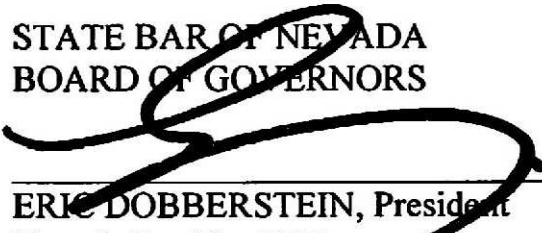


1 years. Given the current composition of the Standing Committee and years of
2 service for its current members, a lifetime term limit of 12 years is proposed. A
3 current list of Standing Committee members is attached as Exhibit C.

4 Finally, the Standing Committee recommends that SCR 225(7)(e) be amended.
5 The prohibition on a “situation in litigation or concerns threatened litigation” is
6 vague and overbroad. Any opinion request could potentially involve an issue that
7 is pending in litigation or has the potential for litigation in some court, regardless
8 of whether the requestor is directly involved or even aware of the matter. Similarly,
9 the prohibition does not draw a distinction between an issue that is pending in
10 litigation or potential litigation at the time the opinion request is submitted as
11 opposed to an issue that may subsequently arise in litigation or potential litigation
12 while the opinion is in the drafting and comment process prior to publication. The
13 Committee’s opinions are not binding but advisory only and are designated as such
14 and an advisory opinion on a “potential” litigation issue may help avert litigation.

15
16 Respectfully submitted this 19th day of January 2021.

17 STATE BAR OF NEVADA
18 BOARD OF GOVERNORS

19
20 
21 ERIC DOBBERSTEIN, President
22 Nevada Bar No. 3712
23 State Bar of Nevada
24 3100 W. Charleston Boulevard, Ste. 100
25 Las Vegas, NV 89102
(702) 382-2200

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EXHIBIT A

**J. ~~[RULES OF PROCEDURE FOR THE]~~ STANDING COMMITTEE ON
ETHICS AND PROFESSIONAL RESPONSIBILITY**

Rule 222. Purpose. Recognizing the need to prevent harm to the public from the unethical practice of law and recognizing the need to provide a clear and timely understanding of the ethics of practicing law; and further acting under its inherent power to regulate the practice of law, this court [~~promulgates the following rules~~] establishes the Standing Committee on Ethics and Professional Responsibility for the purpose of making available advisory opinions on the ethical considerations of the practice of law.

Rule 223. Creation and organization of the committee

~~[1.—The standing committee on professional responsibility and conduct is hereby created.]~~

~~[2.]~~ 1. The membership of the committee shall consist of not less than seven and not more than ten members, appointed or reappointed by the board of governors for a 2-year term of office. No member may be reappointed for more than a lifetime total of 12 years. ~~[The initial membership shall have staggered terms.]~~ At the discretion of the board, one of the members [~~shall~~] may be a lay person who is not admitted to the bar of this state or any other state. ~~[The members of the committee shall not be subject to removal by the board of governors during their terms of office, except for cause. Cause shall include unexcused failures to attend scheduled meetings, the number of which shall be set forth by the committee in an attendance policy.]~~

~~[3.]~~ 2. The officers of the committee shall be the chair and vice-chair appointed or reappointed by the board of governors every 2 years.

~~[4.—Committee meetings shall be held on the call of the chair. A quorum shall consist of four members of the committee. Any member who fails to attend three consecutive meetings may, in the discretion of the chair or board of governors, be deemed to have resigned. Within 30 days of each committee meeting, the minutes of each meeting shall be forwarded to the executive director of the state bar.]~~

1 **Rule 224. Functions of the committee.** The committee shall:

2 1. Assist members of the state bar in their desire to appreciate, understand,
3 and adhere to ethical and professional standards of conduct. Except as provided
4 hereinafter, the committee shall respond to requests from all persons and entities
5 seeking advisory opinions concerning the ethical and professional standards of
6 practicing law. This assistance shall include, but is not limited to:

7 (a) Issuance to members of the bar of advisory opinions on the ethical
8 propriety of hypothetical attorney conduct at the request of members of the state
9 bar or on its own initiative;

10 (b) Response to such inquiries from the public as the committee in its
11 discretion deems appropriate; and

12 (c) Publication of its opinions and responses.

