

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

SCOTT G. WOLFE, JR.; and
WOLFE LAW GROUP, L.L.C.

Plaintiffs,

v.

LOUISIANA ATTORNEY
DISCIPLINARY BOARD; BILLY R.
PESNELL, et al.

Defendants.

Master Docket:
Civil Action No. 08-4451

Relates To:
Civil Action No. 08-4994

**MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AND MOTION TO DISMISS¹**

Introduction

Wolfe's² complaint is not based on a fear that certain advertisements might subject it to disciplinary action. Instead, Wolfe challenges the Regulations³ because this October, regardless of an advertisement's ultimate compliance, the Regulations will unconstitutionally restrict Wolfe's commercial and non-commercial speech.

For this reason, the Defendants' Motion to Dismiss and Motion for Summary Judgment should be denied.

¹ This memorandum opposes the Motion to Dismiss and Motion for Summary Judgment because Defendants largely repeat its ripeness and standing argument in both motions.

² Plaintiffs Scott Wolfe, Jr. and Wolfe Law Group, L.L.C. are collectively referred to herein as "Wolfe" or "Plaintiff(s)"

³ The term Regulations refers to Rule 7.6, and as applied through Rule 7.6(d), Rules 7.2(a), 7.2(c)(10), 7.2(c)(11), and 7.7.

Wolfe's Challenges are Not Hypothetical, Wolfe has Standing and the Controversy is Ripe for Review

An Examination of Plaintiffs' Challenges, And Why They Are Not Speculative

The Defendants portray Wolfe's complaint as speculative, arguing the challenge is based on a fear that unidentified future advertisements might subject Wolfe to disciplinary action.⁴

The Defendants' understanding of Wolfe's complaint, however, is misplaced.

Wolfe contends that the Regulations were drafted without an examination of actual Internet promotion, and as a result, causes concrete and imminent injury to Wolfe, which can *only* be redressed through a favorable judicial decision.

The concrete and particularized injuries are presented in Wolfe's Motion for Summary Judgment where, through its exhibits, Wolfe provides the following sampling of recent "computer-accessed communications:"

- Pay-Per-Click Advertising Campaign through Google;
- A guest "blog" posted on a third-party law blog on May 15, 2009;
- A guest blog posted on a third-party law blog on February 13, 2009;
- A public comment posted on February 9, 2009, to a third-party blog posting about construction law;
- A public comment posted on June 12, 2008 to a third-party blog post about mechanic's liens;
- Wolfe Law Group's Facebook profile page, as printed on July 13, 2009; and
- Scott Wolfe Jr.'s Twitter Profile page, as printed on July 13, 2009.⁵

This sampling was offered to present two primary arguments: (1) That Rule 7.6(d)⁶ is "incompatible" to the most popular way of advertising online: Pay-Per-Click

⁴ See Defendants Memorandum Supporting their Motion to Dismiss, p. 5. Emphasis in original.

⁵ Exhibits 10 and 12, and Scott Wolfe Jr.'s verification, attached to Plaintiffs Memorandum Supporting their Motion for Summary Judgment, is attached hereto as Exhibit 1.

⁶ Including its incorporation of Rules 7.7, 7.2(a) and 7.2(c)10) and 7.2(c)(11)

Web Campaigns;⁷ and (2) That Rule 7.6(d)'s broad language unconstitutionally obstructs Wolfe's online speech.⁸

The compliancy of Wolfe's advertisements is irrelevant to Wolfe's complaint because the instant controversy is not based on a fear of potential discipline for non-complying advertisements. Instead, the controversy is that the Regulations unconstitutionally restrict, "chill" or obstruct Wolfe's ability to advertise speak freely on the Internet.

Plaintiffs Meet Standing Requirements

To establish standing, a plaintiff must show: (1) It has suffered an "injury in fact" that is concrete and particularized, and actual or imminent; (2) The injury is fairly traceable to the challenged action of the defendant; and (3) It is likely the injury will be redressed by a favorable decision.⁹ Plaintiff contends it meets all three elements.

Injury-in-Fact

The injury-in-fact inquiry does not require a plaintiff to expose itself to enforcement to challenge a statute.¹⁰ Rather, standing exists when there is realistic danger of injury from a statute's operation, or if plaintiff asserts an intention to engage in specific conduct affected by a constitutional interest.¹¹

⁷ See argument in Plaintiff's Memorandum in Support of its Motion for Summary Judgment, and the Memorandum's Exhibit 9.

⁸ The example communications are made with significant motive of pecuniary gain, see Wolfe Verification to Plaintiffs Motion for Summary Judgment.

⁹ *Lujan v. Defendants of Wildlife*, 504 U.S. 555,560 (1992); *White's Place, Inc. v. Glover*, 222 F.3d 1327, 1329 (11th Cir. 2000)

¹⁰ *Schwartz v. Welch*, 890 F. Supp. 565, 570 (S.D. Miss. 1995); see also *Jacobs v. The Florida Bar*, 50 F.3d 901, 904 (11th Cir. Fla. 1995)

¹¹ *Id.*

Wolfe's Motion for Summary Judgment demonstrates the concrete and particularized injuries it will sustain if the Regulations take effect. These injuries include: (i) Being unable to advertise through the web's most popular method of online advertising, pay-per-click ads; (ii) Being financially obstructed from marketing its practice through online social networks, blogs, forum comments, and related computer-accessed communications; (iii) Having its non-commercial speech subject to review by Defendants; and (iv) Being charged filing fees to safely engage in discourse that is not pure commercial speech.

The injuries-in-fact are actual and imminent and will be sustained when the Regulations take effect in October. Injuries will occur regardless of whether Wolfe's future advertisements are deemed compliant.

The Injury is Traceable to the Regulations

Defendants cite Warth v. Seldin and Lujan v. Defenders of Wildlife to support its contention that Wolfe cannot trace its injuries to the Regulations.¹² These two cases, however, regard circumstances where a plaintiff has sought to assert the legal claims and injuries of third parties, and not themselves.¹³

The current facts are distinguishable from Warth and Lujan. In this matter, Wolfe is asserting legal claims for its own injuries, and the causation for Wolfe's injuries is the Regulations. The causation is direct and clear, and the injuries would not be sustained but for the imposition of the Regulations.

¹² Cited in Defendants' Memorandum Supporting its Motion to Dismiss all Plaintiffs on page 10. Cites: Warth v. Seldin, 422 U.S. 490, 504 (1975); Lujan, supra.

¹³ Sprint Communs. Co., L.P. v. APCC Servs., 128 S. Ct. 2531, 2544 (U.S. 2008)

Injuries Will Be Redressed, And Can Only Be Redressed, With A Favorable Decision From This Court

This Court finally inquires whether the injury can be redressed by a favorable judicial decision declaring the Regulations unconstitutional. Wolfe avers this is the only way to remedy the imminent and concrete injuries.

A favorable judicial determination would prevent Wolfe from suffering the above-listed injuries, and correct the problem with the Regulations' incompatibility with Internet advertisements.

Aside from a favorable decision from this Court, the Plaintiffs have no other way to seek redress for their injuries. Defendants' suggestion that Wolfe go through its "advisory opinion" service underscores its misunderstanding of Wolfe's complaint, in that Wolfe is injured by the advisory service itself.

This Controversy is Ripe for Judicial Determination

Determination of whether an issue is ripe for judicial review depends upon (i) the fitness of the issues for judicial decision; and (ii) the hardship of the parties of withholding court consideration.¹⁴

The constitutional harms alleged by Wolfe are not hypothetical and are fit for judicial decision, and Wolfe will face hardship if the claims are not adjudicated.¹⁵

Moreover, upon consideration of the other ripeness factors from Sierra Club, briefed by Defendants, all factors weigh in favor of this controversy being ripe for

¹⁴ Anderson v. Sch. Bd. of Madison County, 517 F.3d 292, 296 (5th Cir. 2008); Felmeister v. Office of Attorney Ethics, 856 F.2d 529 (3rd Cir. 1988).

¹⁵ See argument that Plaintiffs have standing, *supra*.

adjudication.¹⁶ Delayed review would cause hardship to Wolfe, judicial review would not interfere with any further administrative action, and the courts would not benefit from any further factual development on the issues presented.

Without a judicial decision, Wolfe will suffer the above-listed concrete and particularized harms when the Regulations take effect.¹⁷ While Wolfe may seek an advisory opinion as to the content of certain advertisements, there are no avenues for Wolfe to seek administrative review of the Regulations themselves, and accordingly, the Plaintiffs cannot administratively seek redress of its imminent injuries and this matter is ripe for judicial review.

In support of its argument that Wolfe's claims are not ripe, Defendants cite Felmeister v. Office of Attorney Ethics.¹⁸ The Felmeister decision, however, is inconsistent with other case law,¹⁹ is not from this jurisdiction,²⁰ and is distinguishable from the facts at hand.²¹

Unlike in Felmeister, here Wolfe challenges the rules based on concrete injuries it will sustain when the Regulations take effect. While the Felmeister plaintiff had the

¹⁶ Defendants Memorandum in Support of its Motion to Dismiss All Defendants, p. 15-16, citing *Ohio Forestry Ass'n v. Sierra Club*, 523 U.S. 726, 733 (1998).

¹⁷ The alleged harms are above-listed, and more fully set forth in the Plaintiffs Memorandum Supporting its Motion for Summary Judgment.

¹⁸ Defendants Memorandum in Support of its Motion for Summary Judgment, citing: 856 F.2d 529 (3rd Cir. 1988).

¹⁹ *Beaulieu v. City of Alabaster*, 454 F.3d 1219, 1226-1227 (11th Cir. Ala. 2006), concluding that plaintiff is not required to exhaust his or her administrative remedies in order to bring a First Amendment claim.

²⁰ See contrary analysis in *Schwartz v. Welch*, 890 F.Supp. 560, 570-71 (S.D. Miss 1995),

²¹ In *Alexander v. Cahill*, the U.S. District Court in New York rejected the Defendant's Motion to Dismiss based on the *Burford* abstention doctrine. The court distinguished Felmeister by stating "this case involves only federal claims challenging the constitutionality of the attorney-advertising rules. It does not involve complex questions of state law or a subject-matter for which the state provides an elaborate review system."

ability to submit its advertisement for an advisory review, that opportunity is not available for Wolfe here.

A review of the Pay-Per-Click Advertising method illustrates the features of this case that distinguish it from Felmeister.

The utility of Pay-Per-Click Advertisements is that they are easy to change, contain multiple variations and are very inexpensive to operate. Further, pay-per-click ads have limited space for the advertiser's message.

Rule 7.7's evaluation process destroys the utility of the pay-per-click advertising method. The \$175.00 filing fee, and requirement to file each ad variation, is incompatible with the method of advertising and financially obstructs Wolfe from using the medium to advertise. In addition, Rule 7.2(a)'s required information and 7.2(c)(10) required disclaimers would eclipse the small space available to Wolfe in the advertisement.

Indeed, Plaintiffs' uncontested expert, Christopher Schultz, opined that the Regulations are incompatible with the Pay-Per-Click Advertising scheme.²²

The enforcement of a rule regulating online advertisements that is "incompatible" with the Internet's most popular method of advertising online will prevent Wolfe from advertising on the medium, which is a concrete and particularized harm that will be sustained when the Regulations take effect.

²² See Plaintiffs Motion for Summary Judgment, Exhibit 9

The Regulations Chill or Obstruct Non-Commercial Speech

In their Memorandum, the Defendants argue the rules do not reach non-commercial speech since – “on their face” – they strictly regulate advertisements only.²³ The argument is in spite of the Regulations actual language.

Despite Defendants’ suggestion, the Rules do not state at its outset that they are addressed to “permissible forms of advertising.” Moreover, instead of defining the term advertisement, the Regulations broadly restrict both “advertisements” *and* “communications.”

