

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF AMENDMENTS  
TO NEVADA RULES OF  
PROFESSIONAL CONDUCT: RPC 7.2  
RPC 7.2A, RPC 7.3.

ADKT 0445

**FILED**

DEC 08 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

ORDER

On December 24, 2009, the Board of Governors of the State Bar of Nevada filed the instant petition seeking amendment of Rules of Professional Conduct 7.2, 7.2A, and 7.3. This court conducted a public hearing on this matter and sought input from the bench, bar, and public.

Subsequent to the public hearing, this court received a letter from Richard H. Bryan with comments specifically regarding the amendment of Rule 7.3. That letter was the only written comment received in this matter, and is attached as Exhibit A.

This court has determined that this matter should be referred back to the State Bar to consider the written comment and to make additional recommendations to this court if necessary.

It is so ORDERED.

*[Signature: Saitta]*, C.J.  
Saitta

*[Signature: Douglas]*, J.  
Douglas

*[Signature: Gibbons]*, J.  
Gibbons

*[Signature: Hardesty]*, J.  
Hardesty

*[Signature: Cherry]*, J.  
Cherry

*[Signature: Pickering]*, J.  
Pickering

*[Signature: Parraguirre]*, J.  
Parraguirre

cc: Constance Akridge, President, State Bar of Nevada  
Kimberly Farmer, Executive Director, State Bar of Nevada

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June 11, 2010

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The Honorable Chief Justice Ron D. Parraguirre  
Supreme Court of the State of Nevada  
201 S. Carson Street, Ste. 250  
Carson City, NV 89701-4702

Dear Chief Justice Parraguirre:

I am writing regarding comments to changes in Rule 7.3 which the Court is contemplating. I apologize for the lateness of this communication, but I only recently learned of this development and Rule 7.3 has been a topic of significant interest both to myself and my firm.

As the public hearing notice mentions, the goals of Rules 7.2 and 7.3 are to prevent false, misleading or deceptive solicitations or advertisements and to do so in a way that is consistent with First Amendment protections for commercial speech.

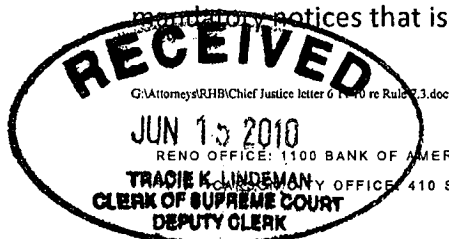
A year or so ago I drafted a letter welcoming a new business to the community and indicating our firm would be happy to assist if they needed local counsel. As a precaution I asked Cam Ferenbach to review the proposed letter. He did so and inquired of the State Bar counsel and was informed such a letter would have to contain a notice required by Rule 7.3; "NOTICE THIS IS AN ADVERTISEMENT!" The advice seemed absurd, as nothing in the letter was either "misleading or deceptive." My understanding is that is the purpose of the rule.

The proposed changes to Rule 7.3 address legibility of mandatory notices and the use of mandatory notices in e-mail communications. However, it is the blanket application of the mandatory notices that is my primary concern.

**FILED**

JUN 15 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK



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Based upon the advice received and by logical extension the following scenarios would likewise require the "NOTICE THIS IS AN ADVERTISEMENT!" legend:

*A new lawyer joins a Nevada law firm. The lawyer attends a Chamber of Commerce meeting and, consistent with the customs of such meetings, hands out business cards to individuals who are not currently clients, introducing herself and telling the people to whom the lawyer gives her business card that she would appreciate being able to assist them if they have legal needs. The business cards are written, but do not contain the notice "NOTICE: THIS IS AN ADVERTISEMENT!"*

*An old law school friend of a local intellectual property attorney is promoted to General Counsel of a local gaming business. As a courtesy, the local intellectual property attorney sends his old friend a professional congratulatory letter. The local gaming business is not a client of the local intellectual property attorney, but may find the local intellectual property attorney's services useful. The letter does not contain the notice: "NOTICE: THIS IS AN ADVERTISEMENT!"*

*A new business opens in town. A lawyer sees the notice and sends a welcome letter to welcome the new business to the community. The letter is in the form of a written communication that does not contain the notice "NOTICE: THIS IS AN ADVERTISEMENT!"*

*After giving a presentation regarding a particular area of the law to a local trade association, as part of the presentation, the lawyer provides printed handouts containing the slides from the presentation. The handout does not contain the notice "NOTICE: THIS IS AN ADVERTISEMENT!"*

*A new law is enacted that is likely to impact employers in the state. A law firm decides to offer a briefing regarding the new law that is set to take effect. To let business owners know of the presentation, the firm sends an invitation and summary to those on its e-mailing list. The list contains current, past and prospective clients who have subscribed to the list. The e-mail notice of the presentation and summary does not begin with the notation "ATTORNEY ADVERTISING:"*

Clearly, as professionals with unique access to the courts and experience in representing the public, we should hold ourselves to the highest standards to ensure that we maintain the public trust while preserving the integrity of the profession. Unfortunately, some in our profession have chosen to operate in a manner that does not comport with these stated goals. In response to such questionable behavior, we have adopted rules to promote these noble goals that are only loosely related to the goals and may actually further erode the image of the profession. For example, sending a professional congratulatory letter to non-client

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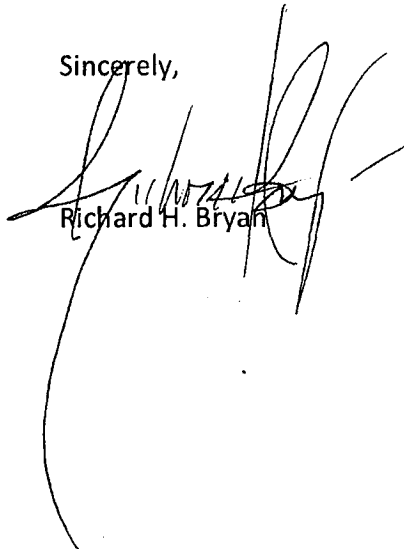
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acquaintance with the notice "*NOTICE: THIS IS AN ADVERTISEMENT!*" may not only be viewed by the recipient as bizarre, but it may also be offensive.

As you review the proposed changes to Rule 7.3, please consider tailoring the Rule to address the problems that the Rule was intended to correct. There should be some nexus between the required notice and the content and circumstances of the communication.

Thank you for your time and attention to this matter.

Sincerely,



Richard H. Bryan