

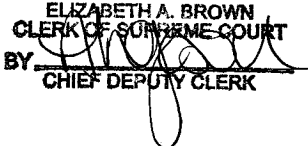
IN THE SUPREME COURT OF THE STATE OF NEVADA

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

ADKT 0527

FILED

JAN 02 2018

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

*ORDER SCHEDULING PUBLIC HEARING
AND REQUESTING PUBLIC COMMENT*

On July 10, 2017, the Board of Governors of the State Bar of Nevada filed a petition to amend Nevada Rules of Professional Conduct (NRCP) 7.1 and 7.2 regarding the regulation of lawyer advertising. The proposed amendments are attached as Exhibit A.


The Nevada Supreme Court will conduct a public hearing on the petition on Tuesday, February 6, 2018, at 3:00 p.m. in the Nevada Supreme Court Courtroom, 408 East Clark Avenue, Las Vegas, Nevada. The hearing will be videoconferenced to the Nevada Supreme Court Courtroom, 201 South Carson Street, Carson City, Nevada.

Further, this court invites written comment from the bench, bar, and public regarding the proposed amendments. An original and 8 copies of written comments are to be submitted to: Elizabeth A. Brown, Clerk of the Supreme Court, 201 South Carson Street, Carson City, Nevada 89701 by 5:00 p.m., January 30, 2018. Comments must be submitted in hard-copy format. Comments submitted electronically will not be docketed. Persons interested in participating in the hearing must notify the Clerk no later than January 30, 2018.

Hearing date: February 6, 2018, at 3:00 p.m.
Supreme Court Courtroom
408 East Clark Avenue
Las Vegas, Nevada 89101

Comment deadline: January 30, 2018, at 5:00 p.m.
Supreme Court Clerk's Office
201 South Carson Street
Carson City, Nevada 89701

DATED this 2nd day of January, 2018.


_____, C.J.
Douglas

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

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:

- ~~(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~~
the committee's recommendation and issues the notice, the advertising lawyer or
law firm has 30 days to respond to bar counsel's notice. Bar counsel may initiate
appropriate disciplinary action if [warranted] the lawyer or law firm fails to file a
timely response.

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

1 (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.~~