



**LAWYER ADVERTISING
INTERPRETIVE GUIDELINES
11/21/13**

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These Interpretive Guidelines (Guidelines) are adopted by the Standing Committees on Lawyer Advertising as a tool to assist Bar Counsel and the Committees in discharging their respective duties, and, lawyers in complying with the Rules of Professional Conduct (RPC) pertaining to advertising (RPC 7.1 – 7.5)

The Annotated ABA Model Rules of Professional Conduct (MR) may also be consulted for guidance unless they are in conflict with the Nevada Rules. (RPC 1.0A.)

The Guidelines shall not be construed to alter, enlarge, or abrogate any portion of the RPCs or the Advertising Committee Rules (ACR) and shall be applied in a manner that is consistent with those Rules and which promotes the fair and just discharge of the Committees' and the State Bar's responsibilities.

Complete texts of the RPCs and ACRs are available at <http://www.nvbar.org/SCLA/scla.htm>.

1. General Application

Subject to the requirements of RPC 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 RPC 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. **RPC 7.2(a).**

At this time, ads that are broadcasted in Nevada as part of a National advertising campaign do not have to be filed. They do still fall under the jurisdictional review of the State Bar of Nevada and are expected to comply with the Rules of Professional Conduct.

The current Advertising Rules were put into effect September 2007 in an effort to minimize illegal, false or misleading statements in advertising while at the same time recognizing that a lawyer has a right protected by the United States Constitution to advertise publicly. In this light, each advertisement will be considered on a case-by-case basis, as a whole, taking into account the cumulative impact of the advertisement or communication. At a minimum, advertisements should provide enough information for the layperson to identify the lawyer licensed to provide services in Nevada, contain factual, substantiated

claims, and disclaimers when appropriate to lend to truthful disclosure of the material being communicated.

2. True but Misleading Statements

RPC 7.1 recognizes that statements that are literally true may nonetheless be misleading by both what they leave out and what they contain. (RPC 7.1(a)). True but misleading statements may occur in the following contexts:

A. By omission of information:

1) *Omission of crucial information that makes the communication considered as a whole materially misleading.*

- It can be misleading to aggregate years of experience of lawyers in a firm in situations where doing so obscures the fact that no individual lawyer has near the advertised number. It can be misleading if a firm of five lawyers, each of whom have two years of experience, to advertise that the firm itself has ten years of experience.
- It can be acceptable to state that a firm has “cumulative,” “combined” or “average” amount of years of experience.
- It can be misleading to truthfully advertise that a lawyer obtained a jury verdict of a certain amount on behalf of a client but not disclose that the verdict was later overturned on appeal or compromised for a substantially reduced amount.

2) *Omissions concerning a lawyer’s fees.*

Lawyers advertising legal fees must disclose information about clients’ responsibilities to pay costs except in cases such as workers’ compensation, social security and other verifiable claims in which a plaintiff would not be obligated to pay costs. When the disclaimer is not warranted, the attorney must indicate the reason for its omission on the 7.2A filing form. See *also* RPC 7.2(f) (advertising discount or range of fees) and Guideline #4.

- It can be misleading to advertise a fixed fee that does not disclose hidden charges such as court costs.
- It can be misleading to advertise “no fee if no recovery” without indicating if the client would be responsible for costs and expenses if there is no recovery.

3) *Omissions concerning the qualifications of law firm staff.*

Non-lawyers, out-of-state lawyers, and specially admitted lawyers, such as in-house counsel, must be properly identified, such that it is clear to a lay person viewing the advertisement or communication whether individuals are lawyers, and if so, where licensed.

- It can be misleading to feature attorneys not licensed in Nevada in an advertisement without disclosing that they are not licensed in Nevada.

B. By establishing unjustified expectations:

An otherwise true statement may be misleading if presented in a way that would lead a reasonable layperson to form an unjustified expectation that the lawyer can achieve the same results for that person as the lawyer has in previous matters, without reference to the specific factual and legal circumstances of each client's case. See MR 7.1 Comment 3, annotation.

1) *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.

When making any reference to past successes or results obtained, disclaimers must be included to overcome the inherently misleading nature of such statements. For more information regarding disclaimers, see Guideline #4.

Substantiation: The advertising attorney bears the burden of demonstrating that the information contained in the advertisement is substantiated by fact. Such information shall be provided upon request of the client, a prospective client, or the State Bar. (7.2 (g))

It is advisable for the RPC 7.2A filing of a communication containing a reference to past successes or results to be accompanied by a written statement by the lawyer claiming credit for such success or result, and should include:

- i) The name of the lead counsel in the matter giving rise to the recovery or an explanation of the relationship between the lawyer claiming credit for the result and the client upon whose behalf the recovery made;
- ii) The amount, in dollars, actually received by the client, whether or not the reference to the gross amount or results in the advertisement includes a reference to a dollar amount;
- iii) The name, address and phone number of the client; and
- iv) The nature of the suit or claim and damages or injuries.

