

01a 6-8-87

IN THE SUPREME COURT OF FLORIDA

In Re: Petition to Amend the Rules
Regulating The Florida Bar
(Specifically Rule 4-7.3,
Legal Service Information)

CASE NO. 707366
FILED
JUL 1 1987

SUPPLEMENTAL RESPONSE TO THE PETITION OF THE FLORIDA BAR AND INQUIRIES OF THE SUPREME COURT AT ORAL ARGUMENT
CLERK, SUPREME COURT
By _____ Deputy Clerk

C
ph

Larry D. Beltz, Attorney at Law (attorney no. 126001), hereby supplements his Response previously filed in order to provide this Court, pursuant to its request, further "constructive proposals", concerning proposed Rule 4-7.3. The Academy of Florida Trial Lawyers filed a supplement response containing its proposed alternative amendments to Rule 4-7.3, and this writer will comment on those proposals as well.

PROPOSED SUBSTITUTION FOR FLORIDA PROPOSED RULE 4-7.3 - LEGAL SERVICE INFORMATION

Attached hereto as Exhibit A, is a complete proposal for Rule 4-7.3. Exhibit A contains all the language proposed by The Florida Bar concerning Rule 4-7.3, as well as the language suggested by the Academy of Florida Trial Lawyers in its supplemental response. Further, Exhibit A contains the suggestions of this writer for certain additions to and deletions from the language proposed by The Florida Bar and the Academy of Florida Trial Lawyers.

The proposed deletions and additions are described as follows in order:

I. This writer suggests that the introductory paragraph of the proposed Rule 4-7.3 should read as follows:

"4-7.3 Legal service information. Each lawyer or law firm ~~advertising-its-services-or-availability who represents or is available to represent clients in actions, claims-or-causes-under-Rule-4.1-5(d)-(4)~~ shall:"

This writer suggests that the proposed Rule on legal service information should be applicable to all lawyers or law firms in the State of Florida, regardless of whether they advertise their services and regardless of whether or not they

handle just actions, claims or cases concerning personal injury or wrongful death. This writer would refer this Court to the "Report of the Special Commission to Study Contingency Fees and Referral Practices" of November 1986, page 11 thereof, which states therein that:

The Special Commission therefor recommends the Code be amended to require all lawyers to maintain written information about their practices, experience and expertise which will be furnished upon request to any consumer who wants to review it for the purpose of retaining a lawyer."

It is clear that the Special Commission intend that the availability of information concerning legal services be borne by all attorneys practicing in the State of Florida regardless of whether they advertise or not. Further reasoning for this writer's change in that regard is set forth in its original response.

II. This writer suggests that that portion of proposed Rule 4-7.3 (B) be changed with certain additions as follows:

~~(b)~~ (B) Whenever a potential client shall request information regarding a lawyer or law firm for the purpose of making a decision regarding employment of the lawyer or law firm:

(1) The lawyer or law firm shall promptly furnish ~~(by mail-if-requested)~~ the written information described in paragraph ~~(a)~~ (A), in the following manner:

(a) By maintaining the written information for immediate delivery to the potential client during regular business hours at the address of the lawyer or law firm; and

(b) By mailing the written information upon the receipt by the lawyer or law firm of a written request and a self-addressed stamped envelope from the potential client; and

(c) In addition to sub-paragraph (a) and (b) above, the lawyer or law firm, at its option and expense, may mail the written information to the potential client.

Clearly, this will create an enormous potential for untold grievance complaints. Under The Bar's proposal, any person without any verification could say that he requested such information but never received it or, on the other hand, any person could claim that he received information but never requested it. There is no mechanism in The Bar's suggested rule whereby any lawyer can protect himself or his firm from spurious grievances from individuals bent on harrasing such lawyer or law firm for ulterior motives. Clearly the grievance system will be further burdened, under The Bar's proposal, since it unconstitutionally requires attorneys to spend insubstantial monies in forwarding documents to potential clients. Common sense would dictate that the attorney should have the option of refusing to spend the money to provide such mailings when the real effect would be for such potential client to reject the attorney for his refusal to so mail.

This writer has suggested, an addition to the Bar's proposed Rule, the insertion of subparagraphs (a), (b) and (c) which, in essence provide a mechanism by which the attorney is required to maintain the written information at all times at his law office, and further required, upon receipt of a written request enclosing a self-addressed, stamped envelope, to mail the written information to the potential client. It further provides that an attorney at his own option and expense may mail the written information requested by any potential client. These proposals allow the lawyer or law firm to comply with the mandates of Rule 4-7.3 for having the written information available and providing it to the client in a reasonable manner which will alleviate the potential for unjustified, burdensome and technical grievances which would become an overwhelming "tar baby" for The Bar's grievance system.

