


IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF AMENDMENTS
TO SCR 222 THROUGH SCR 228
REGARDING THE STANDING
COMMITTEE ON ETHICS AND
PROFESSIONAL RESPONSIBILITY.

ADKT 0573

FILED

JAN 26 2021

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

ORDER SCHEDULING PUBLIC HEARING

On January 22, 2021, the Board of Governors of the State Bar of Nevada filed a petition seeking to amend Supreme Court Rules (SCR) 222 through 228 regarding the organization and function of the Standing Committee on Ethics and Professional Responsibility. The proposed amendments are attached as Exhibit A.

The Nevada Supreme Court will conduct a public hearing on the petition on March 2, 2021, at 1:30 p.m. There will be no physical location for this hearing. The hearing may be viewed on the Supreme Court's website at www.nvcourts.gov/supreme. Persons interested in participating in the hearing may join the meeting at www.bluejeans.com. Click on join meeting; enter meeting ID 568 522 721; participant passcode 4980. For BlueJeans phone dial in, call 1-408-419-1715 or 1-408-915-6290; enter meeting ID 568 522 721; participant passcode 4980.

The Court invites written comment from the bench, bar, and public regarding the proposed amendments. Comments may be submitted electronically or in hard-copy format to: Elizabeth A. Brown, Clerk of the Supreme Court, 201 South Carson Street, Carson City, Nevada 89701 or nvscclerk@nvcourts.nv.gov by 5:00 p.m., February 22, 2021. Persons

interested in participating in the hearing must notify the Clerk no later than February 22, 2021.

Dated this 26TH day of January, 2021.

1 Hardesty, C.J.
Hardesty

cc: Eric Dobberstein, 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
Elko County Bar Association
Douglas County Bar Association
Administrative Office of the Courts

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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.~~

1 [5.] 3. All opinions issued by the committee express only the judgment of the
2 committee and are advisory only. Each [letter and] formal opinion shall [conclude
3 with] include the following statement:

4 This opinion is issued by the standing committee on ethics and
5 professional responsibility of the State Bar of Nevada, pursuant to S.C.R. 225.
6 It is advisory only. It is not binding upon the courts, the State Bar of Nevada,
7 its board of governors, any persons or tribunals charged with regulatory
8 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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