2) *Statements of a lawyer's service or comparisons with other lawyers:*

A lawyer may make statements describing or characterizing the quality of the lawyer's services in advertisements and written communications. However, when the statements are quantitative, such as the "best" or the "most," such statements are subject to proof of verification, to be provided at the request of the State Bar or a client or prospective client. RPC 7.2 (g)

RPC 7.1(c) affirmatively requires any comparison to another lawyer's services must be able to be factually substantiated.

- It can be misleading to state a firm or attorney has the "Most Bankruptcies filed" unless that statement can be substantiated.

Substantiating evidence must be made available upon request of a client, a prospective client, or the State Bar. Again, it is advisable to include substantiating information, like that suggested for past results above, in the applicable RPC 7.2A filing.

A comparison that can be factually verified is not misleading. See *i.e. Mason v. Florida Bar*, 208 F.3d 952 (11th Cir. 2000)("AV rating, the highest rating" not misleading even though rating system is not generally know to the public).

3) *Client-loans/advances*

Advertisements that contains statements or representations that the lawyer or law firm will loan or advance specific sums of monies to prospective clients are misleading and create unjustified expectations in violation of Rule 7.1.

- It may be misleading for an attorney to offer payment for a rental car as that may violate RPC 1.8(e).

However, a lawyer may include a statement in an advertisement that actual litigation expenses or court costs may be advanced to the client with the disclaimer that the client may be responsible for these costs if the case is not successful.

3. Persons appearing in advertisements

A. As Attorneys: If an 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. **RPC 7.2(b).**

In determining whether a person is portraying a lawyer whose services or whose firm's services are being advertised, the advertisement as a whole will be considered, including the setting of the advertisement (i.e., a law library, courtroom, or office), as well as the statements, and whether they are in the third person versus first person, and any other matters which may imply to the consumer that the person in an advertisement is a lawyer whose services are being advertised.

- It can be misleading to feature lawyers with actors depicting lawyers in a single advertisement where all would be assumed to be attorneys of the advertising entity. A disclaimer that some pictured are actors would not suffice in this instance to cure the misleading advertisement because the actors are not specifically identified.
- It can be misleading to feature lawyers who are not Nevada licensed attorneys in a way where it would be understood by the layperson that this attorney is the one who will perform the services being advertised. This could be considered a bait and switch tactic and is inherently misleading.

B. As Staff Members: 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. **RPC 7.2(b).**

- It can be misleading to use an actor as a staff employee without identifying that person as an actor regardless if they have a speaking role in the advertisement.

B. As Clients: When an actor portrays a client, the truthfulness of such portrayals is extremely difficult to monitor, and almost inevitably they involve actors whose apparent physical and mental attributes differ in a number of material respects from those of the actual clients portrayed. Therefore, any person appearing or speaking as though he or she were a client of the advertising lawyer or firm must be an actual client of the lawyer or law firm whose services are being advertised, or be clearly identified as an actor. When an actor is used to dramatize an actual client testimonial, they must avoid misleading imagery regarding client identity. They must use disclaimers about results achieved pursuant to RPC (i), and the clients must consent to their use. Fictional client testimonials are not permissible.

Further, client testimonials may only address facts or circumstances surrounding a case or matter in which the client was a party. This applies to visual images of a client as well as quotations that a layperson would reasonably attribute to a client.

- It can be misleading to use actors to represent clients when they are shown receiving a check or money from an attorney or indicate in any form that the attorney resolved their case without disclaimers that actors are being used during the length of the actor's appearance.
- It can be misleading to use stock images with voice over narration for a client testimonial without identifying both the person in the photo and the voice over talent as actors.
- It can be misleading for a client to testify "My lawyer got me three million dollars." This instance will be treated the same as if the lawyer directly communicated the result and require adequate disclaimers (compare to "Soft testimonials" which simply reference the client's overall happiness with the firm such as prompt attention, nice staff, good communication, etcetera which as a general proposition will not require a disclaimer since the sentiment is a personal opinion).

The name, address and telephone number of the client appearing or speaking shall be provided in the RPC 7.2A Filing Form.

D. Dramatizations: If an actor appears in any other role not prohibited by these Rules, the advertisement must disclose that such person is an actor. RPC 7.2(b). In circumstances in which a person in an ad is clearly an actor and there is no possibility of misrepresentation of the featured person's association with the advertising firm, it may not be necessary to include a disclaimer.

- It can be misleading to have actors portraying potential clients with speaking roles without a disclaimer that they are actors.
- It can be misleading to recreate accident scenes, 911 calls or intake calls without a disclaimer stating these scenes are dramatizations.
- It can be acceptable to have actors appearing in stock photo imagery who can not be mistaken as a particular attorney, staff member or client without a disclaimer stating they are actors.

