we know, when the attorneys began reducing their fees in this matter below what has become the standard in our community for charging in cases, it becomes more difficult to afford legal counsel to meet with each of these clients. You end up having a secretary or a case manager that come and meet with these clients. So therefore it really disadvantages the client, who might also not even be able to meet with a lawyer, which is a whole separate issue. But I believe it really degrades the standard of the practice in the community by misleading advertising only to the detriment of the attorneys who are attempting to advertise fairly and to fully disclose.
So on this note our opinion is that -- and I'm going to say "our." I've spoken to a couple dozen attorneys on my own just informally about this issue. When an attorney is advertising a contingency fee -- for example, 15 percent or whatever the case may be -- and there are other details involved, I believe that the -- that all details of the advertisement need also be stated and given the same -- if
it's printed, if the contingency fee presented is printed on
that advertisement with the same font, same size. If it's
stated on the radio or a TV advertisement, then it needs to be
stated in the exact same way, not really fast at the end with
one of these guys that speaks like a hundred words every ten
seconds or something like that, but all the details must be
laid out as to make it not misleading. That was my first
point.

MR. TURNER: Can we respond to that? And I'm certain
anyone on the commission is free to respond, but I think that
the history of our research has indicated that throughout the
states and federal courts your concern has been absolutely
brought out and has been a major concern by the Courts.
To protect the public there should be full
disclosure; and if there's one trend in lawyer advertising we
see through the court system in the United States, that is
full disclosure. I think that's true in the Securities and
Exchange Commission. I think it's true throughout the
business community, full disclosure. We've seen the Enron
problem. We've seen all these other business problems. So
what you're basically saying is if someone is going to put an
ad in, it shouldn't be bait and switch, and I think
Mr. Bernstein has already very aptly said that and I think
that we do have a recommendation that if a lawyer advertises
specifically a range of fees, he shall include all possible
terms and fees and the duration that the fees are in effect.
Such a disclosure shall be presented with the full promise.
We had a very full discussion of what you're talking about and
your point is so well taken.

MR. STOKES: I don't want to interrupt, but do they
disclose the fact that it is nearly impossible to settle your
personal injury case within 7 days? It's not part of the
terms, but it is an absolutely necessary disclosure that if after
the 7 days or 14 days the rate is going to change. They
do't tell you that.
(Ms. It's entered the proceedings.)

MR. STOKES: That's something else that needs to be
included as well, because we're supposed to be practicing
reasonably, that is a possibility, especially considering the
time it takes to even make contact with some of these
adjustors at the insurance companies, to correspond back and
forth. There are more disclosures required beyond the mere
terms themselves.

MR. TURNER: What you're basically saying I think in
effect is that they need to disclose it and put it so that
it's accepted; is that correct?

MR. STOKES: Right. Even if lawyers are required to just
disclose the terms themselves completely, it's still not
completely -- all the details have not been disclosed because

if the clients don't understand how long it takes to settle
these cases or to work on the cases, they don't understand the
dynamics. That's why they hire a lawyer in the first place.

MR. HARDESTY: Mr. Chairman, I think -- let me ask the
question, but I believe that the amendments that were
discussed at the last meeting in rule 7.2(g) addresses
Mr. Stokes concerns. The rule was modified by the committee
or proposed to be modified by the committee in the following
manner: "A lawyer who advertises a specific range of fees" --
and this was the addition -- "shall include all possible terms
and fees and the duration said fees are in effect. Such
disclosures shall be presented with equal prominence."
Does that modification address your concern or it
doesn't?

MR. STOKES: No, sir, because the clients do not
understand the typical duration for which these -- typical
duration of the handling of these types of cases. They need
to disclose that, for example -- and I don't know what the
statistics are, but for example, 90 percent of this type of
case will not settle in less than 60 days, for example. I
don't know what the statistics are, but I'm just throwing out
hypothetical numbers, because without complete disclosure of
what the typical duration is for handling a case, how
can the disclosure of when the fees will change be a truthful
disclosure if the client doesn't understand how long it should
take to handle that case?

I also think that that leads -- these types of fee
agreements lead to attorneys dragging their feet; and so the 7
days pass, the 14 days pass which, you know, I'm not trying to
say anything bad about any specific attorneys, but I think
that these types of agreements and just basically attorneys
being able to advertise their percentage contingency fees
leads to a wide variety of abuse.

MR. TURNER: What you're really saying, if I gather your
two issues here, one is the fee agreement itself where it has
the seven days because you really saying that's deceptive.

MR. STOKES: Right.

MR. TURNER: That's not really part of lawyer advertising
so much as another form of "Can that agreement be deceptive
because it's used," what you're saying, "in order to bring
someone in and deceive them."

MR. STOKES: Well, the fee agreement doesn't bring someone
in. It's the advertising that's deceptive.

MR. TURNER: Sure. That's your second part. What you
really would like to see, I think if I could address that, is
just do away with that seven day or anything which was meant
to deceive or failed to disclose the real fee agreement.

MR. STOKES: I think my personal opinion is they need to
do away with advertising contingency fees -- I'm sorry,
advertising percentage contingency fee. Of course we all
agree that contingency fees allow access to legal services.

MR. HARDESTY: I want to comment about a couple things you said so there isn't some misconception.

While it may be a criticism that in some cases lawyers would -- some lawyers might delay the resolution of a case so that the contingency fee goes up, but the fact of the matter is in a great many cases discovery is necessary to learn about the case to properly evaluate the case and that's not a product of the lawyer improperly delaying the disposition. That's a product of doing the correct service for the client and learning about the case the way you should.

I think it would be greater criticism, frankly, for a lawyer to take a case, resolve it in a relatively short period of time and then discover that that client has medical problems that are far more severe than the basis of the settlement. So -- and I'm concerned about this commission or any commission suggesting that all cases are the same, that all cases get resolved in the same period of time. I don't think that's true. At least that was never my experience in private practice and I would be surprised if that's changed.

Is that true in your practice?

MR. STOKES: Well, sir, if we can agree that --

MR. HARDESTY: Is that true in your practice in all cases?

MR. STOKES: No, of course not, but if we can agree that an attorney must act diligently and reasonably investigate the facts surrounding the basis of a personal injury --

MR. HARDESTY: Absolutely.

MR. STOKES: How can there be a meaningful disclosure to the client before it goes up without telling them that "The sort of investigation that I'm ethically obligated to provide in your case will take a duration longer than that amount of time"? Is my point being made?

MR. HARDESTY: It is on me. I don't know what the other commission members may be want to comment, but how do you suggest that that information be communicated? Part of lawyer advertising isn't just the First Amendment right of a lawyer to advertise. Part of it is to educate the public on fees, on lawyers. How would you suggest that education be communicated in advertising at this time?

MR. STOKES: Well, I've never really stopped to consider how advertising a 15 or 20 percent contingency fee educates, but I think that the whole practice of advertising a certain percentage contingency fee should be done away with. I do not see how it can be done in a nonmisleading manner and it does not seem that there's any practical way to responsibly manage this sort of practice.

MR. HARDESTY: Mr. Chairman, Mr. Stokes has hit on a major concern with this committee and he has just now been provided with our proposed changes in the rules that presently exist. Since we're going to be here for a number of hours, perhaps he would care to propose some further language that might beef up this change for our consideration as we proceed with this morning and this afternoon.

MR. STOKES: Sure.

MR. TURNER: Would everybody, just for the court reporter's benefit, please identify yourself as you speak.

Tracy, did you have a comment?

MS. EGLET: Sure.

Mr. Stokes, if the number of cases that they actually settle within 30 days -- let's say for the year that they're advertising, you know, they state, "We've settled two cases within 30 days," would that be something that might address your issue, having to give the number they actually settled in that time frame for a certain amount of time?

MR. STOKES: Well, I appreciate your offering some suggestions that address my concerns.

I don't think that would be any less misleading because there are ways to manipulate numbers and statistics and a client might not understand that. If, for example, the attorney said, "I settled two cases in that time period," they might not understand that that attorney handled 600 cases in that time period. Numbers and statistics are tools of manipulation and argument in advertising and persuasion, and that's why I think that attorneys should not be able to advertise a certain percentage.

There's nothing wrong with advertising a contingency fee arrangement. That certainly makes the services available, but it's when you advertise a specific percentage that you start getting into problems, especially when different attorneys package the percentages in different ways. If it's before cost or after cost, there's no meaningful comparison between attorneys when one is saying, "I charge you 15 percent" and "I charge you one-third," when they're calculating the percentage in a different manner.

MR. TURNER: By the way, Miss Court Reporter, that was Tracy Eglet.

MS. EGLET: Tracy Eglet. Sorry about that.

MR. BARE: Mr. Stokes, this is Rob Bare. I want to tell you that as I sit here and listen to you I couldn't agree more with some of your ethical concerns about the way that these discount contingency fees may have been structured, because after all, the key issue having to do with these contingency fee arrangements is when does the triggering mechanism kick in which essentially takes us from the 15 or the 22 or the 27 to some other fee such as a 40 percent fee, it's just say, and is that reasonable? If it's not reasonable I think there's a good argument that it would be misleading.

I will tell you I think there's certainly an enforcement component to everything that you're talking about. You probably haven't had a chance to take a look at a document.
that's available here which describes everything that the
office of Bar counsel has done over the last year or so to
enforce the advertising rules in this state, and on page 3 of
that document I do want to let you know -- please take a look
at it. Let us know your thoughts. On page 3 of that document
you'll see that over the last year, as Bar counsel I've either
subpoenaed or requested the current copies of each and every
contingency fee arrangement for every discount lawyer that we
knew about in this state. I will tell you that they all
provided those contingency fee arrangements to me.

I had counsel for every one of these lawyers, except
for the men lawyers, lawyer in my office and we went through
the agreements. I will tell you now that initially a few of the
agreements in my opinion needed to be specifically amended
to make it so it was reasonable.

I will tell you, though, that the Bar is not aware
currently of any contingency fee arrangement for a discounted
fee where there's a seven-day period where if you don't settle
within the seven days, then we kick up to a 30 or 40 percent.
If you know about that, what I'd ask you to do -- or any of
the lawyers you talk to -- please call me. We'd like to know
about that, but we're not aware of that currently being the
situation. In fact I will tell you now that the 15 percent
and 22 percent, the 27 percent, all the agreements have been
modified if they needed to be modified to be, in my opinion,
in compliance with the rules.

These lawyers I think now are trying to do something
to compete in a market that's highly competitive and that
they're trying to be discount lawyers. I'm not saying that on
other legal bases we might not be interested in some of these
people, but just as far as the written document is concerned,
I wanted you to know that I have reviewed them all and I would
encourage you or any of your contemporaries that you've talked
to to let us know if there's other ones that you have concerns
with.

MR. STOKES: I appreciate what you're saying. I was just
using the seven days as an example. It's not just the fact of
the fee agreements when they say the percentage will change
time. There's all sorts of other ways this happens where
I charge you, for example, one-third of your personal injury
settlement or somebody else might charge you 25 percent of
your personal injury settlement plus 25 percent of your
property -- of the amount that we collect on your property
repairs, like we'll charge you 25 percent of everything
instead of one-third on your personal injury.

And I appreciate the efforts to review the
contingency fees in your office, the agreements themselves. I
think that the problem starts before that point. It's how
that attorney is getting that client into his or her office in
the first place, and that is the product of inadequate
disclosures to these people, to the clients, who because the
terms of the offers aren't being made completely and because
even if they were being made completely, the clients are not
in a position to adequately understand how much the
circumstances surrounding these details like how long it would
typically take to settle a case.

MR. TURNER: He'd like to address this and then the chair
will address it.

MR. MORGAN: Dick Morgan, dean of the Boyd law school.
First of all I doubt that banning any advertisement
of a contingency fee -- 15 percent, 30 percent, 40 percent or
whatever -- would withstand Constitutional challenge. I don't
think you can categorically say that advertising a contingency
fee is misleading. It may be in some circumstances, but in
those circumstances where it's misleading, in addition to the
rule that the Justice Hardesty and Chairman Turner referred to
dealing with the disclosure of all of the terms and fees in
equal prominence and all that, we also have on page 19 a more
general rule. This is subparagraph (g) which says, "Any
factual statement contained in any advertisement or written
communication or any information furnished to a prospective
client under this rule shall not," and then it says, "fail to
disclose material information necessary to prevent the
information supplied from being actually or potentially false
and misleading."