This writer also suggests an addition to Rule 4-7.3(B) subparagraph (1)(d) as follows:

(d) By attaching the written information to all copies of the "Statement of Client's Rights" which are signed in compliance with Rule 4-1.5(D)(4)(c).

This proposal would require in all circumstances in which an attorney executes a Statement of Client's Rights in a personal injury matter to attach such written information thereto. It should be noted that the Statement of Client's Rights provides, in paragraph 3 thereof, that the lawyer should provide to the client the information about his special training and knowledge or actual experience in dealing with cases of that nature, in writing. This will alleviate any question concerning whether or not such was provided by merely requiring that in all cases it be attached to the Statement of Client's Rights so that the client may then return home and utilize the next three days in reviewing such written information.

III. This writer has incorporated AFTLA's proposal to Rule 4-7.3(D)(3) in Exhibit A attached hereto. However, this writer has suggested that that part of the suggested amendment which reads "Such free information shall only be provided upon request", be eliminated. (Noted on paragraph 4 of Exhibit A by asterisk *.)

Direct mail solicitation (defined as it is as "Advertisement"), falls directly under the First Amendment protection guidelines set forth in the Supreme Court's decision in Bates v. State Bar of Arizona, 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977). The Bates court held that indeed, lawyer advertising was a form of commercial speech, protected by the First Amendment and that "advertising by attorneys may not be subjected to blanket suppression". Clearly, the proposal that the free written information may not be provided unless requested is a blanket suppression. The better Rule and the one that would be constitutionally permissible, would be allow the lawyer or law firm providing a written communication not involving solicitation as defined in Rule 4-7.4 to enclose such

written information which is required to be available and maintained by every lawyer or law firm, pursuant to provisions of proposed Rule 4-7.3, Legal Service Information. The Florida Bar may then have, as stated in the requirements of that Rule, access to the information actually furnished to the potential client in the written communication not involving solicitation as defined in Rule 4-7.4.

IV. This writer would agree with AFTLA's position set forth in its footnote on page 6 of its Supplemental Response, to wit, that the meaningful disclosures which have been proposed for written communications should be applicable to television, radio, or display advertisements. In that regard, this writer has proposed an amendment to Rule 4-7.3, at paragraph (D)(4), which states as follows:

(4) If a lawyer or law firm advertises its services in the manner described in (D)(1) or (2) of this Rule, then such advertisement shall prominently display, announce, or state the disclosure information set forth in (D)(3) (b) and (c) of this Rule.

V. This writer has added to Rule 4-7.3 a subparagraph noted at (D)(5) as follows:

(5) If the lawyer or law firm advertises its services pursuant to Rule 4-7.2 or makes a written communication not involving solicitation as defined in Rule 4-7.4 and states in any such advertisement or written communication the name and address of the lawyer licensed to practice law in Florida who would be responsible for the performance of the legal service in the area or areas of law advertised or involved in the potential representation and further states, that such lawyer, as to such relevant areas of specialization, is a "board certified (area of specialization) lawyer", then such lawyer or law firm shall be deemed in compliance with the provisions of Rule 4-7.3(D)(1), (2), (3) (a) (b), and (4).

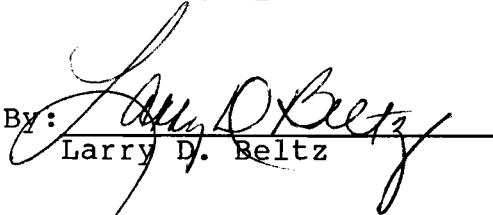
This proposal serves to further emphasize that board certified lawyers have been identified by the Florida Bar as individuals who are capable, competent, and who have demonstrated high professional and ethical standards in their practice. They have further been identified as having special knowledge, skills and proficiency in their area of certification. (See Florida Bar Journal, September 1986, Page 465.) Therefore, any such board certified lawyer (or a lawyer who is then so motivated to become board certified) who elects to advertise, may be deemed to have provided sufficient information concerning his qualifications and experience in the advertisement or written communication itself.

The entire context of proposed Rule 4-7.3, Legal Service Information, including the Florida Bar's proposals, AFTLA's proposals, and the deletions and additions suggested by this writer are attached hereto and shown by dash lines through those portions this writer suggest be changed or altered and by underlining those portions which this writer and AFTLA suggest be added thereto.

