

1 established the regulatory structure for lawyer advertising in Nevada. Except for
2 minor amendments in 2012, these rules have been in effect for the past decade.

3 As part of its ten-year review, the Taskforce considered several issues affecting
4 the regulation of lawyer advertising in this State. Taskforce members were drawn
5 from the Board of Governors and current members of the southern and northern
6 Nevada Lawyer Advertising Advisory Committees.

7 The Taskforce began by looking at adoption of lawyer advertising rules in other
8 jurisdictions. In recent years, there has been a shift in regulatory models nationwide,
9 with a trend toward adoption of the American Bar Association (ABA) Model Rules
10 for Lawyer Advertising. ABA Model Rule 7.1, for example, simply states that
11 lawyer advertising, regardless of the media in which the advertisement is
12 disseminated, shall not be false or misleading. ABA Model Rule 7.2 goes a step
13 further by subjecting violations of advertising rules to the same process as other
14 alleged rule violations where investigation is initiated upon receipt of a complaint,
15 rather than upon review and referral by a bar committee.

16 A review of 19 unified bar association lawyer advertising rules revealed varying
17 degrees of consistency regarding adoption of the ABA Model Rules 7.1 and 7.2
18 with ABA Model Rule 7.1 being the most widely accepted. There is variation in
19 statewide adoption of ABA Model Rule 7.2, particularly regarding required
20 disclaimers. Additionally, Nevada, Florida and Texas are the only states that require
21 attorneys to file their advertisements with the bar and that have standing committees
22 dedicated to advertising review¹.

23 Using this information as a backdrop for its discussions, the Taskforce outlined
24 its considerations beginning with a discussion regarding ABA Model Rule 7.1.

25 ¹ Kentucky has an Advertising Review Committee established for the review of requests for Advance Opinions.

1 Before making recommendations regarding the adoption of ABA Model Rule 7.2,
2 the Taskforce elected to divide its discussion into the following points of
3 consideration:

- 4 - Regulation of online lawyer advertising;
- 5 - Role of Northern and Southern Lawyer Advertising Advisory
6 Committees;
- 7 - Withdrawal or correction of an advertisement after dissemination;
- 8 - Administrative expenses associated with regulation; and
- 9 - Advertising disclosures and disclaimers.

10
11 **I. ABA Model Rule 7.1**

12 At least ten states² have adopted ABA Model Rule 7.1, Communication
13 Concerning a Lawyer's Services, which states:

14 "A lawyer shall not make a false or misleading communication about the lawyer
15 or the lawyer's services. A communication is false or misleading if it contains a
16 material misrepresentation of fact or law, or omits a fact necessary to make the
17 statement considered as a whole not materially misleading."

18 The Taskforce found the ABA Model Rule language to be sufficient and clearly
19 written. Moreover, the simplified language gives the Lawyer Advertising Advisory
20 Committees more flexibility for interpretation. In comparison, the Taskforce also
21 found that NRPC 7.1, which includes subsections (b), (c) and (d), to be interpretive
22 in nature and limiting on the Committee's recommendations. Therefore, the
23 Taskforce recommended, and the Board of Governors approved adopting ABA
24 Model Rule 7.1 and amending NRPC 7.1 as follows:

25

² Arizona, Kentucky, Massachusetts, New Mexico, Oklahoma, Oregon, Tennessee,
Virginia, Washington and Wyoming.

1 **NRPC 7.1. Communication Concerning a Lawyer’s Services**

2 A lawyer shall not make a false or misleading communication about the
3 lawyer or the lawyer’s services. A communication is false or misleading if it:

- 4 ~~(a) Contains a material misrepresentation of fact or law, or omits a fact~~
5 ~~necessary to make the statement considered as a whole not materially~~
6 ~~misleading;~~
- 7 ~~(b) Is likely to create an unjustified or unreasonable expectation about results~~
8 ~~the lawyer can or has achieved, which shall be considered inherently~~
9 ~~misleading for the purposes of this Rule, or states or implies that the~~
10 ~~lawyer can achieve results by means that violate the Rules of Professional~~
11 ~~Conduct or other law;~~
- 12 ~~(c) Compares the lawyer’s services with other lawyer’s services, unless the~~
13 ~~comparison can be factually substantiated; or~~
- 14 ~~(d) Contains a testimonial or endorsement which violates any portion of this~~
15 ~~Rule.~~

16
17 **II. Regulation of Online Lawyer Advertising**

18 The question before the Taskforce was: should lawyers’ online advertisements
19 be subject to Nevada’s filing requirement?