13 2. Assist the supreme court through the board of governors by studying and
14 recommending additions, amendments to, or repeal of rules of professional
15 conduct of the state bar or other laws governing the conduct of attorneys, and
16 perform other such functions as may be assigned to the committee by the court or
17 the board.

18 3. Assist the public, including lawyers and judges, to understand the
19 professional obligations of members of the state bar, which assistance shall
20 include, but is not limited to, sponsoring educational programs and conferences.

21 **Rule 225. Advisory Opinions.** [~~Advisory opinions may be issued by the
22 committee as follows:~~]

23 1. The Board of Governors shall establish procedures for the formal publication
24 of advisory opinions, including but not limited to procedures for soliciting and
25 responding to public comment at least 30 days prior to publication.

~~[1. When it is determined that a request warrants a formal opinion, the
21 hypothetical facts and request shall be distributed to the executive director of the
22 state bar, bar counsel, chairpersons of the Nevada state bar disciplinary boards,
23 other appropriate committees of the state bar, individuals on the state bar staff who
24 participate in regulatory activities, and in the discretion of the chair, other
25 interested persons or entities, advising them that the hypothetical is under
consideration by the committee for a formal opinion and requesting their~~

1 ~~comments thereon within 30 days or such other period of time as the chair may~~
2 ~~designate.]~~

3 2. Prior to or upon filing, the court has the authority to review the opinion
4 and to consider any objections to it.

5 ~~[2.— Drafts of opinions shall be prepared by a member or members assigned~~
6 ~~by the chair and circulated to the membership by mail. Opinions shall set forth:~~

7 ~~— (a) Hypothetical facts of the ethical question presented in a general manner~~
8 ~~without identification of the requesting attorney or any details of the request which~~
9 ~~would permit such identification;~~

10 ~~— (b) The rules of professional conduct or other authorities relied upon;~~

11 ~~— (c) A discussion; and~~

12 ~~— (d) A conclusion.~~

13 ~~— 3. Proposed opinions may be approved only if not less than five members of~~
14 ~~the committee agree, whether at a meeting or by postal ballot, provided that if the~~
15 ~~draft opinion has not been discussed at a meeting, it will not be approved by postal~~
16 ~~ballot if, within 10 days after mailing of the ballot, two or more of the members~~
17 ~~request discussion at a succeeding meeting of the committee. Any of the members~~
18 ~~not responding to a postal ballot within 10 days after mailing of the ballot will be~~
19 ~~deemed to have approved the proposed opinion.~~

20 ~~— 4. Committee members shall not participate in any matter in which they have~~
21 ~~either a material pecuniary interest that would be affected by a proposed advisory~~
22 ~~opinion or committee recommendation, or any other conflict of interest that should~~
23 ~~prevent them from participating. However, no action of the committee will be~~
24 ~~invalid where full disclosure has been made and the committee has not decided that~~
25 ~~the member's participation was improper.~~

[5.] 3. All opinions issued by the committee express only the judgment of the
committee and are advisory only. Each [letter and] formal opinion shall [conclude
with] include the following statement:

This opinion is issued by the standing committee on ethics and professional responsibility of the State Bar of Nevada, pursuant to S.C.R. 225. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, its board of governors, any persons or tribunals charged with regulatory responsibilities, or any member of the state bar.

1 ~~[6. The formal advisory opinion shall be furnished by personal delivery or~~
2 ~~certified mail to the person requesting the opinion. The committee shall also file a~~
3 ~~copy of the opinion and all materials considered by the committee in adopting the~~
4 ~~opinion with the clerk of the Nevada supreme court. The court has the authority to~~
5 ~~review the opinion and to consider any objections to it.]~~

6 [7.] 4. The committee shall not act on requests for opinions when any of the
7 following circumstances exist:

8 (a) There is a pending state bar complaint, investigation, proceeding, or
9 litigation concerning the subject of the request.

