


IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF AMENDMENTS
TO NEVADA RULES OF
PROFESSIONAL CONDUCT 7.1 AND
7.2 REGARDING LAWYER
ADVERTISING.

ADKT 527

FILED

MAR 09 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

*ORDER AMENDING NEVADA RULES OF
PROFESSIONAL CONDUCT 7.1 AND 7.2*

WHEREAS, on July 10, 2017, the Board of Governors of the State Bar of Nevada filed a petition in this court seeking the amendment of the Nevada Rules of Professional Conduct 7.1 and 7.2 regarding lawyer advertising; and

WHEREAS, this court solicited public comment on the petition and a public hearing was held in this matter on February 6, 2018; and

WHEREAS, it appears that an amendment to the Nevada Rules of Professional Conduct 7.1 and 7.2 is warranted; accordingly,

IT IS HEREBY ORDERED that Supreme Court Rule 7.1 shall be amended and shall read as set forth in Exhibit A. Supreme Court Rule 7.2 shall be amended and shall read as set forth in Exhibit B.

IT IS FURTHER ORDERED that the amendments to Nevada Rules of Professional Conduct shall be effective 30 days from the date of this order. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of

this court as to the accomplishment of the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rule amendment.

Dated this 9th day of March, 2018

Douglas, C.J.
Douglas

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

cc: Vernon Leverty, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
C. Stanley Hunterton, Bar Counsel
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Administrative Office of the Courts

EXHIBIT A

AMENDMENT TO RULES 7.1, 7.2, 7.2A, AND 7.2B OF THE NEVADA RULES OF PROFESSIONAL CONDUCT

Rule 7.1. Communications Concerning a Lawyer's Services. A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if ~~it:~~

~~(a) Contains] it contains~~ a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially ~~[misleading;~~

~~(b) Is likely to create an unjustified or unreasonable expectation about results the lawyer can or has achieved, which shall be considered inherently misleading for the purposes of this Rule, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;~~

~~(c) Compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or~~

~~(d) Contains a testimonial or endorsement which violates any portion of this Rule.]~~ misleading.

Rule 7.2 Advertising.

~~[(a)]~~ Subject to the requirements of ~~[Rule 7.1,]~~ Rules 7.1 and 7.3, a lawyer may advertise services through ~~[the]~~ written, recorded, or electronic communication, including public ~~[media, such as a telephone directory, legal directory, newspaper or other periodical, billboards and other signs, radio, television and recorded messages the public may access by dialing a telephone number, or through written or electronic communication not involving solicitation as prohibited by Rule 7.3.~~

~~These Rules shall not apply to any advertisement broadcast or disseminated in another jurisdiction in which the advertising lawyer is admitted if such advertisement complies with the rules governing lawyer advertising in that jurisdiction and the advertisement is not intended primarily for broadcast or dissemination within the State of Nevada.] media.~~

(a) Except as allowed under Rule 7.1(e), a lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or written or recorded communication permitted by these Rules and may pay the usual charges of a lawyer referral service or other legal service organization.

(b) Any communication made pursuant to this Rule shall include the following disclaimers and disclosures:

~~[(b)]~~ (1) Use of actors. If the advertisement uses any actors to portray a lawyer, members of the law firm, clients, or utilizes depictions of fictionalized events or scenes, the same must be disclosed. In the event actors are used, the disclosure must be sufficiently specific to identify which persons in the advertisement are actors, and the disclosure must appear for the duration in which the actor(s) appear in the advertisement.

~~[(e)]~~ (2) Lawyer responsible for content. All advertisements and written communications disseminated pursuant to these Rules shall identify the name of at least one lawyer responsible for their content.

~~[(d)]~~ (3) Area(s) of practice. Every advertisement and written communication that indicates one or more areas of law in which the lawyer or law firm practices shall conform to the requirements of Rule 7.4.

~~[(e)]~~ (4) Contingency fees. Every advertisement and written communication indicating that the charging of a fee is contingent on outcome

or that the fee will be a percentage of the recovery shall contain ~~[the following]~~ a disclaimer ~~[if]~~ that the client may be liable for the opposing parties' fees and ~~[costs: "You may have to pay the opposing parties' attorney fees and costs in the event of a loss."]~~ costs.

~~[(f)]~~ (5) Range of fees. A lawyer who advertises a specific fee or range of fees shall include the duration said fees are in effect and any other limiting conditions to the availability of the fees. ~~[For advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.]~~

~~(g) A lawyer may make statements]~~

(6) Quality of services. Statements describing or characterizing the quality of the lawyer's services in advertisements and written ~~[communications. However, such statements]~~ communications are subject to proof of verification, to be provided at the request of the state bar or a client or prospective client.