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These lower contingency rates that are being made available to the public serve a great public interest. As we all know, across this country there is political winds that are stating now that attorneys are receiving too much money in contingency fees; we’re getting more money than the clients. Legislation wants to be passed to cap lawyers’ fees, and I think by advertising these lower fees we’re doing what everyone wants and the consumer is entitled to know that we’re doing this.

And I also want to point out that not only does the client benefit by more money in his pocket from these lower fees and therefore should be informed about these lower fees, but I think we’re saving the court system a lot of time and resources and we’re saving the taxpayers money by offering these fees, and by that I mean this: By using a 25 percent contingency fee we are able in our firm to settle cases -- a lot more cases before we have to file suit because the insurance companies these days are pretty tough and they’re not offering a lot of money. When we reduce our fees, that means more money in the client’s pocket and the client doesn’t insist on filing a lawsuit. So these cases don’t get filed; they get settled.

So it’s in the interest of the court systems and the taxpayers as well that we get this information out to the public. I think that the market would control what fees ultimately are charged by lawyers, competitive market, and I think that we’re protected by our rights to free speech and to actively participate in the market to advertise these contingency fees.

Thank you.

MR. TURNER: Thank you.

MR. STOKES: In the case of this type of advertisement, I don’t see any harm whatsoever in this gentleman fully disclosing the complete details of the offer on TV. “We advertise a 25 percent contingency fee whether we settle your case or whether we go to trial.” What’s wrong with that?

There’s nothing wrong with saying that.

MR. TURNER: That’s section (g).

MR. STOKES: But the benefits of the complete disclosure of all the terms outweigh the potential abuses that seem to happen pretty frequently.

MR. TURNER: Thank you. Did you have a second point?

MR. STOKES: Yeah. The second point and hopefully a point that won’t take as much of your time as the first point --

MR. TURNER: We welcome your comments and appreciate them.

MR. STOKES: I appreciate your listening to them.

We see a huge problem with nonlawyers who are advertising for legal services with impunity. It seems -- and I don’t know if this is true or not, but it seems like the State Bar does not always vigorously pursue these people and I
don't know if it's because they don't fall under the
testimony of the Bar, but it seems to me that if a nonlawyer
is advertising for legal services, the advertising rules need
to state that the State Bar shall or must immediately file a
lawsuit and seek an injunction against that activity. It must
happen.

It happens -- I think it's damaging to the public if
people believe they're dealing with lawyers and they're not.
They're dealing with notaries or with these secretary legal
services or with -- I don't know if it's true, but I hear of a
place called Ticket Terminators that's owned by a nonlawyer.

You know, I just don't disclose that I own Ticket
Busters for the record when I make that statement.

But nonlawyers are competing with lawyers for legal
services, signing up clients. The Bar is -- it seems like the
Bar is not doing enough and it seems to me that the rules --
there is no reason why the rules should not be changed to say
that the Bar must act as soon as they know about it. The Bar
must file suit and they must seek injunction to have these
businesses shut down.

MR. TURNER: Did I understand one thing you said? Did you
say that you own Ticket Busters?
Mr. STOKES: Yes, sir.
MR. TURNER: Rob, do you want to address this?
MR. BARE: I'd be happy to. Again this is Rob Bare.

I guess it was about four or six years ago now that I
testified in front of the state assembly and in front of the
senate and, you know, the way the legislative process works,
there came a point in time where I was able to sit in the
lobby of the legislative building and propose some language
which did get enacted, which if you look at NRS 7.285 it does
give the State Bar of Nevada authority to get an injunction in
a civil court concerning these businesses that are wholly
engaged in the unauthorized practice of law wholly owned by
nonlawyers.

MR. STOKES: I think subsection (e) of that provision
states that the State Bar may.
MR. BARE: Correct.
MR. STOKES: My point is that should say the State Bar
must pursue these people. There's no reason the State Bar
should have flexibility in deciding whether or not to go after
a nonlawyer who is practicing law. What's the point of having
flexibility?

MR. BARE: There's got to be some sort of prosecutorial
discretion in the Bar to do that.
I want to let you know that over the last few years
we have gotten about ten injunctions in civil court. We've
fully shut down some businesses. I think it's really a
compliment to the Bar, respectfully. I'm not talking about my
office individually or me.

But it's interesting. You know, when members of the
public go to these entities that you're talking about, you
know, they go into an immigration place and they pay twice as
much as they would pay an immigration lawyer for a nonlawyer
to supposedly handle an immigration matter and their relative
ends up on a boat. Do you know where they come when they have
that relative deported? They come into our lobby. They come
into our office. We encourage that. We want that to happen.
I took a bunch of these people up to the legislature
and I put them in front of the assembly and senate and I had
to bring a translator because I didn't speak Spanish. So we
did that.

In addition to that, when people go to these divorce
entities that do family law and they get harmed by nonlawyers,
they're the same people that show up in our lobby.

What I'll tell you is we're committed to doing this.
I have a lawyer in my office David Clark. About half of his
time is spent wholly enforcing and dealing with "unauthorized
practice of law" issues. Kristina Marzec, who is sitting
right over here, is a CLA, one of the CLAs I'm lucky to
have in my office. She's also responsible for all these
pieces of paper floating around here today. She is -- when
she can she spends as much time as she can dealing with
"unauthorized practice of law" issues with David Clark.

What I'll tell you is if you see some things -- one
thing about the State Bar is we want people to tell us about
things so that we can deal with it just like when we talked
about the earlier comments regarding the lawyers who were
saying if the case didn't settle within seven days, then the
contingency fee would go up. I now understand that was just a
hypothetical and you don't really know. Same way with this
issue: If you know about nonlawyer businesses occurring,
please come into the office, meet with me, meet with David.
We'll walk you through it and we'll look at it.

I just want to let you know I honestly -- to react to
the proposed language that you have, I would just say that
some sort of a prosecutorial discretion I think just makes
sense. We'd be in an untenable situation practically speaking
if the Bar was made to have to file a case every time -- you
wouldn't want me to say, for example, that every complaint we
received against lawyers I have to file some sort of a
pleading.

MR. STOKES: Of course not and nobody is -- I'm certainly
not complaining about the efforts of the Bar to control the
unauthorized practice of law, but since there is no private
right of action and since in my experience a police department
will do nothing to prosecute somebody for -- my understanding
after seven counts of specific classic felony, since the
police will do nothing about it and since there's no private
right of action, I believe it would not put an unfair burden
on the Bar to say that they must go after these cases, because the Bar is not deciding what happens. That's why there's a judge. That's why the judge is going to decide if what these people are doing warrants an injunction.

Since there's no other mechanism for controlling what I believe really to be an out-of-control situation, unauthorized practice of law, and on so many levels and so many different levels of law and all over the valley it must... I just don't understand any reason whatsoever why the language should not be changed that "the Bar must."

MR. MORGAN: Dick Morgan, dean of the Boyd law school.

One of our recommendations I'm sure is going to be that the Bar beef up its enforcement staff and efforts so that there can be more enforcement effort in the advertising area and in the "unauthorized practice of law" area. I agree with Rob that I think it's unworkable to mandate the Bar counsel to go after every situation. You have to have discretion, but at the moment there is limited resources and choices have to be made as to how the resources are going to be deployed.

What you ought to be doing among other things is lobbying the Board of Governors of the State Bar to either reallocate Bar resources or to generate more resources, for example, by raising lawyer fees in the State Bar so there can be more resources in Rob's office to be used at his discretion in these kind of cases.

MR. STOKES: But why not create may be a private right of action so that lawyers -- we don't create (inaudible) --

MR. MORGAN: That or you can try an appropriate court case.

MR. STOKES: I understand, but I thought this was a panel for people's input used toward the drafting of laws and court rules in the future.

MR. MORGAN: But what you're suggesting in mandating that the Bar office pursue every alleged miscreant is not a private right of action. That's something different.

MR. STOKES: But -- not pursue every alleged miscreant, but if a case is handed to the Bar, they must pursue it.

MR. TURNER: If we could, I think we have a comment from Tracey.

MS. ITTS: Tracey Itts. And my concern is -- I'm a family law practitioner and was asked to sit on the committee from the family law practice standpoint. I have a concern from that because the family court is so bogged down with pro per litigants that if we go into a "must," we get into a situation where we have a pro bono office down there and we have members of UNLV providing classes to the public and that if we're going to put them in a "must" situation, we're asking them to potentially prosecute individuals who are out there educating the public, helping the public complete forms and some of those things.

I'd hate to see Rob and the Bar put in that situation where we're closing down the self-help center at family court, where we can't allow the UNLV students to help fill out the forms because they in essence are assisting in the unauthorized practice of law if you go to that extreme.

So again just in an observation from in-the-trenches practical standpoint of doing that, I think we're going to have even more of a backlog in family court and landlord/tenant and all of the issues that I know UNLV self-help centers and some of those are working, so just food for thought as to a practitioner's standpoint who is in these courts.

MR. MORGAN: Morgan. Just a comment on UNLV students and their activities: We have to tried to tailor their activities to not include the practice of law. They are doing things in connection with lawyers that we believe to be fully within their ability and their authority to do, and I would object to any suggestion that our students are engaged in the unauthorized practice of law. If they are we need to know about it and we need to stop it.

MS. ITTS: I apologize and that's my point. There's a fine example. Who is going to consider that? I don't. The self-help center certainly doesn't, but...

MR. STOKES: But aren't the clinical programs permitted -- that wouldn't be unauthorized. That's authorized. So why would we go shut down a law school clinic that's providing a community resource to people? Of course that's not the unauthorized practice of law. We're talking about people that set up law offices that aren't lawyers. That's what I'm talking about.

MR. SCOTT: I think that Rob had made the suggestion that if you don't agree of these kind of operations that are taking place, that the Bar counsel is more than willing to accept a complaint from any lawyer or any citizen who knows of any unauthorized practice of law, and we've already set up the system to accommodate that. He's already got the legislature to write something in there. So I think the system is already there. It's just a matter of people actually utilizing the system.

It's just like in the other issue: We can't be every place at every time, so it's important and incumbent upon the citizens to make those complaints to us and then we'll take care of it from there. So I think the system is there. It's just a matter of the lawyers and citizens utilizing the Bar counsel.

MR. TURNER: All right. I think we've covered this area pretty exhaustively.

Yes?

MS. MARZEC: Since we're on the public record I just want to say something about the attorney general's office and...
unauthorized practice. As Rob said, I'm one of the
investigators at the State Bar and one of the things I do
primarily is unauthorized practice; and David Clark and I, who
is the assistant Bar counsel, in the past two years have
created a liaison with the AG's office. They have an
independent authority to enforce, and in the past two years
they've been aggressively doing that. In fact Kathleen
Delaney at the office of the attorney general has reported
over 20 or 30 cases. So I just wanted to go on the record,
since this is in public, that the attorney general's office
division of consumer affairs will also entertain these
complaints.

MR. TURNER: Thank you very much.
MR. BARE: Rob Bare. I personally met with the district
attorneys in both Washoe County and in Clark County talking
about the fact that we will have these cases and that we
forward them for criminal prosecution, because after all, this
is a crime. Unauthorized practice of law is a crime, and they
have been receptive. In fact because this is a public record,
I should tell you that Bernie Zadrowski and I have had these
conversations. So I think that they stand ready to prosecute
the right cases as well.

MS. HEGEDUIS: If I may -- Dianna Hegeduis from the AG's
office -- we recently sent out an E-mail to some of our
clients that we do have some investigators that would be
willing to help the state agencies in their investigation,
because a lot of these small boards do not have an
investigator on staff.

So if resources is a problem, which coming from a
governmental lawyer resources is always a problem, we do have
some investigators that, if you want me to look into that, I
can check into that to see if we have some investigators that
could be assigned, not just through the Bureau of Consumer
Protection but perhaps through another division like the
criminal division or something.

MR. TURNER: Thank you very much.
Do we have any other comments from either Carson City
or here? All right. If we have no other comments I think we
can let the court reporter go in Carson City if there's no one
in Carson City that wants to make a public comment on the
record.

MR. GOODENOW: Mr. Turner, this is Rev Goodenow speaking
to you from Carson City. There are just two of us here and no
other attendees who are present, so -- and I believe we've
already heard comments from the other attendee and so I don't
think there's anything else from up here.

MR. TURNER: Thank you very much.
MR. CHERRY: Bill, before you let them go I'd like to make
a comment on specialization.

MS. MARZEC: Just the court reporter, Judge.

