

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

PUBLIC CITIZEN, INC., et al.

Plaintiffs,

VERSUS

LOUISIANA ATTORNEY DISCIPLINARY BOARD, et al.

Defendants.

\*  
\* CIVIL ACTION NO. 08-4451, c/w 08-4994  
\*  
\* *This pleading applies to all cases*  
\*  
\* SECTION "F"  
\*  
\* JUDGE FELDMAN  
\*  
\* MAGISTRATE WILKINSON  
\*  
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**MOTION TO CONTINUE TRIAL AND HEARINGS  
AND TO RESCIND SCHEDULING ORDER AND PRE-TRIAL NOTICE**

Defendants, the Louisiana Attorney Disciplinary Board, Billy R. Pesnell, and Charles B. Plattsmier (collectively, "Defendants"), through undersigned counsel, hereby move the Court for an order continuing the trial of this case and the scheduled hearings on motions (in particular, the March 4, 2009 hearings on plaintiffs' motions for summary judgment), without date; rescinding the current Scheduling Order (Rec. Doc. 30) and Pre-Trial Notice (Rec. Doc. 30-2); and staying all pending matters associated with this case, including, without limitation, scheduled depositions and discovery.

As set forth more fully in the accompanying Memorandum in Support, this Court should grant Defendants' motion, to avoid premature federal constitutional adjudication. At the time trial and associated preparation deadlines were set, including the March 4th date for hearing dispositive motions, the new attorney advertising rules at issue in this litigation were scheduled to take effect on April 1, 2009.

However, on February 18, 2009, the Louisiana Supreme Court ordered that implementation of the new rules be deferred until October 1, 2009. (*See* Order, attached hereto as Exhibit "A"). As set out in the Court's News Release, also issued on February 18th, the purpose of the deferred implementation is "to allow the LSBA and the Court to further study certain rules in light of the constitutional challenges that have been raised." (*See* News Release, attached hereto as Exhibit "B"). As a result, the challenged rules will not take effect on April 1st, and they may be modified before they are finally implemented on October 1st.

Accordingly, Defendants assert it would be premature for the Court to hear and decide plaintiffs' motions for summary judgment or to proceed to trial of this matter. The rules at issue are subject to further study and may not be implemented in their current form. The constitutional issues currently before the Court may be mooted or substantially modified once the LSBA and the Louisiana Supreme Court complete their additional period of study. Thus, principles of efficiency and judicial economy would seem to dictate that this Court delay consideration of the constitutional issues before it, to avoid rendering decisions that may be wholly advisory and to avoid premature federal constitutional adjudication. *See Bolline v. City*

of *New Orleans*, 757 F. Supp. 715, 719 (E.D. La. 1991) (citing *Harman v. Forssenius*, 380 U.S. 528 1965)). Plaintiffs will lose no rights and suffer no harm as a result of the requested delay, and the Louisiana Supreme Court's process of studying and implementing rules governing the practice of law will be preserved.

Counsel for defendants represent that they have discussed the requested continuance with their clients and have provided their clients with a copy of this motion and the supporting memorandum. Counsel for defendants represent that their clients consent to the requested continuance of motion and trial dates, rescission of the Scheduling Order and Pre-Trial Notice, and stay of proceedings.

**WHEREFORE**, for the reasons set forth herein and in the accompanying Memorandum in Support, Defendants, the Louisiana Attorney Disciplinary Board, Billy R. Pesnell, and Charles B. Plattsmier, move the Court for an order granting a continuance without date of the currently-scheduled motions and trial dates. The defendants further move the Court for an order rescinding the Scheduling Order (Rec. Doc. 30) and Pre-Trial Notice (Rec. Doc. 30-2) and staying all proceedings in this matter pending further action by the LSBA and/or Louisiana Supreme Court regarding the substance of the advertising rules at issue in this litigation and/or implementation of Article XVI, Rule 7 of the Articles of Incorporation of the Louisiana State Bar Association.

Alternatively, and only in the event the Court should refuse to stay this matter and continue the currently-scheduled motions and trial dates, Defendants request that the March 4,

2009 hearing on plaintiffs' motions for summary judgment be continued and reset to allow Defendants sufficient time for preparation of their oppositions to those motions.