The applicability to both advertisements and communications is not a drafting accident. In fact, instead of drafting the rules to focus on advertisements, the drafting committee made a concerted effort to include other types of communications.²⁴

Rule 7.6(d) does no better to restrict the rules applicability to “advertisements.” While the term “advertisement” is used in the rule’s heading, it applies to “all computer-accessed communications,” a very broadly defined term.

Recently, the Supreme Court added “when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain” to Rule 7.6(d), but for the reasons discussed more fully in Plaintiff’s Motion for Summary Judgment, this too fails to resolve its reach to non-commercial speech.

Exhibit 1 to this Memorandum contains a number of “computer-accessed communications” made by Wolfe, and the associated verification confirms they were

²³ Memorandum supporting the Defendants Motion for Summary Judgment, p. 13-14

²⁴ *Emphais ours*. See Exhibit 3. The drafting committee’s meeting minutes illustrate that “the Committee directed Richard Lemmler to make the rules consistent by adding “advertisement *or communication*” throughout the proposed rules.”

made with a “significant motive of pecuniary gain.” While these communications are regulated, they are not true “advertisements.”

The best example from Exhibit 1 is an article titled Should You Care About The Employee Free Choice Act? The article is accessed by the use of a computer, was posted on a third-party website, concerns Wolfe’s services, and was made with a significant motive of pecuniary gain.²⁵ The article squarely falls within the review of Rule 7.6(d), would require 7.2(a) information, and would be subject to evaluation under Rule 7.7.

The article, however, is not an advertisement. Further, since the article comments on a bill pending in the United States Congress that could substantially affect many of Wolfe’s clients and colleagues, Wolfe’s attempt to educate web visitors about the bill is a form of political speech.

On the one hand, if these Exhibit 1 communications are deemed commercial speech, the cost of Rule 7.7’s evaluations would financially and practically obstruct Wolfe from engaging in this type of online commentary.

On the other hand, if the communications were recognized as not purely commercial speech, application of the Regulations to the speech would not survive the heightened level of scrutiny.

²⁵ See Scott Wolfe verification to Plaintiffs’ Motion for Summary Judgment.

Conclusion

Wolfe's challenge is not hypothetical or based on a fear of discipline. Wolfe will suffer concrete and particularized injuries immediately when the Regulations take effect.

The only way to redress these injuries is through a favorable judicial determination.

For the reasons expressed in this Memorandum, the Defendants' Motion to Dismiss and Motion for Summary Judgment should be denied.

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| <p>CERTIFICATE OF SERVICE</p> <p>A copy of this motion was served electronically upon all counsel of record on this date: July 21, 2009.</p> <p><u>/s/ Scott G. Wolfe Jr.</u> Scott G. Wolfe Jr.</p> | <p>Respectfully submitted,</p>  <p>Ernest E. Svenson (La. Bar 17164) Svenson Law Firm, L.L.C. 123 Walnut Street, Suite 1001 New Orleans, LA 70118 Tel: 504-208-5199 Fax: 504-324-0453</p> <p><u>/s/ Scott G Wolfe Jr</u> Scott G. Wolfe Jr. (La Bar 30122) Wolfe Law Group, LLC 4821 Prytania Street New Orleans, LA 70115 Tel: 504-894-9653 Fax: 866-761-8934 Counsel for Plaintiffs</p> |
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SCOTT G. WOLFE, JR.; and
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Plaintiffs,

v.

LOUISIANA ATTORNEY
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AFFIDAVIT OF SCOTT G. WOLFE JR.

STATE OF WASHINGTON | COUNTY OF KING

BEFORE ME, undersigned Notary Public, in and for the State of Washington and County of King, personally came before me, Scott G. Wolfe, Jr., who after being duly sworn did declare and state:

- 1) That he is a named plaintiff in Scott G. Wolfe, Jr. et. al. v. Louisiana Attorney Disciplinary Board, et. al., Master Docket 08-4451, Relating to Docket No. 08-4994, in the United States District Court for the Eastern District of Louisiana (the "Litigation");
- 2) That Exhibit 10 to Plaintiff's Memorandum Supporting its Motion for Summary Judgment is a true and correct, and accurate copy, of Wolfe Law Group's Google Adwords Control Panel, and contains a Pay-Per-Click Advertising campaign conducted by Wolfe Law Group in 2008 ("PPC Campaign");
- 3) That Wolfe Law Group intends to operate Pay-Per-Click Advertising Campaigns in the future, after the October 1, 2009, effective date of the Regulations;

- 4) That the following are actual advertisements used by Wolfe Law Group in its PPC Campaign, of which, substantially similar variations will be used by Wolfe Law Group in future campaigns:

Wolfe Law Group

Contract Dispute? Need a Contract?
Louisiana Construction Lawyers

Wolfe Law Group

Louisiana Construction Lawyers
Disputes, Contracts, Liens

Wolfe Law Group

Louisiana Construction Attorneys
Your New Legal Department

Wolfe Law Group

Louisiana Construction Lawyers
Your New Legal Department

Wolfe Law Group

Construction Defect?
Louisiana Construction Lawyers

Wolfe Law Group

File Your Construction Lien
And Protect Your Rights

Wolfe Law Group

New Orleans Construction Attorneys
Your New Legal Department

Wolfe Law Group

Lien Disputes, Lien Filings
Construction Lawyers

Construction Lawyers

Wolfe Law Group
New Orleans Construction Attorneys

Wolfe Law Group

Louisiana Construction Attorneys
With Real Construction Experience

Wolfe Law Group
Defects/Litigation/Disputes/Liens
Construction Attorneys

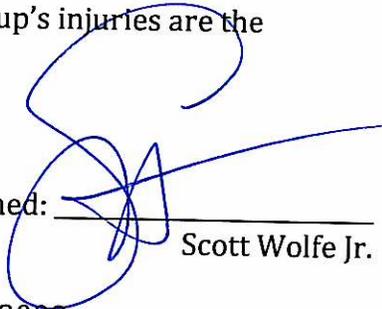
Wolfe Law Group
Construction Disputes and Defects
Lien Laws, Contracts and More

Construction Lawyers
Wolfe Law Group
Disputes/Defects/Liens/Contracts

Wolfe Law Group
Contract Dispute? Need a Contract?
Louisiana Construction Attorneys

- 5) That the communications attached to Plaintiffs Memorandum Supporting its Motion for Summary Judgment as Exhibit 12, will remain on the web and available for viewing after October 1, 2009;
- 6) That the Plaintiff intends to communicate on the Internet through guest blog postings, public comments on internet forums and blog, and by participating in online social networks, in a manner substantially similar to its present engagement, represented by the Exhibit 12 materials, after October 1, 2009;
- 7) On October 1, 2009, the imposition of the Regulations will injure Scott Wolfe Jr. and Wolfe Law Group because they will be unable to effectively advertise through the web's most popular method of online advertising: Pay-Per-Click Ads;
- 8) That the Pay-Per-Click Advertising campaigns operated by Wolfe are incompatible with Rule 7.6(d) because of its incorporation of Rule 7.2(a), which restricts the actual ability for Wolfe to communicate its message;
- 9) That the Pay-Per-Click Advertising campaigns operated by Wolfe are incompatible with Rule 7.6(d) because of the incorporation of Rule 7.2(c)(10)'s disclaimer requirement, because the advertising method does not allow attorneys the space to provide disclaimers;
- 10) That the Pay-Per-Click Advertising campaigns operated by Wolfe are incompatible with Rule 7.7's evaluation, because advertising campaigns use multiple ad variations and are frequently changed, and that the evaluation costs obstruct the usefulness of the communication;

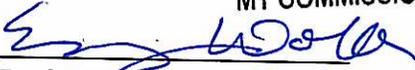
- 11) That the incompatibility of the Regulations to Pay-Per-Click Advertising by Wolfe obstructs Wolfe's ability to advertise on the Internet's most popular method of paid advertising;
- 12) On October 1, 2009, the imposition of the Regulations will injure Scott Wolfe Jr. and Wolfe Law Group because they will be financially obstructed from marketing its practice through online social networks, blogs, forums comments, and related computer-accessed communications;
- 13) On October 1, 2009, the imposition of the Regulations will injure Scott Wolfe Jr. and Wolfe Law Group because their non-commercial speech will be subject to unconstitutional review by the Defendants or the appropriate review board(s);
- 14) On October 1, 2009, the imposition of the Regulations will injure Scott Wolfe Jr. and Wolfe Law Group because to safely engage in discourse that is not true commercial speech, they will be required to pay filing and advisory opinion fees.
- 15) The cause of Scott Wolfe Jr.'s and Wolfe Law Group's injuries are the Regulations.

Signed: 
Scott Wolfe Jr.

Sworn to and subscribed before me, this 21st day of July 2009.



DOUGLAS S REISER
NOTARY PUBLIC
STATE OF WASHINGTON
MY COMMISSION EXPIRES 02/15/2012

Witness: 
Emily Wolfe

Witness: 
Jessica Reiser

UNITED STATES DISTRICT COURT
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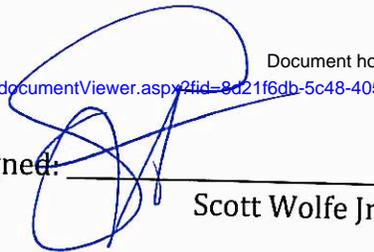
VERIFICATION OF SCOTT G. WOLFE JR.

STATE OF WASHINGTON | COUNTY OF KING

BEFORE ME, undersigned Notary Public, in and for the State of Washington and County of King, personally came before me, Scott G. Wolfe, Jr., who after being duly sworn did declare and state:

- 1) That he is a named plaintiff in Scott G. Wolfe, Jr. et. al. v. Louisiana Attorney Disciplinary Board, et. al., Master Docket 08-4451, Relating to Docket No. 08-4994, in the United States District Court for the Eastern District of Louisiana (the "Litigation");
- 2) He has personally prepared and printed the documents attached as Exhibit 10 to Plaintiffs Memorandum in Support of its Motion for Summary Judgment, filed in the Litigation on July 13, 2009;
- 3) That Exhibit 10 is a true and correct, and accurate copy, of Wolfe Law Group's Google Adwords Control Panel;
- 4) That Exhibit 10 displays data that was obtained after restricting the reporting period to that period between the dates of January 1, 2008 and December 1, 2008;

- 5) That Wolfe Law Group, L.L.C. only ran a Google Adwords ad campaign during the months of April, May and June 2008;
- 6) That during this period, Wolfe Law Group spent a total of \$160.63 with Google for the advertisements;
- 7) That the type of advertising campaign is commonly known as a "Pay-Per-Click" campaign;
- 8) That the Pay-Per-Click campaign operated by Wolfe Law Group in 2008 contained approximately 4 ad groups, and approximately 12 ad variations. These exact numbers are not certain because Google does not keep track of changes to the Google Ad Variations, and during the period Wolfe Law Group did make alterations to the Ad Variations. However, to the best of his recollection and estimation, during this period Wolfe Law Group used approximately 12 ad variations and 4 ad groups.
- 9) That he personally prepared and printed the documents attached as Exhibit 12 to Plaintiffs Memorandum in Support of its Motion for Summary Judgment, filed in the Litigation on July 13, 2009;
- 10) That Exhibit 12 contains true and correct, and accurate copies, of
 - a. A guest blog post made by Scott Wolfe Jr. on a construction law blog maintained by Virginia lawyer and blogger, Christopher Hill, on May 15, 2009;
 - b. A guest blog post made by Scott Wolfe Jr. on a construction law blog maintained by Virginia lawyer and blogger, Christopher Hill, on February 13, 2009;
 - c. A public comment posted by Scott Wolfe Jr. on February 9, 2009, to a blog posting about construction law made by D. Ryan McCabe on his South Carolina Construction Law Blog;
 - d. A public comment posted by Scott Wolfe Jr. on June 12, 2008 to a blog post about mechanic's liens made by Andrea Goldman on her Home Contractor v Homeowner law blog in Massachusetts;
 - e. Wolfe Law Group's Facebook profile page, as printed on July 13, 2009;
 - f. Scott Wolfe Jr's Twitter Profile page, as printed on July 13, 2009.
- 11) That as to all of the communications enclosed with Exhibit 12, a significant motive for Scott Wolfe Jr.'s or Wolfe Law Group's posting of the communication was for pecuniary gain;
- 12) That this affidavit is made upon his personal knowledge.

