IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE AMENDMENT OF RULES OF PROFESSIONAL CONDUCT 7.2, 7.2A, AND 7.3.

ADKT No. 445

FILED

APR 29 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER SCHEDULING PUBLIC HEARING

On December 24, 2009, the Board of Governors of the State Bar of Nevada filed a petition with this court seeking the amendment of RPC 7.2, RPC 7.2A, and RPC 7.3 The petition and proposed amendment to the rules are attached as Exhibit A.

The Nevada Supreme Court will conduct a public hearing on this matter. The public hearing will be held on Monday, June 7, 2010, at 3:00 p.m. in the Nevada Supreme Court Courtroom, Regional Justice Center, 200 Lewis Street, 17th Floor, Las Vegas, Nevada. The hearing will be videoconferenced to the Nevada Supreme Court Courtroom at 201 South Carson Street, Carson City, Nevada.

The bench, bar and the public are invited to submit written comments on the proposed rule amendment. An original and 8 copies of written comments are to be submitted to: Tracie K. Lindeman, Clerk of the Supreme Court, 201 South Carson Street, Carson City, Nevada 89701 by 5:00 p.m., June 3, 2010. Persons interested in participating in the hearing must notify the Clerk no later than June 3, 2010.

Hearing date: June 7, 2010, at 3:00 p.m.
Nevada Supreme Court Courtroom
Regional Justice Center
200 Lewis Street, 17th Floor
Las Vegas, Nevada

Comment deadline: June 3, 2010, at 5:00 p.m.
Supreme Court Clerk's Office
201 South Carson Street
Carson City, Nevada 89701

DATED this 29th day of April, 2010.

_____, C.J.
Parraguirre

cc: All District Court Judges
Kathleen J. England, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Administrative Office of the Courts

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

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In the matter of amendments to)
RPC 7.2, RPC 7.2A, RPC 7.3)

ADKT NO. 445

DEC 24 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

PETITION

In accordance with N.R.A.D. 3.2, the Board of Governors of the State Bar of Nevada hereby petitions this Court to amend Nevada Rule of Professional Conduct ("RPC") 7.2 (Advertising), RPC 7.2A (Advertising Filing Requirements) and 7.3 (Communications With Prospective Clients) as fully set forth in **Exhibit 1.**

A. Introduction.

On September 1, 2007, the current versions of Nevada's advertising rules went into effect. The revised rules repealed aspects of the prior rules directed at "taste" regulation, which was likely prohibited by the First Amendment of the United States Constitution. Instead, the revised rules focused on curbing misleading advertisements. An advertisement could be misleading if it featured a misleading statement or contained a truthful statement, but omitted certain information.

Pursuant to federal case law, a state may outright prohibit false or misleading statements. *See Zauderer v. Office of Disc. Counsel*, 471 U.S. 626, 638 (1985); *see also Friedman v. Rogers*, 440 U.S. 1, 9 (1979). A state may also require disclosures for truthful statements that would be otherwise misleading due to the omission of certain information, provided that the requirements are not overly burdensome. *See In re R. M. J.*, 455 U.S. 191, 203 (1982); *see also Zauderer*, 471 U.S. at 628.

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DEC 22 2009
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

The current version of the rules require disclaimers or disclosures in certain instances, such as when an attorney advertises contingency fees[1], a specific fee[2], or sends solicitation letters to prospective clients with whom the attorney has no prior relationship[3].

In enforcing the advertising rules, certain disclosure requirements have raised concerns of being overbroad and, as will be indicated below, could be more narrowly tailored in order to comply with constitutional requirements. The proposed revisions also include a general rule regarding legibility requirements for disclosures and disclaimers, as well as additional disclosures for advertisements regarding past results and e-mail solicitations.

B. RPC 7.2(b) – Use of Actors in Advertisements.

RPC 7.2(b) states, in relevant part:

> If a person appears as a lawyer is an advertisement for legal services, or under such circumstances as may give the impression that the person is a lawyer, such person must be a member of the State Bar of Nevada, admitted to practice and in good standing before the Supreme Court of Nevada, and must be the lawyer who will actually perform the service advertised or a lawyer associated with the law firm that is advertising. If a person appears in an advertisement as an employee of a lawyer or law firm, such person must be an actual employee of the lawyer or law firm whose services are advertised unless the advertisement discloses that such person is an actor. If an actor appears in any other role not prohibited by these Rules, the advertisement must disclose that such person is an actor.

