

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF AMENDMENTS
TO SCR 196 AND SCR 198
ESTABLISHING SPECIALIZATION.

ADKT No. 350

FILED

ORDER AMENDING RULES 196 AND 198
AND ADOPTING NEW RULE 198.5
OF THE SUPREME COURT RULES

DEC 18 2003

JANETTE M. SLOAN
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

WHEREAS, the Board of Governors of the State Bar of Nevada has petitioned this court to amend the Supreme Court Rules to permit attorneys to be certified as specialists in particular areas of the law and to create policies and procedures for such certification and for the communication thereof to the public; and

WHEREAS, this court heard public comment on the petition during a public administrative meeting on September 23, 2003, and determined that amendment of the Supreme Court Rules is warranted, accordingly,

IT IS HEREBY ORDERED that Rules 196 and 198 of the Supreme Court Rules shall be amended and shall read as set forth in Exhibit A and that new Rule 198.5 of the Supreme Court Rules shall be adopted and shall read as set forth in Exhibit A.

IT IS FURTHER ORDERED that these rule amendments shall be effective thirty (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

SUPREME COURT
OF
NEVADA

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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 18th day of December, 2003.

Agosti, C.J.
Agosti

Shearing, J.
Shearing

Rose, J.
Rose

Leavitt, J.
Leavitt

Becker, J.
Becker

Maupin, J.
Maupin

Gibbons, J.
Gibbons

cc: N. Patrick Flanagan, III, President, State Bar of Nevada
Allen W. Kimbrough, Executive Director, State Bar of Nevada
Rob Bare, Bar Counsel, State Bar of Nevada

EXHIBIT A**AMENDMENT TO RULES 196 AND 198 AND
NEW RULE 198.5 OF THE SUPREME COURT RULES****Rule 196. Advertising.**

1. Subject to the requirements of Rule 195, 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 communication not involving solicitation as prohibited by Rule 197.

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.

2. Advertisements on the electronic media such as television and radio may contain the same factual information and illustrations as permitted in advertisements in the print media. The information shall be articulated by a voice, with no background sound other than instrumental music. The voice shall not be that of a celebrity whose voice is recognizable to the public. 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 which is advertising. If a person appears in an advertisement as an employee of a lawyer or law firm, such person must be

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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.

3. All advertisements and written communications disseminated pursuant to these rules shall include the name of at least one lawyer or the lawyer referral service responsible for their content.

4. [Except as provided in this section, all advertisements shall contain the following disclaimer: "The State Bar of Nevada does not certify any lawyer as a specialist or expert." This disclaimer need not appear in advertisements in the public print media that contain no illustrations and no information other than that listed in subsections 12(a)-(h) of this rule.] A lawyer shall not state or imply that the lawyer is a specialist in a field of law unless the lawyer is currently certified as a specialist in accordance with Rule 198, and the name of the authorized certifying organization is clearly identified in the advertisement.

5. There shall be no dramatizations, testimonials or endorsements in any advertisement in any medium. A lawyer's advertisement, regardless of medium, must provide only useful, factual information presented in a nonsensational manner. This rule is intended to preclude the use of scenes creating suspense, scenes containing exaggerations or situations calling for legal services, and scenes creating consumer problems through characterization and dialogue ending with the lawyer solving the problem.

6. Illustrations used in advertisements shall present information which can be factually substantiated. Provided that the scenes do not unduly appeal to any emotion or passion, permitted illustrations include scenes such as a lawyer working behind a desk, consulting with another attorney,

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working in the library, climbing courthouse steps, or other similar scenes reflecting activities commonly performed by lawyers.

7. 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 198.

8. 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: "You may have to pay the opposing party's attorney's fees and costs in the event of a loss."

9. A lawyer who advertises a specific fee or range of fees for a particular service shall honor the advertised fee or range of fees for at least 90 days unless the advertisement specifies a shorter period; provided that, 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.

10. A lawyer shall not make statements describing or characterizing the quality of the lawyer's services in advertisements and written communications. This provision shall not apply to information furnished to a prospective client at the person's request or to information supplied to existing clients.

11. A lawyer shall not advertise services under a name that violates the provisions of Rule 199.

12. The following information in advertisements and written communications shall be presumed not to violate the provisions of Rule 195:

(a) Subject to the requirements of this rule and Rule 199, the name of the lawyer or law firm, a listing of lawyers associated with the firm, office

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addresses and telephone numbers, office and telephone service hours, and a designation such as "attorney" or "law firm."

(b) 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.

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

(d) Foreign language ability.

(e) Fields of law in which the lawyer is certified or designated, subject to the requirements of Rule 198.

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

(g) Acceptance of credit cards.

(h) Fee for initial consultation and fee schedule, subject to the requirements of sections 8 and 9 of this rule.

(i) 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.

13. 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.

14. A copy or recording of an advertisement or written or recorded communication shall be retained by the lawyer or law firm which advertises for four years after its last dissemination along with a record of when and where it was used.