Signed: 
_____ Scott Wolfe Jr.


Sworn to and subscribed before me, this 13th day of July 2009.

DOUGLAS S REISER
NOTARY PUBLIC
STATE OF WASHINGTON
MY COMMISSION EXPIRES 02/15/2012

Witness: 
Emily Wolfe

Witness: 
Jessica Reiser

Report Ad Group List
Date Generate 9-Jul-09
Customer Email: ItsScottWolfe@gmail.com
Company Name: Wolfe Law Group
Contact Name: Scott Wolfe Jr

| Status | Name | Clicks | Impressions | CTR | Avg CPC | Cost |
|---------|--------------------------|--------|-------------|-------|---------|----------|
| enabled | Construction Contracts | 41 | 90573 | 0.05% | \$2.09 | \$85.58 |
| enabled | General Construction Law | 25 | 58460 | 0.04% | \$2.53 | \$63.18 |
| enabled | Construction Liens | 3 | 13705 | 0.02% | \$2.56 | \$7.68 |
| enabled | Construction Defects | 2 | 1298 | 0.15% | \$2.10 | \$4.19 |
| | | | | | | \$160.63 |

None of your ads are running. Can we help? [See more](#)

[All online campaigns](#)

Jan 1, 2008 - Dec 31, 2008 Go

Campaign: Wolfe Law New Orleans

Custom date range

Paused Budget: \$5.00/day Edit Targeting: All networks; All devices Edit English Edit Louisiana, US Edit

Ad groups Settings Ads Keywords Networks Filter and views

Change Graph Options



+ New ad group Edit Change status... More actions... Show: All | All enabled | All but deleted

| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Ad group</u> | <u>Status</u> <small>?</small> | <u>Search Max. CPC</u> | <u>Content Auto Max. CPC</u> <small>?</small> | <u>Clicks</u> | <u>Impr.</u> | <u>CTR</u> | <u>Avg. CPC</u> | <u>Cost</u> | <u>Avg. Pos.</u> |
|--------------------------|-------------------------------------|--|--|------------------------|---|---------------|--------------|------------|-----------------|-------------|------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Construction Contracts | Campaign paused | auto: \$5.00 | auto | 41 | 90,573 | 0.05% | \$2.09 | \$85.58 | 2.8 |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | General Construction Law | <input type="checkbox"/> Campaign paused | auto: \$5.00 | auto | 25 | 58,460 | 0.04% | \$2.53 | \$63.18 | 3.9 |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Construction Liens | Campaign paused | auto: \$5.00 | auto | 3 | 13,705 | 0.02% | \$2.56 | \$7.68 | 3.8 |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Construction Defects | Campaign paused | auto: \$5.00 | auto | 2 | 1,298 | 0.15% | \$2.10 | \$4.19 | 3.1 |

| | | | | | | |
|-----------------------------------|----|---------|-------|--------|----------|-----|
| Total - search ? | 12 | 2,539 | 0.47% | \$2.90 | \$34.81 | 3.7 |
| Total - content ? | 59 | 161,497 | 0.04% | \$2.13 | \$125.82 | 3.3 |

Show rows: 1 - 4 of 4

Reporting is not real-time. Clicks and impressions received in the last three hours may not be included here. There is a 24-hour delay in conversion tracking reporting.

Time zone for all dates and times: (GMT-06:00) Central Time. [Learn more](#)

None of your ads are running. Can we help? [See more](#)

[All online campaigns](#)

Jan 1, 2008 - Dec 31, 2008 Go

[Wolfe Law New Orleans](#)

Custom date range

Ad group: General Construction Law



[Wolfe Law Group](#)

Enabled

Louisiana Construction Lawyers
Your New Legal Department

Ad group default bids (Auto)

blog.wolfelaw.com



Search **\$5.00** Content: automatic placements **auto**

4821 Prytania Street, New Orleans, LA

1 of 3

Settings **Ads** Keywords Networks

Filter and views

Change Graph Options



New ad Change status... More actions...

| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Ad | Ad variations | Status ? | % Served | Clicks | Impr. | CTR ? | Cost |
|--------------------------|-------------------------------------|----|---------------|----------|----------|--------|-------|-------|------|
|--------------------------|-------------------------------------|----|---------------|----------|----------|--------|-------|-------|------|

| <input type="checkbox"/> | | Wolfe Law Group Louisiana Construction Lawyers Disputes, Contracts, Liens blog.wolfelaw.com | | Campaign paused | 50.83% | 13 | 29,715 | 0.04% | \$31.31 |
|--------------------------|--|---|--|-----------------|--------|----|--------|-------|---------|
| <input type="checkbox"/> | | Wolfe Law Group Louisiana Construction Attorneys Your New Legal Department blog.wolfelaw.com | | Campaign paused | 36.48% | 7 | 21,325 | 0.03% | \$19.63 |
| <input type="checkbox"/> | |  Wolfe Law Group Louisiana Construction Lawyers Your New Legal Department blog.wolfelaw.com 4821 Prytania Street, New Orleans, LA | | Campaign paused | 7.59% | 3 | 4,437 | 0.07% | \$8.94 |
| Total - all deleted ads | | | | | 5.10% | 2 | 2,983 | 0.07% | \$3.30 |

Show rows: 1 - 3 of 3

Reporting is not real-time. Clicks and impressions received in the last three hours may not be included here. There is a 24-hour delay in conversion tracking reporting.

Time zone for all dates and times: (GMT-06:00) Central Time. [Learn more](#)

SEARCH BLOG

FLAG BLOG

Next Blog

CONSTRUCTION LAW MUSINGS- RICHMOND, VA

THOUGHTS ON THE CONSTRUCTION/LEGAL LANDSCAPE FROM AN ATTORNEY AND MEMBER OF VIRGINIA'S LEGAL ELITE IN CONSTRUCTION LAW

FRIDAY, MAY 15, 2009

Chinese Drywall Checklist For Builders



For this week's Guest Post Friday, Musings has its first repeat contributor. Scott G. Wolfe, Jr., of Wolfe Law Group. Wolfe Law Group is a construction law practice with offices in Seattle, WA and New Orleans, LA. The firm publishes the Construction Law Monitor, a blog that provides insight and commentary on construction law issues in Louisiana and Washington.

Insofar as construction news is concerned, Chinese Drywall has been all the rage.

According to reports, drywall imported from China between 2002 and 2008 is exposing homes to toxic elements that may cause health problems, corrodes HVAC components of the home, and damages wiring and other building elements.

What does this mean?

First, obviously, homeowners with Chinese Drywall installed must have the imported materials replaced [and soon]. They must then turn to the damages sustained by them consequential to the tainted drywall.

Second, however, this means that litigation is spreading across affected states like wildfire, rolling foreign manufactures, suppliers and builders of all shapes and sizes into complex litigation that promises on-going debate for years.

Local and national builders and suppliers who installed or supplied

ABOUT ME

I am a lawyer at the Richmond, VA firm, **DuretteBradshaw, PLC**, member of Virginia's Legal Elite in Construction Law and a LEED AP. I specialize in mechanic's liens, contract review and consulting, occupational safety issues (VOSH and OSHA), and risk management for construction professionals. Please join the conversation!

For more about the Construction Law Musings blog, click [here](#).

MY DURRETTEBRADSHAW, PLC BIOGRAPHY

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SURFING WITH A MOBILE PHONE?

Chinese Drywall very likely didn't know they were delivering a defective product....but nevertheless, they are being named in lawsuits as part of the products chain of supply.

It's important for these builders and suppliers to act now to limit its exposure in this expensive crisis, and to protect its legal defenses. While a company's reaction will differ depending on where they are located and how they are implicated in the situation [and, therefore, should retain counsel]...here is a general checklist of things builders and suppliers should keep in mind when faced with Chinese Drywall claims or exposure:

1. Get Counsel. Yes, we just said that...but it's worth repeating, and repeating at the beginning of this list. An experienced construction litigator will help your company understand your exposure, and will help best position your company to defend Chinese Drywall claims and avoid liability.

Perhaps your company is entitled to statutory indemnity (like in Texas). Perhaps your company can launch an aggressive action against its manufactures and suppliers (like Lennar Co. did). Perhaps your insurance company should be paying for the damages and your counsel (soon to be decided in Builders Mutual v. Dragas Co.)

Speaking with an attorney about your company's best course of action is important when faced with these complicated and potentially costly disputes.

2. Determine Your Exposure. If you received a Chinese Drywall complaint...your work is half done. However, with or without a complaint, you should examine your work history to determine how much exposure you have to Chinese Drywall claims.

Go through your call-backs looking for imported drywall symptoms and examine where you purchased drywall during the period at issue [2002 – 2008]. This should give you a strong indication of whether your company may have encountered any tainted drywall.

Understanding your potential exposure will help you decide future actions.

3. Mitigate Your Damages. We have mentioned this on the Chinese Drywall Blog time and again. The duty for those involved with

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- I believe as I have written about previously that ... - Rich Cartlidge
- Thanks Leigh for the great insight. I too look at... - Christopher G. Hill
- I'm more concerned for the potential liabilities o... - Leigh Monette
- Mark and Tim, Great comments from you both. The ... - Christopher G.

litigation and disputes to mitigate its damages may play an important role in the Chinese Drywall crisis.

Must homeowners repair the damages to avoid future deterioration? Must builders, under a home warranty? Must builders warn those homes with Chinese Drywall that the defective – and potentially unhealthy – products are present in the homes?

Take steps now to ensure that the damages, and your exposure, does not worsen.

4. Get Prepared. The Chinese Drywall problem is not going away. In fact, it's getting bigger and bigger every day. If you have installed or supplied Chinese Drywall, its very likely you'll be involved with litigation related to the product, and its best to prepare for it now.

(a) Notify Your Insurance Company

(b) Organize files associated with imported drywall (contracts, warranties, insurance policies, etc.)

(c) Map Other Parties – understand who else is involved with each home, which subcontractors and installers were hired, where the drywall was purchased, etc.

More Information:

- Avvo Legal Guide: What to do if you Supplied or Installed Chinese Drywall
- Chinese Drywall Blog (<http://www.chinesedrywallblog.com>)

As always. if uou eniou this post or others. please comment or

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CONSTRUCTION LAW MUSINGS- RICHMOND, VA

THOUGHTS ON THE CONSTRUCTION/LEGAL LANDSCAPE FROM AN ATTORNEY AND MEMBER OF VIRGINIA'S LEGAL ELITE IN CONSTRUCTION LAW

FRIDAY, FEBRUARY 13, 2009

Should You Care About The Employee Free Choice Act?



For our first "Guest Post" Friday, this post was contributed by Scott G. Wolfe, Jr., of Wolfe Law Group. Wolfe Law Group is a construction law practice with offices in Seattle, WA and New Orleans, LA. The firm publishes the Construction Law Monitor, a blog that provides insight and commentary on construction law issues in Louisiana and Washington.

The results are in: The Employee Free Choice Act is controversial.

In the red corner is the Associated Builders and Contractors, Inc., the U.S. Chamber of Commerce and a host of other "pro-business" organizations.