~~[(h) Any statement or disclaimer required by these rules shall be made in each language used in the advertisement or writing with respect to which such required statement or disclaimer relates; provided, however, the mere statement that a particular language is spoken or understood shall not alone result in the need for a statement or disclaimer in that language.]~~

~~(i)]~~ (7) Statement regarding past results. If the advertisement contains any reference to past successes or results obtained, the communicating lawyer or member of the law firm must have served as lead counsel in the matter giving rise to the recovery, or was primarily responsible

for the settlement or verdict. The advertisement shall also contain a disclaimer that past results do not guarantee, warrant, or predict future cases.

If the past successes or results obtained include a monetary sum, the amount involved must have been actually received by the client, and the reference must be accompanied by adequate information regarding the nature of the case or matter and the damages or injuries sustained by the client, and if the gross amount received is stated, the attorney fees and litigation expenses withheld from the amount must be stated as well.

~~[(j) Disclaimers. In addition to any specific requirements under these rules, any disclosures or disclaimers required by these rules to appear in an advertisement or unsolicited written communication must be of sufficient size to be clearly legible and prominently placed so as to be conspicuous to the intended viewer. If the disclosure or disclaimer is televised or broadcast in an electronic medium, it shall be displayed for a sufficient time to enable the viewer to see and read the disclosure or disclaimer. If the disclosure or disclaimer is spoken aloud, it shall be plainly audible to the intended listener. If the statement is made on a website, the required words or statements shall appear on the same page as the statement requiring the disclosure or disclaimer.~~

~~(k) The following information in advertisements and written communications shall be presumed not to violate the provisions of Rule 7.1:~~

~~(1) Subject to the requirements of this Rule and Rule 7.5, the name of the lawyer or law firm, a listing of lawyers associated with the firm, office addresses and telephone numbers, office and~~

~~telephone service hours, and a designation such as “attorney” or “law firm.”~~

~~(2) Date of admission to the State Bar of Nevada and any other bars and a listing of federal courts and jurisdictions other than Nevada where the lawyer is licensed to practice.~~

~~(3) Technical and professional licenses granted by the state or other recognized licensing authorities.~~

~~(4) Foreign language ability.~~

~~(5) Fields of law in which the lawyer is certified or designated, subject to the requirements of Rule 7.4.~~

~~(6) Prepaid or group legal service plans in which the lawyer participates.~~

~~(7) Acceptance of credit cards.~~

~~(8) Fee for initial consultation and fee schedule, subject to the requirements of paragraphs (e) and (f) of this Rule.~~

~~(9) A listing of the name and geographic location of a lawyer or law firm as a sponsor of a public service announcement or charitable, civic or community program or event.]~~

(c) Any statement or disclaimer required by these rules shall be made in each language used in the advertisement or writing with respect to which such required statement or disclaimer relates; provided, however, the mere statement that a particular language is spoken or understood shall not alone result in the need for a statement or disclaimer in that language.

(d) Any information required by these rules to appear in an advertisement must be reasonably prominent and clearly legible if written, or intelligible if spoken.

~~[(4)]~~ (e) Nothing in this Rule prohibits a lawyer or law firm from permitting the inclusion in law lists and law directories intended primarily for the use of the legal profession of such information as has traditionally been included in these publications.

~~[(m) A copy or recording of an advertisement or written or recorded communication shall be submitted to the State Bar in accordance with Rule 7.2A and shall be retained by the lawyer or law firm which advertises for 4 years after its last dissemination along with a record of when and where it was used.]~~

~~(n) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or written or recorded communication permitted by these Rules and may pay the usual charges of a lawyer referral service or other legal service organization.]~~

Rule 7.2A. Advertising Filing Requirements.

(a) **Filing requirements.** A lawyer or law firm shall file with the state bar (1) a copy or recording of [an advertisement or] all advertisements disseminated in exchange for something of value; and (2) written or recorded [communication published after September 1, 2007, shall be submitted to the state bar in either physical or digital format] communications the lawyer causes to be disseminated for the purpose of advertising legal services. For the purpose of this Rule, websites are not considered to be advertisements subject to filing requirements. Submission shall be in a format provided by the bar within 15 days of first dissemination [along with] accompanied by a form supplied by the state [bar. If a published item that was first disseminated prior to September 1, 2007, will continue to be published after this date, then it must be submitted to the state bar on or before

~~September 17, 2007, along with a form supplied by the state bar.] bar~~
~~and a filing fee, as established by the board of governors.~~

(b) **Failure to file.** A lawyer or law firm's failure to file an advertisement in accordance with paragraph (a) is grounds for disciplinary action. In addition, for purposes of disciplinary review pursuant to Supreme Court Rule 106 (privilege and limitation), when a lawyer or law firm fails to file, the 4-year limitation period begins on the date the advertisement was actually known to bar counsel.

Rule 7.2B. Volunteer Advisory Committees; Pre-Dissemination Review.