15. A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the

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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 198. [Communication of fields of practice] Communication of fields of practice, specialization, and limited practice. A lawyer shall not communicate that the lawyer is a specialist or that he or she **[does or does not practice]** practices in particular fields of law, except in accordance with this **[Rule]** rule.

1. **Patent law.** A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "patent attorney" or a substantially similar designation.

2. **Admiralty law.** A lawyer engaged in admiralty practice may use the designation "admiralty," "proctor in admiralty" or a substantially similar designation[; and].

3. **Specialist.** In addition to the designations permitted by subsections 1 and 2 of this rule, a lawyer may communicate that he or she is a specialist in a particular field of law if the lawyer complies with the provisions of this subsection.

(a) **Certification.** The lawyer must be certified as a specialist by an organization that has been approved under Rule 198.5.

(b) **Practice hours; CLE; liability coverage; reporting.** The lawyer must meet the following requirements for practice hours devoted to each field of specialization, continuing legal education in each field of specialization, and professional liability coverage:

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(i) The lawyer shall have devoted at least one-third of his or her practice to each designated field of specialization for each of the preceding 2 calendar years.

(ii) The lawyer shall have completed 10 hours of accredited continuing legal education in each designated field of specialization of practice during the preceding calendar year. The carry-forward and exemption provisions of Rules 210 and 214 do not apply. In reporting under subparagraph (iv), the lawyer shall identify the specific courses and hours that apply to each designated field of specialization.

(iii) The lawyer shall carry a minimum of \$500,000 in professional liability insurance, with the exception of lawyers who practice exclusively in public law. The lawyer shall provide proof of liability coverage to the state bar as part of the reporting requirement under subparagraph (iv).

(iv) The lawyer shall submit written confirmation annually to the state bar and board of continuing legal education demonstrating that the lawyer has complied with these requirements. The report shall be public information.

(c) **Registration with state bar.** The lawyer must file a registration of specialty, along with a \$250 fee, with the executive director of the state bar on a form supplied by the state bar. The form shall include attestation of compliance with subsection (3)(b) for each specialty registered.

(i) **Annual renewal.** A lawyer registered under this rule must renew the registration annually by completing a renewal form provided by the state bar, paying a \$250 renewal fee, and providing current information as required under subsection (3)(b) for each specialty registered. The lawyer must submit the renewal form to the executive director of the state bar on or

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before the anniversary date of the initial filing of the registration of specialty with the state bar.

(ii) Registration of multiple specialties. A lawyer may include more than one specialty on the initial registration or include additional specialties with the annual renewal without additional charge. Additional specialties added at any other time will be assessed a one-time \$50 processing fee.

(d) Revocation and reinstatement. The board of governors shall establish rules and procedures governing administrative revocation and reinstatement of the right to communicate a specialty for failure to pay the fees set forth in subsection 3(c), including reasonable processing fees for late payment and reinstatement.

(e) Advertising. A lawyer certified as a specialist under this rule may advertise the certification during such time as the lawyer's certification and the state bar's approval of the certifying organization are both in effect. Advertising by a lawyer regarding the lawyer's certification under this rule shall comply with Rules 195 and 196 and shall clearly identify the name of the certifying organization.

[3. In addition to a designation permitted by preceding subsections 1 and 2, a] 4. Limited practice. A lawyer may communicate that the lawyer's practice is limited to the following or substantially similar fields of practice, and such others as are not false or misleading.

Administrative Agency Matters
Antitrust and Trade Regulation
Appellate Practice
Banking Law
Bankruptcy Law
Constitutional Law

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Construction Law
Consumer Claims and Protection
Copyright and Trademark Law
Corporate Finance and Securities Law
Corporation and Business Law
Creditor and Debtor Law
Criminal and Traffic Law
Domestic Relations and Family Law
Environmental Law
Gaming Law
Government Law
Health Care Law
Immigration and Customs Law
Insurance Law
International and Foreign Law
Job Discrimination and Civil Rights
Labor Law
Legislative Matters
Military Law
Mining Law
Pension, Profit Sharing and Employee Benefit Plans
Personal Injury and Wrongful Death Claims
Professional Malpractice
Public Utility Matters
Real Estate Law
Taxation Law
Water Rights Law
Wills, Estate Planning and Probate Matters
Workers Compensation

[Not more than three designations, including those pursuant to subsections 1 and 2, above, are permitted under this Rule. A law firm may use more than three designations, provided each attorney in the firm from whom a designation is derived is identified together with his or her fields of practice.]

(a) Manner of designation of limited practice. Designation of limitation of practice shall be only in the following manner:

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(i) If the lawyer accepts only legal matters in the designated fields of practice, they shall be preceded by the words "Practice limited to . . ."; or

(ii) If the lawyer is practicing primarily in the designated fields of practice but also accepts other types of legal matters, the designated fields of practice shall be preceded by the words "Practicing primarily in . . .".

[(b) A communication in writing to the public of a field of practice permitted by subsection 3 of this Rule shall be accompanied by a prominent "Notice to the Public" in the following form:

Neither the State Bar of Nevada nor any agency of the State Bar has certified any lawyer identified here as a specialist or as an expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability.]