In applying this rule, the Standing Lawyer Advertising Committee and the State Bar have encountered scenarios where "stock" photos or footage were used in the attorney advertisement, and despite the lack of disclaimer, were not found to be misleading as the picture did not reference any attorney, attorney's staff or client, nor did the advertisements

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[1] *See* RPC 7.2(e).
[2] *See* RPC 7.2(f).
[3] *See* RPC 7.3.

dramatize any court case or other scenario that could reasonably be mistaken for an actual event. **See Exhibit 2**. Typically, the use of undisclosed actors was typically found to be misleading when used to portray attorneys, staff and/or clients, and in dramatizations where it was not immediately apparent whether the client testimony was true or fictional. **See Exhibit 3.** The current version of the rule does not specifically reference clients.

The rule also requires that any person appearing as a lawyer actually be a Nevada-licensed attorney. However, the requirement is overbroad as certain areas of practice, *e.g.*, immigration, intellectual property, patent law, do not necessarily require the attorney to be licensed in Nevada. As such, the current rule prohibits attorneys not licensed in Nevada but otherwise authorized to practice law in Nevada from appearing in advertisements.

Suggested Rule Change:

> ~~Advertisements on the electronic media such as the Internet, television and radio may contain the same factual information and illustrations as permitted in advertisements in the print media. If a person appears as a lawyer in an advertisement for legal services, or under such circumstances as may give the impression that the person is a lawyer, such person must be a member of the State Bar of Nevada, admitted to practice and in good standing before the Supreme Court of Nevada, and must be the lawyer who will actually perform the service advertised or a lawyer associated with the law firm that is advertising. If a person appears in an advertisement as an employee of a lawyer or law firm, such person must be an actual employee of the lawyer or law firm whose services are advertised unless the advertisement discloses that such person is an actor. If an actor appears in any other role not prohibited by these Rules, the advertisement must disclose that such person is an actor.~~
>
> ***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.***

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C. RPC 7.2(c) – Attorney Identification in Advertisements.

RPC 7.2(c) states:

> All advertisements and written communication disseminated pursuant to these Rules shall include the name of at least one lawyer or law firm responsible for their content.

In the 2007 amendment to this rule, the Court added language that allows a law firm to advertise without having to include the name of an individual lawyer responsible for the content of the advertisement. While this conforms to the ABA Model Rule[4] in regard to the addition of "or law firm," some firms use a trade name pursuant to RPC 7.5, which may not identify a named lawyer, making it difficult for the State Bar and the public to readily ascertain information regarding the lawyer or firm in advertising the legal services.

For example, attached hereto as **Exhibit 4** is a script from an advertisement filed by The 4 Firm. As "The 4 Firm" is the trade name of the law firm, the advertisement does not violate RPC 7.2(c). However, if a member of the public wanted to find out more information on the firm, based on "The 4 Firm" alone, there is not much information that could be provided if that member were to call the State Bar. Using the State Bar's database, there are no attorneys who identify "The 4 Firm" as his/her company name.

Similarly, **Exhibit 5** is an advertisement that was filed by Justice Injury Lawyers. Again, should a member of the public call the State Bar for information on the firm, there would be no records of such a named firm. The use of trade names may obscure the identity of the responsible attorney and impede the consumer from researching references and discipline history.[5]

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[4] The ABA Model Rule also requires that an office address be included in the communication. This is not present in the Nevada Rule.

[5] Part of this problem is alleviated by RPC 1.4(c), which requires that attorneys have Biographical Data Forms available upon request.

Suggested Rule Change:

> All advertisements and written communications disseminated pursuant to these Rules shall ***identify*** ~~include~~ the name of at least one lawyer ~~or law firm~~ responsible for their content.

D. RPC 7.2(e) – Contingency Fee Disclaimer.

RPC 7.2(e) states:

> 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 disclaimer: "You may have to pay the opposing party's attorney fees and costs in the event of a loss."

The disclaimer required by the RPC 7.2(e), although appropriate in personal injury matters, may be contrary to the law in other areas. Specifically, in worker's compensation and social security law, claimants are not required to pay the opposing party's attorneys fees and costs in the event of a loss. As such, the rule should be revised to only include the disclaimer in instances where the prospective client may actually be obligated to pay the opposing party's fees and costs in the event of a loss.

