

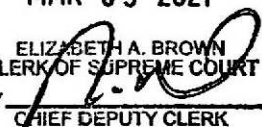
IN THE SUPREME COURT OF THE STATE OF NEVADA

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

ADKT 0573

FILED

MAR 03 2021

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

ORDER AMENDING SUPREME COURT RULES 222 THROUGH 228

WHEREAS, on January 22, 2021, the Board of Governors of the State Bar of Nevada on behalf of the Standing Committee on Ethics and Professional Responsibility filed a petition requesting the Nevada Supreme Court to amend Supreme Court Rules (SCR) 222 through 228 regarding the Committee's organization and function; and

WHEREAS, this court solicited public comment on the petition and a public hearing was held in this matter on March 2, 2021; and

WHEREAS, this court concludes that the proposed amendments to SCR 222 through 228 are warranted; accordingly,

IT IS HEREBY ORDERED that SCR 222 through 228 shall be amended and shall read as set forth in Exhibit A.

IT IS FURTHER ORDERED that these amendments shall be effective 30 days from the date of this order. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The

certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing amendments.

Dated this 3RD day of March, 2021.

1 Hardesty, C.J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Silver, J.
Silver

Pickering, J.
Pickering

Herndon, J.
Herndon

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

EXHIBIT A

AMENDMENT TO SUPREME COURT RULES PART III(J), RULES 222, 223, 225, 226, 227, and 228

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.]~~ 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. ~~[The initial membership shall have staggered terms.]~~ No member may be reappointed for more than a lifetime total of 12 years. 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.]~~

* * *

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

1. ~~[When it is determined that a request warrants a formal opinion, the hypothetical facts and request shall be distributed to the executive director of the state bar, bar counsel, chairpersons of the Nevada state bar disciplinary boards, other appropriate committees of the state bar, individuals on the state bar staff who participate in regulatory activities, and in the discretion of the chair, other interested persons or entities, advising them that the hypothetical is under consideration by the committee for a formal opinion and requesting their comments thereon within 30 days or such other period of time as the chair may designate.~~

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

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

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

~~(c) A discussion; and~~

~~(d) A conclusion.~~

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

~~4. 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 committee will be invalid where full disclosure has been made and the committee has not decided that the member's participation was improper.~~

~~5.] The Board of Governors shall establish procedures for the formal publication of advisory opinions, including but not limited to procedures for~~

soliciting and responding to public comment at least 30 days prior to publication.

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

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.

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

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

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

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

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

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

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

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

~~[8.]~~ 5. At any time after a request for an opinion has been assigned for drafting, but before actual publication, if any of the circumstances enumerated in sections ~~[7(a)]~~ 4(a) through (f) of this rule arise, the committee shall decline to act further on the request and no opinion shall be published. In such event, the committee shall follow the procedure set forth in section ~~[7(f)]~~ 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: (a) the identity of the formal advisory opinion requester; and (b) committee work product created prior to public comment or publication.

~~[Rule 226. Recommendations for revision or amendment of rules of professional conduct and other laws governing attorneys. The committee shall, upon recommendation of the board of governors or on its own initiative with the concurrence of the~~

~~Nevada state bar disciplinary boards by and through bar counsel, study and submit recommendations to the supreme court through the board of governors regarding proposed additions or amendments to or repeal of rules of professional conduct of the state bar or other laws governing the conduct of attorneys.]~~

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

~~1. The committee shall:~~

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

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

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

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

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

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

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

~~2. The committee shall:~~

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

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

Rule [228.] 226. Immunity. The board of governors, members of the committee and all staff persons assisting them shall have absolute immunity from civil liability for all acts undertaken in the course of their official duties pursuant to these rules.