

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
AMENDMENT OF RULES OF
PROFESSIONAL CONDUCT 7.2, 7.2A,
AND 7.3.

ADKT No. 445

FILED

NOV 13 2012

TRACIE K. LINDSEY
CLERK OF THE COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER ADOPTING AMENDMENTS TO THE
RULES OF PROFESSIONAL CONDUCT

WHEREAS, on December 24, 2009, the Board of Governors of the State Bar of Nevada filed a petition with this court seeking the amendment of the Rules of Professional Conduct 7.2, 7.2A, and 7.3; and

WHEREAS, it appears to this court that amendment of the rules is warranted;

IT IS HEREBY ORDERED that the Rules of Professional Conduct shall be amended as set forth in Exhibit A.

IT IS FURTHER ORDERED that the amended rules 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 rule amendments.

Dated this 13th day of November, 2012.

Cherry, C.J.
Cherry

Douglas, J.
Douglas

Saitta, J.
Saitta

Gibbons, J.
Gibbons

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Francis C. Flaherty, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Administrative Office of the Courts

AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

* * *

Rule 7.2. Advertising.

(a) Subject to the requirements of Rule 7.1, a lawyer may advertise services through 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.

~~(b) [Advertisements on the electronic media such as the Internet, television and radio may contain the same factual information and illustrations as permitted in advertisements in the print media. If a person appears as a lawyer in an advertisement for legal services, or under such circumstances as may give the impression that the person is a lawyer, such person must be a member of the State Bar of Nevada, admitted to practice and in good standing before the Supreme Court of Nevada, and must be the lawyer who will actually perform the service advertised or a lawyer associated with the law firm that is advertising. If a person appears in an advertisement as an employee of a lawyer or law firm, such person must be an~~

~~actual employee of the lawyer or law firm whose services are advertised unless the advertisement discloses that such person is an actor. If an actor appears in any other role not prohibited by these Rules, the advertisement must disclose that such person is an actor.]~~ If the advertisement uses any actors to portray a lawyer, members of the law firm, clients, or utilizes depictions of fictionalized events or scenes, the same must be disclosed. In the event actors are used, the disclosure must be sufficiently specific to identify which persons in the advertisement are actors, and the disclosure must appear for the duration in which the actor(s) appear in the advertisement.

(c) All advertisements and written communications disseminated pursuant to these Rules shall ~~[include]~~ identify the name of at least one lawyer ~~[or law firm]~~ responsible for their content.

(d) Every advertisement and written communication that indicates one or more areas of law in which the lawyer or law firm practices shall conform to the requirements of Rule 7.4.

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

(f) A lawyer who advertises a specific fee or range of fees shall include ~~[all possible terms and fees, and]~~ the duration said fees are in effect and any other limiting conditions to the availability of the fees. ~~[Such disclosures shall be presented with equal~~

prominence.] For advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.

(g) A lawyer may make statements describing or 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.

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

(i) 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 accompanied by adequate information regarding the nature of the case or matter and the damages or injuries sustained by the client, and if the gross amount received is stated, the

attorney fees and litigation expenses withheld from the amount must be stated as well.

(j) Disclaimers. In addition to any specific requirements under these rules, any disclosures or disclaimers required by these rules to appear in an advertisement 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) Subject to the requirements of this Rule and Rule 7.5, the name of the lawyer or law firm, a listing of lawyers associated with the firm, office addresses and telephone numbers, office and telephone service hours, and a designation such as “attorney” or “law firm.”

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

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

(4) Foreign language ability.

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

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

(7) Acceptance of credit cards.

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

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

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

~~[(j)]~~(m) A copy or recording of an advertisement or written or recorded 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.

~~[(k)]~~(n) A lawyer shall not give anything of value to a person for recommending the lawyers' 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.

Rule 7.2A. Advertising Filing Requirements.

(a) **Filing requirements.** A copy or recording of an advertisement or written or recorded communication published after September 1, 2007, shall be submitted to the state bar in ~~[both hard copy and electronic]~~ either physical or digital format within 15 days of first dissemination along with a form supplied by the state bar. If a published item that was first disseminated prior to September 1, 2007, will continue to be published after this date, then it must be submitted to the state bar on or before September 17, 2007, along with a form supplied by the state bar. ~~[The form shall include a provision for members to request a waiver of the electronic filing requirement for good cause.]~~

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

* * *

Rule 7.3. Communications With Prospective Clients.

(a) **Direct contact with prospective clients.** Except as permitted pursuant to paragraph (d) of this Rule, a lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, by mail, in person or otherwise, when a significant motive for the lawyers' doing so

is the lawyers' pecuniary gain. The term "solicit" includes contact in person, by telephone, telegraph or facsimile, by letter or other writing, or by other communication directed to a specific recipient.

(b) **Direct or indirect written advertising.** Any direct or indirect written mail communication or advertising circular distributed to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but who are so situated that they might in general find such services useful, shall contain the disclaimers required by Rule 7.2. The disclaimers shall be in a type size and legibility sufficient to cause the disclaimers to be conspicuous[, ~~and in a size at least as large as the largest of any telephone number appearing in the ad~~].

(c) **Additional disclaimer on mailers or written advertisements or communications.** Direct or indirect mail envelope, and written mail communications or advertising circulars shall contain, upon the outside of the envelope and upon the communication side of each page of the communication or advertisement[, ~~in legible type that is at least twice as large as the largest type used in the body of the communication~~], in red ink, the following warning:

NOTICE: THIS IS AN ADVERTISEMENT!

(d) **Target mail to prospective clients.** ~~[Written]~~ In the event of an incident involving claims for personal injury or wrongful death, written communication directed to ~~[a specific prospective client who may need legal services due to a particular~~

~~transaction or occurrence]~~ an individual injured in the incident or to a family member or legal representative of such an individual seeking to represent the injured individual or legal representative thereof in potential litigation or in a proceeding arising out of the incident is prohibited in Nevada within ~~[45]~~ 30 days of the ~~[transaction or occurrence giving rise to the communication]~~ date of the incident. After ~~[45]~~ 30 days following the ~~[transaction or occurrence]~~ incident, any such communication must comply with paragraphs (b) and (c) of this Rule and must comply with all other Rules of Professional Conduct.

This provision limiting contact with an injured individual or the legal representative thereof applies as well to lawyers or law firms or any associate, agent, employee, or other representative of a lawyer or law firm who represent actual or potential defendants or entities that may defend and/or indemnify said defendants.

* * *