In the blue corner is the AFL-CIO, American Rights at Work, and a host of other "pro-labor" organizations.

The opponents of the bill cry that its opposed by a majority of Americans, invades privacy and destroys private enterprise. Proponents, of course, claim support by a majority of Americans, and argue that the bill is required to save working families.

President Bush had promised to veto the bill, if it reached his desk. President Obama all but promises to sign it.

ABOUT ME

I am a lawyer at the Richmond, VA firm, DurretteBradshaw, PLC, member of Virginia's Legal Elite in Construction Law and a LEED AP. I specialize in mechanic's liens, contract review and consulting, occupational safety issues (VOSH and OSHA), and risk management for construction professionals. Please join the conversation!

For more about the Construction Law Musings blog, click [here](#).

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The Democrats have control of the Congress and Senate, the AFL-CIO is running a television ad campaign to gather support, and the bill is making its way to the house and senate floors. With both sides preparing their arguments, that match is on...and the construction industry promises to be one of the most affected.

What IS the Employee Free Choice Act?

Okay, you've heard the talk about the Employee Free Choice Act (EFCA) - but what in the world is it?

Speaking broadly, the proposed legislation calls for three major changes to the National Labor Relations Act:

1. Eliminating the mandatory secret ballot election now used to determine whether workers support unionization. Replacing it with a "card check" process, requiring an employer to recognize a union when a majority of employees have signed union authorization cards;
2. Subject the parties (Employer and Union) to mandatory arbitration if they cannot decide on contract terms within 90 days;
3. Increase the legal and economic penalties against Employers for Violations of the Act.

A good summary of the EFCA can be found at the EFCA Report, published by McKenna, Long, Aldridge, LLP.

How Could It Impact the Construction Industry?

The Delaware Employment Law Blog warns that construction-industry employers should be aware of proposed legislation because it could be a "silent killer."

Why?

The long-unchanged law currently requires employers to choose between recognizing the union and a secret-ballot election if more than 50% of employees in a bargaining unit sign a union authorization card.

If passed, the EFCA would change this procedure entirely. Employers would have to recognize the labor union immediately if more than half of the workforce signs union cards. And, to make it worse, there's not much an employer can do about it. Union campaigns can be fully underway before the

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you both The Hill

Dave Seitter of the Midwest Construction Law Blog weighs in on the EFCA's impact on construction businesses as well:

The untold implications of eliminating the secret ballot election are many, and are derived from the protections crafted under the NLRA over the last half-century. Most importantly, employees will be denied access to the normal pre-election debate that shapes informed decision-making, and employers will lose the opportunity to present an alternative point of view.

This radical change will also erode employees' free choice. Importantly, there are currently no restrictions in the EFCA on the time period during which labor organizations can collect authorization cards. A union that collects a single card each week from a workforce totaling 200 employees could potentially acquire cards from the majority of the workforce over the course of two long years.

Dave Seitter's commentary on the EFCA are very informative, and he speaks in detail about the bill's most controversial changes.

Resources To Persuade You

Can't make up your mind about the Employee Free Choice Act? The web is riddled with resources to inform you about both sides of the debate.

Resources of Proponents of the Bill:

- AFL-CIO
- President Barak Obama
- American Rights at Work
- ACORN

Resources of Opponents of the Bill:

- UnionFacts.Com

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The South Carolina Construction Law Blog

The Blog to discuss South Carolina Law on Mechanic's Liens, Delay Claims, Acceleration Claims, Lost Labor Productivity Claims, Construction Defect Claims, Construction Contracts and other issues involving Construction Law.



By D. Ryan McCabe



• About D. Ryan McCabe

I practice law with Rogers, Townsend and Thomas, PC in Columbia, South Carolina. I primarily practice in the areas of Construction Law, Community Association Law and Business Law. I am a former drywall, stucco, steel stud framing, and painting contractor. I was a USG Certified EIFS Contractor and currently hold a SC Residential Specialty Contractors license.

Subcontractors, Be Prepared to Deal with Your Contractor's Bankruptcy - Know Your Rights, but Also Your Obligations!



This entry was posted on 2/3/2009 10:02 PM and is filed under [Subcontractors](#), [Bankruptcy](#), [Contractors](#).

As a subcontractor, you should understand the challenges that come with a contractor's bankruptcy. Authors Jay Clark and Larry Longsdon discussed the many issues to consider when a contractor files bankruptcy in *The Contractor's Compass* journal. Jay Clark & Larry Longsdon, *Customer Bankruptcy! What's a Subcontractor to Do?*, THE CONTRACTOR'S COMPASS, First Quarter 2009, at 12-13. Contractors that file bankruptcy are eligible for either a Chapter 7 or Chapter 11 proceeding. Unlike a Chapter 7 case, where a trustee takes possession of the debtor's assets,

• **Contact D. Ryan McCabe**

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3. [Exception to the Economic Loss Rule Extended to Commercial Construction](#)

Chapter 11 allows the debtor to keep possession throughout the bankruptcy process.

An automatic stay protects a debtor immediately upon filing a bankruptcy petition. The stay prevents commencement or continuance of lawsuits, as well as enforcement of judgments, against the debtor. During the stay, you must stop demanding payments from debtor in any manner. The bankruptcy court may fine you for violations.

During the stay, you may try to collect on a lien or bond. Some states may require that you file a motion with the bankruptcy court to perfect a lien. Both liens and bonds have deadlines and other requirements for filing a claim. You should also remember that the deadline to file a lawsuit, regardless of the stay, is within one year of performing or supplying materials.

File a proof of claim with the bankruptcy court within the specified deadline, if any, or else you will not receive any payment. The proof of claim shows how much the debtor owes you on the day bankruptcy was filed. In a Chapter 11 case, the debtor will show how much it plans to pay creditors. Payment in a Chapter 7 situation depends on whether there are any assets to liquidate and on your proportion of the total creditor claims.

File a motion with the bankruptcy court asking the possessor of assets to either accept or reject a contract that you have not yet completed. If the debtor or trustee chooses to continue the contract, it must first pay all dues. If the contract is rejected, you have a damages claim that is separate from a proof of claim.

Payments made by the debtor within 90 days of filing for bankruptcy may be forfeited if shown to favor the paid creditor. To protect from uncollected debt, ask that the debtor pay with checks written to you and another payee jointly. Also, assess the risk at the bidding stage by comparing the expected profit with the potential of nonpayment. Get a copy of a payment bond, if applicable, to learn how to file a claim if necessary.

So upon a filing of bankruptcy, stop demanding payment. Yet, follow the Bankruptcy Code and statutes to get a chance to receive payment, even if it is a low one.

This site and any information contained herein is intended for informational purposes only and should not be construed as legal advice. Seek a competent attorney for advice on any legal matter.

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- 5. [Wrongful Conduct Found Not Covered by Insurance Policy](#)

Wednesday, May 06, 2009

- 6. [U.S. Senate Expresses Concern over Chinese Drywall Issues](#)

Thursday, April 30, 2009

- 7. [No-Damages-For-Delay Clause May Be Unenforceable](#)

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- 8. [Short Contract Law Lesson](#)

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- [2/9/2009 5:18 PM Scott Wolfe](#) wrote:
Enjoyed this article. We wrote a similar article on our blog in December 2007, which may be helpful to your readers wanting more information on this topic:

<http://tinyurl.com/camb3q>

This is an important subject for contractors in this economy. While many smaller outfits may have avoided learning about bankruptcy proceedings, now is the time to catch up on how to make these claims.

One thing you slightly mention in your article, is the construction lien. Subs and suppliers can avoid the messy bankruptcy claims process by just filing their construction liens. We operate a blog on construction liens here: <http://www.constructionlienblog.com>.

Keep up the good work with the South Carolina Construction Law blog.

[Reply to this](#)

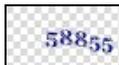
- 1. [2/17/2009 9:41 PM Ryan McCabe](#) wrote:
Scott:

Thanks for stopping by.

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Post a Comment On: [Home Contractor vs. Homeowner](#)**"The Strength of a Mechanic's Lien"**4 Comments - [Show Original Post](#)[Collapse comments](#)** Wolfe Law Group said...**

Andrea - I'm a subscriber to your blog and a blogger myself, and wanted to comment about this recent post. I think you really strike a chord with contractors of all sizes with your posts about the strengths of a construction lien - especially by referencing something that is frequently not discussed: even improper liens can be effective.

While it's certainly not an excuse to file a improper lien for an improper person, the point remains that liens cause problems - and precisely the problems that get contractors paid.

I made reference to your post on my two blogs:

<http://blog.wolfelaw.com>
<http://blog.expresslien.com>

12:19 PM

 Patio and deck California said...

"While it's certainly not an excuse to file a improper lien for an improper person, the point remains that liens cause problems - and precisely the problems that get contractors paid."

^ very well said.

4:42 PM

 Anonymous said...

Contractors should carefully prepare liens in that an improper lien can provide a basis for a claim for a breach of the covenant of good faith and fair dealing (implicit in every contract), prima facie tort (if your jurisdiction recognizes this cause of action) or even a violation of the state Unfair Practices Act which, in some states, carries an attorney fee award and up to treble damages.

10:52 AM

 Drywall said...

Thanks for shaing this great information about contractor with us!

5:28 PM



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Construction law practice with offices in New Orleans, Louisiana and Seattle, Washington. Learn more about us at <http://www.wolfelaw.com>

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[WLG Attorneys to Speak at Chinese Drywall Seminar](#)
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Join Scott Wolfe on ABA Teleconference: Ethical Implications of Web 2.0 Marketing

The American Bar Association's Law Practice Management Section is offering a CLE Teleconference next week that examines the ethical implications of web 2.0 marketing for attorneys. Wolfe Law Group's own Scott Wolfe, Jr. is in the program's faculty...

July 9 at 9:15am



Wolfe Law Group, LLC

New Orleans Office Dresses Up

Our Prytania Street office in New Orleans, LA opened just a few months after Hurricane Katrina, and hung across the top of our door was a banner exclaiming the office was "NOW OPEN." Well in those post-Katrina days, banners and temporary signage was common-place...

July 6 at 3:38pm



Wolfe Law Group, LLC

WLG Attorneys to Speak at Chinese Drywall Seminar

New Orleans, Louisiana (PRWEB) July 06, 2009 -Wolfe Law group Attorneys, Scott Wolfe, Jr., and Douglas Reiser, will be speaking at the Chinese Drywall Problems and Litigation Seminar on July 31, 2009 in New Orleans, Louisiana...

July 6 at 3:38pm



Wolfe Law Group, LLC

Ask Us: General Questions

Whether you're considering hiring WLG - or you already have- we know you have lots of questions and we want to do our very best to answer them. From here on out we will be regularly posting answers to Frequently Asked Questions...

July 6 at 3:38pm



Wolfe Law Group, LLC

Oscar Undergoes Knee Surgery

Our favorite hound is taking a few weeks off his greeting duties to tend to a wounded knee that underwent surgery this past weekend. Oscar has the puppy equivalent of a torn ACL, most likely caused by over-exerting himself on squirrel chases through Audubon Park...

July 2 at 2:03pm



Donald at 2:15pm July 2
awe, he will be in my prayers.



Wolfe Law Group, LLC

Doug Reiser Publishes Article on Avvo.com

As a general contractor, liability in and around the work place is inevitable. How can you keep your liability to a minimum in order to avoid future legal problems? Most attorneys are hired once a legal matter is pending...

June 30 at 3:51pm



Wolfe Law Group, LLC



Doug Reiser Is Firm's Second LEED AP

Doug S. Reiser, a member of Wolfe Law Group, has recently passed the LEED AP examination, and is now the firm's second LEED Accredited Professional...