MR. CHERRY: Oh, just the court reporter?
MS. MARZEC: Just the court reporter.
MR. CHERRY: That's fine.
This is District Judge Michael Cherry and I've been
contacted by Bob Grossman who is a tax attorney here in town.

THE CARSON CITY REPORTER: I'm sorry, excuse me. Did
you --

MR. TURNER: I want Mr. Cherry's comments to go on the
record with you first and then we'll let you go, all right?

THE CARSON CITY REPORTER: Okay.

MR. CHERRY: You want me to start over?

MR. TURNER: Judge Cherry.
MR. CHERRY: The main thing is I've been contacted by a
tax attorney named Bob Grossman who has been in practice here
a number of years, and his feeling is that he's tried to talk
to the State Bar about specialization of tax attorneys; and
what he's found -- and that's what he specializes in is tax
law only -- is that with the change of the bankruptcy laws,
the vast change in bankruptcy laws, that many of the
bankruptcy attorneys are misadvising the clients on tax
ramifications with bankruptcy law and then they're coming to
him because they're stuck with penalties and interest and
large tax assessments. What he'd like to know is -- I said
I'd bring the message. He's unfortunately unable to come here
today -- as to why there isn't specialization in taxation.

MR. KIMBROUGH: Let me respond to that.
MR. CHERRY: I know he's been in contact with you.
MR. KIMBROUGH: I'm Allen Kimbrough. I'm executive
director of the State Bar of Nevada and the specialization
program operates under my specific control.
In Nevada to become a specialist, Nevada recognizes
all of the certifying authorities that are recognized by the
American Bar Association. We do not have the staff or the
resource to give our own examination; however, there is -- and
there is no national specialization authority for tax lawyers.
So that's where his problem starts. There is, however, in our
rules a provision that an entity, either a section of the
State Bar or some other entity, can prepare a specialization
exam and process and pay a fee and have that approved by the
State Bar Board of Governors and thereafter offer that exam
and allow those who pass it to become specialists.

For example, the family law section is in the process
of developing their own specialization exam and process
because again there is no national family law -- other than
trial part, there's no family law specialization offered
nationally.

I have spoken as recently as last Friday with the
chair of the tax law section of the State Bar who understands
Mr. Grossman's dilemma. I don't believe at this point that
section has the resources or the people power, if you will, to

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I hope I don't forget anybody. You might have the list here, but I believe it was Mr. Bernstein, Ms. Its, Bryan Scott, Mr. Myers, Mr. Hurris and Bob, Bill, and I was there to take the notes and whatnot.

We eventually had two conference calls where we went back and forth and this rule has been in a number of different forms. I gave you a packet, the cover page of which is RPC 7.0. That's the most current version. As you go through the packet you'll see the prior versions and the genesis of the rule as it got to this particular point today.

The last time we met what we did is we went from a very limited scope of review and what would be required to be filed to a little bit more broad requirement for filing, and the committee members can discuss that with more detail as to why.

We implemented -- I believe it started with Mr. Bernstein and Ms. Eglet -- the idea that we don't want to punish people that are doing things properly and the idea of escalating sanctions for people who fail to file. So there's a whole section in here on sanctions for people who fail to correct noncompliant ads after a final adjudication of noncompliance. You've got increased nonfiling fees and you've got an increased filing fee.

So we also have the issue of whether or not we wanted to have an advertising committee. We went back and forth on it. We started off with the possibility of a committee, and the last time we had a conference call the subcommittee felt very strongly that we should create a "shall" provision that we are going to have an advertising committee. We tried to put forth some minimum standards for that similar to what we did with specialization.

I'll turn it over to Mr. Turner.

MR. TURNER: I think that the discussions -- and I don't want to summarize the committee. I would like committee members to chime in, but we had some very strong feelings that we needed to have teeth in this particular section, and the teeth come where there's a failure to comply with the rule.

If you look at those sections you'll see that we have increasing fine for failure to comply. We also have filing fees that should take care of any concerns with regards to funding this program, though I think the Supreme Court and this commission feels that this is such an important program, that funding should not be an issue. But certainly as a practical matter, by raising these fees we have created a self-disciplining format and self-funding format for this program.

It was felt very strongly that -- in our hearings over the last year, one of the things at least this chair has noticed is that lawyers feel that the playing field is not level and that lawyers often are the most vocal persons with
grievances against the way these rules have been written or how they're being effectively able to be enforced, not that they aren't being enforced, but there's a lack -- or perception -- of credibility.

So we decided that it's extremely important that we have an advisory group, a group of lawyers and laypeople -- at least one layperson -- on this committee who will review these advertisements with an individual with the State Bar so that the lawyers participate themselves in this review and that they see that there is something being done.

Rob has done a tremendous job with regards to enforcement, but we need to beef up our enforcement as well. So these rules were written with that in mind, to give legal input, legal review of these advertisements, and a series of methods by which if the lawyer does not agree with what the advisory committee says about the rules or about the advertisement, he can appeal. He can go to the disciplinary committee. He can go to the State Bar. He can go up levels.

But the point of this rule is to establish what appears to be a review -- a fair review of these advertisements before the horse is out of the barn.

The problem in the past has been raised is if the advertisements happen and there's no way of reviewing them first, then the public suffers, but the lawyer may also suffer. The example that Rob gave was the lawyer in Reno, I think it was, who had a billboard that had to take it down that cost him $100,000 and he wasn't a very happy lawyer. This is a method by which lawyers can be advised, as they are in Texas, as to what ads conform and what ads -- or what they need to do in order to conform to good business practice but also to the protection of the public and the State Bar.

MR. KIMBROUGH: May I ask a technical question of either you or the committee? I guess as the one who is going to help Rob administer this from a practical standpoint, on page 8 under subsection 3, "Fees," I'm happy to have the fees be as high as they possibly can; however, in the section sub (ii) the last sentence says, "Appeal of this penalty must be made in writing within 30 days of receipt of a billing from the State Bar along with the reason for the requested waiver."

However, it does not specify where that appeal is to be taken and I think that needs to be set forth expressly. I know there are other appeals discussed later in the rule, but not this particular one.

MR. TURNER: No, I agree with you.

MR. KIMBROUGH: It can't be appealed to the State Bar because we're the one doing it. I would say it has to be the Board of Governors, or do you want --

MS. MARZEC: I think our thought, Allen -- you're right. It should say a lawyer can contest an opinion finding under subsection 3(ii) looking at it there and, yeah, then they would have the option of appealing to Bar counsel or to the advisory committee, and here's why -- I know you weren't able to participate in that conference call, but what we thought is there may be an occasion where it was an honest mistake. Someone fixed it, we didn't get it or they were in the hospital or something. We didn't want it to be an automatic $500 in all cases. We wanted there to be an ability for someone to come back and say, "Hey, there's good cause to set aside this fee."

MR. KIMBROUGH: We do things like that with Bar dues and other stuff, but it's really not set out in the rules. I don't have a problem with that, but --

MR. TURNER: You just want to make it a little clearer.

MR. KIMBROUGH: Yeah, I think you need to make it a little clearer as to where the appeals goes.

MR. TURNER: That's a good idea. Let's do that.

MR. KIMBROUGH: On the other hand it seems like it's pretty automatic. If you run an ad, you get a letter from Rob or from me with an invoice. Isn't that the way we're going?

MR. TURNER: Yes. We're not going to mess with this. Certainly it's going to be instructive that the lawyers need to pay attention. This is going to be a wake-up call that we need these ads to conform and we need a consistency in the protocol of advertising. Right now, without going into any specific ads, you see all forms of ads all over the place. We need a consistency of enforcement and a method by which lawyers can be educated. This is going to educate them. This mandatory requirement that they submit their ads for review is going to educate them and be helpful to them as well and save them in the long run grief and also protect the public.

MR. HARDESTY: Mr. Chairman, I'm not sure I read the rule quite that way. I understand the rule to require a lawyer to submit their ads, but it appears as though if they want an opinion regarding that ad, that aspect of the rule is discretionary.

MR. TURNER: That's true. That's very true.

MR. HARDESTY: I think it will make a difference in enforcement if I know I have to turn my ad in but I might not necessarily need an opinion or request form.

MR. TURNER: That's correct.

MR. HARDESTY: Now, on the other hand, the flip side of that is I think I infer from this -- but maybe the rule needs to say it explicitly -- that Bar counsel or someone within the Bar has an affirmative obligation to look at the ads. I mean I don't want just a file drawer full of ads.

MR. TURNER: No. I think that's very specific.

MR. HARDESTY: So my expectation was that they would be required to tender them and that we would do something with them when we got them.

MR. TURNER: No. I think --
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<th>Page 46</th>
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<tr>
<td>1 MR. HARDESTY: I'm sure it's implicit as long as Rob is here, but maybe if somebody else were here they wouldn't look at them or review them, and I want that reviewed.</td>
<td>1 don't ask for an opinion, you don't get an opinion. You're going -- the ad will get reviewed and if disciplinary proceedings are appropriate they will be taken, but why do we want to send an opinion to somebody who didn't ask for it? Why do we want to mandate that every ad will be reviewed within 30 days and some opinion rendered when the person hasn't asked for it? This goes back to Mr. Stokes' point about why don't we mandate Rob Bar to take on all the unauthorized practitioners in town. We don't want to mandate. We want to leave discretion because there are limited resources. Why we would want to mandate an opinion for somebody who hasn't asked for an opinion is beyond me and I don't think the rule says that. I think the rule says if you want an opinion you can ask for it and you'll get it; otherwise Rob will read the ad and he'll do what he thinks is appropriate.</td>
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<td>2 MR. TURNER: And I absolutely agree and I think the commission and the committee point was that the advisory group of lawyers and this one person, this one individual that's hired by the State Bar, would have to look at all these ads and I think that's written into the rule.</td>
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<td>3 MS. MARZEC: Justice Hardesty, perhaps if it's not clear, we could add a sentence under perhaps &quot;Filing Requirements&quot; that says the State Bar or advisory committee shall issue a written finding or opinion within 30 days or two weeks or whatever, make it clearer.</td>
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<td>4 MR. TURNER: Do we need a finding or just they shall review it?</td>
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<td>5 MS. MARZEC: I think we should send out an opinion saying, &quot;Your ad has been reviewed. It's fine.&quot; That's what we intended to do and I agree with the Justice. It's probably not clear.</td>
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<td>6 MR. TURNER: So your suggestion would be, even if the ad is fine, send out the statement anyway?</td>
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<td>7 MS. MARZEC: Absolutely. I think that's the whole point. A lawyer wants to have a compliant opinion in their hands. That's part of the application process.</td>
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<td>8 MR. SCOTT: Bryan Scott. That's required because can't use that opinion as a shield to --</td>
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<td>9 MS. MARZEC: Exactly.</td>
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<td>10 MR. SCOTT: -- any disciplinary procedures you may encounter as a result of your ad?</td>
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<td>11 MR. HARDESTY: The application is discretionary. If I submit the ad --</td>
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<td>12 MR. SCOTT: In advance.</td>
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<td>13 MR. HARDESTY: -- and I don't necessarily request the opinion be provided, that's one side of the coin. The other side of the coin is, from the regulatory point of view I think the Bar counsel for the committee needs to affirmatively review all the ads submitted to them.</td>
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<td>14 MR. TURNER: Absolutely.</td>
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<td>15 MR. HARDESTY: And to initiate appropriate disciplinary action that they deem appropriate as a result of their review. That's different than issuing a bunch of opinions.</td>
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<td>16 MR. KIMBROUGH: Again from a financial standpoint, under 3 sub (1), not just submitting the application. I mean if all you're doing is submitting, you still got to have a fee, not just if they want an opinion. You got to have a fee regardless because we can't pay for this any other way.</td>
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<td>17 MR. MORGAN: Dick Morgan. I understand that, but I think if you want an opinion you ask for an opinion and Rob and his staff will provide an opinion and the opinion will provide you some comfort in future disciplinary proceedings, but if you see if this ad is going to fly and he submits it to the appropriate individual or authorities under this provision. That was a separate prong.</td>
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<td>18 MR. HARDESTY: I think there's an important Constitutional issue too. If the opinion is tied to the requirement of the submission of the ad, you're going to run into a breach of a Constitutional issue I think if you infer that you are (inaudible) --</td>
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<td>19 THE REPORTER: I'm sorry, I can't hear you.</td>
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<td>20 MR. HARDESTY: You are running the risk of prior restraint interpretation if you tie the opinion to every ad submitted. The purpose or what I envisioned supporting this rule was a finding by the commission that it's easier for the Bar to require ads to be submitted to us that are going to be run so that we can test the ads against our rules than it is for us to go chasing ads that we don't know about and can't find, or even the Yellow Pages that we looked at at last committee meeting. That's different though than a lawyer seeking solace from an opinion.</td>
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<td>21 MR. TURNER: Right.</td>
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<td>22 MR. MORGAN: There's an issue of providing proper incentives here. We want to give people incentives to come in advance and seek an advisory opinion which will give them some comfort in future disciplinary proceedings. If we're going to send an opinion to everybody that files, what</td>
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incentive is there to come in if you're going to get an opinion anyway? So I think we ought to do what the rule says, which is if you ask for an opinion, get your stuff in in advance, you'll get an opinion. If you file concurrently, it will get reviewed but you get no opinion.