(a) **Standing Lawyer Advertising Advisory Committees.** The board of governors shall create ~~[two]~~ a Standing Lawyer Advertising Advisory ~~[Committees, one for each district north and south as defined in Supreme Court Rule 100,]~~ Committee to review filings submitted under Rule 7.2A and to respond to written requests from an advertising lawyer or law firm voluntarily seeking an advance opinion regarding that lawyer's compliance with the advertising rules.

The board of governors may promulgate bylaws, rules of procedure, and reasonable fees for advance opinions to offset the administrative costs of these committees, as it deems necessary and proper. ~~[A state bar staff member or members shall be designated to assist with implementing this Rule, including but not limited to providing administrative support to the standing committees, and receiving and coordinating requests submitted under subparagraph (c)(1) of this Rule.]~~

(1) **Committee composition.** ~~[Each]~~ The committee shall have ~~[a minimum of 5 volunteer members, 4 of whom shall be members of the State Bar of Nevada and 1 of whom]~~ 11 members: 8 of whom shall

be members in good standing of the state bar, 4 of whom shall practice in northern Nevada and 4 of whom shall practice in southern Nevada; 3 members may be [a non-lawyer. Each committee shall also have a minimum of 5 members to serve as ad hoc or conflict replacements when needed. Members must have a full-time business or residential presence in the respective district.] non-lawyers.

(i) **Appointment.** Members shall be appointed by the board of governors and serve 2-year terms, subject to reappointment at the board's discretion. No member shall serve a lifetime total of more than 12 years. Members may be removed by the board of governors for cause.

(ii) **Minimum duties.** ~~[Each]~~ The committee shall meet ~~[at least monthly on a predetermined date, and]~~ as often ~~[thereafter]~~ as ~~[necessary,]~~ necessary to review all matters before it in a timely fashion. Advance opinions shall be provided within 30 days of submission of the request or sooner. Requests to expedite review of advertisements shall be granted whenever possible within reason. The board of governors may promulgate a procedure and attach an added fee for expedited requests.

(b) **Review of filings; advisory opinions to bar counsel.** The committee may issue advisory opinions on any advertisement filed with the state bar. If the committee finds that an advertisement does not comply with these Rules, it may issue an advisory opinion to bar counsel within 30 days of its review. The opinion must include the basis for the Committee's finding of ~~[noncompliance and a recommendation that bar counsel issue a notice to the lawyer or law firm requesting a correction or withdrawal of the advertisement. If bar counsel accepts the committee's recommendation and issues the notice, the advertising lawyer or law firm has 30 days to respond to bar counsel's notice.]~~ noncompliance. Bar

counsel may initiate appropriate disciplinary action if ~~[the lawyer or law firm fails to file a timely response.]~~ warranted.

(c) **Pre-dissemination review.** A lawyer or law firm may file a written request with the state bar seeking an advance opinion on whether a proposed advertisement complies with these Rules. The request shall be made in the form and manner designated by the state bar. ~~[Upon receipt of such request, the state bar shall submit it to the appropriate Standing Lawyer Advertising Advisory Committee for its review.]~~

(1) **Advance opinion.** Within 30 days of submission, the committee shall issue an advance opinion to the lawyer or law firm submitting the request for pre-dissemination review. The opinion shall include a finding of whether the proposed advertisement is in compliance with these Rules. If the Committee finds that the advertisement is not in compliance, then the opinion shall also include the basis for the finding and instructions on how the proposed advertisement can be corrected. Such an adverse opinion must also notify the lawyer or law firm of an opportunity for ~~[a hearing on]~~ an appeal of the committee's finding of ~~[noncompliance and the procedure for requesting such a hearing.]~~ noncompliance.

(2) **Appeal.** ~~[An adverse advance opinion of one committee may be appealed by the requestor in writing to the other committee, which]~~ Appeals are decided by the committee, whose decision shall be controlling.

(d) **Limitations; when binding on discipline authority.** The ~~[committees]~~ committee created under this Rule ~~[are]~~ is primarily dedicated to providing independent, volunteer peer advance opinions to lawyers upon request as a safe-harbor to future disciplinary action only. No request for an advance opinion shall be granted after a disciplinary investigation is

commenced on the subject advertisement. In the event an opinion is inadvertently issued by a committee during or after a disciplinary review is in progress, the decision of any disciplinary panel convened pursuant to Supreme Court Rule 105 shall be controlling.

An advance opinion of noncompliance issued under this Rule shall not be binding on any disciplinary panel or bar counsel. An advance finding of compliance is binding on the disciplinary panel and bar counsel in favor of the advertising lawyer provided that the representations, statements, materials, facts and written assurances received in connection therewith are true and not misleading. An advance opinion of compliance constitutes admissible evidence if offered by a party.

(e) **Annual report.** The board of governors shall file an annual report with the clerk of this court that addresses, among other things, ~~[the state bar's efforts to enforce the rules, the operation of the standing committees, the effectiveness of the current rules and any changes to the rules that this court should consider. The first report under this paragraph shall be filed by December 31, 2008, and then annually thereafter.]~~ the status of lawyer advertising in this state.