20 All attorneys must comply with NRPC 7.1 and 7.2 when advertising, regardless
21 of the format in which their advertisement is delivered. Nevada is one of three states
22 that requires attorneys to file their advertising with their respective state bar for
23 review³. Each state has exempted social media from its filing requirements,
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³ Florida, Nevada and Texas

1 although Texas does require the filing of websites. In Nevada, online advertising
2 has been specifically exempted per Board of Governors policy.

3 Unlike traditional print, television and radio advertising, the forms of advertising
4 in the social media sphere are harder to define, continually changing, and gaining
5 popularity among the legal profession. For example, according to a 2015 Report of
6 the Regulation of Lawyer Advertising Committee published by the Association of
7 Professional Responsibility Lawyers (APRL), more than 60 percent of law firms
8 now use LinkedIn and more than 80 percent of attorneys have LinkedIn profiles for
9 their professional use.

10 Additionally, forms of advertising on social media vary significantly. Examples
11 of existing forms include:

- 12 - Sponsored Facebook posts or sponsored tweets;
- 13 - Sponsored ads on third party websites;
- 14 - Third party online rating services such as AVVO, Yelp, Super Lawyers and
15 Best Lawyers;
- 16 - Search engine optimization;
- 17 - Content marketing, such as legal blogs;
- 18 - You Tube infomercials;
- 19 - Paid pop-up advertisements on game apps and webpages; and
- 20 - Legal questions posed on Twitter with answers linked to a third-party
21 website.

22 However, given the increased use of social media for lawyer advertising, the
23 Taskforce recommended expanding the scope of the filing requirements by
24 establishing a “bright line” regulation that could be applied consistently by
25 requiring the filing of all advertisements that are disseminated in exchange for

1 something of value. This would include both paid placements and in-kind or
2 bartered placements. By way of example, this scope would encompass a lawyer
3 donating \$1,000 to a public radio station who then airs a statement promoting the
4 lawyer's practice.

5 Proposed amendments to NRPC 7.2A, Advertising Filing Requirements, are as
6 follows:

7 **Rule 7.2A. Advertising Filing Requirements**

8 (a) **Filing requirements.** A [lawyer or law firm shall file with the state bar
9 (1) a] copy or recording of an ~~advertisement~~ [all advertisements disseminated in
10 exchange for something of value and; (2)] ~~or~~ written or recorded communication[s
11 the lawyer causes to be disseminated for the purpose of advertising legal services.
12 For the purpose of this Rule, websites are not considered to be advertisements
13 subject to filing requirements.] ~~published after September 1, 2007, shall be~~
14 submitted to the state bar in [Submission shall be in a format provided by the bar]
15 either physical or digital format within 15 days of first dissemination along with
16 [accompanied by] a form supplied by the state bar. If a ~~published item that was~~
17 first disseminated prior to September 1, 2007, will continue to be published after
18 this date, then it must be submitted to the state bar on or before September 17,
19 2007, along with a form supplied by the state bar.

20
21 **III. Role of Northern and Southern Lawyer Advertising Advisory**
22 **Committees**

23 The ABA Model Rules for lawyer advertising do not include a framework for
24 Lawyer Advertising Advisory Committees. However, in Nevada, consumer
25 complaints about lawyer advertising are rare, with most referrals to the Office of

1 Bar Counsel originating from other attorneys or the bar's Lawyer Advertising
2 Advisory Committees. Therefore, the Taskforce considered maintaining the
3 committee structure, with amendments to provide for streamlined review.