MR. TURNER: And that was my -- as chair that was my opinion. We weren't going to issue a statement in the mandatory filing requirements -- so we don't have prior restraint we weren't going to issue an opinion to all those advertisements. We were simply going to make a determination if they violated or didn't violate the rule. If they violated, then they have to give them notice of that effect. This, as you said, is a separate section designed to give people that comfort level ahead of time for doing that and that certainly if we keep those two separate, clearly it doesn't violate the Constitutional mandate. We need to spell that out.

MR. HARDESTY: I like the way it's drafted. I just wanted a separate rule that says we're going to look at these ads and Bar counsel is obligated to initiate appropriate disciplinary action based on any ads that are not in compliance.

MR. TURNER: That the advisory committee would look at them and recommend to Bar counsel.

MR. HARDESTY: However you want to structure it.

MR. TURNER: If that's not clear enough, let's add that so responsible to the State Bar and then there's a series of appeals, but that's separate from this advisory opinion, totally separate. So we distinguish these two. I think that's what Justice Hardesty is saying.

MR. HARDESTY: That's correct.

MS. MARZEC: So we're going to have a separate subsection under "Filing" that says the ad shall be reviewed?

MR. MORGAN: Why don't you just add the words, where it says it will be submitted, "for review by the State Bar."

MR. TURNER: I think that takes care of it.

MR. KIMBROUGH: So can I ask another question?

So if the application will accompany everything that's filed, we'll ask you -- and you'll send $200 with that -- we'll ask if you (A) want an advisory opinion and (B) whether you want that advisory opinion to be issued by the office of Bar counsel or the committee. Is that essentially what we're talking about?

MR. TURNER: Or for the advance advisory committee, yes.

That's advance advisory now. That's where somebody just says, "I've got something I want to do a year from now and I want your opinion on this," and they can ask either Bar counsel or the advisory committee.

MR. KIMBROUGH: But they could submit that ad to be run in the future without having to wait for an advisory opinion and then take their chances.

it's very clear that that's what's going to happen, that all these particular ads that come in concurrent are going to be mandatory review by the committee and the person at the State Bar and then they have a series of appeals to take.

MS. MARZEC: Can we take a specific look at sub (f).

"Appeals Review"?

MR. TURNER: Sure.

MS. MARZEC: On page 3 of 5 that's where we have the "Advance Opinion" subsection and separate and distinct appeals where we have the first level of appeal that can be done to the standing advisory committee or directly to Bar counsel, and then the last sentence, "If the lawyer fails to amend or appeal within the prescribed ten-day period, the matter will be referred to Bar counsel and proceed in accordance with Rule 105 and the fines set forth in subsection (f)(2) sub (ii)."

Do we want to beef that up a little bit? Do we think it's not sufficiently clear that any noncompliant ads will end up with Bar counsel?

MR. TURNER: It's pretty clear. I think what Justice Hardesty is trying to say --

MS. MARZEC: I want to understand what I'm amending.

MR. TURNER: I think that we just want to make very clear that all ads that come in concurrently are to be reviewed by this advisory committee and the clerk or the person

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MR. TURNER: That's fine, "shall be filed with the offices of the State Bar and shall be reviewed."

MS. MARZEC: Later in the sentence?

MR. TURNER: Well that change that to do that.

I think we resolved that issue.

MR. KOSTIW: I had a question. I was talking to Allen about it during the break. I guess I missed the public comment, but he thought I should raise it. I'm Vincent Kostiw. I'm an attorney and I'm also in the entertainment field.

The one thing about the tombstone exceptions, I found since I went out on my own practice a couple years ago that I meet a lot of lawyers and get their business cards. It just says their name and they're a lawyer. Six months later I need somebody that does tax law. I can't tell from business cards what kind of law they practice.

Another thing that I would like to put on is I don't have my own business card. I know we're not talking about web sites here because they're more dynamic, but I practice entertainment law and I have a background in entertainment and I'm a member of the recording cabinet, which anybody can be a member of the recording cabinet, but from my practice I find that's very useful for me. It kind of helps me stand out from the other people in town that are saying they're entertainment lawyers.

So I barely advertise at all. I have a little one-inch thing in the Yellow Pages there and it says, "Grammy voting member." Under these tombstone rules I guess I would be subject to the $200 fee to review this. I'm just thinking maybe there can be one more exception if you're affiliated with a professional organization or something like that where it's not misleading. That's what Allen brought up too, that maybe that would fall under the tombstone exception also.

MR. TURNER: Rob is sort of an expert on tombstones. The problem is -- I understand your concern and I want the committee and the subcommittee to address that, but when you start making exceptions and you start trying to define what those exceptions are, you get into a can of worms. It's really hard to say your concern in your business is this and somebody else's concern is that and then you start having huge amounts of different definitions.

Rob, would you like to address that.

MR. BARE: You got it covered.

MR. KOSTIW: I did notice in the model rules there is an exception (i) in the model rules back in that packet that there is an exception for sponsorship of a charitable organization or something like that and doesn't look like it's going to be part of our (inaudible).

MR. TURNER: I think you're going to have to be reviewed, it seems to me; otherwise we're opening up Pandora's box.

It's $200. It's a very effective business thing that you do, but --

MR. BERNSTEIN: Go ahead and finish.

MR. KOSTIW: No. I just had a second thing I wanted to bring up, but the second thing I just also noticed it's either limiting your practice to practicing within the ABA rules or --

THE REPORTER: I'm sorry, I can't hear you.

MR. KOSTIW: Oh, sorry.

This whole area of practice rules I never followed because of the entertainment things that I do. I found the general public, if you say, "I do intellectual property," they have no idea what you're talking about. So I'm going to say "copyright," this whole laundry list. So there's my three right there. So I'm wondering if we can address that. If things are related, can you have more than three?

MR. TURNER: That's your bailiwick, Rob, but I would say you got to follow the rules as they're written now and I don't know how you can get around that exception. Do you?

MR. BARE: Well, I mean practically speaking what we try to do is make certain comments just as you've indicated. If you limit yourself to three areas within the context of what you talked about -- maybe you talk about something that's related to these three as you've indicated -- we've never really said that you can't do that as long as it's reasonably related to one of the three areas.

MR. TURNER: I think the purpose of this advisory committee and Rob's review of all this is common sense. We're trying to exercise some degree of common sense. We're not going to be, you know, enforcement police just narrow-minded, but we want to have some control of consistency. So I'm sure those concerns can be addressed.

MR. KOSTIW: Just one point. I'm sure we've all filled out the application for lawyers.com or Martindale-Hubbell and that's kind of advertising, plus if you're a business lawyer, if you're a corporation, you're checking all these boxes. It expands your practice area out and it looks like a violation of this rule.

MR. TURNER: They never called me.

MR. BERNSTEIN: But -- Ed Bernstein -- it's not a violation of that rule. That rule only applies to saying "practice limited to." You're filling out those forms on lawyers.com, it's any type of case you'll handle, two different standards.

MR. TURNER: Absolutely.

MR. STOKES: Can I change the topic?

MR. TURNER: Sure. I think we had one more topic.

MR. MORGAN: Why don't you come down here again.

MR. STOKES: Adam Stokes, attorney. My question is, once you have an advertisement approved, can you use the same ad in

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1 a different form, like different format? Like, for example, this is one of my business cards. I don't know if everybody has seen it.

2 MR. TURNER: Is that Traffic Busters?

3 MR. STOKES: Ticket Busters. I also have the same -- I use the same advertisements on the side of the freeway, on A-frames. I use the same advertisement on my website. I use the same advertisement on billboards up in the air. I use the same advertisement on mailings. I use the same advertising on a brochure that's in an insurance agent's office. Do I need to have every single one approved even though it's the same content?

4 It just seems to me that this $200 fee application is awfully burdensome and slow for a small firm to be able to react. We need to wait so long and pay so much. Can we feel free that once we get -- out of these proposed rules, once we have one format approved, that we can adopt this to anything else? I mean it's the same artwork, but it's a 14-by-48 billboard.

5 MS. MARZEC: Subsection 9.

6 MR. TURNER: Subsection 9 I think addresses that, "Post-Review Exemptions: Once an advertisement or written solicitation is approved, the following need not be refiled: Derivatives of the approved advertisement, provided they are taken verbatim from the approved version and nonsubstantive changes such as new address, practice areas, new colors or new music."

7 I will tell you though from the chair's point of view -- maybe no one else's concern -- it bothers me that you have "in most cases" in very small print at the bottom of the card. That's just my own personal opinion. Doesn't reflect the opinion of the commission.

8 MR. STOKES: Does not guarantee a result.

9 MR. TURNER: So that should answer your question. Ed?

10 MR. BERNSTEIN: Segueing into the concept of results, we had quite a bit of discussion about unjustified expectations and we left -- on 7.1, page 13 of 29 we left the old rule in. Now, I thought it was the feeling of the committee --

11 MR. TURNER: What page is it?

12 MR. BERNSTEIN: 7.1. It's page 13 of 29.


14 MR. TURNER: Oh, sorry.

15 MR. BERNSTEIN: Subsection (b).

16 As I look through the Yellow Pages and see all of these verdicts, settlements, judgments -- 5 million, 3 million, 8 million, 22 million -- two thoughts occur to me. Well, one thought is a lot of these judgments are never collected. These are default judgments that I go in to get. These judgments that are uncollectible, there's no insurance.

17 Somebody's bankrupt. They get this by filing an affidavit in district court and now they're advertising 10 million dollar judgments and it's misleading. I think by nature any time you're going to mention a specific case, a specific dollar amount, it is inherently misleading because there is no other case like that.

18 I thought that we were going to have a resulting rule that would indicate that although you can do testimonial and you can talk about those type of areas of your practice, you could not specifically mention a 10 million dollar fee or something that is -- blank space, which I think is misleading.

19 MR. TURNER: Wouldn't section (b) take care of that? It is a general statement of increase in expectations.

20 MR. BERNSTEIN: Maybe we need to clarify by examples, specifying an amount by judgment, various settlements or whatever that you obtain for a specific client.

21 MR. TURNER: We did in fact at one point have that in there. It became somewhat unwieldy to try and figure out what language you would use. I understand exactly what you're saying because your point is very well taken. I just don't know how to get that language in there. Perhaps it's better left to the discretion of the committee or Bar counsel. I don't know. Does anybody on this commission have a suggestion as to how we could put in there? Because I know that some of these ads do suggest they will get you millions of dollars. "Just hang on. We'll almost guarantee we'll get you hundreds of millions." Vioxx they've had a huge reward, failing to mention two cases they've lost. People think that they'll get something without any difficulty sometimes, so I know what you're saying. Trial results which guarantee another trial result of the same magnitude can be very misleading.

22 MR. BERNSTEIN: Appeal may change the trial result.

23 MR. TURNER: Absolutely. So how do you do this?

24 MS. EGLET: It's also giving information to the client that if you have a bigger case or more severely injured, you can get a firm that actually handles those kind of cases. I had a case where the law firm that had it first made an offer to settle for $2500 and then that person got fired because they didn't talk to her about it. Then she came over to our firm and two years later I settled it for 2 million.

25 I don't know, but I think that you're misleading the public if you don't allow people to say what they've done and what their successes are.

16 (Pages 58 to 61)
MR. TURNER: Well, and that balances free speech. You've got commercial free speech and how do you regulate that? You certainly can't create unreasonable expectations.

MS. EGLET: Sure.

MR. TURNER: So that's why I think we left the language the way it was, simply to allow the advisory committee and the State Bar to make a determination as to whether this is inherently misleading, deceptive or creates false expectations; but I agree with Ed. There is a problem.