Dated: February 23, 2009

Respectfully submitted,

/s/ Kathryn M. Knight

Phillip A. Wittmann, 13625

Kathryn M. Knight, 28641

Matthew S. Almon, 31013

Of

STONE PIGMAN WALTHER WITTMANN L.L.C.

546 Carondelet Street

New Orleans, LA 70130

Telephone: (504) 581-3200

and

John H. Beisner (*pro hac vice*)

Jessica Davidson Miller (*pro hac vice*)

O'MELVENY & MYERS, L.L.P.

1625 Eye Street, NW

Washington, DC 20006

Telephone: (202) 383-5300

*Attorneys for the Louisiana Attorney*

*Disciplinary Board, Billy R. Pesnell, and*

*Charles B. Plattsmier*

**CERTIFICATE**

I hereby certify that on this 23rd day of February, 2009, a copy of the foregoing Motion to Continue Trial and Hearings and to Rescind Scheduling Order and Pre-Trial Notice has been served upon each counsel of record by notice of electronic filing generated through the CM/ECF system, and/or by United States mail, facsimile, or e-mail for those counsel who are not participants in the CM/ECF system.

*/s/ Kathryn M. Knight*

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

PUBLIC CITIZEN, INC., et al.	*	
	*	CIVIL ACTION NO. 08-4451, c/w 08-4994
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Plaintiffs,	*	<i>This pleading applies to all cases</i>
	*	
VERSUS	*	SECTION "F"
	*	
LOUISIANA ATTORNEY DISCIPLINARY BOARD, et al.	*	JUDGE FELDMAN
	*	
Defendants.	*	MAGISTRATE WILKINSON
	*	
	*	

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**CERTIFICATE PURSUANT TO CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN ARTICLE 3(2)**

Undersigned counsel for Defendants, the Louisiana Attorney Disciplinary Board, Billy R. Pesnell, and Charles B. Plattsmier, hereby certifies, pursuant to Article 3(2) of this Court's Civil Justice Delay and Expense Reduction Plan, that undersigned counsel has advised his/her clients that counsel has initiated this motion to continue the trial and motion dates, and that his/her clients have been provided with a copy of the Motion to Continue Trial and Hearing

and to Rescind Scheduling Order and Pre-Trial Notice and a copy of the Memorandum in Support.

Dated: February 23, 2009

Respectfully submitted,

/s/ Kathryn M. Knight

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*Attorneys for the Louisiana Attorney*

*Disciplinary Board, Billy R. Pesnell, and*

*Charles B. Plattsmier*

**CERTIFICATE**

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I hereby certify that on this 23rd day of February, 2009, a copy of the foregoing Certificate Pursuant to Civil Justice Expense and Delay Reduction Plan Article 3(2) has been served upon each counsel of record by notice of electronic filing generated through the CM/ECF system, and/or by United States mail, facsimile, or e-mail for those counsel who are not participants in the CM/ECF system.

*/s/ Kathryn M. Knight*

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SUPREME COURT OF LOUISIANA

ORDER

Acting in accordance with Article V, Sections 1 and 5 of the Louisiana Constitution of 1974, the inherent power of this Court, and considering the need to amend the Orders of this Court dated June 26, 2008 and October 31, 2008, regarding certain amendments to the Rules of Professional Conduct,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

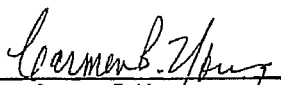
The effective date of the amendments to the Article XVI, Rule 7 series of the Articles of Incorporation of the Louisiana State Bar Association set forth in the October 31, 2008 Order of this Court is hereby amended to October 1, 2009.

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This rule change shall become effective upon signing and shall remain in full force and effect thereafter, until amended or changed through future Orders of this Court.

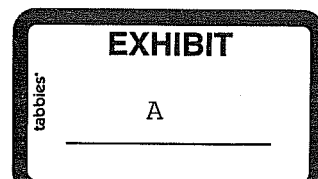
New Orleans, Louisiana, this 18<sup>th</sup> day of February, 2009.