4 Nevada Rule of Professional Conduct 7.2B requires the state bar to create two
5 Standing Lawyer Advertising Advisory Committees to review advertisements
6 filed under NRPC 7.2A and 7.2B(c). For efficiency and reduced administration
7 time, the State Bar has recently held joint northern and southern Lawyer
8 Advertising Advisory Committee meetings each month.

9 The Taskforce recommended and the State Bar proposes formalizing this
10 process by amending NRPC 7.2B to create a single 11-member Advertising
11 Advisory Committee, comprised of four northern and four southern members and
12 three lay members. Additionally, the amendment proposes eliminating the
13 requirement for a designated staff person to support the standing committees to
14 provide the State Bar greater flexibility in staffing resources. The proposed
15 amendment is as follows:

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

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

23 The board of governors may promulgate bylaws, rules of procedure, and
24 reasonable fees for advance opinions to offset the administrative costs of these
25 committees, as it deems necessary and proper. ~~A state bar staff member or~~

1 members shall be designated to assist with implementing this Rule, including
2 but not limited to providing administrative support to the standing committees,
3 and receiving and coordinating requests submitted under subparagraph (c)(1) of
4 this Rule.

5 (1) **Committee composition.** Each [The] committee shall have a
6 minimum of 5 volunteer members, 4 of whom shall be members of the State
7 Bar of Nevada [11 members; eight of whom shall be members in good standing
8 of the state bar; four of whom shall practice in northern Nevada and four of
9 whom shall practice in southern Nevada, and 1 of whom Three members may be
10 a non-lawyers]. Each committee shall also have a minimum of 5 members to
11 serve as ad hoc or conflict replacements when needed. Members must have a
12 full-time business or residential presence in the respective district.

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

17 (ii) **Minimum duties.** Each [The] committee shall meet at least monthly
18 on a predetermined date, and as often thereafter as necessary; to review all
19 matters before it in a timely fashion. Advance opinions shall be provided within
20 30 days of submission of the request or sooner. Requests to expedite review of
21 advertisements shall be granted whenever possible within reason. The board of
22 governors may promulgate a procedure and attach an added fee for expedited
23 requests.

24 (b) **Review of filings; advisory opinions to bar counsel.** The committee
25 may issue advisory opinions on any advertisement filed with the state bar. If the

1 committee finds that an advertisement does not comply with these Rules, it may
2 issue an advisory opinion to bar counsel within 30 days of its review. The
3 opinion must include the basis for the Committee's finding of noncompliance
4 and a recommendation that bar counsel issue a notice to the lawyer or law firm
5 requesting a correction or withdrawal of the advertisement. If bar counsel
6 accepts the committee's recommendation and issues the notice, the advertising
7 lawyer or law firm has 30 days to respond to bar counsel's notice. Bar counsel
8 may initiate appropriate disciplinary action if the lawyer or law firm fails to file
9 a timely response.

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

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

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

4 (d) **Limitations; when binding on discipline authority.** The committees
5 created under this Rule ~~are~~ [is] primarily dedicated to providing independent,
6 volunteer peer advance opinions to lawyers upon request as a safe-harbor to
7 future disciplinary action only. No request for an advance opinion shall be
8 granted after a disciplinary investigation is commenced on the subject
9 advertisement. In the event an opinion is inadvertently issued by a committee
10 during or after a disciplinary review is in progress, the decision of any
11 disciplinary panel convened pursuant to Supreme Court Rule 105 shall be
12 controlling.

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

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

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4 **IV. Withdrawal or Correction of Advertisement after Dissemination**

5 Under NRPC 7.2B(b), when the Lawyer Advertising Advisory Committee
6 refers a noncompliant advertisement to bar counsel, the lawyer is afforded the
7 opportunity to withdraw or correct an advertisement that has already been
8 disseminated. Bar counsel may initiate appropriate disciplinary action if the
9 lawyer or law firm fails to file a timely response. This “loophole” in the lawyer
10 advertising rules has been used by some attorneys (one to two per year) who
11 routinely place advertisements in violation of the rule and then agree to withdraw
12 them upon notice from bar counsel.