MR. BERNESTEIN: There's a lot of firms that are putting down verdicts and judgments that are uncollectible.

MR. TURNER: I've seen some cases in certain states that say you can't do this.

MS. EGLET: I would agree with that. You shouldn't be able to do that.

MR. HARDESTY: Maybe we ought to see if there are states with other rules that touch on this, but perhaps a separate subparagraph could be inserted that says it's likely to create --

MR. TURNER: We've got that on section (b).

MR. HARDESTY: I'm expanding on that.

"It is likely to create an unjustified expectation about results the lawyer can achieve based upon the results the lawyer claims to have already achieved or achieved in the past, or something along those lines."

MS. EGLET: And make him specify -- this is Tracy Eglet by the way -- "We're not saying you're going to get this."

Somehow may be have a stamp, you know, a form or language that says, "That is not saying you're going to get this, but this is the results that the firm has gotten or members of the firm have gotten."

I understand what the issues are, but when you're getting into different types of cases, I don't think it's fair to preclude a firm that routinely gets certain verdicts from telling people that's what they get.

MR. HARDESTY: Or another part of the rule may be, "Any representation with respect to prior achievement has to be made with full disclosures."

I think I mentioned a firm that advertises in Reno about verdicts that they have obtained in their advertising, but that's a verdict. If you're talking about someone who got a 10 million dollar judgment, that's not -- that is a material misrepresentation.

MS. EGLET: And along those lines, there are -- the attorneys that get up and say that "You will receive more money because of the 22 percent," well, you know, 80 -- or 78 percent of $10,000 is a lot less than 60 percent of $100,000. So it is misleading that someone is going in and settling a case that in another firm's hands might be worth more. There is one particular law firm that says that with a reduced rate. That is so misleading because the case in his hands may be different than in someone else's. So is there some way to address that issue?

MR. TURNER: I think the rules really will address that.

I want to take the time to address -- there's several state courts, including Texas, which have said exactly what you said. I think Louisiana has said, "If you're going to list your successes, you have to list your failures"; in other words, full disclosure, and they require that. So I don't know that you shouldn't put something in like that.

MR. HARDESTY: I would like to see what those rules look like.

MR. TURNER: Let me see if I can go back. I read those about six months ago and I thought, well, the whole point of that was -- we've summarized it -- full disclosure.

Maybe we can just put language in there to say something like you said where if you have results lawyers have achieved in the past, you have to put in their failures too.

I mean that general language would constitute the area of the unjustified expectation about results a lawyer can achieve; or if the lawyer lists his successful verdicts, he also lists any unsuccessful verdicts in the same area of practice, something like that, something along that line, because frankly, if you have a million dollar verdict in that area and you have five cases where you've gotten zero verdicts in that area, is that really effectively telling the public?

MR. CHERRY: Is a car accident different than slip and fall?

MR. BERNESTEIN: I think another consequence of all this is not really does it create unjustified expectations with the client; it also damages the profession.

In other states that allow this what I see is you have law firms. Everybody is topping everybody else with dollar amounts, and the net result is that our reputation as greedy ambulance-chasing lawyers is damaged and it plays right into the insurance companies' hands, which then results in tort-reform legislation and their ads against lawyers. It's a vicious circle once you open up that can of worms and it backfires against the profession and against tort-reform issues.

MR. TURNER: Here is the rule that we discussed and this is what stuck in my mind -- thank you very much, Kristina -- that I read. It's the Texas rule. 7.02 in the Texas rule, which is the revisions they passed, says, "Unless lawyer was lead counsel or primarily responsible for the verdict or settlement, amount used was actually received by the client, case and damage information is provided, attorneys' fees and litigation expenses need to be outlined in using the settlement amount or gross settlement amount."

"To me that's a pretty good rule and maybe we should..."
just put that paragraph in there just like that.

MS. ITTS: Tracey Itts. If you recall, we had a lengthy discussion about getting permission from the client because of client confidentiality. That's why I thought we decided not to go with that model as written, because there was concern that we needed to go ask our clients and people might accept less money for having clients basically give them a testimonial. I don't know if anybody else recalls that, but we spent some time talking about getting client permission.

MR. TURNER: That may be a concern and I'm just rethinking this. Again it's up to the commission here, but it seems to me if you can't get that permission, then don't use that ad. I mean it just seems to me only fair to the public. I know it's a business, but the public needs to be informed. If you're going to use an ad and you are using it, you should fully disclose the information; or if you can't, you shouldn't use it. That's just my opinion.

MR. HARDESTY: I remember that discussion. The more I thought about that actually, it's the client's case and you ought to get the client's consent.

MS. EGLET: Any advertising you got to have the client's consent.

MR. HARDESTY: If you have a great result in the case and you're going to use that case to promote yourself without at least talking to the client about that, I have a problem with that.

Again I come back to my favorite rule, which is on page 19, (g): "Any factual statement contained in any advertisement or written communication or any information furnished to a prospective client under this rule shall not:
 Fail to disclose material information necessary to prevent the information supplied from being actually or potentially false and misleading."

If you say that "I got a 2 million dollar judgment," but you fail to disclose that it was reversed on appeal or you fail to disclose that it was an uncontested default proceeding or you fail to disclose that you never collected on it then I think there's a basis for action by Rob.

MR. CHERRY: When do you advertise? The shooting case was a 7-and-some-change million dollar verdict for Bob Maddox with the entitlements that went up to 14 million and then three years later it was reversed. For three years he could have advertised, "I got a 14 million dollar verdict," then the Hardesty Court decided to reverse it.

MR. MORGAN: But at that point it's accurate.

MR. CHERRY: Do we really want Infomercials, Rob?

MR. MORGAN: I'm arguing for sticking with the current language.

MR. BARE: My humble opinion on this is it would be a big mistake to open up the door and let lawyers start getting into the business practice of advertising. I think this area is so wrought with pitfalls, I think we've talked about a lot of them, but there's something even more than all the pitfalls: The technical requirements and such that we're going to run into. I get calls all the time on this.

The problem is it makes the profession look like it's all about money. It's just all about money. It's not just about justice, it's not about the cases, it's all about money.

I think it demeans the profession. They always use the Larry Parker type of comparison. I think he's a lawyer from another state. He says, "Well, Larry Parker got me 7 million dollars."

MR. TURNER: Texas.

MS. MARZEC: California.

MR. BARE: People watching the TV have to see enough. This is all about money. That's all these lawyers are about. You go to them. They're just trying to get you millions of dollars when really isn't it supposed to be about something different than just the bottom-line million?

MR. TURNER: Then wouldn't it be good to just have the 7.2 guidelines for the reviewing group to have specifically what a lawyer can't do, making it less likely you're going to put the money issue in? This is somewhat of a refining statement saying basically, "If you want to put money in there, pal, you better be very clear. You better allude to just these definitions." I know that in general we covered this, like
Dean said, in this general language, but since there's not a
very specific teeth to it, we may have individuals reviewing
this that say, "Well, that's fine." I think we ought to have
a little more specific language. I know we have differences
of opinion on that, but we ought to have some form of vote on
it.
MS. EGLET: I want to make a comment about just what Rob
said.
We go in there and say that, you know, we can't give
Mr. Smith his arm back. I mean the only compensation you have
in this judicial system is money unfortunately. I mean that's
what it is about unfortunately. So I mean I understand what
you're saying about the profession, but unfortunately that's
what the profession is about, when it comes to people who are
injured in our profession, is getting them full compensation.
So I just disagree.
MR. TURNER: By the way, did Justice Hardesty leave?
MR. CHERRY: Yeah. He had to go to the university.
MR. BERNSTEIN: He's indicated he wanted to support 7.02.
Once again it may be just clearer not to allow these
results of cases to be advertised because once again there are
no two cases that are alike.
MR. TURNER: Would that be in a sense, if you put that in
there, a Constitutional issue? Would that be something that
you could put in there without having a Constitutional

question?
MR. CHERRY: Are you asking me?
MR. TURNER: Yes, or Justice Hardesty.
MR. CHERRY: My decision doesn't matter.
MR. TURNER: It seems to me you're allowing for some
indication of what your firm does without being deceptive. If
you put 7.02 in, there's a very specific set of requirements.
I personally would prefer not to have any, but I'm just
concerned about Constitutional requirements. So my own
opinion is it's probably safer to do it this way.
Rob, do you have any feelings on the
Constitutionality of just saying no more ads with regards to
verdicts?
MR. BARE: I am comfortable with the idea that it is
Constitutionally allowable for a State Bar to simply say
results are inherently misleading, because they are.
MS. ITTS: Tracey Itts again, and again it goes back to
the long conversation we had before. I know that some of the
concern expressed by committee members was if you have an
article -- I know that Tracy's firm has had articles. I know
that in domestic cases you have articles that are written
about specific cases. If we use those articles on our web
sites for information and it talks about verdicts or outcomes,
that would be precluding it when the attorney had nothing to
do with the newspaper article and the free press that they

got. I know that that was again another area that we had a
lengthy discussion, that as attorneys on our web sites or in
the information packet we provide, if there's newspaper
articles, we wanted to be able to use that in our promotions;
and if there's an article that talks about this great verdict,
we would be precluded from doing that.
MR. TURNER: I'm not so sure you would, but I think we
talked about billboards, radio, television, Yellow Pages.
Those are the things we're concerned about. I don't know how
we could possibly restrain the press from putting an article
in about some type of verdict and you not using it in your own
promotion materials if it again doesn't create unreasonable
expectations as covered by all these other rules; but I think
we really -- if you're going to put them in ads and you're
using them in a certain way as we've defined, you really can't
mislead the public by just suggesting that you hit a 1 million
dollar verdict and that you're going to get it all the time.
MR. KIMBROUGH: But the problem I would say, if you use it
in your advertisement and in the example that Ed was giving
where somebody gets a huge verdict and there's no recovery,
wouldn't you then be obligated to say underneath the article
that's taken verbatim, "However, in this particular case the
other side recovered zero"?
MR. TURNER: I think you should.
MR. KIMBROUGH: But who is going to do it?

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Mr. Turner: You know, that's my concern, the
Constitutionality.
Ms. Eglet: You should be concerned.
Mr. Turner: Rob is comfortable with it.
Mr. Bare: Did I just get threatened with a lawsuit?
Ms. Eglet: You did.
Mr. Kimbrough: With apologies for not having participated
in the concurrent review committee, Rob brings up a good
point. That is becoming the major way that people advertise
and I think web sites need to be reviewed.
Mr. Turner: How do you review web sites?
Mr. Kimbrough: You submit the web site, send it in,
Ms. Marzec: Texas does it with the main page. You have
to submit your home page.
Mr. Turner: Aren’t they updated on sometimes a daily
basis?
Ms. Marzec: It’s a tremendous volume.
Mr. Kimbrough: I think it’s legitimate. That is a main
form of advertising.
Mr. Turner: It’s a main form.
Does anybody have a problem with adding that, if it’s
reviewable?
Mr. Cherry: Is it reviewable?
Mr. Kimbrough: It allows you to change any ad without
having to change parameters.