Suggested Rule Change:

> 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 disclaimer ***if the client may be liable for the opposing parties fees and costs***: "You may have to pay the opposing party's attorney fees and costs in the event of a loss."

E. RPC 7.2(f) – Advertising of Fees.

RPC 7.2(f) states:

> A lawyer who advertises a specific fee or range of fees shall include all possible terms and fees, and the duration said fees are in effect. Such disclosures shall be presented with equal prominence. For advertisements in the yellow pages of telephone directories or other media not published more frequently then annually, the advertised fee or range of fees shall be honored for no less than one year following publication.

In the 2007 amendment to this rule, this Court added language that required attorneys who advertise a specific fee or range of fee to include all possible terms and fees, and the duration said fees are in effect. Although the purpose of this provision was to notify the prospective client as to any limiting conditions imposed on the advertised fee in order to avoid a "bait and switch" scenario, the actual language is overbroad, requiring all possible terms and fees. Some attorneys who contacted the bar complained that the rule, as written, essentially requires such advertisements to contain their entire fee agreement.

The proposed revision requires that, if a specific fee is advertised, any limiting conditions must be disclosed as to the advertised fee(s), but removes the requirement that all possible terms and fees be disclosed.

Suggested Rule Change:

> A lawyer who advertises a specific fee or range of fees shall include ~~all possible terms and fees, and~~ the duration said fees are in effect ***and any other limiting conditions to the availability of the fee(s).*** Such disclosures shall be presented with equal prominence. 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.

F. New Disclaimer Rule Regarding Foreign Languages.

The rules currently do not specifically mandate that disclaimers appear in the same language as the statement which requires the disclosure. As such, the prospective clients for whom these advertisements are intended may not be able to read or understand the English disclaimers, thereby rendering them ineffective. The proposed rule is taken from Texas' Rule of Professional Conduct 7.02(d) (Communications Concerning a Lawyer's Services).

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Suggested Rule Addition:

> (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.

G. New Disclaimer Rule Regarding Legibility.

Currently, there is no general rule regarding legibility requirements for disclaimers. The proposed rule, based loosely on Louisiana's Rule of Professional Conduct 7.2(c)(10) provides that any necessary disclosures or disclaimers, if written, be large enough and prominently placed so that the intended viewer can easily see and read the disclosure or disclaimer.

No specific size or placement requirement is imposed pursuant to the proposed rule. The State Bar's experience in reviewing advertising rules, particularly RPC 7.3, is that an advertisement can meet the goals of being legible and conspicuous without strict adherence to specific size and placement requirements.

The requirement that a disclaimer be prominent has been upheld by the federal courts. Further, federal courts, in issuing injunctions, have frequently required the disclaimer to be prominently displayed. *See Better Business Bureau of Metropolitan Houston, Inc., v. Medical Directors, Inc.*, 681 F.2d 397, 406 (5th Cir. 1982) (issuing injunction requiring, in part, that the subject advertisements use a disclaimer in a "prominent manner appropriate to the media"); *Commodity Futures Trading Commission v. Vartuli*, 228 F.3d 94, 106-07 (2nd Cir. 2000) (upholding injunction against computer software company's advertisements that did not "prominently" place disclaimers in advertisement, although disclaimer was contained within materials); *Hayes v. Zakia*, 327 F.Supp. 2d 224, 231-32 (W.D.N.Y. 2004) (stating that although 'prominently made'

requirement is subjective in its interpretation, the language is sufficiently plain and adequate to put attorneys on notice that the disclaimer cannot be presented in an obscure fashion and "simply informs" the attorney that the disclaimer "must be displayed in a manner that will not render it unreadable and meaningless for the average viewer"); *Nissan Motor Co., Ltd., v. Nissan Computer Corp.*, 89 F.Supp.2d 1154, 1165 (C.D.Cal. 2000) (issuing injunction requiring computer company to post a "prominent disclaimer" on upper portion of website); *Quichocho v. Macy's Dept. Stores, Inc.*, 2008 WL 2669301 (Guam Terr.) (stating that "[d]isclaimers may be ineffective if they are inconspicuously located"), *citing Am. Home. Prods. Corp. v. Johnson & Johnson*, 654 F.Supp 568, 590 (S.D.N.Y. 1987).