13 While bar counsel has the authority to bring these repeat violations forward for
14 action and has done so, the Taskforce recommended and the State Bar proposes an
15 amendment to NRPC 7.2B(b) to eliminate this provision and make advertising
16 rule violations subject to investigation and discipline the same as other alleged
17 rule violations. Bar counsel would retain its ability to informally resolve the
18 matter if warranted under SCR 104(2). The proposed amendment is as follows:

19 **NRPC 7.2B Volunteer Advisory Committees; Pre-Dissemination Review.**

20 ...

21 **(b) Review of filings; advisory opinions to bar counsel.** The committee
22 may issue advisory opinions on any advertisement filed with the state bar. If the
23 committee finds that an advertisement does not comply with these Rules, it may
24 issue an advisory opinion to bar counsel within 30 days of its review. The opinion
25 must include the basis for the Committee’s finding of noncompliance ~~and a~~

1 ~~recommendation that bar counsel issue a notice to the lawyer or law firm~~
2 ~~requesting a correction or withdrawal of the advertisement. If bar counsel accepts~~
3 ~~the committee's recommendation and issues the notice, the advertising lawyer or~~
4 ~~law firm has 30 days to respond to bar counsel's notice. Bar counsel may initiate~~
5 ~~appropriate disciplinary action if [warranted] the lawyer or law firm fails to file a~~
6 ~~timely response.~~

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8 **V. Administrative Expenses Associated with Regulation**

9 The State Bar's lawyer advertising program operates on an annual budget of
10 about \$20,000 per year. The Lawyer Advertising Advisory Committees review
11 approximately 460 advertisements – filed by about 150 attorneys – each year. The
12 advertising program budget includes actual expenses related to Committee
13 meetings in Reno and Las Vegas, staff travel and 20 percent of the salary and
14 benefits of one staff person needed to operate the program⁴. These administrative
15 expenses are funded through the annual license fees paid by all Nevada attorneys,
16 regardless of whether they advertise.

17 The State Bar proposes implementation of an administrative fee that would
18 place the financial burden of regulating lawyer advertising on the segment of
19 lawyers who advertise. The State Bar would anticipate implementing a \$100 filing
20 fee, subject to review by the Board of Governors annually. The proposed Rule
21 amendment is as follows:

22 **Rule 7.2A. Advertising Filing Requirements**

23 (a) **Filing requirements.** A [lawyer or law firm shall file with the state bar a]
24 copy or recording of an advertisement or written or recorded communication.

25 ⁴ Other expenditures not included in the program budget include attorney staff time, executive staff time, overhead and database maintenance expenses.

1 ~~published after September 1, 2007, shall be submitted to the state bar in~~
2 ~~[Submission shall be in a format provided by the bar] either physical or digital~~
3 ~~format within 15 days of first dissemination along with [accompanied by] a form~~
4 ~~supplied by the state bar [and a filing fee, as established by the board of~~
5 ~~governors]. If a published item that was first disseminated prior to September 1,~~
6 ~~2007, will continue to be published after this date, then it must be submitted to the~~
7 ~~state bar on or before September 17, 2007, along with a form supplied by the state~~
8 ~~bar.~~

10 **VI. Advertising Disclosures and Disclaimers**

11 The ABA Model Rules do not specify disclosures or disclaimers to be required
12 in lawyer advertising. Research of comparable rules in other states shows a great
13 degree of variation regarding adoption of Model Rule 7.2, particularly as they relate
14 to disclaimers, with most states having disclosure or disclaimer requirements to one
15 extent or another⁵.