10 (b) The request constitutes a complaint against a member of the state bar.

11 (c) The request involves procedures employed by the bar in processing
12 complaints against members of the state bar.

13 (d) The request involves activities, the propriety of which depends principally
14 on a question of law unrelated to legal ethics.

15 (e) Where it is known that the request involves ~~[a situation in litigation or~~
16 ~~concerns threatened litigation or involves]~~ the propriety of sanctions within the
17 purview of the courts, such as contempt.

18 (f) The committee has by majority vote determined that it would be
19 inadvisable to respond to the request and has specified in writing its reasoning to
20 the person who requested the opinion. A copy of the committee's response shall be
21 sent to the executive director of the state bar.

22 ~~[8.] 5.~~ At any time after a request for an opinion has been assigned for
23 drafting, but before actual publication, if any of the circumstances enumerated in
24 sections [7]4(a) through (f) of this rule arise, the committee shall decline to act
25 further on the request and no opinion shall be published. In such event, the
committee shall follow the procedure set forth in section [7]4 (f) of this rule.

~~[9.] 6.~~ All formal advisory opinions shall be numbered and maintained on file
at the state bar office and shall be available to any member of the bench or bar
upon request. A reasonable charge to defray the costs of reproduction of such
opinions and postage may be fixed by the board of governors.

7. The committee shall maintain in confidence the identity of the formal
advisory opinion requestor and committee work product created prior to public
comment or publication.

1 ~~[Rule 226. — Recommendations for revision or amendment of rules of~~
2 ~~professional conduct and other laws governing attorneys. — The committee~~
3 ~~shall, upon recommendation of the board of governors or on its own initiative with~~
4 ~~the concurrence of the Nevada state bar disciplinary boards by and through bar~~
5 ~~counsel, study and submit recommendations to the supreme court through the~~
6 ~~board of governors regarding proposed additions or amendments to or repeal of~~
7 ~~rules of professional conduct of the state bar or other laws governing the conduct~~
8 ~~of attorneys.]~~

7 ~~[Rule 227. — Reports and procedures.~~

8 ~~1. The committee shall:~~

9 ~~(a) Receive requests for opinions.~~

10 ~~(b) Advise members of the state bar of the existence, functions and procedures~~
11 ~~of the committee.~~

12 ~~(c) Consult with bar counsel to determine whether any circumstances,~~
13 ~~including those enumerated in S.C.R. 225(7)(a)–(f), exist which preclude or~~
14 ~~mitigate against committee action.~~

15 ~~(d) Issue approved formal opinions to the requesting attorney.~~

16 ~~(e) In coordination with the executive director of the state bar cause opinions~~
17 ~~issued by the committee to be published as appropriate.~~

18 ~~(f) Maintain all official files and records of the committee and make such files~~
19 ~~available to interested members of the bench and bar as appropriate.~~

20 ~~(g) Apply to the supreme court through the board of governors for revision,~~
21 ~~modification and amendment of these rules as the committee deems required.~~

22 ~~2. The committee shall:~~

23 ~~(a) Forward approved formal opinions to the state bar office for filing and~~
24 ~~publication as appropriate.~~

25 ~~(b) Report in writing to the supreme court through the board of governors, at~~
26 ~~least quarterly, the number of advisory opinions requested during the reporting~~
27 ~~period, the number of opinions issued during the reporting period, and the number~~
28 ~~of requests to which the committee has declined to respond.]~~

29 **Rule [228] 226. Immunity.** The board of governors, members of the
30 committee and all staff persons assisting them shall have absolute immunity from

1 civil liability for all acts undertaken in the course of their official duties pursuant to
2 these rules.

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EXHIBIT B

Draft Rules of Procedure for the Standing Committee on Ethics and Professional Responsibility



Standing Committee on Ethics and Professional Responsibility
Rules of Procedure
Effective XXX

I. Purpose

The Standing Committee on Ethics and Professional Responsibility (Standing Committee) is established under Supreme Court Rule 222 to issue advisory opinions concerning the ethical and professional standards of practicing law.