June 29 at 2:01pm



Wolfe Law Group, LLC

Firm Takes New Office Photos

While everyone from Seattle was in the Crescent City for Doug & Jess' April wedding, we put aside some time to take new group photos. We tried to keep things a bit more casual with these shots, and think they came out okay. We'll be incorporating them into our websites over the next few weeks...

June 24 at 12:10pm



Wolfe Law Group, LLC

(No Title)

Wolfe Law Group understands the dread that comes with paying your invoice for legal fees. That is exactly why WLG aims to provide clients with an organized, transparent look into what and how much they are being charged...

June 16 at 4:28pm



Wolfe Law Group, LLC

Big City Living with Clients In Mind

Take a look around, most law offices are located in the heart of a city's downtown in large skyscrapers. Generally speaking, finding parking is nearly impossible and simply finding the office location can be daunting...

May 26 at 5:11pm



Wolfe Law Group, LLC

Alabama: Congratulations, You've Got Beer

To our brethren to the east, we thought we would throw out some congratulations! The Alabama Senate has approved a bill that will increase the maximum alcohol content in beer from 6% up to 13.9%...

May 15 at 10:55am



Wolfe Law Group, LLC

Wolfe Law Group: Mind of an Attorney, Heart of a Contractor

During Wolfe Law Group's initial organization and over the past five years, the logo, "Mind of an Attorney, Heart of a Contractor" seemed more than appropriate. Requirements of a construction attorney do not include a background in construction...

May 14 at 4:59pm

Jane likes this.



Wolfe Law Group, LLC

Happy Mother's Day from Wolfe Law Group

Mother's Day is celebrated all around the world (as it should be!) on different days of the year. Here in the United States, Mother's Day is celebrated on the second Sunday in May...

May 8 at 2:44pm



Wolfe Law Group, LLC

Scott Wolfe, Jr. featured in QuickBooks Online Press Release

Wolfe Law Group takes pride in choosing software that is not only compatible with Mac Computers, but software that provides the firm and its staff with the tools to work as efficiently as possible...

May 6 at 12:20pm



Wolfe Law Group, LLC

Technology: An Asset to Wolfe Law Group

Technology is at the heart of Wolfe Law Group's daily activities. As a technology based law firm, WLG enjoys many advantages with regard to productivity levels, communication with clients and accessibility of staff members and attorneys...

May 5 at 11:22am



Wolfe Law Group, LLC

Create a Page for My Business
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**Scott Wolfe on 22tweets**

Twitter mash-up, 22Tweets, hosted WLC founding attorney, Scott Wolfe, Jr., as it's featured interviewee on Tuesday, April 28... <http://www.jdsupra.com/post/documentViewer.aspx?fid=8d21f6db-5c48-405b-8cee-876a0fd36914>

April 30 at 11:10am

**Wolfe Law Group, LLC****Happy Earth Day!**

Today, April 22, 2009, marks the 39th anniversary of Earth Day- an occasion founded by U.S. Senator Gaylord Nelson to inspire awareness and appreciation for the environment, celebrate the gains we have made and create new visions to accelerate environmental progress, according to earthday.gov...

April 22 at 11:25am

**Wolfe Law Group, LLC****Scott Wolfe gains LEED AP Accreditation**

Scott Wolfe Jr., founding member of Wolfe Law Group and contributor to the Louisiana Green Building Law blog, is now a LEED AP (LEED Accredited Professional). Scott passed the LEED AP exam on Friday, April 10th...

April 20 at 9:20am

**Wolfe Law Group, LLC****A Wolfe Law Wedding**

Wolfe Law Group just got a little closer. We are happy to announce that our rockstar attorney, Doug, and legal assistant extraordinaire, Jessica, tied the knot in New Orleans this past weekend, and a fabulous time was had by all...

April 15 at 9:57am

**Wolfe Law Group, LLC****A Special Message from Wolfe Law**

April 10 at 9:21am

**Wolfe Law Group, LLC****Wolfe Law Group Launches Three New Topic-Specific Blogs**

Wolfe Law Group announces the launch of three new topic-specific legal blogs. The three new blogs all relate the construction industry, and focus on emerging practice areas for the firm...

April 6 at 7:05am

**Wolfe Law Group, LLC****Wolfe Law Keeps It Simple**

Wolfe Law Group announces a massive overhaul of its offices...

April 1 at 1:21am

**Wolfe Law Group, LLC****Listen for Scott Wolfe tomorrow on WYDE 101.1's House Studs**

A Saturday morning home improvement talk show, House Studs, will discuss the Chinese Drywall crisis on its show, March 28th, 2009, at 9:30 AM. Scott Wolfe, Jr. - founding member of the firm - will be a featured guest on that episode...

March 29 at 4:25pm

**Wolfe Law Group, LLC****Around the Web: Updates on Construction Law and Wolfe Law Group 3/27/09**

This week, some familiar topics were being talked about in the legal blogosphere, from the Employee Free Choice Act to the Chinese Drywall situation in Florida, Louisiana and elsewhere...

March 29 at 4:25pm

**Wolfe Law Group, LLC****The Big Draw: Washington's Stimulus Share Divulged**

Washington state officials released figures to the media on Thursday, illustrating that the state is due to receive some \$225 Million in funding. Initial planning earmarks all of that cash for major public building projects...

March 29 at 4:25pm



Wolfe Law Group, LLC

<http://www.jdsupra.com/post/documentViewer.aspx?fid=8d21f6db-5c48-405b-8cee-876a0fd36914>

Scott Wolfe Interviewed about whether Builders are nervous about Chinese Drywall

New Orleans' Fox 8 has been reporting on the Chinese Drywall crisis as it's appearing in Louisiana. They recently turned the tables on the story, asking not about problems faced by homeowners, but those problems faced by builders, contractors, suppliers and other participants in the...

March 29 at 4:25pm



Wolfe Law Group, LLC

Around the Web: Updates on Construction Law and Wolfe Law Group 3/27/09

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March 29 at 4:21pm



Wolfe Law Group, LLC

Wolfe Law Group Facebook Page Gets A Domain & Mention at JDScoop

You can access the Wolfe Law Group facebook page with a simple web address these days: <http://fb.wolfelaw.com>. Our page was mentioned on JDScoop's blog under a posting titled "You Should Be On Facebook. Here's Why (and How)". Now...we just need more fans.

March 24 at 3:10pm



Wolfe Law Group, LLC



Oscar & Wolfe Law Group in the USA Today

Wolfe Law Group and its pet-friendly office policy was featured in the USA Today this morning. Take a look at the photo (attached), as well as the short featuring here:

http://www.usatoday.com/money/workplace/m090306_pets/flash.htm?gid=906&aid=4299

March 18 at 11:01am



Wolfe Law Group, LLC Carnival is celebrated all over the world, but especially so in New Orleans under the title "Mardi Gras." This year, Wolfe Law Group shut its doors to celebrate on and before Fat Tuesday, and here are some photos from the parade routes and the Bacchus Ball.



Mardi Gras 2009

13 new photos

March 8 at 5:58pm



Wolfe Law Group, LLC

WLG Makes Wishes Come True for Valentines Day

Wolfe Law Group, a construction law firm in Seattle, WA and New Orleans, LA, announced its unique valentine to its clients, showing the company's appreciation of their support and trust...

February 12 at 12:39pm



Wolfe Law Group, LLC

Wolfe Law Group files Federal Suit Challenging Louisiana Ad Rules

This morning, Wolfe Law Group, L.L.C. filed a suit in federal court challenging the constitutionality of Louisiana's new rules governing lawyer advertising...

November 24, 2008 at 11:05am

RECENT ACTIVITY

Wolfe Law Group, LLC activated Facebook Mobile.

- [Skip past navigation](#)
- On a mobile phone? Check out m.twitter.com!
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- [Find People](#)
- [Settings](#)
- [Help](#)
- [Sign out](#)



scottwolfejr

1. Thanx 4 tweeting about ABA teleconf on Thurs
@[ThePPCmaster](#) @[SummitQuestSEO](#)
@[Multistreams](#) @[SmBizSolutions](#) @[ethicmarketing](#)
<http://bit.ly/aayF9>about 17 hours ago from web
2. Green Building Tax Deductions and Incentives:
Where Can I Find Information?
<http://ff.im/580TE>about 23 hours ago from
[FriendFeed](#)
3. Lennar Tots Up Chinese Drywall Damage
<http://ff.im/57MfC>8:58 AM Jul 12th from [FriendFeed](#)
4. i have Chinese Drywall homeowners and builders
contacting us about claims. Looks like litigation
between these parties is imminent [3:49 PM Jul 10th](#)
from [TweetDeck](#)
5. RT @[constructionlaw](#): UCC Article 9- A “New”
Collection Tool? <http://su.pr/4t&tEA> A great Post
from @[douglasreiser](#) [12:16 PM Jul 10th](#) from
[TweetDeck](#)
6. Construction Law Musings: Are UCC Article 9 Liens

a Collection Tool for Contractors?

<http://ff.im/53yIp10:33> AM Jul 10th from [FriendFeed](#)

- Name *Scott Wolfe Jr*
- Location *New Orleans, LA | Seattle, WA*
- Web <http://www.wolfel...>
- Bio *Construction attorney and entrepreneur in Louisiana and Washington.*

7. its a beautiful crisp morning in seattle. looking for flights back to New Orleans for the end of July...knowing crispness not in air there [8:36 AM Jul 10th](http://ff.im/53dud7:54) from [TweetDeck](#)

8. Landrieu backs more funding for Chinese drywall testing <http://ff.im/53dud7:54> AM Jul 10th from [FriendFeed](#)

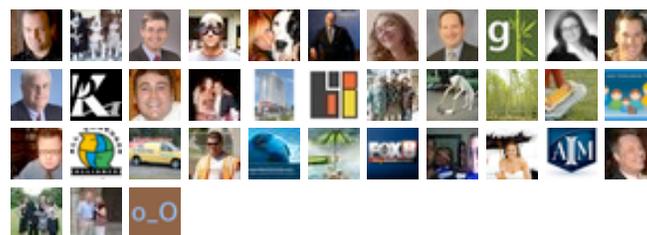
[969 Following](#) [1,014 Followers](#)

9. whoa. 1000 followers. you guys rock. [6:40 PM Jul 9th](http://ff.im/53dud7:54) from web

- [1,187 Updates](#)
- [Favorites](#)

10. Just did test run for ABA Teleconf next week w/ @mbuchdahl @michaeldowney (Ethics and Web 2.0 Marketing: <http://bit.ly/2vJwE>). Register! [8:29 AM Jul 9th](http://ff.im/53dud7:54) from web

Following



[View All...](#)

11. a chilly evening in SEA. sad about Mariners 9th inning loss. [8:09 PM Jul 8th](http://ff.im/53dud7:54) from web

12. Breaking Up with a Contractor is Hard to Do: L&A Contracting and the Parameters of Default Requirements for... <http://ff.im/4Wc5g7:49> PM Jul 7th from [FriendFeed](#)

[RSS feed of scottwolfejr's updates](#)

13. Corps uses 'innovative' contracting in N.O. East <http://ff.im/4W6XO7:04> PM Jul 7th from [FriendFeed](#)

14. Scott first time making dinner with chicken since I got food poisoning. I disinfected everything. <http://ff.im/4W6XR7:04> PM Jul 7th from [FriendFeed](#)

15. Contractor Prevails in Lien Claim on Leased Property (Charles and Joanne Haselwood v. Bremerton Ice Arena 2009 WL... <http://ff.im/4W6XP7:04> PM Jul 7th from [FriendFeed](#)

16. eGreens <http://ff.im/4W6XQ7:04> PM Jul 7th from [FriendFeed](#)

17. Scott I was just suggested to be a friend of "God" and I said no. <http://ff.im/4VAS22:27> PM Jul 7th from [FriendFeed](#)

18. More Contractors Sought in New Orleans? <http://www.jdsupra.com/post/documentViewer.aspx?fid=8d21f6db-5c48-405b-8cee-876a0fd36914>
<http://ff.im/4UquO6:27 AM Jul 7th> from [FriendFeed](#)
19. Unequivocal waiver of a contract term: what does it look like? <http://ff.im/4TDv711:02 PM Jul 6th> from [FriendFeed](#)
20. Expert Testimony and Ambiguity
<http://ff.im/4T0f25:06 PM Jul 6th> from [FriendFeed](#)

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Findings and Recommendations of the LSBA Rules of Professional Conduct Committee
Re: New Lawyer Advertising Rules and Constitutional Challenges Raised

April 15, 2009

Following adoption by the Supreme Court of Louisiana of new Rules of Professional Conduct pertaining to lawyer advertising and solicitation (Order dated June 26, 2008), two separate lawsuits have been filed and are currently pending in the United States District Court for the Eastern District of Louisiana, challenging certain portions of those new Rules on constitutional grounds (hereinafter referred to, respectively, as "Public Citizen, et al. v. LADB" and "Wolfe v. LADB"). Additionally, the Louisiana State Bar Association commissioned an "Opinions and Perceptions Study regarding Attorney Advertising", which was conducted by Survey Communications, Inc. ("SCI") in three (3) separate phases [telephone interviews, web-based interviews and focus groups, respectively] during December 2008 and January 2009.

