

8-30-10

5 pm

Minutes

Discussion of Lawyer Advertising — Rod Snow

- Florida atty advertisement was shown — ^{Example of "over the top" advertising.}
- Utah Bar Commission wants to tighten up the rules on lawyer advertising
- Rod gave a summary of Nevada's rules re lawyer advertising — (Highlight some of the specifics from Rod's handout to the Bar Commissioners) —
- Rod also gave brief summary of Florida rules — ^{No ~~among~~ other things, current} pointed ~~out~~ Harnell v. The Florida Bar — held no prior restraint (20-day period for review) — There is a major war going on between the Florida Bar and the FC bar —
- Nevada Florida (extreme)
- Bar Commission doesn't want to embroil Bar in litigation —
- BC wants a committee to be formed to study the issues, make proposals, —> out for comment, then to S. Ct.
- Steve: we looked at advertising rules — No basis for ~~this~~ ^{many fact finding?} committee to move forward on changing rules —
- Rod: Bar Comm. thinks we do have a problem — Would like 2-3 members from FC committee to serve on Bar Comm. committee —
- Jary: We were reluctant to take some action w/out examples of ads not within rules — Are we looking for a solution to a problem that doesn't exist? Plus, OPC doesn't have resources to prosecute —

Rod - ~~Bar Nevada definition~~ ^{Current rule} ~~There is~~ a difficult rule to enforce - Only way to get your arms around it is different process - (Nevada)

Steve - Timetable: Meet w/ S. Ct. in September - Present this to S. Ct. Probably a 1 year project -

J. Baldwin - at least a year to study; it will be difficult to reach a consensus -

2-3 volunteers from PC committee;

1 volunteer from OPC

maybe 1-2 law students

maybe law school deans

Rod - Bar Commission wants to be doing more than we're doing now - We're heading in the wrong direction

Earl - ~~Are~~ Florida, Texas, Nevada only examples?
(No - Louisiana)

Earl - Is our rule basically the Model rule? (yes)

Steve: ~~First~~ Funnel info through Diane for now - PC Committee will ~~not~~ recommend when Bar Commission is ready to act

Volunteers: - Stuart Schultz

John Sattis - Qs re Nevada committee - Has there been any litigation re who gets appointment to committee?

(Rod) - No - Bar appointments - They meet once a month (2-3 hours) - 1,000 ads.

Billy Walker - Has no idea re # of ads in Utah

Rod - 99% of Nevada bad ads are resolved after letter from Bar Council -

John Sotter - ~~Do~~ Do Bar Comm considering following Nevada Bar?

Red - Cant before the horse - Florida fee approach ^{But, Nevada approach / alternatives}

John Sotter - Criminal Bar as advertising - "Pit Bull" billboard

Leslie Van Frank - Cant we use current rule to enforce?

Red - OFC needs fleshed out, detailed rules to enforce than our current rule / ASA model rule -

Leslie - Court's concerns re Florida approach -

Utah has said current rule is insufficient

John Sotter - ^{Nevada's} Pre-screening committee may temper things for OFC -

Leslie - We're talking about diverting tremendous resources for a few problems -

John Balderson - Committee needs to do "due diligence" - Advertising creep - Slip it in the end -

Let's look at what there is & see if action needed - Current rule may not be enough - ^{Maybe some guidelines for OFC}

Leslie - 1st circuit opinion says constitutional?

Red - Prior restraint / not unconstitutional - 20-day review period isn't burden -

Ben - No decisions today - PC Comm. will observe ads -

Red - Get us some volunteers

Ben - Any volunteers aren't representing PC Comm

Discussion of comments to proposed Rule 8.2

Steve - Steve read samples of comments -
Bar took heat -

Pam Chrysler - I see no problem with the ^{proposed} rule -

Roth - My concerns: judges can't speak out to defend self - I may have misunderstood - I've been pushed to the other side after reading the comments - 8.4 may sweep this kind of thing in -
Comments were persuasive -

Salis - Agrees w/ Roth - criticizing branch of govt: I switched to other side, NO -
Judicial system is overreaching

Nayan - Careful when criticizing individuals; should be able to criticize system -

Roth - Fathers rights / judicial system undercuts fathers' rights = political speech. The antidote ~~is~~ to bad speech is more speech (not less speech) -

Stuart -

belie - Admit CMO want us to look at it?
Comments are very thought provoking -

Chapman - proposed rule doesn't prohibit only

Sackett - "judicial system" isn't well defined -
So what is a false statement here?
Vague / not enforceable -

Stuart Schwetz - how does proposed rule stifle
free speech? Comments support concept that
you should be able to make knowingly false
statements about the judicial system -

Nayan - "Opinion" about system can't be
false - Who determines what is true

Sotto - Who determines? - Vagueness - Overreaching
rule as drafted -

Kent Roche - Our colleagues view this judiciary
trying to protect self from criticisms

~~Stuart~~ - ~~Stuart~~

Paula - "unfairness to fathers" may be statistically true -
figuring out if it is false, etc. - so hard to prove -
Chilling effect -

Judge Maughan -

Roth - Lawyer advertising disagrees with this rule -

motion: ~~1~~

Issue: Withdraw recommendation for ^{framing} rule change
Earl seconded motion -

~~Vote~~: 14 = yes 2 = no

Issue will ⁴ go to Court - keep
rule "as is."

Other business = none

mtg. adjourned -

→ Has Ct. sent letter to Bob thanking
him for his service?

→ What about Matty?