II. Requests for Advisory Opinion

- A. Requests for advisory opinions shall be submitted to the Standing Committee through its Chair.
- B. Requests may be made by members of the legal profession, the public, or the Board of Governors.
- C. Requests shall be presented to the Standing Committee Chair by mail, email, or through the State Bar's website.
- D. Requests must present one or more ethical issues and questions using hypothetical facts and parties.

III. Analysis and Screening

- A. The Standing Committee Chair has authority to determine whether a request for an opinion should be placed before the Standing Committee for review and consideration. Alternatively, the Chair may appoint one or more Standing Committee members to review requests and make recommendations to the Chair for consideration.
- B. Supreme Court Rule 225 outlines the circumstances under which the Standing Committee acts or refrains from acting upon requests.
- C. The Standing Committee Chair or designee shall communicate the decision to accept or reject a request for an advisory opinion with the requestor.

IV. Acceptance of a Request for Review

- A. The Standing Committee Chair shall assign up to three Standing Committee members to review and draft a proposed opinion. Additional members may be added if the complexity of the ethical issue(s) presented requires more members.
- B. The Standing Committee Chair may assign committee members to form subcommittees to research specific ethical issues and case law.
- C. The Standing Committee Chair shall establish deadlines for completion of a proposed opinion and its review by other committee members. Such deadlines may be altered based on the complexity of the legal issue(s) presented and/or the number of proposed opinions being processed at any given time.

- D. The Standing Committee Chair may seek the assistance of outside professionals or entities, law-related or otherwise, to assist Standing Committee members with unusual issues or those which might be beyond the expertise of the assigned committee members.
- E. Draft opinions shall be circulated to other Standing Committee members by mail or email for review.

V. Draft Advisory Opinions: Format and Standing Committee Review

- A. The draft opinion shall contain:
 - 1. Hypothetical facts of the ethical question(s) presented in a general manner without identification of the requesting attorney or any details of the request which would permit such identification.
 - 2. The Rules of Professional Conduct and other authorities relied upon;
 - 3. A discussion; and
 - 4. A conclusion.
- B. Draft opinions must be approved by at least five members of the Standing Committee prior to being made available for public comment.
- C. *Dissenting Opinions.* A Standing Committee member may elect to have notice of his or her dissent included with the opinion. In this event, the number of dissenters, but not their names, will be noted in the final opinion. In the rarest of cases, a dissenting opinion or opinions explaining the reasons for any dissent may be added to the opinion, in the discretion of the Standing Committee Chair. As with the opinion of the Standing Committee, the dissenting opinion will not be attributed to particular authors but will note on how many members' behalf the dissent is filed.

VI. Public Comment

- A. All draft opinions will be made available for public comment on the state bar's website and notice provided via e-News for no less than 30 days to allow for public comment or objections.
- B. At the end of the public comment period, all comments or objections received shall be distributed to Standing Committee members for consideration at a regular Standing Committee meeting. If the Standing Committee accepts changes to the advisory opinion which substantially or significantly affect the advisory opinion, the draft advisory opinion will be posted for another 30-day public comment period.

VII. Publication. All advisory opinions shall:

- A. Be filed with the Nevada Supreme Court; and
- B. Numbered and maintained with the state bar and made available on the state bar's website.

IX. Confidentiality

- A. Supreme Court Rule 225 requires the Standing Committee to maintain the confidentiality of the person seeking an advisory opinion and all work product associated with an advisory opinion created prior to public comment and publication.
- B. The Standing Committee's deliberations are confidential. Draft opinions may not be circulated to parties outside the Standing Committee or to state bar staff until published for comment or objection.
- C. Standing Committee members shall direct inquiries from the public or attorneys regarding specific issues under consideration to the Chair.
- D. When requested, Standing Committee members may provide legal advice regarding ethics issues and discuss non-confidential aspects of committee business. Whenever appropriate, the committee member should specify that the advice is being given in a personal capacity and not on behalf of the Standing Committee.