Respectfully submitted,

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By:


Larry D. Beltz

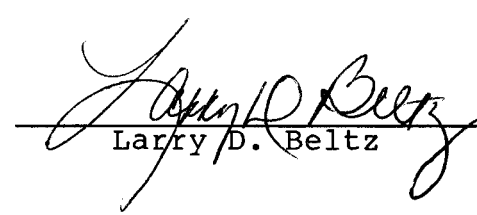
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CERTIFICATE OF SERVICE

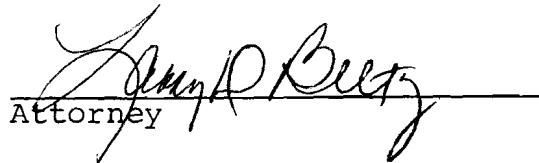
I HEREBY CERTIFY that a copy of the foregoing has been sent by U.S. mail to the attached Certificate of Service list on this 29th day of June, 1987.


Larry D. Beltz

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Joseph J. Reiter, President, The Florida Bar, 2000 Palm Beach Lakes Blvd., Suite 800, West Palm Beach, Florida 33409; Ray Ferrero, Jr., President-elect, The Florida Bar, P. O. Box 14604, Ft. Lauderdale, Florida 33302; Ben L. Bryan, Jr., Chairman, Rules and Bylaws Committee, P. O. Box 1000, Ft. Pierce, Florida 33454; George A. Dietz, Chairman, Disciplinary Procedures Committee, 1550 Ringling Blvd., Sarasota, Florida 33577; John R. Beranek, Chairman, Contingent Fees & Referral Practices Commission, 501 S. Flagler Drive, Suite 503, West Palm Beach, Florida 33401; John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Florida 32301; John A. Boggs, Director of Lawyer Regulation, The Florida Bar, Tallahassee, Florida 32301; Sidney A. Stubbs, Jr., Chairman, Committee to Review, P. O. Drawer E, West Palm Beach, Florida 33402; Thomas M. Ervin, Jr., Esquire, 305 S. Gadsden Street, Tallahassee, Florida 32301; Marcia K. Cypen, Attorney, 7900 N. W. 27th Avenue, Suite 210, Miami, Florida 33122; Bill Wagner, Esquire, Wagner, Cunningham, Vaughan & McLaughlin, 708 Jackson Street, Tampa, Florida 33602; ~~Larry D. Beltz, Esquire and Steven C. Ruth, Esquire, P. O. Box 16008, St. Petersburg, Florida 33733~~; Henry P. Trawick, Jr., Esquire, P. O. Box 4019, Sarasota, Florida 33578; Joseph D. Magri, First Assistant United States Attorney, P. O. Box 600, Jacksonville, Florida 32201; Lawrence H. Sharf, Special Counsel, Executive Division, United States Attorney's Office, Southern District, 155 S. Miami Avenue, Suite 700, Miami, Florida 33130; Mary Ellen Bateman, UPL Counsel, The Florida Bar, Tallahassee, Florida 32301; Patricia S. Etkin, Bar Counsel, The Florida Bar, 444 Brickell Avenue, Miami, Florida 33131; George dePozsgay, Co-Bar Counsel, The Florida Bar, Suite 210, 2950 S.W. 27th Avenue, Miami, Florida 33133; John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida 32301; Rhea P. Grossman, Attorney, 2710 Douglas Road, Miami, Florida 33125; Michael E. Allen, Public

Defender, P. O. Box 671; Tallahassee, Florida 32302; Steven L. Bolotin, Assistant Public Defender, P. O. Box 1640, Bartow, Florida 33830; Robert A. Butterworth, Attorney General, The Capitol, Tallahassee, Florida 32301; Norma J. Mungenast, Assistant Attorney General, The Capitol, Tallahassee, Florida 32301; Peter J. Hurtgen, Esquire, Claudia B. Dubocq, Attorney, 3200 Miami Center, Miami, Florida 33131; Charles F. McClamma, Esquire, Koger Executive Center, Turner Building, Room 100, 2586 Seagate Drive, Tallahassee, Florida 32399-2171; Robert D. Klausner, Esquire, Pelzner, Schwedock, Finkelstein & Klausner, 1922 Tyler Street, Hollywood, Florida 33020, The Academy of Florida Trial Lawyers, William C. Gentry, Gentry and Phillips, P.A., Six East Bay Street, Suite 400, Jacksonville, Florida 32202; C. Rufus Pennington, III, Margol, Fryefield & Pennington, 222 East Forsyth Street, Jacksonville, Florida 32202, by U.S. Mail the 29th day of June, 1987.


Attorney