Mr. Turner: Not what the specific ad says if you don’t
change it, but if you change it substantively saying, "I’m the
greatest lawyer that ever lived.”
Mr. Cherry: What if you get a major new partner, when a
major partner comes into a firm? It has a good meaning in the
rule, but try it when you’re a judge. I kind of touched on
when you were talking about the horse being out of the gate
and you can’t go back and fix it. Yellow Pages it’s going to
sit in somebody’s house for two years. I think a web page
should be under scrutiny, but whereas Yellow Pages is very
static.
Mr. Kimbrough: At personal cost to the lawyer.
Mr. Kostiw: I do my own web site. It complies to the
rule, but I can change something in a heartbeat. I think it
should be subject to all these rules, but I think an up-front
review may not be necessary. I think it’s more of just kind
of if somebody brings it to your attention or something like
that. I think it’s more of that kind of situation. It’s not
static, it’s dynamic. It will quickly change.
Mr. Kimbrough: It’s a major piece of advertising.
Mr. Turner: The biggest problem is Yellow Pages are going
to go out and web Yellow Pages are going to be more and more
common. I think we probably should include it.
Mr. Kostiw: I think it probably should be--web pages
should be under the same review and scrutiny, but the $200
active web sites should be reviewed. Passive should not.  
2 MR. BARE: Respectfully, do you want to get into that? I  
3 just want to bring that to your attention.  
4 MR. TURNER: At least some of the State Bars have gotten  
5 into it, but Allen's point, which I thought was well taken, it  
6 is becoming a major force of the way you express what you do  
7 as a lawyer to the public, and publics are looking at  
8 computers and looking at these types of advertisement and most  
9 of them aren't looking at Yellow Pages.  
10 MR. BARE: I don't mean to belabor this point, but if I  
11 have a web site, as a law firm I could do a lot of things on  
12 that web site that could be precluded by the advertising  
13 rules. I could have testimonials on the web site, but on my  
14 web site -- you could go deep into my web site. Maybe there's  
15 a link that says, "All cases that we've had in the last year."  
16 I mean you could do that, but you couldn't do that as an  
17 active advertisement.  
18 MR. TURNER: Would you say that if this law firm  
19 specifically --  
20 MR. BARE: It's a problematic area.  
21 MR. TURNER: Let's just consider this hypothetically: If  
22 a law firm says in an advertisement, "Visit our web site to  
23 find out more about it," you go to the web site and it says  
24 that, isn't that an active advertisement and isn't that the  
25 danger to the public --

MR. BARE: Yeah.  
2 MR. TURNER: -- that you're trying to prevent?  
3 MR. BERNSTEIN: Ed Bernstein. I don't think the test is  
4 active versus passive. It's not different. You're visiting a  
5 web site. If I'm trying to drive somebody to my web site,  
6 it's no different than driving somebody to my office. I want  
7 you to come visit me.  
8 The reality of web sites today is that nobody is  
9 going to find anybody's web site unless you're advertising  
10 your web site. If you're on Google, if you're looking up my  
11 web site, you've got me placing an ad. You have to know  
12 somebody's name today in Google search or Yahoo search to  
13 really find a specific person the same way you have to go to  
14 their office address and go into their office to find them.  
15 So I think even though -- if you're advertising, "Hey, visit  
16 my web site," it's no different than saying, "Come visit me at  
17 the office or call me," and then once you call an attorney or  
18 visit their office, they're free to say essentially whatever  
19 they want to say.  
20 MS. EGLET: Are they though?  
21 MR. BERNSTEIN: Well, you can say, "I've handled lots of  
22 these kinds of cases" when you're sitting in front of a  
23 client.  
24 MS. EGLET: Then I'd like that in the rule. I think you  
25 need to explain that because I don't think it's clear. I
think what you're doing could be construed as an
advertising. I can have a client in there and be telling
them things where you could consider me advertising. That was
I think Dick's comment. His concern is that how far do you
go? I mean, you know, "Okay, we've gotten this verdict. I'm
not saying your verdict, but these are our verdicts." I don't
understand the difference between your saying it and, for
example, putting it on a web site. I don't see a difference
at all. I see that slippery slope. "Yeah, I'm in the
courtroom, but no, I can't give you any of our verdicts. I
can't tell you my results." So within this I mean you're
basically tying the hands of people and I think it's prior
restraint.
MR. TURNER: The one thing that I would just remind us as
a commission is obviously the Board of Governors and the
Supreme Court has to consider these rules, and if they decide
in their wisdom that this particular section with regards to a
lawyer advertising verdicts is not Constitutional, they can
certainly put 7.02 back in.
MS. EGLET: But I would like in there -- I would put
before the committee where it says that when you're talking to
someone and you're speaking to your client, that this is
somehow -- that is not what we're deeming as advertising
and you can talk about your verdicts.
MR. TURNER: Didn't we put "written" in here? Isn't it
"in writing"?
MS. EGLET: I don't know.
MR. TURNER: I think writing.
MS. EGLET: So then I can't hand out a pamphlet to my
clients who come in?
MR. BERNSTEIN: Once somebody is in your office, it's not
advertising anymore.
MS. EGLET: It's not advertising?
MR. BERNSTEIN: In my opinion it's not.
MS. EGLET: That's what I want to make clear. We have a
big pamphlet. It talks about our firm. It talks about our
lawyers. If I hand that to someone in my office, is that
advertising?
MR. TURNER: I don't see how -- it seems to me now we're
really going into -- that's way overregulation.
MS. EGLET: That's an exception.
MS. MARZEC: We do say pamphlets in our rule.
MR. TURNER: We did add pamphlet, but I don't think we
were talking about pamphlets in the lawyer's office.
MR. KENNY: Subsection 7(a)(5).
MS. EGLET: What page are you on?
MR. KENNY: Page 1 of 5.
MR. TURNER: At the time they're in your office are they
being solicited?
MR. BERNSTEIN: No.

MR. KENNY: It says, "including but not limited."
MR. TURNER: To solicit people to come in to become a
client.
MS. EGLET: It doesn't say that and if you haven't signed
up, Bill, then they aren't your client yet. So you need to be
more specific. You're tying the hands of lawyers.
MR. CHERRY: I bet Rob gets complaints from people who
have gone to lawyers who have made representations about
verdicts.
MR. TURNER: Well, it's a sticky wicket, but it seems to
me that I would not at this point -- do we have a
recommendation then to change this? Do you want to change
this as a commission, this language, and somehow to cover -- I
think we're just getting into the same problem we were getting
in before. When we start making exceptions, we run into
problems.
MS. EGLET: I think if we don't you run into problems. I
think I would make a motion that you're not talking about when
you're in your office and you take out the pamphlets. I think
that's a big -- that's really important. You're saying you
can't.
MR. TURNER: We're talking about web sites.
MR. TURNER: I think we better come back to this after we
come done with web sites. I think we need to have a vote as to
whether or not to include the web sites. So all those in
favor? I think -- is there a motion to include web sites as
part of this section? Is there a motion and a second to that?
Do we have a motion to include web sites as part of the
regulation? If we don't, then --
MS. EGLET: Not by me.
MR. TURNER: No motion? No second? Then that's a done
deal. Tracy, do you have a motion?
MS. EGLET: I'd like to change that section that says --
at least to clarify that that is not talking about meetings
with clients in your office when you're going over what your
successes are or whatever and what your firm has done while
they're in your office. I understand that, Ed, you don't
think that's problematic, but it doesn't say that.
MR. TURNER: Let's address that.
MR. BERNSTEIN: I don't think any of these rules would
apply to a situation once the client has contacted you.
MR. CHERRY: I agree.
MS. EGLET: Can we put that in there?
MR. TURNER: Does anybody have a problem with that?
MS. MARZEC: Could "unsolicited" -- "including but not
limited to unsolicited pamphlets and postcards"? Then if
someone were in your office and they ask for it or they're
already your client, it wouldn't be considered the same thing.
MR. TURNER: Maybe if we define -- you start getting into
this language, "unsolicited" is kind of vague. Do you have

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any suggestion how we can do that?

MR. MYERS: Your point is well taken, Tracy. We don't get
into regulating law firms trying to internally work with
people who are already there.

MS. HEGEDUS: Could I ask a question? The section you're
talking about says, "including but not limited to," so when
you're talking to a client, it's not a written solicitation.

MS. EGLET: I'm talking about handing out a pamphlet. Our
firm has many materials. It has a whole pamphlet of
information that talks about our attorneys.

MS. HEGEDUS: That's before they've seen a retainer
agreement?

MS. EGLET: They just see who you are. They don't usually
sign up with you right now.

MR. BERNSTEIN: Maybe we just need to define "solicited."

MR. KOSTIW: My recollection of the ABA model rules --
attorneys are trained in the art of persuasion. They don't
want attorneys going out there and tricking people at the
bedside of a hospital, things like that. That's why we're
supposed to put this big red stamp, but if somebody has a need
and they seek you out, like you said, once they come to you
that's not a solicitation anymore. They're seeking you.

You're not soliciting them. That's really where the line
changes I think.

MS. EGLET: As long as it's defined.

MR. CHERRY: Do you really believe it's not a
solicitation? I can't believe you would say that.

MS. EGLET: They're already in the office.

MR. CHERRY: But they haven't signed up yet. They're
going to go to Stokes and maybe a few others. People shop.
They don't just come in and sign up when you are doing
big-time criminal or big-time civil for that matter.

MR. TURNER: Let me ask you a question just as a basic
concept.

I understand talking to people. You can't regulate
talk, but in your package I assume there's a full disclosure
there. There's a certain honesty there that you would want
your client to be aware of.

MS. EGLET: There is always an honesty, but it's not
reflected in here. It says I can't be honest. So that's what
I wanted to be defined.

MR. TURNER: I don't understand. If your packages are
fully disclosing the information required, wouldn't that be
sufficient?

MS. EGLET: No.

MR. MORGAN: She wants to be able to put verdicts in and
judgments in; and if that's advertising, she can't do that.

MR. TURNER: I understand.

MS. EGLET: We've all said it's not. It just needs to be
defined in here.

MS. ITTS: Tracey Itts. The other thing that I'm
concerned about for the family Bar is many of us have gone
beyond just doing general family practice and are doing
mediation and collaborative practice, those type of things.
We actually purchase pamphlets and handouts and put our
business cards and put our information about these other areas
from International Collaborative Professionals. We are now
going to have to change that and create our own pamphlets and
everything else if we want to hand out that information to
educate people when they come through the door that there is a
different way. There's this way, this way and this way.

MR. TURNER: So you would take out pamphlets? Would you
guys take out pamphlets?

MS. EGLET: I would just say define "solicitation."

MR. TURNER: That's a tricky wicket.

MR. BERNSTEIN: How is somebody going to get a pamphlet
any other way than if they come into the office? Once you
mail them out you're subject to the mailing laws, right, of
advertising. So the only way -- and I guess if you go to a
seminar and hand them out, then that would be -- take
pamphlets -- that wouldn't fall under the advertising laws.

Once again I think that "solicitation" word kind of
speaks for itself. I mean you're soliciting people you don't
have a relationship with in the general public. That's
advertising. If you're having some clients in your office
where you have a relationship with somebody, that is not
solicitation.

MS. EGLET: How about if we can -- this is Tracy Eglet --
"all attorney advertisements disseminated in or directed to
Nevada except as done in the attorney's office" --

MR. TURNER: Where are we?

MS. EGLET: Right at the top on 7(a).

"Except as handed -- or "except as done in the
attorney's office in the following forms shall be filed with
the State Bar of Nevada in accordance with this rule."

MS. ITTS: "Except as provided."

MS. EGLET: "As provided by the attorney in person."

MR. TURNER: "Provided by the attorney in person" might
work.

MS. ITTS: Unless they're at a hospital or in the
attorney's office as part of the consultation.

MR. TURNER: Does anyone have a problem with that
language? Though that of course opens the door to another
issue, but --

MR. CHERRY: You go to Craig Kenny's party, you get a
pamphlet, you start handing them out all over. You're opening
Pandora's box here.

MR. TURNER: How would you change it?

MR. CHERRY: I don't know what you do with the First
Amendment. I don't know.
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MR. TURNER: I want to keep Pandora's box closed, Judge.
MR. CHERRY: They may be able to get through the Supreme
Court, but how about the federal judges in the Ninth Circuit?
MS. EGLET: In a consultation.
MR. TURNER: It's not a -- you're not soliciting people
right then at that point in one sense. They're there. You're
not out handing out this stuff all over town. You have an
individual you're talking to.
MS. EGLET: "Except in a consultation."
MR. TURNER: What language would you add?
MS. EGLET: "Except" -- "all attorney advertisements
disseminated in or directed to Nevada except in a
consultation."
MS. MARZEC: Can I ask you something? Could we possibly
put it in sub (5), the exceptions?
MS. EGLET: Yeah, that's fine.
MR. TURNER: What page?
MS. MARZEC: 7.0(a) sub (5), because we're talking about
all written solicitation in RPC 7.3, including these
20 pamphlets.
MS. EGLET: Except for those given during --
MR. BARE: In a lawyer's office during consultation.
MR. TURNER: I'm afraid by doing that you can give them
false and misleading (inaudible).
MR. MORGAN: First of all I'm going to have to leave in
about two minutes. I just wanted to get a couple comments in.
This whole discussion I think raises the need for
somebody to look carefully at all these rules, to see how this
discussion started with outlawing judgments and verdicts
categorically, but somebody needs to go through here and see
how all this stuff plays.
For example, there is already a definition of
"solicit" in rule 7.3(a) which is now different from the
definition of "solicit" that we're just working on. So I
think somebody has to give some thought to this.
I haven't read through all of it, but I do note that
it all started with this idea that we should outlaw all
reference to judges -- judgments and verdicts and I come back
to my point, which is there's already a general prohibition on
false and misleading statements and failing to provide
information necessary to make the provided information not
misleading, and I would have left it at that, anyway I'm
leaving.
MR. TURNER: Your point is well taken, but you do start
opening up all these exceptions to the exceptions.
MR. MORGAN: Somebody needs to look at the whole set.
MR. TURNER: Did you say the definition?
MR. MORGAN: 7.3(a) has a definition of "solicit" in it
which is now inconsistent with the definition you're about to
approve.