16 Nevada has at least nine specific disclosure or disclaimer requirements,
17 including identification of actors, statements regarding contingency fees, the
18 duration for how long specific attorney fees are in effect and statements that warn
19 consumers that past successes or results may not guarantee, warrant or predict future
20 cases. Upon review of the current disclosure and disclaimer requirements, the
21 Taskforce and the State Bar agreed that although these requirements should not be
22 eliminated, they can be simplified by moving language that is interpretive in nature

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24
25 ⁵ No disclosures required in Arizona, Idaho, Utah and Washington. Minimal disclosures required in Alabama, Alaska, Florida, Georgia, New Mexico, Oregon and Wyoming.

1 from Rule to interpretive guidance so as to provide more flexibility in addressing
2 future advertising methods as they develop.

3 Additionally, the Taskforce recommended and the State Bar approved amending
4 NRPC 7.2 to adopt a modified version of ABA Model Rule 7.2(b) prohibiting a
5 lawyer for giving anything of value to a person for recommending the lawyer's
6 services. These proposed amendments are as follows:

7 **NRPC 7.2. Advertising**

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

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

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

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

1 (b1) [Use of actors.] If the advertisement uses any actors to portray a
2 lawyer, members of the law firm, clients, or utilizes depictions of fictionalized
3 events or scenes, the same must be disclosed. In the event actors are used, the
4 disclosure must be sufficiently specific to identify which persons in the
5 advertisement are actors, and the disclosure must appear for the duration in
6 which the actor(s) appear in the advertisement.

7 (e2) [Lawyer responsible for content.] All advertisements and written
8 communications disseminated pursuant to these Rules shall identify the name of
9 at least one lawyer responsible for their content.

10 (d3) [Area(s) of practice.] Every advertisement and written communication
11 that indicates one or more areas of law in which the lawyer or law firm
12 practices shall conform to the requirements of Rule 7.4.

13 (e4) [Contingency fees.] Every advertisement and written communication
14 indicating that the charging of a fee is contingent on outcome or that the fee will
15 be a percentage of the recovery shall contain ~~the following~~ a disclaimer if [that]
16 the client may be liable for the opposing parties' fees and costs: ~~"You may have~~
17 ~~to pay the opposing parties' attorney fees and costs in the event of a loss."~~

18 (f5) [Range of fees.] A lawyer who advertises a specific fee or range of fees
19 shall include the duration said fees are in effect and any other limiting
20 conditions to the availability of the fees. ~~For advertisements in the yellow pages~~
21 ~~of telephone directories or other media not published more frequently than~~
22 ~~annually, the advertised fee or range of fees shall be honored for no less than~~
23 ~~one year following publication.~~

24 (g6) [Quality of services.] ~~A lawyer may make~~ [Statements] describing or
25 characterizing the quality of the lawyer's services in advertisements and written

1 communications. However, such statements are subject to proof of verification,
2 to be provided at the request of the state bar or a client or prospective client.

3 (7) [Statement regarding past results.] If the advertisement contains any
4 reference to past successes or results obtained, the communicating lawyer or
5 member of the law firm must have served as lead counsel in the matter giving
6 rise to the recovery, or was primarily responsible for the settlement or verdict.
7 The advertisement shall also contain a disclaimer that past results do not
8 guarantee, warrant, or predict future cases.

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

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

20 ~~(i) **Statement regarding past results.** If the advertisement contains any~~
21 ~~reference to past successes or results obtained, the communicating lawyer or~~
22 ~~member of the law firm must have served as lead counsel in the matter giving~~
23 ~~rise to the recovery, or was primarily responsible for the settlement or verdict.~~
24 ~~The advertisement shall also contain a disclaimer that past results do not~~
25 ~~guarantee, warrant, or predict future cases.~~

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

7 (jc) **Disclaimers.** [Any information required by these rules to appear in an
8 advertisement must be reasonably prominent and clearly legible if written, or
9 intelligible if spoken.] In addition to any specific requirements under these
10 rules, any disclosures or disclaimers required by these rules to appear in an
11 advertisement or unsolicited written communication must be of sufficient size
12 to be clearly legible and prominently placed so as to be conspicuous to the
13 intended viewer. If the disclosure or disclaimer is televised or broadcast in an
14 electronic medium, it shall be displayed for a sufficient time to enable the
15 viewer to see and read the disclosure or disclaimer. If the disclosure or
16 disclaimer is spoken aloud, it shall be plainly audible to the intended listener. If
17 the statement is made on a website, the required words or statements shall
18 appear on the same page as the statement requiring the disclosure or disclaimer.