The Committee has now been requested by the Supreme Court of Louisiana, in a letter from Chief Justice Kimball dated March 11, 2009, to review several of the new Rules that have been challenged on constitutional grounds and report back to the Court no later than May 1, 2009. Prior to meeting to review the challenged Rules, the Chair of the Committee requested and, in keeping with that request, the following materials were circulated to and reviewed in advance by members of the Committee: 1) a copy of the original Complaint filed in each of the federal lawsuits; 2) a copy of suggested language for rule modifications proposed informally by counsel for plaintiffs in the Public Citizen lawsuit (letter dated January 28, 2009); 3) a copy of the written research findings from the "Opinions and Perceptions Study regarding Attorney Advertising" conducted by SCI (hereinafter referred to as the "LSBA Research Findings"); 4) a copy of full-length digital video recordings for each of the three "focus groups" conducted by SCI as "Phase 3" of the "Opinions and Perceptions" study; 5) a copy of a written survey for use by the Committee compiled by LSBA staff using materials produced by the ABA Center for Professional Responsibility regarding comparisons between attorney advertising guidelines for other states (i.e., comparing the then-proposed Louisiana Rules to those of other states); 6) a

copy of a written memorandum dated May 23, 2007 prepared by Stanley, Flanagan & Reuter, LLC regarding "Constitutionality of Proposed Rule Changes"; and 7) a copy of a recent *per curiam* decision by the Supreme Court of Florida (dated February 27, 2009) regarding amendments to Rule 4-7.6 of the Rules Regulating the Florida Bar (Computer-accessed Communications) proposed by the Florida Bar.

Respectfully, the Committee remains of the strong opinion and continues to believe that the new Rules, as recommended by the LSBA and adopted by the Court, are necessary, appropriate and balance the constitutional right of lawyers to truthfully advertise legal services with the need to improve the existing rules in order to preserve and strengthen the ethics and integrity of the legal profession, to protect the public from false, misleading and/or deceptive forms of lawyer advertising, and to prevent erosion of and positively foster the public's confidence and trust in the judicial system.

I. Re: Wolfe v. LADB

The Committee met on Friday, March 13, 2009 at the LSBA Bar Center to consider the new lawyer advertising Rules (currently set to become effective on October 1, 2009) and constitutional challenges raised by Wolfe v. LADB. The meeting was called to order at 9:00 a.m. with the following attendance: Present/Participating – Richard C. Stanley, Chair; Val P. Exnicios; Sam N. Gregorio (by teleconference); Clare F. Jupiter; Leslie J. Schiff (by teleconference); Joseph L. Shea, Jr.; Edward Walters, Jr. (by teleconference); Lauren A. McHugh, Supreme Court Liaison; Cheri Cotogno Grodsky, LSBA Associate Executive Director for Professional Programs; Richard P. Lemmler, Jr., LSBA Ethics Counsel; and Eric K. Barefield, LSBA Assistant Ethics Counsel; Not Present/Not Participating – Shaun G. Clarke; Harry S. Hardin, III; Paul J. Hebert; Christine Lipsey; William M. Ross; Marta-Ann Schnabel; and Charles B. Plattmier, Disciplinary Liaison. The meeting was concluded and adjourned at approximately 11:39 a.m.

After reviewing the allegations raised in Plaintiffs' original Complaint, the Committee respectfully submits the following findings and recommendations:

1) FINDING: As currently written, the Committee did not intend for entries in a "blog" ["blog" (a contraction of the term *weblog*) is generally defined as a type of website, usually maintained by an individual with regular entries of commentary, descriptions of events, or other material such as graphics or video] to be governed by these new Rules unless the lawyer is advertising on a "blog" for the lawyer's own pecuniary gain.

- RECOMMENDATION – New Rule 7.6(d) could be amended (underlined portion denotes proposed amended language) to read:

"(d) Advertisements. All computer-accessed communications concerning a lawyer's or law firm's services, other than those subject to subdivisions (b) and (c) of this Rule, are subject to the requirements of Rule 7.2 when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain."

2) FINDING: Even if a lawyer is advertising on a "blog" by conveying information about the lawyer, the lawyer's services or a law firm's services, if the lawyer stays within the "safe harbors" of "permissible content" defined by new Rule 7.2(b)—or if the advertisement/communication is otherwise exempt under new Rule 7.8—the lawyer will not be required to file the advertisement/communication or pay any filing fee for an evaluation of the exempt advertisement/communication, i.e., the advertisement will be exempt from the filing and evaluation requirements of new Rule 7.7.

3) FINDING: Regarding the example of an on-line advertisement cited in Paragraph 22 of the Plaintiffs' Complaint:

Wolfe Law Group
Louisiana Construction Lawyer
Disputes, Contracts, Liens
<http://www.wolfelaw.com>

the Committee believes there is enough space available to include the information required by new Rule 7.2(a). The Committee also believes that, if the lawyer amends the advertisement in question to comply with new Rule 7.2(a), there would be nothing there that would require the lawyer to file the advertisement with the Committee for evaluation under Rule 7.7, i.e., it would be exempt from filing under new Rule 7.8.

- 4) FINDING: With regard to the allegations of Paragraph 23 of the Plaintiffs' Complaint concerning "junk-mail filters", any alleged "junk-mail filters" are not controlled by the Committee, the Rules or the LSBA; nor are the Committee, the Rules or the LSBA responsible for the use of any such "junk-mail filters". It is further noted that new Rule 7.6(c)(3) [requiring the subject line of an unsolicited e-mail communication sent directly or indirectly to a prospective client for the purpose of obtaining professional employment to state "LEGAL ADVERTISEMENT"] simply embodies what has long been required by the old/current Rule 7.3(b)(iii)(B) [*"...in the case of an electronic mail communication, the subject line of the communication states that 'This is an advertisement for legal services'..."*].

- 5) FINDING: New Rule 7.2(c)(11) does not prohibit one lawyer from appearing on another lawyer's website. The Committee believes the intent of new Rule 7.2(c)(11) relates to whether or not a significant motive for the lawyer's communication is the lawyer's pecuniary gain, as also noted above in our recommendation to amend new Rule 7.6(d). If the lawyer's appearance and communication on another lawyer's website is not significantly motivated by the lawyer's pecuniary gain, the Committee did not intend for new Rule 7.2(c)(11) to apply. On the other hand, if the lawyer's appearance and communication on another lawyer's website is significantly motivated by the lawyer's pecuniary gain, we believe new Rule 7.2(c)(11) would be triggered and the lawyer must bear the cost of the advertisement.

- 6) FINDING: With regard to the Plaintiffs' allegations/prayer for relief in Paragraph 51(a)(vi) of the Complaint, the Committee believes that if a lawyer is not advertising, the filing and evaluation requirements detailed in new Rule 7.7 are not intended to apply.
- o If the lawyer is advertising, the lawyer's use of only "safe harbor" "permissible content", as detailed in new Rule 7.2(b), or, if one or more of the other exemptions listed within new Rule 7.8 is/are applicable, the advertisement would be exempt from the filing and evaluation otherwise required by new Rule 7.7.
 - o Furthermore, if the advertisement must be filed pursuant to new Rule 7.7, we note that there is no requirement of an advance filing—new Rule 7.7(c) permits filing "*...prior to or concurrent with the lawyer's first dissemination of the advertisement or unsolicited written communication...*" [emphasis added].

Finally, we note that if an advertisement must be filed for evaluation under new Rule 7.7, one filing and evaluation of compliance would thereafter suffice for multiple/continued dissemination(s) of the same advertisement.

II. Re: Public Citizen, et al., v. LADB

The Committee met on Friday, March 20, 2009 at the LSBA Bar Center to consider the new lawyer advertising Rules (currently set to become effective on October 1, 2009) and constitutional challenges raised by Public Citizen, et al., v. LADB. The meeting was called to order at 12:00 noon with the following attendance: Present/Participating – Richard C. Stanley, Chair; Val P. Exnicios; Sam N. Gregorio (by teleconference); Harry S. Hardin, III; Paul J. Hebert; Clare F. Jupiter; Christine Lipsey; Leslie J. Schiff (by teleconference); Joseph L. Shea, Jr.; Edward Walters, Jr.; Lauren A. McHugh, Supreme Court Liaison; Charles B. Plattsmier, Disciplinary Liaison; Richard P. Lemmler, Jr., LSBA Ethics Counsel; and Eric K. Barefield, LSBA Assistant Ethics Counsel; Not Present/Not Participating – Shaun G. Clarke; William M.

Ross; and Marta-Ann Schnabel. The meeting was concluded and adjourned at approximately 3:22 p.m.

After reviewing the allegations raised in Plaintiffs' original Complaint, as well as the written "Research Findings" of the "Opinions & Perceptions Study regarding Attorney Advertising" produced by SCI Research for the LSBA during December 2008-January 2009 (hereinafter referred to as the "LSBA Research Findings"), the Committee respectfully submits the following findings and recommendations:

- 1) FINDING: The Committee finds the conduct prohibited by new Rule 7.2(c)(1)(D) [*"...reference or testimonial to past successes or results obtained..."*] is inherently misleading and that a disclaimer would not be able to cure or prevent the conduct from misleading and/or deceiving the public, as it would be nearly impossible to offer/provide enough facts and details to adequately disclaim a past result or success. The Committee also finds the Rule, as written, to be narrowly-tailored to address the harm in question and to achieve the desired objective of protecting the public from false, misleading and/or deceptive advertising.

The Committee notes that pages 18-19 of the LSBA Research Findings support that position, as eighty-three (83%) percent of the public interviewed and sixty (60%) percent of LSBA members interviewed indicated that they "disagreed" with the statement that "client testimonials in lawyer advertisements are completely truthful", while seventy-two (72%) percent of LSBA members interviewed "agreed" with the statement that "client testimonials imply that the endorsed attorney can obtain a positive result without regard to facts or law". It should also be noted that page 10 of the LSBA Research Findings indicates that forty (40%) percent of the public interviewed would rate lawyers in Louisiana as "dishonest" and only nineteen (19%) percent would rate lawyers in Louisiana as "honest". Page 12 of the LSBA Research Findings indicates that sixty-one (61%) percent of the public interviewed believe that lawyer advertising in Louisiana is "less truthful" than advertisements for other

businesses and, on page 13, forty-five (45%) percent of the public interviewed believed the use of disclaimers in lawyer advertising was “less truthful” than the use of disclaimers in advertising for other businesses.