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MS. ITTS: It says "in person" in there.
MR. TURNER: Direct contact.
MR. BERNSTEIN: We're not changing the definition of
"solicit." We're just adding the solicitation part.
MR. TURNER: Which is a carved-out exception, it seems to
me.
MS. EGLET: We have to look at this stuff, right?
MR. TURNER: It seems to me that with that -- there are
two ways to go about this. Either get rid of the "no verdicts
at all" and just go -- or at least carve out your exception,
Tracy. I think otherwise we really are getting into a huge
amount of almost impossible problems.
MS. ITTS: You know what, Bill? You could probably add at
the end of (a) in doing so, "unless information is provided in
a consultation setting." Again under 7.3(a) add "in a
consultation setting" and that alleviates any problem and that
way the two rules match.
MR. BERNSTEIN: But it doesn't work because it doesn't
stop. You still go out and you solicit the clients.
MS. ITTS: I wasn't thinking about from a personal injury
standpoint.
MR. TURNER: But at least we have the language that you
want and I think everybody is agreeable to that language.
Does anybody oppose Tracy's language being added to that as an
exception under I think 5?

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MS. MARZEC: (a)(5).
MR. TURNER: Unless anybody is opposed to that, let's add
that section in there. So that will deal with that.
Do we have any other issues with this concurrent
group? Then with that done, we need to vote on this
particular concurrent draft with these changes.
MS. MARZEC: Correct.
MR. MYERS: I think we ought to review the changes.
MS. MARZEC: Here's the thing. What I'd like to do is
just make sure I understand what you asked of staff today.
Then you have the existing draft to review in the next week,
because we want to try to get this to the Board. I will do
this tonight. I promise I'll do it tonight and E-mail it to
you all tomorrow.
MR. KIMBROUGH: But it really has to be finalized by the
end of the day on Tuesday.
MR. TURNER: The only issue as a procedural matter, if we
don't vote on this today with these changes --
MS. MARZEC: We have to file it without the concurrent
review.
MR. KIMBROUGH: Or you wait till May.
MR. TURNER: I'd like to vote on this as a package today,
if we could, with those changes because I think we've all
looked at this.
MR. MYERS: Before we vote, we need to know what the
changes are.

MR. TURNER: Kristina is going to make those changes.

MR. MYERS: We can't vote as a group?

MS. ITTS: Why can't we do it on line.

MR. MYERS: If we all -- in each other's presence if we recite the changes that we've already voted on and then vote on the whole package.

MS. MARZEC: Then I'll make the changes and E-mail it to you. Assuming I don't flub it all, you've already voted.

MS. HEGEDUIS: When are we going to vote?

MS. MARZEC: Now Dianna. There aren't that many changes anyway.

MR. MYERS: After we recite in everybody's presence what changes we've already voted on.

MS. MARZEC: Do you want me to go through the whole thing?

So we began with, in Rule of Professional Conduct 7.0 sub (a) we're going to add in language that "All attorney advertisements disseminated in or directed to Nevada in the following form shall be filed with the State Bar of Nevada" -- "filed with and reviewed by the State Bar of Nevada or the standing advisory committee."

MR. TURNER: "And the advisory committee."

MS. MARZEC: Every single ad is going to be reviewed? We didn't contemplate that.

MR. TURNER: The monthly meeting is going to review those ads it wishes to review.

MR. MYERS: And there will be a stamp person there representing State Bar of Nevada and whatever requisite number of the standing Bar (inaudible).

MS. MARZEC: We decided that's only television.

And so the first part should say, "All attorney advertisements disseminated in or directed to Nevada in the following forms shall be filed with and received at the State Bar of Nevada" -- or "reviewed by the State Bar in accordance with this rule."

MR. MYERS: Then down below.

MS. MARZEC: "Which the State Bar shall also concurrently submit to the standing advisory committee" -- "television, which the State Bar shall also submit to the standing advisory committee."

We didn't want -- if we're going to have two people reviewing, why have a staff member? So our thought was the staff member was going to weed out the things that are clearly compliant, with the exception of a lawyer who asks to go to the advisory committee for television and Yellow Pages, 'cause we thought those were big enough and important enough that they should be reviewed by the committee.

MR. KIMBROUGH: We have to have some efficiencies because this is going to overwhelm, but I think the language that we agreed on is "shall be filed with and reviewed by the State Bar of Nevada in accordance with this rule."

MR. TURNER: You just want to make sure.

MR. KIMBROUGH: That's the simplest change because the State Bar encompasses the committee.

MR. BERNSTEIN: Is it your opinion if you use the word "dissiminated" in there, does that include these cable advertisers?

MR. KIMBROUGH: Yes.

MS. MARZEC: We generally look at, if it's exclusively federal and not run on local cable channels, Rob will do an analysis; and if it does, then we proceed from there. I probably shouldn't speak on behalf of Rob. So they are as a threshold issue subject to review. Whether or not we assert jurisdiction is going to depend on the content and the venue and the channel.

MR. MYERS: That's one of the things we've agreed to today that we'll vote on, right?

MS. MARZEC: So we're going to go with, "All attorney advertisements disseminated in or directed to Nevada in the following forms shall be filed with and reviewed by the State Bar of Nevada in accordance with this rule." You want to vote on that?

MR. TURNER: Yes. All those in favor? All those opposed?

It's unanimous.

MS. EGLET: I say so.

MR. TURNER: Then there is -- Tracy Eglet is the opposing vote.

The second one?

MS. MARZEC: So the next change that we made was to subsection (5). That was just for the first part of (a).

That wasn't for the whole rule. That was just (a) we voted on. I was just doing 7.0 (a). (1), (2), (3) and (4) we didn't make any changes.

Subsection (5) was changed to read as follows: "All written solicitation as described in RPC 7.3, including but not limited to flyers, inserts, newspapers, pamphlets and postcards." For the purposes of this section the following exceptions shall apply. We'll have a sub (i), "business cards that have information beyond the tombstone exceptions shall be considered a written solicitation which must be filed." Then we'll have sub (b) which says, "materials that are disseminated during a consultation in a lawyer's office shall be exempt from filing under this rule."

MR. BERNSTEIN: It doesn't have to be in a lawyer's office.

MS. MARZEC: Do you just want "during a consultation" to allow for people to go out?

MS. EGLET: Yeah. There are people who can't actually get to our office.

MR. TURNER: That's true.
MS. MARZEC: This language obviously will be cleaned up tonight and then you'll have a chance to comment on it.

MR. TURNER: It will be interesting, though, seeing lawyers standing on a corner.

MS. MARZEC: This is only what has to be filed.

MR. TURNER: Let's go.

MS. MARZEC: Can we get a vote, Mr. Chairman?

MR. TURNER: Yes. All those in favor? Any opposed?

MS. EGLET: I'm saying the reason I voted "nay" before was because I don't agree with this new advertisement -- or with the whole --

MR. TURNER: The whole process?

MS. EGLET: With the language.

MS. MARZEC: That's an important distinction. Maybe we should -- the rule overall we have one "nay," but if we're going to have the rule, now we're going to have to work on the language to clarify the vote.

MR. TURNER: I think the rule overall I think everyone else --

MS. MARZEC: Okay.

MR. TURNER: What's the next one, Kristina?

MS. MARZEC: We went against the website addition; correct?

MR. TURNER: Correct. That was voted down.

MS. MARZEC: We were to make clear in the rule that the fine -- to whom the fine could be appealed. So I have to make a change to the section where it says, "Non-Filing Penalty Fee." "Appeal of this penalty must be made in writing within 30 days of receipt of a notice from the State Bar of Nevada along with the requested waiver. Appeal should be processed in accordance with subsection (f)." That will lead you to subsection on appeals.

MR. KIMBROUGH: That goes to the advisory committee.

MS. MARZEC: They have the choice of going to the standing advisory committee or directly to Bar counsel.

MR. TURNER: That's in that section.

MR. KIMBROUGH: That seems odd because Bar counsel is the (inaudible).

MR. TURNER: Are we still on this rule or are we changing something else? All those in favor of this change? Any opposed? Okay. Allen.

MR. KIMBROUGH: Yeah. On page 5 of 5 in capital (B).

"Appointments," that should be "appointed by the Board of Governors" and you should say "Board of Governors" again.

That's the way they draft the rules. It always spells it out, doesn't it.

MS. MARZEC: So throughout subsection (h), "Oversight," "The Board of Governors shall oversee the implementation of this rule as follows." Everywhere I say "board" in those subsections will now say "Board of Governors."

MR. KIMBROUGH: And you do it most places.
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1 period? It was, "If you want the opinion in 30 days, you have
to give it to us within 30 days." Now we're going to change
that and say, "You have to give it to us 45 days in advance,
but we're not going to get back to you for 60 days." I think
the two periods of time should be the same. They should be
the same.

7 MR. KIMBROUGH: I think you could shorten it by saying,
"If you want it to be reviewed only by Bar counsel."
9 MS. MARZEC: Or sooner if submitted to Bar counsel. So,
10 "All requests shall be submitted within 45 days of the
required date," why don't we say.
12 MR. KIMBROUGH: You may have to have emergency meetings of
the committee.
14 MS. MARZEC: I think most people would probably just opt
to go to Bar counsel first. Then if they got a contrary
opinion -- because an opinion of Bar counsel is binding, so
why not just say "45 days or sooner if submitted to Bar
18 counsel.""
19 MR. TURNER: Why don't we just say "45 days or sooner."
20 MS. MARZEC: Okay.
21 MR. TURNER: That way they have a choice and that's
discretionary. Bar counsel for some reason may not be
available.
24 MR. BARE: That's a long amount of time for my office. I
25 usually do them in a day or two days.

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1 MR. KIMBROUGH: This is going to be a whole new world.
2 MR. TURNER: Just say 45 days.
3 MS. MARZEC: "Not less than 45 days prior to the date of
first dissemination."
5 MR. TURNER: "And shall be reviewed" --
6 MS. MARZEC: Then we should probably add a sentence to the
end, "Request for advance opinion shall be reviewed within 45
days or sooner."
9 MR. TURNER: "Or sooner," period.
10 MR. BERNSTEIN: I think it's very few law firms that are
going to be able to submit an ad in 45 days or more before
you're ready to run the ad and sit there and wait for an
13 opinion. These things happen quickly. You may as well just
go ahead and run your ad and take your chance. You do want to
encourage people to get advance opinions.
16 MR. TURNER: How would you run that, Ed, if you got a
committee that's only meeting every 30 days and if you hit
then the day after they met?
19 MR. BERNSTEIN: But if Bar counsel can give an opinion,
why don't you give something more reasonable if you want to
encourage people to do this. If you're going to require me to
do 45, I'm just going to do the ad.
23 MR. TURNER: We said 45?
24 MS. MARZEC: Within 45 days if submitted to the standing
advisory committee or within 10 days if submitted to Bar

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1 counsel, because they have the option.
2 MR. TURNER: If that's acceptable.
3 MR. KIMBROUGH: We won't know until this thing gets under
way.
5 MR. BARE: Ten days is fine.
6 MR. KIMBROUGH: Ten business days. There's less --
7 MS. MARZEC: We'll say ten business days.
8 MR. KIMBROUGH: There's some assumption that if it's less
9 than so many days --
10 MR. MYERS: It's less than seven days.
11 MR. TURNER: All right. Do we have an agreement on that?
12 Is there anyone opposed to that change? That change will be
13 45 days before it will be submitted and shall be reviewed by
14 Bar counsel.
15 MS. MARZEC: Shall be reviewed within 45 days if submitted
16 to the advertising committee or 10 days if submitted to Bar
17 counsel.
18 MR. TURNER: That's putting a mandatory requirement on
19 you, Rob.
20 MR. BARE: One thing: Can I go to a new subject, though
21 having to do with the rule? Before Bryan Scott left -- he had
22 to leave in a hurry -- he asked me to present a proposed
23 change to the committee, so I have it here. Specifically it's
24 on page 4 of 5 and it's section (g) about three-quarters down
25 the page which is entitled "Requests for Information." Do you

