

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

IN THE MATTER OF AMENDMENTS TO)
NEVADA RULES OF PROFESSIONAL)
CONDUCT: RPC 7.2, RPC 7.2a, RPC 7.3)

ADKT 0445

JAN 27 2012

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

STATE BAR'S COMMENTS TO
THE COURT'S ORDER OF DECEMBER 8, 2011

Pursuant to the Court's Order of December 8, 2011, the State Bar of Nevada ("Board") hereby submits its written comments to Richard H. Bryan's letter dated June 10, 2010.

The State Bar's Southern and Northern Lawyer Advertising Advisory Committees ("Committees") reviewed the letter from Richard H. Bryan concerning potential rule changes proposed in ADKT 445 at each of their respective meetings in January, 2011, and provided input to the Board to address the concerns that Mr. Bryan has in regards to Rule of Professional Conduct ("RPC") 7.3(c) Communication With Prospective Clients.

RPC 7.3(c) states:

Direct or indirect mail envelope, and written mail communications or advertising circulars shall contain, upon the outside of the envelope and upon the communication side of each page of the communication or advertisement, in legible type that is at least as twice as large as the largest type used in the body of the communication, in red ink, the following warning:

NOTICE: THIS IS AN ADVERTISEMENT

Mr. Bryan provided several examples in his letter of instances in which he believed the disclaimer required by RPC 7.3(c) would be necessary but also overly burdensome. The first example is of an attorney handing out business cards during a Chamber of Commerce meeting. Mr. Bryan indicates that RPC 7.3(c) would require that the business card contain the disclaimer, "NOTICE: THIS IS AN ADVERTISEMENT."

RECEIVED

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1 The Committees do not agree with this conclusion. While the business card is a written
2 communication it does not fall under the purview of RPC 7.3(c) because it is neither mailed or
3 a type of circular. Also, the participants of a Chamber of Commerce meeting are aware that it
4 is a networking opportunity and are inviting the opportunity to learn about new business
5 services including legal services. As such, the concerns addressed by RPC 7.3(c) are not
6 implicated in this example.

7 The second example is of an attorney sending another attorney, who is also a personal
8 friend, a congratulatory letter for receiving a new position as General Counsel to a local
9 gaming business. While the letter is congratulatory only, the General Counsel may wish to
10 use the sender's legal services in the future. Mr. Bryan indicates that RPC 7.3(c) would
11 require that the congratulatory letter contain the disclaimer, "NOTICE: THIS IS AN
12 ADVERTISEMENT."

13 The Committees do not agree with this conclusion. The Advertising Committee Rules
14 ("ACR"), as enacted by the Board of Governors per RPC 7.2B in ACR 2(o)(1)(h), define as
15 exempt:

16 Listings in a regularly published law list; newsletters or other similar
17 publications directed primarily to other lawyers and legal professionals;
18 and announcements limited to change of address, affiliation, or staffing
are exempt from filing.

19 The Committees agreed that this rule exempts written communications between
20 attorneys. They would regard a congratulatory letter from one attorney to another as being
21 exempt from filing and the requirement of the RPC 7.3(c) disclaimer. The Committees
22 suggest that the ACR definition be broadened to include this type of communication. Further,
23 the Committees feel that the scope of RPC 7.3(c) is to protect prospective clients and not to
24 govern communication between attorneys.

1 The third example is of an attorney sending a welcome letter to a new business in
2 town. Mr. Bryan indicates that RPC 7.3(c) would require that the welcome letter contain the
3 disclaimer, "NOTICE: THIS IS AN ADVERTISEMENT."

4 The Committees agree with this conclusion. Because the letter is a written
5 communication which is mailed to an individual who is a prospective client and is not an
6 attorney, it falls under the purview of RPC 7.3(c). The Committees believe that the purpose
7 of the welcome letter is to introduce the new business to the legal services of the attorney
8 and that "a significant motive for the lawyer's doing so is the lawyer's pecuniary gain" as
9 stated in RPC 7.3(a). In this example, the welcome letter would need the disclaimer,
10 "NOTICE: THIS IS AN ADVERTISEMENT" printed in red on the envelope as well as upon
11 each page of the communication.

12 The fourth example is of an attorney providing a printed handout of slides from a
13 presentation to a local trade group. Mr. Bryan indicates that RPC 7.3(c) would require that the
14 handout contain the disclaimer, "NOTICE: THIS IS AN ADVERTISEMENT."

15 The Committees do not agree with this conclusion. While the handout is a written
16 communication it does not fall under the purview of RPC 7.3(c) because it is neither mailed or
17 a type of circular. Further, in the instance of a presentation, the attendees of the presentation
18 have opted to be present and to receive the information. The Committees did conclude that
19 any advertisement for the presentation mailed to prospective participants would need the
20 disclaimer.

21 The final example is of an e-mail solicitation for a presentation that is sent to current,
22 past and prospective clients who subscribe to a firm's e-mail list. Mr. Bryan indicates that
23 RPC 7.3(c) would require that the e-mail contain the disclaimer, "NOTICE: THIS IS AN
24 ADVERTISEMENT."

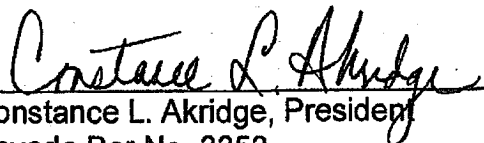
1 The Committees do not agree with this conclusion. Because the recipients of this e-
2 mail have subscribed to be on the firm's e-mail list, they have opted to receive information
3 from this firm. If the recipients of the e-mail had not subscribed to the list, the Committees
4 conclude that the e-mail would need the disclaimer, "NOTICE: THIS IS AN
5 ADVERTISEMENT" in the subject line of the e-mail. The Committees note that this "subject
6 line" requirement is one of the proposed rule changes in ADKT 445.

7 The Committees believe that RPC 7.3(c) serves to inform the public that they are being
8 exposed to an advertisement rather than a legal document requiring their attention. The Office
9 of Bar Counsel has told the Committees about instances of the public being frightened by
10 receiving attorney advertisements in the form of letters which they believed to be legal
11 documents. In at least one instance, an elderly woman who had previously received a notice
12 of default was frightened to open an envelope which had an attorney's return address on it but
13 with no disclaimer. The woman believed she was being sued and called her husband to come
14 home from work. It wasn't until after he opened the letter that they realized it was an
15 advertisement. It is to prevent this type of scenario that RPC 7.3(c) requires a clearly visible
16 disclaimer on the envelope and upon each page of the communication.

17 We hope that these comments assist the judicial panel in their consideration of ADKT
18 445.

19 Respectfully submitted this 24th day of January, 2012.

20 STATE BAR OF NEVADA
21 BOARD OF GOVERNORS

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STATE BAR OF NEVADA

January 25, 2012

Chief Justice Nancy Saitta
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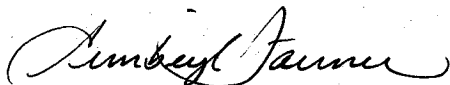
RE: ADKT 0445

Dear Chief Justice Saitta:

An Order seeking state bar comments to ADKT 0445 was filed in the Supreme Court on December 8, 2011.

On behalf of the Board of Governors I am pleased to submit to the Court the attached petition with respect to ADKT 0445. I am available to provide further information to the Court as requested.

Respectfully,



Kimberly K. Farmer
Executive Director

cc: Connie Akridge, President
Tracie Lindeman

Enclosure



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