As such, the proposed rule is likely to survive any constitutional challenge as to vagueness. Further, if enacted, the State Bar would issue guidelines regarding the size and placement of disclosures or disclaimers that would be presumed to satisfy the rule's requirements, and these guidelines would address the various media used in attorney advertising, *e.g.*, billboards, flyers, post cards, televisions ads.

Suggested Rule Change:

> <u>(i) 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 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 web site, the required words or statements shall appear on the same page as the statement requiring the disclosure or disclaimer.</u>

Should the proposed rule be enacted, the size requirements contained in RPC 7.2(f) and RPC 7.3 should also be repealed.

RPC 7.2 (Advertising)

. . .

(f) A lawyer who advertises a specific fee or range of fees shall include all possible terms and fees, and the duration said fees are in effect. ~~Such disclosures shall be presented with equal prominence.~~ 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.

Rule 7.3. Communications With Prospective Clients.

. . .

(b) Direct or indirect written advertising. Any direct or indirect written mail communication or advertising circular distributed to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but who are so situated that they might in general find such services useful, shall contain the disclaimers required by Rule 7.2. The disclaimers shall be in a type size and legibility sufficient to cause the disclaimers to be conspicuous, ~~and in a size at least as large as the largest of any telephone number appearing in the ad.~~

(c) Additional disclaimer on mailers or written advertisements or communications. 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 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!

<u>If the written communication is in the form of a self-mailing flyer, brochure or pamphlet, the warning shall appear above the address panel of the flyer, brochure or pamphlet.</u>

H. Disclaimer Regarding Past Results.

RPC 7.1(a) (Communication Concerning a Lawyer's Services) states that a statement regarding past results the attorney has achieved is prohibited if it is likely to create an unjustified or unreasonable expectation. The rules proffered no specific

disclaimer for such statements. The State Bar advised attorneys whose advertisements stated past results that a disclaimer was necessary to inform the viewer that past results did not predict, warrant or guarantee the prospective client's case.

The proposed rule, based upon Texas Rule of Professional Conduct 7.02(a)(2) (Communication Concerning a Lawyer's Services), would establish the disclaimer in the rules, and further require the attorney to disclose the net amount received by the client, as it would be misleading to advertise an awards that was overturned on appeal or if the parties subsequently settled for a lesser amount.

Suggested Rule Change:

> (i) Statements 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 no guarantee, warrant or predict future cases.
>
> If the referenced past success or results obtained includes a monetary sum, the amount involved must have been actually received by the client, 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's fees and litigation expenses withheld from the amount must be stated as well.

I. RPC 7.2A(a) –Advertising Filing Requirements.

RPC 7.2A(a) states, in relevant part:

> A copy or recording of an advertisement or written or recorded communication published after September 1, 2007, shall be submitted in both hard copy and electronic format within 15 days of the first dissemination along with a form supplied by the state bar.

The RPC 7.2A filing requirement was established with the 2007 amendments. The State Bar determined that the intent of the Court was to have an attorney file his

advertisement by mailing a copy of the form and advertisement to the State Bar, as well as e-mail the advertisement or provide the advertisement on a CD or DVD-ROM to the State Bar. While it is essential that radio and television advertisements are submitted in an electronic format, the State Bar found that it was overly burdensome on some of the membership to require that they submit print advertisements in both electronic format as well as in hard copy.

After the implementation of the rules, it soon became apparent that many sole practitioners and smaller firms who only advertised in the print media did not possess the equipment necessary to convert their advertisement into an electronic format, such as a scanner. Additionally, it requires extra effort by the Advertising Administrator to process advertisements filed by e-mail and then locate the matching hard copy. The State Bar offices have scanning equipment, and the Advertising Administrator can easily scan print advertisements for storage in the electronic database. Removing the requirement that print advertisements be filed in an electronic format would not affect the State Bar's ability to process or review advertisements and, in fact, would liberate State Bar resources.

Suggested Rule Change:

> **Filing requirements**. A copy or recording of an advertisement or written or recorded communication published after September 1, 2007, shall be submitted to the state bar in ***either*** ~~both~~ ***physical*** ~~hard copy~~ ***or*** ~~and~~ ***digital*** ~~electronic~~ format within 15 days of first dissemination along with 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. ~~The form shall include a provision for members to request a waiver of the electronic filing requirement for good cause.~~

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J. RPC 7.3(c) – Additional disclaimer on mailers or written advertisements or communications.