X. Administration

- A. *Frequency.* The Standing Committee shall hold a monthly meeting or as often as necessary to review all requests for advisory opinions.
- B. *Location.* Meetings may occur in person or via alternative telephonic and video formats.
- C. *Attendance.* Any Standing Committee member who fails to attend three consecutive meetings may, in the discretion of the Chair or Board of Governors, be deemed to have resigned.
- D. *Quorum.* A quorum consists of half the appointed Standing Committee members, plus one.
- E. *Voting.* Each Standing Committee member shall have a single vote. Action of the Standing Committee shall be a majority of the members present.
- F. *Conflicts.* Standing Committee members shall not participate in any matter in which they have either a material pecuniary interest that would be affected by a proposed advisory opinion or committee recommendation, or any other conflict of interest that should prevent them from participating. However, no action of the Standing Committee will be invalid where full disclosure has been made and the Standing Committee has not decided that the member's participation was improper.
- G. *Notice.* The Standing Committee Chair shall give members of the Standing Committee not less than 15 days' notice of the time and place of each regular meeting and not less than five days' notice of any special meeting.
- H. *Minutes.* The Standing Committee Chair, or designee, shall prepare written minutes of each Standing Committee meeting. The state bar shall permanently maintain minutes in electronic format.
- I. *Designation of Alternate Chair.* If the Chair or Vice Chair is absent from any meeting, the Chair may designate another Standing Committee member to preside at the meeting.
- J. *Record Retention.* Requests for advisory opinions and the Standing Committee's response will be retained by the State Bar of Nevada for three years after the date the advisory opinion is published.
- K. *Rules of Procedure.* Standing Committee meetings shall be governed by Roberts Rules of Order.

XI. Amendments

These Rules of Procedure may be amended at any time by a majority vote by members of the Standing Committee and approval by the Board of Governors.

DRAFT

EXHIBIT C

Standing Committee on Ethics and Professional Responsibility Membership List

**Standing Committee on Ethics and Professional Responsibility
Effective December 2020**

Maximum Possible Membership: Not less than 7 and not more than 10 (SCR 223)

NAME	ORIGINAL APPT DATE	DATE CURRENT TERM EXPIRES	MAXIMUM TERM	FIRM/ORGANIZATION	LOCATION	PRACTICE AREA
Brett Kandt, (Chair) <i>Attorney Member</i>	July 2012	September 2022	None	Nevada State Board of Pharmacy	Reno	Administrative
Melissa Brown (Vice Chair) <i>Attorney Member</i>	September 2018	September 2022	None	White Pine County DA	Ely	Criminal
Stephanie Barker <i>Attorney Member</i>	July 2019	July 2021	None	Olson Cannon Gormley & Stoberski	Las Vegas	Civil rights, tort defense, eminent domain, public records
Josh Gilmore <i>Attorney Member</i>	December 2020	December 2022	None	Bailey Kennedy LLP	Las Vegas	Complex litigation, professional responsibility, legal ethics.
Alan Freer <i>Attorney Member</i>	February 2010	September 2022	None	Solomon Dwiggin & Freer Ltd	Las Vegas	Trust and estate
Joseph Garin <i>Attorney Member</i>	July 2010	September 2022	None	Lipson Neilson, PC	Las Vegas	Professional liability defense, employment, business and commercial litigation
Paul Hejmanowski <i>Attorney Member</i>	July 2010	September 2022	None	Hejmanowski & McCrea LLC	Las Vegas	Complex civil litigation
J. Rusty Graf <i>Attorney Member</i>	January 2019	July 2021	None	Black & Wadhams	Las Vegas	Commercial litigation, real estate, corporate
Joel Henriod <i>Attorney Member</i>	July 2019	July 2021	None	Lewis Roca Rothgerber Christie	Las Vegas	Civil litigation, appellate
Sarah Molleck <i>Attorney Member</i>	July 2019	July 2021	None	Lemons, Grundy & Eisenberg	Reno	Personal injury defense, professional liability defense, commercial litigation, appellate

STAFF CONTACT: Lisa Dreitzer

BOARD OF GOVERNORS LIAISON: Terry Coffing