When a disclaimer is required, the disclaimer must be conspicuously placed, clearly legible and appear for a duration that allows the viewer to read the entire disclaimer.

4. Disclaimers

A. Contingency fees: Communicated contingency fees shall contain the disclaimer if the client may be liable for the opposing parties' fees and costs: "You may have to pay the opposing party's attorney fees and costs in the event of a loss." **RPC 7.2(e)**. The necessity of a disclaimer is not triggered solely by the expressions "contingent fee" or "percentage fee." Advertisements that express any willingness to except cases on a contingency fee basis are also required to display the appropriate disclaimer.

- It can be misleading to advertise "No Recovery No Fee," "No fee or charges unless we win your case," or any derivative thereof suggesting that the client will not have to pay anything unless they win or settle their case without including mandatory disclaimers. This includes advertisements of flat fees, percentage fees or contingency fees statements.

B. Discount fees/Range of fees: A lawyer who advertises a specific fee or range of fees shall include the duration said fees are in effect and any other limiting conditions to the availability of the fees. 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. **RPC 7.2(f)**.

RPC 1.0A(a) states the Rules of Professional Conduct are rules of reason. If the discount fee conditions are lengthy and it is not feasible for all conditions to be in the advertisement, rather than not offer and/or advertise the discounted fee, the lawyer should work with the Advertising Committee by way of an optional advance opinion to verify appropriate language to comply with this rule. For example:

- It can be misleading to advertise an 18% contingency fee that is actually a sliding scale without a disclaimer stating the limiting conditions upon the 18% contingency fee.
- It can be misleading to advertise a static 18% fee when it is in fact a sliding scale fee. This would be a deceptive “bait and switch” tactic.

C. Actors: Actors are allowed to portray law staff or appear in dramatizations when appropriate disclaimers are present. Appropriate disclaimers would include “this is a dramatization,” or “paid actor” during the length of the actor’s presence. For more regarding the use of actors and appropriate disclaimers, see Guideline #3 or RPC 7.2.

D. Appearance or Communication of Disclaimer: The inclusion of a disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client, but it will not necessarily do so. Unless any such qualifications and disclaimers are of sufficient size to be clearly legible and prominently placed so as to be conspicuous to the intended viewer, that information can still readily mislead prospective clients. Consequently, in order for statements that require disclaimers not to be false, misleading or deceptive, the appropriate disclaimers or qualifying language must be of sufficient size to be clearly legible and prominently placed so as to be conspicuous to the intended viewer

- It can be misleading to advertise in a foreign language and present the disclaimer in English. Disclaimers must appear in the same language as the statement which prompts the disclaimer. RPC 7.2(h).
- It can be misleading to include a disclaimer that is too small to be legible or is otherwise hidden in the content of the advertisement.

Several authorities have addressed the adequacy of disclaimers. See generally *Farrin v. Thigpen*, 173 F. Supp. 2d 427 (M.D.N.C. 2001) (size, lightness, and brevity of disclaimer rendered it ‘entirely ineffective’). A standard rule of thumb to follow is that disclaimers must be conspicuously displayed in a font size that is easily legible and in language this is easily understood by an ordinary consumer. It is

recommended that the disclaimer be at least as big as the smallest font in an advertisement, be of a contrasting color that draws attention to the disclaimer, and appear for an equal duration as the statement which prompts the use of the disclaimer appears.

5. Name of one lawyer included.

All advertisements and written communications disseminated pursuant to these Rules shall include the name of at least one lawyer responsible for their content. **RPC 7.2(c).**

The purpose of this rule is to ensure the public can clearly identify that the advertisement is for a bona fide lawyer or law firm and independently research the qualifications, licensure status, and discipline history thereof.

A. Trademark Names: A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise false or misleading. (RPC 7.5).

- It may be misleading for a private practice to use a name indicating a geographical location such as “Springfield Legal Clinic” without a disclaimer stating that they are not associated with a public or charitable organization.
- It may be misleading for a private practice located near a university to call themselves “University Legal Center” as the name implies an affiliation with the university.
- It may be misleading for a private practice to call itself “The People’s Law Center,” or “Workers Compensation Relief Center” as both names imply a connection with a public or charitable organization.

6. Direct written communication.

A. Disclaimer: Because direct written solicitations are personalized and may be disguised as some form of official communication, RPC 7.3(c) requires a disclaimer on mailers or written advertisements or communications. The 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 red ink, the following warning:

B. Time Restrictions: If a solicitation is prompted by a specific event or cause of action, the attorney is prohibited from contacting prospective clients arising from the event for 30 days after the event.

While not required, it is advisable when a lawyer directly solicits clients under this rule to make a disclosure identifying the specific information source on which the solicitation is based. For example: police accident reports, booking logs, a specific foreclosure list, etcetera.