RPC 7.3 (c) states that:

> (c) **Additional disclaimer on mailers or written advertisements or communications.** 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 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!**

This provision, however, is not easily, if at all, applicable to electronic mail solicitations as they do not contain envelopes and are of a different nature than mailed solicitations. As such, the rule should be modified to include a provision that the subject line of any e-mail solicitation sent pursuant to this rule include, in the e-mail's subject line the term "Attorney Advertising." The shorter disclosure takes into account the space limitations of a subject line.

Suggested Rule Change:

> (c) **Additional disclaimer on mailers or written advertisements or communications.** 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 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!**
>
> <u>In case of electronic mail, the subject line shall begin with the notation "Attorney Advertising."</u>

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K. RPC 7.3(d) –Target Mail to Prospective Clients.

RPC 7.3(d) states, in relevant part:

> Written communication directed to a specific prospective client who may need legal services due to a particular transaction or occurrence is prohibited in Nevada within 45 days of the transaction or occurrence giving rise to the communication.

A 30-day period no-contact period has been approved in regard to accident victims and their relatives by the United States Supreme Court in *Florida Bar v. Went For It, Inc.*[6] However, the decision only discussed personal injury/wrongful death in regard to the no-contact rule, and attempts to expand the no contact rule beyond personal injury/wrongful death may be overly broad and prevent potential clients from receiving the legal services they need in a timely matter. *See e.g.*, *Ficker et al v. Curran et al,* 119 F. 3d 1150, 1155-56 (4th Cir. 1997) (striking down Maryland's 30-day no-contact rule in regarding to mailed solicitation for criminal matters noting, in part, that a criminal defendant has different privacy concerns and was on a much more accelerated calendar than a plaintiff in a personal injury matter); *see also* Tex. Atty. Gen. Op. JC-0022, 1999 WL 156298 (Tex. A.G.) (advisory opinion concluding that no-contact rule would likely be found unconstitutional as applied to solicitations concerning criminal matters).

The current rule, although prohibiting plaintiff's counsel from contacting the prospective client, does not prohibit contact by counsel for the potential defendants. As such, given that the purpose of the no-contact rule is to preclude a vulnerable person from being exploited, the rule should be modified to preclude contact by either plaintiff or defendant counsel. The proposed revisions are based upon the New York version of the rule, which addresses contact by both plaintiff and defense counsel. The New York rule was found to be constitutional in *Alexander v. Cahill*, 634 F.Supp. 2d 239, 253-54 (N.D.N.Y.

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[6] 515 U.S. 618, 635 (1995).

2007). The *Cahill* decision is currently pending review before the Second Circuit Court of Appeals.

Suggested Rule Change:

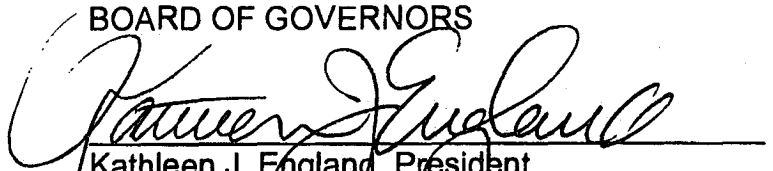
> ***In the event of an incident involving potential claims for personal injury or wrongful death, written*** ~~Written~~ communication directed to ***an individual injured in the incident or to a family member or legal representative of such an individual,*** ~~a specific prospective client who may need legal services due to a particular transaction or occurrence~~ ***seeking to represent the injured individual or legal representative thereof in potential litigation or in a proceeding arising out of the incident*** is prohibited in Nevada within ***30*** ~~45~~ days of the ***date of the incident.*** ~~transaction or occurrence giving rise to the communication.~~ After ***30*** ~~45~~ days following the ***incident*** ~~transaction or occurrence~~, any such communication must comply with paragraphs (b) and (c) of this Rule and must comply with all other Rules of Professional Conduct.
>
> **This provision limiting contact with an injured individual or the legal representative thereof applies as well to lawyers or law firms or any associate, agent, employee or other representative of a lawyer or law firm who represent actual or potential defendants or entities that may defend and/or indemnify said defendants.**

CONCLUSION

Whereas, the Board of Governors respectfully recommends that this honorable Court so amend Nevada Rule of Professional Conduct ("RPC") 7.2 (Advertising), RPC 7.2A (Advertising Filing Requirements) and 7.3 (Communications With Prospective Clients) as fully set forth in **Exhibit 1.**

Respectfully submitted this 10th day of December, 2009.