[(c) A lawyer shall not place a listing in the classified section of a telephone directory under a classification of "Attorneys," "Attorneys & Counselors at Law," or "Lawyers,"] (b) Limitations. A lawyer shall not communicate, pursuant to subsection 4(a), that the lawyer's practice is limited to, or that the lawyer practices primarily in, a particular field, unless for each field of practice the lawyer meets the requirements of this [Rule] rule for communicating a limitation of practice.

[(d) Prior to communication of a limitation of practice permitted by subsection 3 of this Rule,] (c) Requirements. Before a lawyer may communicate a limitation of practice permitted by this subsection, a lawyer shall comply with the following requirements each calendar year and so state in writing to the [Board of Continuing Legal Education] board of continuing legal education:

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(i) The lawyer must have devoted at least 300 hours each year to each separate designated field of practice for each of the preceding two calendar years; and

(ii) The lawyer must have completed at least six hours of accredited continuing legal education in each designated field of the practice during the preceding calendar year. The general exemptions and carry-forward provisions of [the MCLE] Rules 210 and 214 do not apply.

(iii) [The first report of compliance may be made in 1985.] In reporting under subsection [(d)](c)(i), a statement of compliance signed by the lawyer is sufficient. In reporting under subsection [(d)](c)(ii), the lawyer shall identify the specific courses and hours which apply to each designated field of practice. The report shall be public information.

[(e) A lawyer may communicate the name of the state and federal courts in which the lawyer is permitted to practice.

(f) If a lawyer is unable to complete the hours of accredited continuing legal education during the preceding calendar year as required by this Rule, the lawyer may apply to the Board of Continuing Legal Education for an extension of time in which to complete the hours. For good cause the board may extend the time not more than six months.

(g) A lawyer who communicates a field of practice pursuant to this Rule shall keep time records to demonstrate compliance with preceding subsection (d). Such records shall be available to the State Bar Association and the Board of Continuing Legal Education on request.]

5. Limit on number of designations. Not more than three designations, including those pursuant to subsections 1 through 4, above, are

permitted under this rule. A law firm may use more than three designations, provided each attorney in the firm from whom a designation is derived is identified together with his or her fields of practice.

[4.]6. Temporary exemption from CLE requirements. The board of governors or its designee may grant a member's request for [Temporary] temporary exemption from completion of the specific continuing legal education requirements imposed by this [Rule may be sought and granted] rule for exceptional, extreme, and undue hardship unique to the member [by the Board of Governors or its designee].

7. Extension to complete CLE requirements. If a lawyer is unable to complete the hours of accredited continuing legal education during the preceding calendar year as required by this rule, the lawyer may apply to the board of continuing legal education for an extension of time in which to complete the hours. For good cause the board may extend the time not more than six months.

8. Records. A lawyer who communicates a field of practice pursuant to subsections 3 and 4 of this rule shall keep time records to demonstrate compliance with subsections 3(b) and 4(c). Such records shall be available to the State Bar of Nevada and the board of continuing legal education on request.

[5. The Board of Governors of the State Bar] 9. Guidelines. The board of governors of the state bar shall be authorized to formulate and publish a set of guidelines to aid members of the [Bar] state bar in complying with the requirements of this [Rule] rule.

10. Law lists and legal directories. This rule does not apply to listings placed by a lawyer or law firm in reputable law lists and legal directories that are primarily addressed to lawyers.

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Rule 198.5. State bar approval of organizations that certify lawyers as specialists. The board of governors of the state bar may, for the purposes of Rule 198, approve organizations that certify lawyers as specialists in accordance with this rule. The board of governors may, in its discretion, appoint a committee to assist the board in implementing a program for the approval of certifying organizations. Any such committee shall be comprised of members of the state bar and such others whom the board of governors deems necessary and proper.

1. Rules; authority. The board of governors shall implement rules and standards by which the board approves organizations to certify lawyers as specialists in particular areas of law, and which describe the conditions and procedures under which such approval shall be granted, maintained, and revoked. The board shall retain jurisdiction to approve, deny, or revoke approval of a certifying organization under this rule and may establish fees for administering its duties under this rule. At its discretion, the board may delegate any other duties associated with approving specialty certification organizations as it deems necessary and proper.

2. Minimum standards for certifying organizations. To be approved under this rule, in addition to meeting the standards adopted by the board of governors, an organization that certifies lawyers as specialists in a particular area of the law must make certification available to all lawyers who meet objective and consistently applied standards relevant to the specialty area of law.

3. Duration of approval; renewal; revocation. The board's approval of the certifying organization shall be valid for a period of 5 years, subject to discretionary renewal upon application by the organization. The

board of governors may revoke approval of a certifying organization at any time for violation of this rule or violation of any other terms and conditions of the approval. Notice of a decision to deny approval, deny renewal, or revoke approval shall be provided to the petitioning organization and an opportunity to appeal provided.

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