- RECOMMENDATION – The Committee overwhelmingly recommends no change to new Rule 7.2(c)(1)(D) as currently written. One member dissents, indicating a belief that the conduct in question is not inherently misleading.

2) FINDING: The Committee finds the conduct prohibited by new Rule 7.2(c)(1)(E) [“...*promises results*...”] is inherently misleading and that a disclaimer would not be able to cure or prevent the conduct from misleading and/or deceiving the public. Moreover, the Committee finds that the Rule, as written, is not vague or ambiguous, as it does not prohibit promises in general but only prohibits promises of results. The Committee finds the Rule, as written, to be narrowly-tailored to address the harm in question and to achieve the desired objective of protecting the public from false, misleading and/or deceptive advertising. Finally, the Committee is unaware of any instance where this Rule has been applied to prohibit the conduct in the examples cited by Plaintiffs.

The Committee notes that page 14 of the LSBA Research Findings indicates that, with regard to the series of statements from Louisiana lawyer advertisements that were recognized by the public interviewed, eighty (80%) percent of the public interviewed believed the lawyer ads that contained the statements recognized “disagree[d]” that the ads raised their confidence in Louisiana courts, while seventy-eight (78%) percent of LSBA members interviewed “disagree[d]” that the public’s confidence in Louisiana courts is raised by the lawyer advertisements that were recognized. Moreover, the Committee notes that, on page 15 of the LSBA Research Findings, seventy-six (76%) percent of the public interviewed “disagree[d]” that the lawyer advertisements in question raise their opinion of Louisiana lawyers. Finally, the Committee notes that page 17 of the LSBA Research Findings indicates that

sixty-one (61%) percent of the public interviewed “agree[d]” that the statements in the advertisements that were recognized promised that the lawyer will achieve a positive result.

- RECOMMENDATION – The Committee unanimously recommends no change to new Rule 7.2(c)(1)(E) as currently written.
- 3) FINDING: The Committee finds the conduct prohibited by the first part of new Rule 7.2(c)(1)(I) [*“...includes the portrayal of a client by a non-client...”*] is potentially misleading and that, while the Rule, as written, is narrowly-tailored to address the harm in question and to achieve the desired objective of protecting the public from false, misleading and/or deceptive advertising, a disclaimer would also work to prevent the conduct from misleading and/or deceiving the public.

The Committee notes that page 12 of the LSBA Research Findings indicates that a significant majority of LSBA members interviewed [eighty-two (82%) percent] and of the public interviewed [seventy-three (73%) percent] have seen or heard a disclaimer used in a print, television or radio advertisement but page 13 indicates that fifty-eight (58%) percent of LSBA members interviewed and forty-one (41%) percent of the public interviewed indicated that they generally are not able to clearly read, hear or understand disclaimers in advertising. Moreover, forty-five (45%) percent of the public interviewed thought that the use of disclaimers in lawyer advertising was “less truthful” than the use of disclaimers in advertising for other businesses. The Committee notes that page 19 of the LSBA Research Findings indicates that fifty-nine (59%) percent of the public interviewed and sixty-three (63%) percent of the LSBA members interviewed “disagree[d]” with the statement that they can always tell if a testimonial in a lawyer advertisement is made by a client and not by an actor.

The Committee further notes comments from the “focus groups” contained in the LSBA Research Findings pertaining to whether disclaimers are a positive or negative

thing (given that every person in the focus groups had seen or heard a disclaimer used in an advertisement):

- o "...The print is very small and usually you don't have time to read them ..."
(page 23);
- o "...it's almost like they're showing you the big pretty picture, but they tell you all the bad stuff at the bottom..." (page 23);
- o "...That's what I mean by negative. It gives you a positive image, but when you read the fine line you get wiped out..." (page 23);
- o "...when I see a disclaimer, to me that commercial is telling me: I'm advertising this product, but what you see is not necessarily what you receive..." (page 23).

The Committee further notes comments from the "focus groups" contained in the LSBA Research Findings pertaining to whether lawyers' disclaimers are a positive or negative thing [and if negative, does that mean you feel a disclaimer is misleading to you] (given that some persons in the focus groups had seen or heard a disclaimer used in a lawyer's advertisement):

- o "...Yeah, it is [misleading]. If you have reps that say, you got me X or one that said Y, but you didn't get that—that is misleading..." (page 24);
- o "...I think when I see an ad and they're pumping it up and up and then there is a disclaimer—that takes away from everything they've been hyping..." (page 24);
- o "...I do think it's misleading. I think it's very misleading..." (page 24);
- o "...Why can't they just advertise what they can do? Why do they have to make promises like rainbows and all this? Why can't they just say: hey, I'm Tom Jones and I can handle divorces, bankruptcies and accident cases? Why can't they just be up front? Why do they have to have actors?..." (page 24).

The Committee further notes comments from the “focus groups” contained in the LSBA Research Findings pertaining to why lawyers put disclaimers in their ads:

- “...To keep them from being sued. If you’re doing what you’re supposed to do, why do you need a disclaimer?...” (page 24);
- “...ultimately, there are people who will see the disclaimer and still think they’re going to get top dollar for the service...” (page 24).

The Committee further notes comments from the “focus groups” contained in the LSBA Research Findings pertaining to the disclaimers in the lawyer advertisements viewed and recognized:

- “...I saw some disclaimers, but I could not read any...” (page 33);
- “...They put them in as small as possible knowing most of the people they’re trying to catch will not...it’s too small...” (page 33);
- “...And sometimes you can’t understand them either. I don’t know how anyone can read that fast...” (page 33);
- “...My opinion is they really don’t want you to read them, until you say, ‘well you said you could get me’, and they say, ‘oh, no, no, didn’t you see my disclaimer...’” (page 33);
- “...They don’t set a guideline for how big it has to be or how long it has to be on the TV. As long as it’s there, it’s there...” (page 33);
- “...they say it so fast you can’t hear it. It’s bah bah bah bah bah, what was all that? So the disclaimers aren’t clear...” (page 33);
- “...I honestly haven’t seen a disclaimer at the bottom...” (page 33).

The Committee further notes comments from the “focus groups” contained in the LSBA Research Findings pertaining to what one regulation you would suggest if you were standing in front of the committee that makes the rules regarding lawyer advertising:

- o "...If you have to put in a disclaimer, make it visible and clear and readable..." (page 35);
 - o "...State your record, leave all the drama and the bells and all that out. Don't say anything that MAKES you put a disclaimer..." (page 35);
 - o "...And if you're required to put a disclaimer, make sure we can read it. If it's necessary to put in a disclaimer, make it clear, concise and so that we can understand it..." (page 35).
- RECOMMENDATION – The Committee recommends that new Rule 7.2(c)(1)(I) could be revised and amended, in pertinent part, (underlined portion denotes proposed amended language) to read:

"(I) includes the portrayal of a client by a non-client without disclaimer of such, as required by Rule 7.2(c)(10),..."

One member of the Committee dissents, believing the conduct in question is inherently misleading and cannot be cured with a disclaimer. Two members of the Committee dissent in part and concur in part, believing the conduct in question to be inherently misleading but also believing that a disclaimer, as recommended, would adequately work to prevent the conduct in question from misleading and/or deceiving the public.

- RECOMMENDATION – The Committee also recommends that, in keeping with the foregoing recommended amendment to the pertinent portion of new Rule 7.2(c)(1)(I), new Rule 7.2(c)(10) could be revised and amended to include new required disclaimer language as follows (underlined portion denotes proposed amended language):

“Appearance of Required Statements, Disclosures and Disclaimers. Any words or statements required by these Rules to appear in an advertisement or unsolicited written communication must be clearly legible if written or intelligible if spoken aloud.

All disclosures and disclaimers required by these Rules shall be clear and conspicuous. Written disclosures and disclaimers shall use a print size at least as large as the largest print size used in the advertisement or unsolicited written communication, and, if televised or displayed electronically, shall be displayed for a sufficient time to enable the viewer to easily see and read the disclosure or disclaimer. Spoken disclosures and disclaimers shall be plainly audible and spoken at the same or slower rate of speed as the other spoken content of the advertisement. All disclosures and disclaimers used in advertisements that are televised or displayed electronically shall be both spoken aloud and written legibly.”

- RECOMMENDATION – The Committee also recommends that, in keeping with the foregoing recommended amendment to the pertinent portion of new Rule 7.2(c)(1)(I) and to new Rule 7.2(c)(10), new Rule 7.5(b)(2)(C) should also be amended to incorporate a cross-reference to new Rule 7.2(c)(10), as so amended [please see FINDING #7, below].
- 4) FINDING: The Committee finds the conduct prohibited by the second part of new Rule 7.2(c)(1)(I) [“...or the reenactment of any events or scenes or pictures that are not actual or authentic...”] is potentially misleading and that, while the Rule, as written, is narrowly-tailored to address the harm in question and to achieve the desired objective of protecting the public from false, misleading and/or deceptive advertising, a disclaimer would also work to prevent the conduct from misleading and/or deceiving the public.

The Committee notes that page 22 of the LSBA Research Findings indicates that fifty-nine (59%) percent of the public interviewed “agree[d]” that lawyer advertisements that include scenes of accidents or accident victims lessen their confidence in the integrity of Louisiana lawyers, while seventy-eight (78%) percent of LSBA members interviewed “disagree[d]” with the statement that lawyer advertisements that include scenes of accidents or accident victims raise the public’s opinion of the integrity of Louisiana lawyers. On the other hand, page 21 of the LSBA Research Findings shows that sixty-three (63%) percent of the public interviewed “disagree[d]” that lawyers whose advertisements include scenes of accidents or accident victims have more influence on Louisiana courts than other lawyers but fifty-four (54%) percent of LSBA members interviewed “agree[d]” that lawyer advertisements that include scenes of accidents or accident victims imply to the public that the lawyer advertised can obtain a positive result without regard to the facts or law.

- RECOMMENDATION – The Committee recommends that the second part of new Rule 7.2(c)(1)(I) could be revised and amended, in pertinent part, (underlined portion denotes proposed amended language; ~~struck through~~ language denotes proposed deletions) to read:

“...or the ~~reenactment~~-depiction of any events or scenes or pictures that are not actual or authentic without disclaimer of such, as required by Rule 7.2(c)(10);...”

One member of the Committee abstained.

- 5) FINDING: The Committee finds the conduct prohibited by the challenged portions of new Rule 7.2(c)(1)(J) [*“...includes the portrayal of a judge or jury...”*] is inherently misleading and that a disclaimer would not be able to cure or prevent the conduct from misleading and/or deceiving the public. Moreover, the Committee finds the pertinent portions of this Rule, as written, do not concern simply any general form of

portrayal or the depiction of just any scenes or events but, in this instance, specifically concern depiction and portrayal of the judiciary and juries within our system of justice. The Committee also finds that the conduct in question (i.e., judges appearing in lawyers' advertisements) would, if allowed, essentially portray judges engaged in conduct that would almost certainly be deemed improper and constitute a violation or violation(s) of the Louisiana Code of Judicial Conduct if engaged in by actual judges, thereby calling into question and/or impugning the integrity of the judiciary and the judicial system. The Committee finds the Rule, as written, to be narrowly-tailored to address the harm in question and to achieve the desired objective of protecting the public from false, misleading and/or deceptive advertising.

