

SUMMARY

Robert S. Peck, President of the Center for Constitutional Litigation, P.C.
March 29, 2006

Rule 4.04(b)(3)

Mr. Peck finds that the proposed rule creates far greater problems than the one it seeks to ameliorate, while potentially exacerbating the problem of judges being identified with particular advocacy. The proposed rule is one of enormous and problematic breadth. It could affect a wide variety of bar groups and not just plaintiff or defense groups, ideological groups, or corporate counsel groups.

He goes on to point out that the discriminatory treatment that the proposed rule would foster between lawyers' groups and non-lawyer groups raises profound free-speech and equal-protection issues. Further, he states that the general bar association of a locality can easily be dominated by a single law firm or practitioners representing one side of disputes. For that reason, the specialty bars comprise a different constituency within the legal profession than can be reached through the general bars.

To Mr. Peck, the rule as proposed has the twin failings of overinclusiveness and underinclusiveness. It addresses a relatively minor problem using a blunt tool that both fails to resolve initial problem and permits attendance at other forums, placing lawyers' groups at an unconstitutional disadvantage.