

**IN THE SUPREME COURT OF FLORIDA**

<b>THE FLORIDA BAR,</b>	)	
<b>Complainant,</b>	)	<b>Supreme Court Case No.: SC04-40</b>
<b>vs.</b>	)	<b>SC04-41</b>
	)	
<b>JOHN ROBERT PAPE and</b>	)	<b>The Florida Bar Case No.: 2003-90,076(02S)</b>
<b>MARC ANDREW CHANDLER,</b>	)	<b>The Florida Bar Case No.: 2004-90,002(02S)</b>
<b>Respondents.</b>	)	

**AMENDED FINAL ORDER OF REFEREE WILLIAM W. HERRING**

The trial in this action was heard on September 14, 2004. The Court, after reviewing the pleadings, discovery and responses thereto, evidence presented at trial including the television commercial produced by the respondents, the memoranda of law and supporting documents filed by the respective parties in this action, as well as applicable decisional law, found:

1. The respondents ran television advertisements in which they displayed a logo (a depiction of the head of a pit bull wearing a spiked collar) and the telephone number 1 800-PIT-BULL.
2. The Florida Bar has prosecuted this case alleging that the respondents violated two of The Rules Regulating The Florida Bar: 4-7.2(b)(3) and 4-7.2(b)(4).
3. Rule 4-7.2(b)(3) states “[a] lawyer shall not make statements describing or characterizing the quality of the lawyer’s services in advertisements and written communications.”
4. Neither respondents’ logo, nor respondents’ 1 800-PIT-BULL telephone number constitute characterizations or descriptions as to the quality of the lawyer services; they describe qualities of the respondent attorneys.
5. There is a big difference (qualitatively and substantively) between quality of services that a lawyer renders and the qualities or characteristics of the advertising lawyer.
6. The second rule that respondents are prosecuted under is Rule 4-7.2(b)(4) which states “[v]isual or verbal descriptions, depictions, or portrayals of persons, things, or events must

be objectively relevant to the selection of an attorney and shall not be deceptive, misleading, or manipulative;"

7. The Florida Bar, through its answers to interrogatories, stated that pit bulls are perceived as loyal, persistent, tenacious, and aggressive.

8. The characteristics that The Florida Bar ascribed to pit bulls through their answers to interrogatories are desirable traits in attorneys.

9. The qualities that are depicted by the logo and the telephone number are objectively relevant to the selection of an attorney as they are informational, because these are qualities that a consuming public would want in a trial lawyer; someone who is aggressive, tenacious, loyal, and persistent, and the ad is not improperly manipulative, realizing that all advertising, to be effective, is manipulative at some level. The advertisement is tastefully done, the logo is not unduly conspicuous in its replacement of an ampersand between respondents' names atop the TV screen, and the large print 1-800 number is an effective mnemonic device tailored to maximize responses from potential clients. That the ad is geared towards a particular market or segment of the public does not deprive it of First Amendment protection. There are no slogans, jingles, alarm bells, or the like, nor does the ad suggest a favorable outcome through the employment of improper means, such as the depiction of a fist. The advertisement herein may be compared with the Dalkon Shield illustration in Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio, 471 U.S. 626, 105 S. Ct. 2265 (1985), which was also informational yet potentially offensive to some population segment. An advertisement may be only incompletely informative and still pass constitutional muster, so long as it is not false, misleading, or deceptive, which this ad is not. The ad is directed to a group which might not otherwise seek representation to vindicate its rights, and the focus must always be on the consumer's right to clean information, not on the attorney's need to attract a clientele.

10. The logo and telephone number are not misleading or deceptive, and The Florida Bar has made no record to the contrary, as to surveys or studies of the public. Contrast the Bar's failure herein to make a factual record to demonstrate a concrete, specific, and significant harm as opposed to a speculative, nebulous one to which the present application of the pertinent Rules is purportedly directed (as to the substantial governmental interest being furthered by the Rules' application to respondents, part of the three-pronged test set forth in Central Hudson Gas &

Electric Corporation v. Public Service Commission of New York, 447 U. S. 557, 100 S. Ct. 2343 (1980), with the showing made by the Bar in Florida Bar v. Went for It, Inc., 515 U.S. 618 (1995), in support of its prohibition against direct-mail solicitation of victims and their relatives in personal injury and wrongful death cases within 30 days after a loss.

11. That certain segments of the public may find respondents' advertisement to be distasteful or offensive (such as white-collar professionals) is wholly irrelevant to the required analysis, as is the Bar's known animosity towards attorney television advertising.

12. The Rules Regulating the Florida Bar are unconstitutional as applied in this case.

13. The Florida Bar has not selectively enforced the rules against the respondents as alleged by the respondents in their affirmative defenses because the great majority of these ads were in the Florida Bar Journal and the Florida Bar News, which are lawyer-to-lawyer ads and thus the Rules Regulating the Florida Bar are not applicable to them.

14. The great majority of the ads cited by the respondents in their affirmative defense of selective enforcement contain images or statements that are expressly allowed by the rules in terms of ads involving images of marble columns, people sitting on courthouse steps, images of paper and technical drawings and writings. All of these kinds of things are permissible and are approved by the pertinent rules, and again the great majority of them were in lawyer-to-lawyer advertising in the Bar news and Bar journal and are not covered by the Bar rules because they are not media ads in terms of either TV, radio or newspaper or magazine.

### **IT IS ADJUDGED**

1. The respondents' TV advertisements (specifically, the logo (a depiction of the head of a pit bull wearing a spiked collar) and the 1 800-PIT-BULL telephone number) are Constitutionally-protected commercial free speech.

2. The respondents' TV advertisements (specifically, the logo (a depiction of the head of a pit bull wearing a spiked collar) and the 1 800-PIT-BULL telephone number) do not violate the Rules Regulating the Florida Bar.

3. The Florida Bar's attempt to prosecute the respondents under the rules The Florida Bar cites as having been violated by the respondents constitutes an unconstitutional application of those rules to the respondents' rights of commercial free speech as protected under the First Amendment of the United States Constitution and also the Florida Constitution, Article I, Section 4.

**ORDERED** at Fort Lauderdale, Broward County, Florida on this 6 day of October, 2004.

W. W. 7  
County Court Judge/Referee

Copies to: Randi Klayman Lazarus, Esq.  
John Robert Pape  
Marc Andrew Chandler

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