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

21 (1) Subject to the requirements of this Rule and Rule 7.5, the name of the
22 lawyer or law firm, a listing of lawyers associated with the firm, office
23 addresses and telephone numbers, office and telephone service hours, and a
24 designation such as “attorney” or “law firm.”

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

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

6 ~~(4) Foreign language ability.~~

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

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

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

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

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

16 (d) Nothing in this Rule prohibits a lawyer or law firm from permitting the
17 inclusion in law lists and law directories intended primarily for the use of the
18 legal profession of such information as has traditionally been included in these
19 publications.

20 ~~(m) A copy or recording of an advertisement or written or recorded~~
21 ~~communication shall be submitted to the State Bar in accordance with Rule~~
22 ~~7.2A and shall be retained by the lawyer or law firm which advertises for 4~~
23 ~~years after its last dissemination along with a record of when and where it was~~
24 ~~used.~~

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EXHIBIT A

NRPC 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:

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- ~~(a) 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.~~

NRPC 7.2 Advertising

~~(a) Subject to the requirements of Rule 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including 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.~~

[(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:]

1 (b1) [Use of actors.] If the advertisement uses any actors to portray a lawyer,
2 members of the law firm, clients, or utilizes depictions of fictionalized events or
3 scenes, the same must be disclosed. In the event actors are used, the disclosure
4 must be sufficiently specific to identify which persons in the advertisement are
5 actors, and the disclosure must appear for the duration in which the actor(s) appear
6 in the advertisement.

7 (e2) [Lawyer responsible for content.] All advertisements and written
8 communications disseminated pursuant to these Rules shall identify the name of at
9 least one lawyer responsible for their content.

10 (d3) [Area(s) of practice.] Every advertisement and written communication that
11 indicates one or more areas of law in which the lawyer or law firm practices shall
12 conform to the requirements of Rule 7.4.

13 (e4) [Contingency fees.] Every advertisement and written communication
14 indicating that the charging of a fee is contingent on outcome or that the fee will be
15 a percentage of the recovery shall contain ~~the following~~ a disclaimer if [that] the
16 client may be liable for the opposing parties' fees and costs: ~~"You may have to pay
17 the opposing parties' attorney fees and costs in the event of a loss."~~

18 (f5) [Range of fees.] A lawyer who advertises a specific fee or range of fees
19 shall include the duration said fees are in effect and any other limiting conditions
20 to the availability of the fees. ~~For advertisements in the yellow pages of telephone
21 directories or other media not published more frequently than annually, the
22 advertised fee or range of fees shall be honored for no less than one year following
23 publication.~~

24 (g6) [Quality of services.] ~~A lawyer may make~~ [Statements] describing or
25 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.

(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

1 accompanied by adequate information regarding the nature of the case or matter
2 and the damages or injuries sustained by the client, and if the gross amount
3 received is stated, the attorney fees and litigation expenses withheld from the

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

9 (i) ~~Statement regarding past results.~~ If the advertisement contains any
10 reference to past successes or results obtained, the communicating lawyer or
11 member of the law firm must have served as lead counsel in the matter giving rise
12 to the recovery, or was primarily responsible for the settlement or verdict. The
13 advertisement shall also contain a disclaimer that past results do not guarantee,
14 warrant, or predict future cases.