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1 see that there?
2 Here's his thought. Again this is Rob Bare. This is
3 a thought of Bryan Scott that he wanted me to relay: "If
4 requested by the State Bar of Nevada or the standing advisory
5 committee on lawyer advertising as set forth in subsection
6 (h)(2), a lawyer shall promptly submit information to
7 substantiate statements or representations made or implied in
8 any advertisement submitted under this rule." Bryan's thought
9 was that the word "promptly" is too vague and should be better
10 defined and he's proposing a ten-day requirement.
11 MR. TURNER: Well, yeah, "promptly" is a vague word. That
could mean a year.
13 MR. BARE: That's his thought.
14 MR. BERNSTEIN: Ten business days.
15 MR. TURNER: All right. Does anybody oppose the ten days?
16 No, that's a great idea. Do we have any other suggestions?
17 Changes? All these have been very good changes.
18 MR. MYERS: Well, we haven't voted a second time on the
19 rule change, which I voted against, about prohibiting
20 advertising results.
21 MS. MARZEC: We're still on concurrent review; right?
22 MR. TURNER: Yes.
23 MR. KIMBROUGH: With the cosmetic changes that we just
24 voted on separately. So we're done with that; right?
25 MS. MARZEC: So we can move on to 7.1, which is on Bates
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<tr>
<td>1 13 in the big packet.</td>
<td>1 &quot;create unreasonable expectations&quot; in there.</td>
<td>1 Mr. KIMBROUGH: You can't give CLE credit. They can count it toward the pro bono credit because it's improving the law.</td>
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<td>2 MS. EGLET: Before we move on, I just was a little concerned about where we were going to get volunteers. Maybe if we were able to -- I don't know if we can do this but provide CLE credits for these volunteers, because it's kind of a big duty. I don't know if that's something --</td>
<td>2 MS. MARZEC: That's in (b) already. Do you want to restate it? I'm sorry, I lost you.</td>
<td>2 MR. KIMBROUGH: Looking at the rule, &quot;unjustified expectation,&quot; is &quot;unreasonable&quot; different than &quot;unjustified&quot;? Mr. TURNER: Well, I've always heard it used as &quot;unreasonable.&quot;</td>
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<td>4 MR. TURNER: No. That's a given.</td>
<td>5 MR. TURNER: (b) is the definition of what's unreasonable expectations. We have &quot;false and misleading&quot; or &quot;unreasonable expectations.&quot; It doesn't matter to me. It just seems to me I'm trying to avoid Tracy's concerns. If the verdicts create unreasonable expectations, then they're not false necessarily but create unreasonable expectations.</td>
<td>5 MR. BERNSTEIN: Maybe we should change that word.</td>
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<td>6 MS. EGLET: You won't have to put that in there.</td>
<td>7 MR. BERNSTEIN: Where is that?</td>
<td>7 MR. BERNSTEIN: It's on 7.1 subsection (b).</td>
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<td>8 MR. TURNER: So we're on 7.1. What is it --</td>
<td>9 MR. TURNER: I'm sorry. Go ahead.</td>
<td>9 MR. BERNSTEIN: I think &quot;unreasonable&quot; rather than &quot;unjustified.&quot; &quot;Unreasonable&quot; has been defined by the Courts.</td>
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<td>12 MS. MARZEC: The change to 7.1 had to do with the prohibition of specific results.</td>
<td>10 MS. MARZEC: That was when I left the room. All I have is that we're supposed to come up with language, but you didn't have any so you need to add it.</td>
<td>10 MS. MARZEC: I don't know.</td>
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<td>13 MR. TURNER: And I thought we voted on that six to five.</td>
<td>12 MR. MYERS: As (e) I think.</td>
<td>12 MR. BARE: That is right from our own rule.</td>
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<td>15 MR. BERNSTEIN: We did.</td>
<td>15 MR. TURNER: Where is that?</td>
<td>15 MR. BERNSTEIN: Why don't we use &quot;unreasonable&quot; for &quot;unjustified.&quot;</td>
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<td>16 MS. MARZEC: So we're going over the changes again.</td>
<td>16 MR. TURNER: I'm sorry. Go ahead.</td>
<td>16 MR. TURNER: That's fine with me.</td>
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<td>17 MR. TURNER: I'm sorry. Go ahead.</td>
<td>17 MS. MARZEC: &quot;A communication is false or misleading if it,&quot; (e) contains specific results that the lawyer has issued.&quot;</td>
<td>17 MR. MARZEC: That's in (b). What did we do to (e) again?</td>
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<td>18 MR. MARZEC: That's in (b). What did we do to (e) again?</td>
<td>18 MR. TURNER: We're going to put language in (e).</td>
<td>18 MR. TURNER: We're going to put language in (e).</td>
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<td>1 prohibiting specific results for a specific case.</td>
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<td>2 MS. MARZEC: Tracy, is there any language that we could add to that that would address your concern, or is it just as a principle the tenet of it is something that is going to be a &quot;no&quot; vote for you?</td>
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<td>3 MR. MYERS: It should say the language.</td>
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<td>4 MS. EGLET: There was the one that -- the one who advertises a specific fee, on page 15, shall include possible terms. Obviously I think that would be the better language, the better finding, but that's not what is being put forth.</td>
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<td>5 MS. MARZEC: Could you read us sub (e) as we have it.</td>
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| 6 MR. BERNSTEIN: Okay. Well, we added the word "unreasonable" for "unjustified"; so is likely to create an unreasonable expectation about results the lawyer can or has achieved, and maybe we just put in parentheses an example: "For example, advertising a specific result on a specific case" or "a specific result."

| 7 MS. EGLET: This again needs to address the fact when they're in the office. |
| 8 MR. TURNER: I think we have already. |
| 9 MS. EGLET: We did in a previous section. |
| 10 MR. TURNER: That's a definition. |
| 11 MS. EGLET: This is communications. This is not solicitation. I disagree with you. |
| 12 MR. MARZEC: So we are adding it to (b) now instead of a |
1 new sub (c)? Are we putting the language up in (b) now?
2 MR. BERNSTEIN: I think really it belongs in (b).
3 You're really defining what an unreasonable expectation may
4 be.
5 MR. TURNER: Actually I like it there because that is --
6 yeah, I think that works well.
7 MR. KIMBROUGH: My problem with the wording is as
8 Tracy said. It's not false.
9 MS. EGLET: It's not false.
10 MR. KIMBROUGH: We are determining what is inherently
11 misleading. I think that's what you need to say somehow. "It
12 shall be deemed inherently misleading to advertise specific --
13 a specific result from a specific case," or something like
14 that.
15 MS. EGLET: "To advertise" so that it takes it out of
16 communications when I talk to my client in my office. It
17 shoves it back in there. This would prevent me from saying
18 anything about any prior verdict.
19 MR. BERNSTEIN: I'm happy with that. Where do you
20 specifically want to put it, No. (c)?
21 MR. KIMBROUGH: It almost has to be in --
22 MR. BARE: 7.1(a).
23 MR. KIMBROUGH: Yeah. Well, I guess what you could do,
24 you could actually start where it says, "A communication is
25 false or misleading if it," and then you could make that an
26 just talks about unreasonable or unjustified expectation.
27 MR. TURNER: That's right, but I would put under 7.1
28 "creates an unreasonable expectation." That way you're not
29 saying it's false necessarily. You're saying "or it could be
30 just creates an unreasonable expectation" and you don't have
31 to change all this around. Then I agree with Ed. You've got
32 it down here at (b), just communication concerning a lawyer's
33 services that is false or misleading or creates unreasonable
34 expectations, and then we know that this particular type of
35 advertisement where there's a verdict involved is creating an
36 unreasonable expectation. It also may be misleading.
37 MS. MARZEC: If we're going to get away from the ABA
38 model, why not have one section that's false or one that's
39 misleading.
40 MR. TURNER: No.
41 MR. KIMBROUGH: I don't think that solves the problem. I
42 still think it's not clear.
43 MR. TURNER: Better not start defining what's false and
44 what's misleading as separate issues. Some are false and
45 create unreasonable expectations and some are misleading.
46 MS. MARZEC: Which is exactly why we didn't have it
47 separated out. That's why you put it up in the top.
48 MR. KIMBROUGH: I know the Court doesn't like them, but
49 shall we put it in a comment?
50 MS. MARZEC: We can ask the Court to do a comment.
51
52 (A), a capital (A) let's say. You're going to have to change
53 the outline form and then you'd have a sub (B) that says --
54 MS. MARZEC: The Court did this already, these lettering
55 from (e) to (d), just so you know.
56 MR. KIMBROUGH: We're changing a whole concept here.
57 MS. MARZEC: It's separate rules.
58 MR. KIMBROUGH: Not a separate rule. I'm saying that at
59 the end of that paragraph you would have an (A) or a (1) or
60 whatever is appropriate under the way they note the rules that
61 would have "false or misleading" and its four things that are
62 in "false or misleading." Then there would be (B), "It shall
63 be deemed inherently misleading," et cetera, et cetera.
64 MS. EGLET: May I make a suggestion? When we say -- why
65 don't we just take "false or misleading" out and say, "A
66 lawyer shall not make communication about the lawyer's
67 services if it," and then (a), and (b), "contains a material
68 misrepresentation" instead of label it all false and
69 misleading.
70 MR. KIMBROUGH: Rob has to prosecute it on the basis of
71 being false or misleading.
72 MR. TURNER: It doesn't say "false or misleading" and I
73 thought we added "or unreasonable expectation." It is one of
74 those three things. It doesn't have to be all of them.
75 MR. KIMBROUGH: Maybe add "for example."
76 MR. BERNSTEIN: That's why I put it in paragraph (b). It
77 MR. KIMBROUGH: Ed, would that work for you?
78 MR. BERNSTEIN: No. I think we're making a lot to do
79 about nothing here. We just add it in section (b) with "for
80 example, stating a specific result in a specific case does
de facto create an unjustified expectation."
81 MR. TURNER: Inherently.
82 MR. BERNSTEIN: Inherently in an advertisement.
83 MR. TURNER: That works.
84 MS. MARZEC: Can we just do a sentence for the purpose of
85 this section?
86 MR. TURNER: We're in section (b); correct?
87 MS. MARZEC: So there would be a sentence that would say,
88 "For the purposes of this subsection, statements regarding a
89 lawyer's past results on a specific case shall be considered
90 inherently misleading?"
91 MR. KIMBROUGH: And we also want to put in section (b) "is
92 likely to create an unjustified" -- or "unreasonable
93 expectation."
94 MR. KIMBROUGH: You're going to have to say actually about
95 the results the lawyer can achieve -- or has achieved, past
96 tense, to follow Ed's language.
97 MR. TURNER: You're right.
98 MR. KIMBROUGH: Sorry.
99 MR. TURNER: That's all right. That's good. With that
100 language do we have an acceptance of that language?
MR. MYERS: I think that fairly states what we voted on before six to five.
MR. TURNER: All right. It doesn't change anything substantively. It's just trying to define it. With that in mind do we have any other comments? Are we ready to vote on this package as a whole?
MR. BERNSTEIN: Kristina, did you add web site to tombstone-admissible things on your business card and on your stationery?
MS. MARZEC: Yes, E-mails and web addresses on your business cards.
MR. BERNSTEIN: Under the tombstone exception.
MS. MARZEC: Yes.
MR. TURNER: Is there a motion to adopt these rules as we've changed them?
MR. MYERS: So moved.
MR. KENNY: Second.
MR. TURNER: All those in favor? It's unanimous. It's done.
MS. MARZEC: I'll make these changes tonight. I'll E-mail it to you and then I'll work with the reporter on getting an additional version of this.
MR. TURNER: May I say, Kristina, for helping us with the concurrent committee, thank you, thank you and thank you so much. Without your help and your assistance this couldn't be done. You deserve special thanks.
(Proceedings concluded at 1:17 p.m.)

REPORTER'S CERTIFICATE

STATE OF NEVADA )
) ss
COUNTY OF CLARK )

I, Ellen A. Goldstein, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby certify:
That I reported the taking of the above-captioned proceedings at the time and place aforesaid;
That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said proceedings is a complete, true and accurate transcription of my said shorthand notes taken down at said time.
I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS THEREOF, I have hereunto set my hand in the County of Clark, State of Nevada, this 12th day of March 2005.

Ellen A. Goldstein, CCR No. 829

30 (Pages 114 to 116)