C. Biographical Data Form: RPC 1.4(c)(3) requires that any lawyer or law firm that advertises or promotes services by written communication under Rule 7.3 shall enclose with each such written communication the information described in paragraph (c)(1) of RPC 1.4.

The referenced paragraph describes the Lawyer's Biographical Data Form, and the information which is now required to be added to RPC 7.3 communications is:

- (i) Full name and business address of the lawyer.
- (ii) Date and jurisdiction of initial admission to practice.
- (iii) Date and jurisdiction of each subsequent admission to practice.
- (iv) Name of law school and year of graduation.
- (v) The areas of specialization in which the lawyer is entitled to hold himself or herself out as a specialist under the provisions of Rule 7.4.

7. Communication of fields of practice and specialization.

Only those lawyers who have met the requirements of RPC 7.4(d) may advertise or communicate as a specialist or expert. RPC 7.4A states that the State Bar of Nevada has approval power over those organizations that can certify lawyers as specialist. For more information about "certifying organizations," visit <http://www.nvbar.org/Specialization/FAQ>.

Fields of Practice: RPC 7.4A was not substantively changed in the 2007 amendments. However, the rule was amended to **remove** any limitations on communicating practice areas or limited fields of practice, so long as those communications are not false or misleading. As such, a lawyer is no longer limited to advertising just three fields of practice and no longer is required to meet any specific conditions.

- It can be misleading to advertise "specializing in" or as an "expert" in a specific area or areas of practice if the advertising attorney has not been deemed a certified specialist by an approved organization.

It is possible to indicate focused areas of practice by using alternative phrasing such as "practicing primarily in." It is also allowable to use an area of practice in phrasing such as "Personal Injury Attorneys," or "a Family Law Firm."

8. Websites and Electronic Advertisements

Websites, and advertisements on the electronic media such as the Internet, do not currently have to be filed under RPC 7.2A, but must comply with the Rules of Professional Conduct.

Such communications are eligible for an optional advanced advisory opinion under RPC 7.2B if the lawyer or law firm wishes.

9. Distinction between "Filing" and an "Advanced Advisory Opinion"

A. Filing:

All advertisements with the exception of tombstones and websites must be filed with the State Bar Administrator. RPC 7.2A, ACR 2(o), ACR 6. Filing does not connote approval of an ad. An ad that has been filed is reviewed within thirty (30) days of filing by the Advertising Advisory Committee. Although a filed ad has an initial review, it is still subject to scrutiny if the Committee or Office of Bar Council deems it necessary.

B. Advanced Advisory Opinion:

The purpose of a request for an Advanced Advisory Opinion is to discover any violations of the advertising rules so that they may be corrected prior to dissemination. Its use is purely optional. No lawyer is required to obtain advance clearance of any advertisement or solicitation from the State Bar. Although a finding of noncompliance by the Committee is not binding in a disciplinary proceeding, a finding of compliance is binding in favor of the submitting lawyer as to all material actually submitted for review, as long as the lawyer's presentation to the Committee in connection with that advisory opinion is true and not misleading.

If a lawyer wishes to get an advanced, binding advisory opinion, an application and the appropriate fee may be submitted to the appropriate Advertising Advisory Committee in care of the State Bar Administrator. RPC 7.2B, ACR 7, ACR 8.

10. Lawyer Responsible for Content of Advertising

It is presumed that a lawyer or law firm whose name is published in an advertisement is responsible for the content of the advertisement. The responsible lawyer shall sign the RPC 7.2A Filing Form.

11. Tombstone. ACR 2(o)

Advertisements which are limited to the following information shall be considered “tombstone” advertisements which are exempt from filing under RPC 7.2A:

(a) The name of the lawyer or firm and lawyers associated with the firm, with office addresses, telephone numbers, office and telephone service hours, telecopier numbers, e-mail and website information, and a designation of the profession such as attorney, lawyer, law office, or firm;

(b) The fields of law in which the lawyer or firm advertises a certification, limited practice, or specialty, and required related information as set forth in RPCs 7.2 and 7.4, provided the lawyer is otherwise qualified to make those statements in compliance with those Rules;

(c) The date of admission of the lawyer or lawyers to the State Bar of Nevada, to federal courts, and to the bars of other jurisdictions;

(d) Technical and professional licenses granted by this state and other recognized licensing authorities;

(e) Foreign language ability;

(f) Identification of prepaid or group legal service plans in which the lawyer participates provided the participation is otherwise compliant with SCR 42.5;

(g) The acceptance or non-acceptance of credit cards; and

(h) In addition to the exceptions listed in subparagraphs (a)-(g) above, listings in a regularly published law list; newsletters or other similar publications directed primarily to other lawyers and legal professionals; and announcements limited to change of address, affiliation, or staffing are exempt from filing.