STATE BAR OF NEVADA
BOARD OF GOVERNORS



Kathleen J. England, President
Nevada Bar No. 206
600 East Charleston Boulevard
Las Vegas, Nevada 89104
(702) 382-2200

Exhibit 1

EXHIBIT 1

Rule 7.2. Advertising.

(a) Subject to the requirements of Rule 7.1, a lawyer may advertise services through the 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.

(b) ~~Advertisements on the electronic media such as the Internet, television and radio may contain the same factual information and illustrations as permitted in advertisements in the print media. If a person appears as a lawyer in an advertisement for legal services, or under such circumstances as may give the impression that the person is a lawyer, such person must be a member of the State Bar of Nevada, admitted to practice and in good standing before the Supreme Court of Nevada, and must be the lawyer who will actually perform the service advertised or a lawyer associated with the law firm that is advertising. If a person appears in an advertisement as an employee of a lawyer or law firm, such person must be an actual employee of the lawyer or law firm whose services are advertised unless the advertisement discloses that such person is an actor. If an actor appears in any other role not prohibited by these Rules, the advertisement must disclose that such person is an actor.~~

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.

(c) All advertisements and written communications disseminated pursuant to these Rules shall ~~include~~ identify the name of at least one lawyer ~~or law firm~~ responsible for their content.

(d) 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) 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 disclaimer if the client may be liable for the opposing parties fees and costs: "You may have to pay the opposing party's attorney fees and costs in the event of a loss."

(f) A lawyer who advertises a specific fee or range of fees shall include ~~all possible terms and fees, and~~ the duration said fees are in effect and any other limiting conditions to the availability of the fee(s). ~~Such disclosures shall be presented with equal prominence~~. 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 describing or characterizing the quality of the lawyer's services in advertisements and written communications. However, such statements 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) Statements 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 no guarantee, warrant or predict future cases.

If the past success or results obtained includes 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's fees and litigation expenses withheld from the amount must be stated as well.

(i) 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 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 web site, the required words or statements shall appear on the same page as the statement requiring the disclosure or disclaimer.

(~~h~~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.

(~~i~~l) 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.

(~~j~~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.

(~~k~~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 copy or recording of an advertisement or written or recorded communication published after September 1, 2007, shall be submitted to the state bar in ~~both~~ either physical ~~hard copy and~~or ~~electronic~~ digital format within 15 days of first dissemination along with 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. ~~The form shall include a provision for members to request a waiver of the electronic filing requirement for good cause.~~

(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 7.3. Communications With Prospective Clients.

(a) **Direct contact with prospective clients.** Except as permitted pursuant to paragraph (d) of this Rule, a lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, by mail, in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone, telegraph or facsimile, by letter or other writing, or by other communication directed to a specific recipient.

(b) **Direct or indirect written advertising.** Any direct or indirect written mail communication or advertising circular distributed to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but who are so situated that they might in general find such services useful, shall contain the disclaimers required by Rule 7.2. The disclaimers shall be in a type size and legibility sufficient to cause the disclaimers to be conspicuous~~, and in a size at least as large as the largest of any telephone number appearing in the ad~~.

(c) **Additional disclaimer on mailers or written advertisements or communications.** 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 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!

<u>In case of electronic mail, the subject line shall begin with the notation "Attorney Advertising."</u>

(d) **Target mail to prospective clients.** <u>In the event of an incident involving potential claims for personal injury or wrongful death, written</u>~~Written~~ communication directed to <u>an individual injured in the incident or to a family member or legal representative of such an individual, seeking to represent the injured individual or legal representative thereof in potential litigation or in a proceeding arising out of the incident</u> ~~a specific prospective client who may need legal services due to a particular transaction or occurrence~~ is prohibited in

Nevada within ~~45~~ 30 days of the ~~transaction or occurrence giving rise to the communication~~date of the incident. After ~~45~~ 30 days following the ~~transaction or occurrence~~incident, any such communication must comply with paragraphs (b) and (c) of this Rule and must comply with all other Rules of Professional Conduct.

This provision limiting contact with an injured individual or the legal representative thereof applies as well to lawyers or law firms or any associate, agent, employee or other representative of a lawyer or law firm who represent actual or potential defendants or entities that may defend and/or indemnify said defendants.