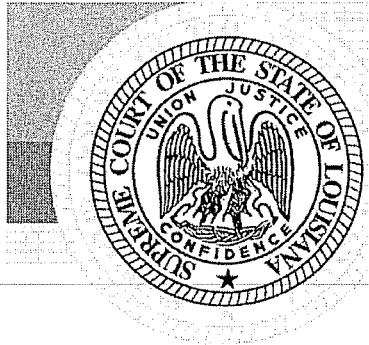
SUPREME COURT OF LOUISIANA  
A TRUE COPY

  
Carmen B. Young  
Deputy Clerk of Court

FOR THE COURT:

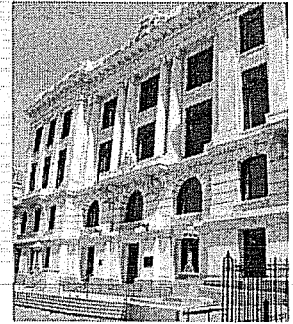
  
Catherine D. Kimball, Chief Justice





# The Louisiana Supreme Court NEWS

400 Royal Street Suite 1190 • New Orleans, LA 70130-8101  
504-310-2550 • [www.lasc.org](http://www.lasc.org)



Contact: Valerie Willard  
504-310-2590

February 18, 2009

FOR IMMEDIATE RELEASE

Chief Justice Catherine D. Kimball announced today that the Court's recently-adopted amendments to the Rules of Professional Conduct pertaining to lawyer advertising will become effective on October 1, 2009, rather than April 1, 2009, as previously announced.

The Court adopted the new rules following a lengthy study conducted by the Louisiana State Bar Association, recommendations of the LSBA House of Delegates, and further study by a Court Committee chaired by Chief Justice Catherine D. Kimball. These processes were triggered by a 2006 Senate Concurrent Resolution finding that lawyer advertising in the state has become undignified and poses a threat to the way the public perceives lawyers in this state. The new rules resulting from these processes balance the right of lawyers to truthfully advertise legal services with the need to improve the existing rules in order to preserve the integrity of the legal profession, to protect the public from unethical and potentially misleading forms of lawyer advertising, and to prevent erosion of the public's confidence and trust in the judicial system.

The Court has decided to defer implementation of the new rules until October 1, 2009, in order to allow the LSBA and the Court to further study certain rules in light of the constitutional challenges that have been raised.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

PUBLIC CITIZEN, INC., et al. \*  
Plaintiffs, \* CIVIL ACTION NO. 08-4451, c/w 08-4994  
VERSUS \* *This pleading applies to all cases*  
LOUISIANA ATTORNEY DISCIPLINARY \*  
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\* MAGISTRATE WILKINSON  
\*  
\* \* \* \* \*

**MEMORANDUM IN SUPPORT OF MOTION TO CONTINUE TRIAL AND  
HEARINGS AND TO RESCIND SCHEDULING ORDER AND PRE-TRIAL NOTICE**

Defendants, the Louisiana Attorney Disciplinary Board, Billy R. Pesnell, and Charles B. Plattsmier (collectively, "Defendants"), submit this memorandum in support of their Motion to Continue Trial and Hearings and to Rescind Scheduling Order and Pre-Trial Notice (hereafter, "Motion to Continue"). In their Motion to Continue, Defendants seek an order of this Court continuing without date the March 23, 2009 trial of this case and the March 4, 2009 hearing on plaintiffs' pending motions for summary judgment; rescinding the current Scheduling Order (Rec. Doc. 30) and Pre-Trial Notice (Rec. Doc. 30-2); and staying all pending matters

associated with this case, including, without limitation, scheduled depositions and discovery. Defendants' motion should be granted, to avoid premature federal constitutional adjudication and a decision that would be advisory in nature.

In this litigation, plaintiffs challenge the constitutionality of certain of the new attorney advertising provisions set forth in Article XVI, Rule 7 of the Articles of Incorporation of the Louisiana State Bar Association ("LSBA"). At the time the Court's Scheduling Order and Pre-Trial Notice were issued, providing for a March 23, 2009 trial date, a March 10, 2009 pre-trial conference date, a March 4, 2009 hearing on dispositive motions, and associated pre-trial deadlines, the advertising rules at issue were to take effect on April 1, 2009. The early motion and trial dates were established to allow this Court to decide plaintiffs' constitutional challenges prior to the April 1 effective date of the challenged rules.