The Committee notes that page 20 of the LSBA Research Findings indicates that twenty-seven (27%) percent of the public interviewed "agree[d]" with the statement that "when I see a lawyer advertisement that portrays a judge or a jury, I assume the lawyer being advertised has more influence on Louisiana courts than other lawyers", while fifty (50%) percent of LSBA members interviewed "agree[d]" that lawyer advertisements that portray a judge or jury imply to the public that the lawyer advertised can assert more influence over judges or juries than other lawyers. Moreover, page 20 indicates that seventy-nine (79%) percent of the public interviewed "disagree[d]" with the statement that "lawyer advertisements that portray judges or juries raise my confidence in Louisiana courts", while sixty-eight (68%) percent of LSBA members interviewed "disagree[d]" that lawyer advertisements that portray judges or juries raise the public's confidence in Louisiana courts. Additionally, with respect to lawyer advertisements that contained statements that were recognized, page 16 of the LSBA Research Findings indicates that fifty-nine (59%) percent of the public interviewed indicated that those lawyer advertisements imply that Louisiana courts can be manipulated by the lawyers in the ads. Most telling, page 14 of the LSBA Research Findings indicates that eighty (80%) percent of the public interviewed "disagree[d]" that their confidence in Louisiana courts was

raised by the lawyer advertisements that contained the statements that were recognized.

The Committee further notes comments from the “focus groups” contained in the LSBA Research Findings pertaining to whether the advertisements recognized raised or lowered the participants’ confidence in Louisiana courts:

- o “...It lowers it in a way. You’re saying: ‘I can get this through the court system. Like you got a hold on somebody down the river. I don’t care for that sort of thing...’” (page 25);
- o “...If any non-experienced attorney could go to court and win that kind of money, then I wouldn’t have confidence in the courts...” (page 25);
- o “...It doesn’t raise my confidence, but there’s no way it could lower my confidence. It’s the bottom of the barrel as far as I’m concerned. I would love for something to raise my confidence in LA courts...” (page 25);
- o “...It does seem he would manipulate the system more. Lower...” (page 26);
- o “...Lowers. I don’t respect that commercial. If they’re going with someone that is that flamboyant and think that’s smart...if the court system is impressed with that flamboyance, I’m not...” (page 31);
- o “...He also said, ‘it’s that easy’- he’ll get you what you want, ‘it’s that easy.’ So that would make the courts look lower. If that clown can walk in there and get what you want, that isn’t good for the courts...” (page 31).

The Committee further notes comments from the “focus groups” contained in the LSBA Research Findings pertaining to whether portrayals of judges and juries in the advertisements recognized raised or lowered the participants’ confidence in Louisiana courts:

- o “...Lowers it. Makes them seem like their on the take...” (page 34);
- o “...Either way [whether it’s a real judge or an actor]. It gives the impression that the judge could be bought by this attorney...” (page 34);

- o "...Why is he in this particular lawyer's ad?..." (page 34);
- o "...I don't think we can [tell if a judge or juror is an actor] because we can't tell which lawyers are real and not real sometimes, so how're we supposed to know? Or, you know, how is anyone supposed to know?..." (page 34);
- o "...I don't think courts belong in attorney ads..." (page 34).

The Committee further notes general comments from the "focus groups" contained in the LSBA Research Findings pertaining to the participants' confidence in Louisiana courts:

- o "...I've been to court for different things, several things...and I've never...I usually always come out smelling good, but I don't have faith in this court system in Louisiana and I don't know why. To me, especially here in Caddo parish, it seems like it's a money gig. Like if you've got the money, you get a high-priced lawyer where that lawyer can divide a little bit up among the others involved in this process and make the judge a big smile on his face, then you're good to go..." (page 35);
 - o "...Nothing we've heard improved our opinion of the courts..." (page 35).
 - RECOMMENDATION – The Committee unanimously recommends no change to new Rule 7.2(c)(1)(J) as currently written.
- 6) FINDING: The Committee finds the conduct prohibited by new Rule 7.2(c)(1)(L) ["...utilizes a nickname, moniker, motto or trade name that states or implies an ability to obtain results in a matter..."] is inherently misleading and that a disclaimer would not be able to cure or prevent the conduct from misleading and/or deceiving the public. The Committee finds the Rule, as written, to be narrowly-tailored to address the harm in question and to achieve the desired objective of protecting the public from false, misleading and/or deceptive advertising.

The Committee notes that page 17 of the LSBA Research Findings indicates that sixty-one (61%) percent of the public interviewed “agree[d]” that the statements in the lawyer advertisements that were recognized promised that the lawyer will achieve a positive result, while seventy-six (76%) percent of the LSBA members interviewed “disagree[d]” that the public is not misled by the lawyer advertisements that contained the statements recognized and, on page 16, seventy-eight (78%) percent of LSBA members interviewed “agree[d]” that the lawyer advertisements that contained the statements that were recognized imply that the lawyers advertised can obtain favorable results without regard to facts or law. Page 10 of the LSBA Research Findings indicates that forty (40%) percent of the public interviewed would rate lawyers in Louisiana as “dishonest”, page 11 indicates that fifty-six (56%) percent of the public interviewed believe lawyer advertising in Louisiana is “misleading” and page 12 indicates that sixty-one (61%) percent of the public interviewed would say that lawyer advertising in Louisiana is “less truthful” than advertisements for other businesses.

- RECOMMENDATION – The Committee unanimously recommends no change to new Rule 7.2(c)(1)(L) as currently written.
- 7) FINDING: The Committee finds the conduct prohibited by new Rule 7.5(b)(1)(C) [*“... (C) any spokesperson’s voice or image that is recognizable to the public in the community where the advertisement appears; ...”*] is potentially misleading and that, while the Rule, as written, is narrowly-tailored to address the harm in question and to achieve the desired objective of protecting the public from false, misleading and/or deceptive advertising, a disclaimer—as recommend above [in conjunction with FINDING #3], with respect to the recommended amendment to new Rule 7.2(c)(10)—would also work to prevent the conduct from misleading and/or deceiving the public.

The Committee notes that page 19 of the LSBA Research Findings indicates that fifty-nine (59%) percent of the public interviewed “disagree[d]” with the statement that “I can always tell if a testimonial in a lawyer advertisement is made by a client and not by an actor”, while sixty-three (63%) percent of LSBA members interviewed “disagree[d]” with the same statement. On the other hand, page 21 of the LSBA Research Findings shows that sixty-two (62%) percent of the public interviewed “disagree[d]” that lawyers whose advertisements include endorsements by a celebrity or “well known” person have more influence on Louisiana courts than other lawyers, whereas sixty-two (62%) percent of the LSBA members interviewed “agree[d]” that lawyer advertisements that include endorsements by a celebrity or “well known” person imply to the public that the lawyer advertised can obtain a positive result without regard to facts or law.

- RECOMMENDATION – The Committee recommends that new Rule 7.5(b)(1)(C) could be deleted and repealed.
- RECOMMENDATION – The Committee also recommends that, in keeping with the foregoing recommended deletion/repeal of new Rule 7.5(b)(1)(C), new Rule 7.5(b)(1)(B) could be revised and amended as follows (underlined portion denotes proposed amended language; ~~struck through~~ language denotes proposed deletions):

“(B) lawyers who are not members of the advertising law firm speaking on behalf of the advertising lawyer or law firm; ~~or~~.”

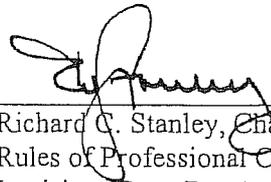
- RECOMMENDATION – The Committee also recommends that, in keeping with the foregoing recommended deletion/repeal of new Rule 7.5(b)(1)(C) and foregoing recommended amendment/revision of new Rule 7.5(b)(1)(B), new Rule 7.5(b)(2)(C) could be revised and amended as follows (underlined portion denotes

proposed amended language; ~~struck through~~ language denotes proposed deletions):

"...~~(C) a non-lawyer spokesperson speaking on behalf of the lawyer or law firm, as long as the spokesperson is not recognizable to the public in the community where the advertisement appears and that spokesperson shall provide a spoken and written disclosure, as required by Rule 7.2(c)(10), identifying the spokesperson as a spokesperson, and disclosing that the spokesperson is not a lawyer and disclosing that the spokesperson is being paid to be a spokesperson, if paid.~~"

One member of the Committee dissents, believing the foregoing Rules should not be changed as currently written.

Respectfully Submitted:



Richard C. Stanley, Chair
Rules of Professional Conduct Committee
Louisiana State Bar Association

transmitted to the Court Committee. There was no objection to this suggested procedure from the Committee members.

Stanley noted that members of the Supreme Court Committee have been invited to attend the Rules of Professional Conduct Committee meetings.

Agenda Item 2. Proposed Rules 7.1, 7.2 and 7.3

7.1(a) - The Committee voted to strike the last sentence “Regardless of medium, a lawyer’s advertisement shall provide only useful, factual information presented in a non-sensational manner.”

The Committee voted to change the word “subchapter” to “these rules”.

7.1(b) - The Committee voted to make no changes to this section.

There was a Motion and a second to suggest to the Court to amend Rule XIX, Section 6 to expand ODC jurisdiction in a manner that parallels Rule 8.5. The motion passed with no opposition.

7.2(a)(1) - The Committee voted to delete the word “written”.

7.2(a)(2) - The Committee voted to delete the word “written”.

7.2(b)(1) - The Committee voted to delete “A” and add the words “An advertisement or” to the beginning of the second sentence before the word “communication”.

7.2(b)(1)(A) - no change

7.2(b)(1)(B) - no change

7.2(b)(1)(C)-no change

7.2(b)(1)(D) - no change

7.2(b)(1)(E) - no change

The Committee voted to add a new sections (F) (G) (H) (I) and (J) to read as follows:

(F) includes a portrayal of a client by a nonclient or the reenactment of any events or scenes or pictures or persons that are not actual or authentic;

(G) includes the portrayal of a judge, the portrayal of a lawyer by a non-lawyer, the portrayal of a law firm as a fictionilized entity, the use of a fictitious name to refer to lawyers not associated together in a law firm, or otherwise imply that lawyers are associated in a law firm if that is not the case;

(H) depicts the use of a courtroom;

(I) resembles a legal pleading, notice, contract or other legal document;

(J) utilizes a nickname, moniker, motto or trade name that implies an ability to obtain results in a matter.

There was discussion about adding section (K) “utilizes a jingle”. There was a Motion and a second to add such language. The motion did not pass. The vote was 3 to 3 as follows:
In favor of- Larry Shea, Leslie Schiff and Sam Gregorio
Against- Edward Walters, Clare Jupiter and Rick Stanley. **This issue may be considered at a later meeting.**

7.2(b)(2) - no changes

7.2(b)(3) - delete the word “written”.

7.2(b)(4) - no changes.

7.2(b)(5) - The Committee voted in favor of the following language: A lawyer or law firm shall not advertise for legal employment in an area of practice in which the advertising lawyer or law firm states or implies that it currently practices law in that area of practice, when that is not the case.

7.2(b)(6) - no changes.

7.2(c)(1) - no changes.

7.2(c)(2) - no changes.

7.2(c)(3)(B)(i) - There was discussion regarding adding the words “or by the ABA”. The Committee did not vote in favor of this added language.

The Committee directed Richard Lemmler to make the rules consistent by adding “advertisement or communication” throughout the proposed rules.

Agenda Item 3. Public Hearings

Public hearings will be conducted in Shreveport, Baton Rouge, Lafayette and New Orleans. The following committee members will participate:
Shreveport - Larry Shea, Sam Gregorio, Chuck Plattsmier and Marta-Ann Schnabel.
Baton Rouge - Edward Walters, Sam Gregorio, Leslie Schiff, Clare Jupiter, Chuck Plattsmier and Marta-Ann Schnabel.
New Orleans - Rick Stanley, Dane Ciolino, Chuck Plattsmier and Marta-Ann Schnabel.
Lafayette - Leslie Schiff, Sam Gregorio, Chuck Plattsmier and Marta-Ann Schnabel.

The next meeting has been moved to 11:00 a.m.

Other matters

Marta-Ann Schnabel will contact the Board of Specialization for information.