Exhibit 2

DON'T SETTLE FOR LESS.

Get the breadth of experience you need.

You've heard the term "up a creek without a paddle." Sure. That's the point you call a law firm to help with your litigation needs. The question is, what kind of paddles are they bringing to the table? Parsons Behle & Latimer has years of litigation experience from a well-seasoned team of attorneys. From these attorneys, a custom team is formed to work for you based on your needs so you get the experience you need—every time, in every situation. In short, we carry a big paddle.

Parsons Behle & Latimer

RENO 775.323.1601 | LAS VEGAS 702.384.3877 | PARSONSBEHLELAW.COM

SALT LAKE CITY 801.532.1234 | 800.293.9669

DON'T SETTLE FOR LESS.

Get the depth of experience you need.

Sure, on the surface some law firms might appear to be capable of handling your real estate needs. Upon closer inspection you may find their experience a bit...ahem...shallow. Parsons Behle & Latimer's well-seasoned team of attorneys offers the environmental and tax expertise that's critical for real estate transactions. They've been around the block a time or two (or three) and are prepared with vast legal experience. Now that's deep.

Parsons Behle & Latimer

RENO 775.323.1601 | LAS VEGAS 702.364.5877 | PARSONSBEHLELAW.COM

SALT LAKE CITY 801.532.1234 | 800.228.9969

DON'T SETTLE FOR LESS.

Get the breadth of experience you need.

A lot of people leave themselves exposed when it comes to corporate law by choosing a law firm that lacks the necessary experience. Why? We're not sure. But it's the kind of choice that can lead to a downpour of legal troubles. Parsons Behle & Latimer has years of experience in corporate law with a well-seasoned team of attorneys who have served companies of all sizes. In short, we've got you covered.

Parsons Behle & Latimer

RENO 775.323.1601 | LAS VEGAS 702.384.3877 | PARSONSBEHLELAW.COM

SALT LAKE CITY 801.532.1234 | 800.293.9669

Exhibit 3

WE HAVE A HISTORY OF HELPING INJURED PEOPLE IN THE LAS VEGAS VALLEY

ALL PERSONAL INJURIES & WORKER INJURIES

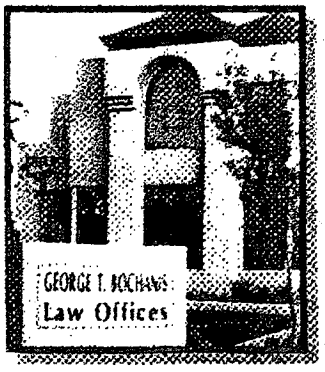
LAW OFFICES OF

GEORGE T. BOCHANIS

OVER 20 YEARS EXPERIENCE • HIGHEST LEGAL RATING WITH MARTINDALE-HUBBEL

Since 2002 We Will Match Any Other Personal Attorney* Contingency Fee

Sheets Representation • Experienced Negotiation • Maximum Compensation



Don't Let Insurance Companies Take Advantage of You, Call

388-2005

631 South 9th St. • Se Habla Español

Visit us at www.LVaccident.com

*With their same terms

Exhibit 4

34868.

AA Take Action :10

Client: The 4 Firm | Job #: TFF 0003 | Date: 08/27/2007

Comments: | Changed by: Matt Nahay

☒ New ☐ Revised ☐ Creative

Traffic Notes: | Traffic Status: ○ Active ○ Archive

○ Unapproved ◉ Approved ○ Do Not Air

Type	Auto Accident	#9	Length :10	Master	TFF 0003-BM-1	Code	TFF 1010
Status	Final	DG	Market	Las Vegas	State NV	Producer	Matt
Template		VO	Info			Editor	

Bug

Tag Info:

MAIN PHONE: 444-4444

OTHER PHONE:

24 / 7: Yes-24/7

WEB SITE: the4firm.com

ADDRESS:

OTHER:

Disclaimer Info:

No Disclaimers

Audio

Nancy on greenscreen

If you've been injured in a car accident, don't take on the insurance company alone, Think 4. Call The 4 Firm right now.

444.4444

Music Used:

Pronunciation Note:

Four--Four--Four--Forty Four--Forty Four

Exhibit 5

JUSTICE INJURY LAWYERS

Slot Machine Copy 15 second TV spot

Injured in an accident? Don't gamble with your case. Call 862-help and get all the money that you deserve.