However, on February 18, 2009, the Louisiana Supreme Court ordered that implementation of the new attorney advertising provisions be deferred until October 1, 2009. (*See* Order, attached as Exhibit "A" to Motion to Continue). As set out in the Court's News Release, also issued on February 18th, the purpose of the deferred implementation is "to allow the LSBA and the Court to further study certain rules in light of the constitutional challenges that have been raised." (*See* News Release, attached as Exhibit "B" to Motion to Continue).

During the period of further study, the Louisiana Supreme Court may modify the advertising provisions challenged in the instant litigation, and the rules implemented on October 1 may be different from those currently at issue in this litigation. As a result, the constitutional issues currently before this Court may be mooted or substantially modified by action of the Louisiana Supreme Court. Thus, principles of efficiency and judicial economy would seem to

dictate that this Court delay consideration of the constitutional issues before it, to avoid rendering decisions that may be wholly advisory and to avoid premature federal constitutional adjudication. *See Bolline v. City of New Orleans*, 757 F. Supp. 715, 719 (E.D. La. 1991) (citing *Harman v. Forssenius*, 380 U.S. 528 (1965)).<sup>1</sup>

Expenditure of this Court's and the parties' resources to reach a decision that is merely advisory, whether on summary judgment or at trial, is inconsistent with principles of judicial economy. *See Robichaux Const., Inc. v. Solid Waste Disposal, Inc.*, 707 F. Supp. 242, 245 (E.D. La. 1989). Therefore, this Court should delay consideration of the constitutional issues presently before it to foster "conservation of judicial resources and comprehensive disposition of litigation." *Id.* (quoting *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 816 (1976)).<sup>2</sup> Plaintiffs will lose no rights and suffer no harm as a result of the requested delay, and the Louisiana Supreme Court's process of studying and implementing rules governing the practice of law will be preserved.

Accordingly, pending further action by the LSBA and/or the Louisiana Supreme Court, Defendants respectfully request that the March 23, 2009 trial of this case be continued without date; that hearings on plaintiffs' motions for summary judgment, presently scheduled for March 4, 2009, be continued without date; that the Scheduling Order and Pre-Trial Notice

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<sup>1</sup> In *Bolline*, this Court delayed consideration of the constitutionality of a New Orleans city ordinance while the legality of that same ordinance was at issue in state court.

<sup>2</sup> In *Robichaux*, this Court delayed consideration of a federal RICO allegation pending the outcome of state court proceedings.

currently in effect for this case be rescinded; and that all proceedings, including, without limitation, scheduled depositions and discovery, be stayed.

Dated: February 23, 2009

Respectfully submitted,

/s/ Kathryn M. Knight

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*Attorneys for the Louisiana Attorney*

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### **CERTIFICATE**

I hereby certify that on this 23rd day of February, 2009, a copy of the foregoing Memorandum in Support of Motion to Continue Trial and Hearings and to Rescind Scheduling Order and Pre-Trial Notice has been served upon each counsel of record by notice of electronic filing generated through the CM/ECF system, and/or by United States mail, facsimile, or e-mail for those counsel who are not participants in the CM/ECF system

/s/ Kathryn M. Knight



Louisiana 70130 on the 18th day of March, 2009 at 10:00 a.m., or at such earlier time as the Court deems appropriate.

Dated: February 23, 2009

Respectfully submitted,

/s/ Kathryn M. Knight

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Charles B. Plattsmier*

### **CERTIFICATE**

I hereby certify that on this 23rd day of February, 2009, a copy of the foregoing Notice of Hearing on Motion to Continue Trial and Hearings and to Rescind Scheduling Order and Pre-Trial Notice has been served upon each counsel of record by notice of electronic filing generated through the CM/ECF system, and/or by United States mail, facsimile, or e-mail for those counsel who are not participants in the CM/ECF system.

/s/ Kathryn M. Knight