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

21 (jc) **Disclaimers.** [Any information required by these rules to appear in an
22 advertisement must be reasonably prominent and clearly legible if written, or
23 intelligible if spoken.] In addition to any specific requirements under these rules,
24 any disclosures or disclaimers required by these rules to appear in an advertisement
25 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 ~~(1) Subject to the requirements of this Rule and Rule 7.5, the name of the~~
2 ~~lawyer or law firm, a listing of lawyers associated with the firm, office addresses~~
3 ~~and telephone numbers, office and telephone service hours, and a designation such~~
4 ~~as “attorney” or “law firm.”~~

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

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

10 ~~(4) Foreign language ability.~~

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

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

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

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

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

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

24 ~~(m) A copy or recording of an advertisement or written or recorded~~
25 ~~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.~~

1 **Rule 7.2A. Advertising Filing Requirements**

2 (a) **Filing requirements.** A [lawyer or law firm shall file with the state bar
3 (1) a] copy or recording of an advertisement [all advertisements disseminated in
4 exchange for something of value and; (2)] or written or recorded communication[s
5 the lawyer causes to be disseminated for the purpose of advertising legal services.
6 For the purpose of this Rule, websites are not considered to be advertisements
7 subject to filing requirements.] published after September 1, 2007, shall be
8 submitted to the state bar in [Submission shall be in a format provided by the bar]
9 either physical or digital format within 15 days of first dissemination along with
10 [accompanied by] a form supplied by the state bar [and a filing fee, as established
11 by the board of governors]. If a published item that was first disseminated prior to
12 September 1, 2007, will continue to be published after this date, then it must be
13 submitted to the state bar on or before September 17, 2007, along with a form
14 supplied by the state bar.

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

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

21 (a) **Standing Lawyer Advertising Advisory Committees.** The board of
22 governors shall create a two Standing Lawyer Advertising Advisory Committees,
23 one for each district north and south as defined in Supreme Court Rule 100, to
24 review filings submitted under Rule 7.2A and to respond to written requests from
25 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 (1) **Committee composition.** Each ~~[The]~~ committee shall have a minimum
2 of 5 volunteer members, 4 of whom shall be members of the State Bar of Nevada
3 [11 members; eight of whom shall be members in good standing of the state bar;
4 four of whom shall practice in northern Nevada and four of whom shall practice in
5 southern Nevada, and 1 of whom Three members may be a non-lawyers]. Each
6 ~~committee shall also have a minimum of 5 members to serve as ad hoc or conflict~~
7 ~~replacements when needed. Members must have a full-time business or residential~~
8 ~~presence in the respective district.~~

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

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

19 (b) **Review of filings; advisory opinions to bar counsel.** The committee
20 may issue advisory opinions on any advertisement filed with the state bar. If the
21 committee finds that an advertisement does not comply with these Rules, it may
22 issue an advisory opinion to bar counsel within 30 days of its review. The opinion
23 must include the basis for the Committee's finding of noncompliance and a
24 ~~recommendation that bar counsel issue a notice to the lawyer or law firm~~
25 ~~requesting a correction or withdrawal of the advertisement. If bar counsel accepts~~
26 ~~the committee's recommendation and issues the notice, the advertising lawyer or~~
27 ~~law firm has 30 days to respond to bar counsel's notice. Bar counsel may initiate~~
28 ~~appropriate disciplinary action if [warranted] the lawyer or law firm fails to file a~~
29 ~~timely response.~~

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

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

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

13 (d) **Limitations; when binding on discipline authority.** The committees
14 created under this Rule ~~are~~ [is] primarily dedicated to providing independent,
15 volunteer peer advance opinions to lawyers upon request as a safe-harbor to future
16 disciplinary action only. No request for an advance opinion shall be granted after a
17 disciplinary investigation is commenced on the subject advertisement. In the event
18 an opinion is inadvertently issued by a committee during or after a disciplinary
19 review is in progress, the decision of any disciplinary panel convened pursuant to
20 Supreme Court Rule 105 shall be controlling.

21 An advance opinion of noncompliance issued under this Rule shall not be
22 binding on any disciplinary panel or bar counsel. An advance finding of
23 compliance is binding on the disciplinary panel and bar counsel in favor of the
24 advertising lawyer provided that the representations, statements, materials, facts
25 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 status of lawyer
advertising in this state.] ~~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.~~