



**LAWYER ADVERTISING
INTERPRETIVE GUIDELINES
July 2018**

Introduction:

The Nevada Supreme Court issued an Order dated March 9, 2018 amending the Rules of Professional Conduct relating to lawyer advertising. The State Bar of Nevada's Lawyer Advertising Committee is responsible for reviewing all lawyer advertising in this state filed pursuant to NRPC 7.2 and referring non-compliant advertising to the state bar's Office of Bar Counsel. These Guidelines are provided as a notice to advertising attorneys for how the Committee may interpret the lawyer advertising rules, providing a basis for its referrals. In no way are these Guidelines to be considered limiting or binding on the Office of Bar Counsel.

GUIDELINE 1: MISLEADING COMMUNICATIONS

Rule 7.1 states "A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading."

Communications will be considered inherently misleading if they:

- Create an unjustified or unreasonable expectation about the results the lawyer can or has achieved;
- Compare the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; and/or
- Contain a testimonial or endorsement which violates any portion of the Rule.

GUIDELINE 2: DISCLOSURES AND DISCLAIMERS

Rule 7.2(b) sets forth a series of disclaimers and disclosures that must be included in lawyer communications. The following examples are provided to give guidance on how to best comply with disclosure and disclaimer requirements.

(A) Fees.

- (1) *Contingency Fees.* Advertising and communications which indicate that the charging of a fee is contingent on outcome or that the fee will be a percentage of the recovery shall contain a disclaimer that the client may be liable for the opposing parties' fees and costs. The following disclaimer may be used to fulfill this requirement: "You may have to pay the opposing parties' attorney fees and costs in the event of a loss."

(2) *Fixed Fees.* If charging a fixed fee, the advertisement should also disclose hidden charges such as court costs.

(3) *Jury Verdict/Fees Awarded.* It is considered 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.

(4) *No Fee if No Recovery.* Advertisements that state the client will not be charged a fee unless there is a recovery should disclose that the client would be responsible for costs, including advanced litigation expenses and court costs, and possible opposing party's fees if there is no recovery.

(5) *Range of Fees.* If advertising a specific fee or range of fees for a limited duration, the advertisement should state the duration the fees are in effect and any other limiting conditions. For advertisements published in media not more frequently than annually, it is the expectation that the fee or range of fee be honored for no less than one year following publication.

(B) **Identification of Non-Lawyers.** In addition to the disclosures required for the use of actors, lawyer advertising should identify non-lawyers, out-of-state lawyers, and specially admitted lawyers, such as in-house counsel.

(C) **Quantitative Statements.** Statements that are quantitative, such as the "best" or the "most" will be subject to proof of verification.

(D) **Years of Experience.** If listing the aggregate years of experience of lawyers in a firm in an advertisement, it should not appear that the firm has more years of experience than any one lawyer. It is acceptable to state a firm has "cumulative," "combined" or "average" amount of years of experience.

GUIDELINE 3: PAST SUCCESSES

If advertising referencing past successes or results obtained, the communicating lawyer or member of the law firm must have served as lead counsel or was primarily responsible for the settlement or verdict in the matter. Additionally, advertisements regarding past successes or results obtained must:

(A) Contain a disclaimer that past results do not guarantee, warrant, or predict future cases; and

(B) If the results include a monetary sum, the actual gross amount received by the client, the attorney fees and litigation expenses withheld from the amount must all be stated in the actual ad.

GUIDELINE 4: USE OF ACTORS

Rule 7.2(b)(1) outlines the disclosures required if actors are used to portray a lawyer, members of a law firm or clients. In determining whether a person is portraying a lawyer whose services or whose firm's services are being advertised, the Advertising Committee will consider the advertisement as a whole, 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.

The following scenarios would be considered to be misleading:

- An advertisement featuring 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.
- Advertising featuring 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.

GUIDELINE 5: PROMINENCE OF DISCLAIMERS

Disclaimers and disclosures must be reasonably prominent and clearly legible if written, or intelligible if spoken. For example:

- If the disclosure or disclaimer is televised or broadcast in an electronic medium, it should be displayed for a sufficient time to enable the viewer to see and read it.
- If spoken aloud, the disclosure or disclaimer should be plainly audible to the intended listener.
- If the statement is made on a website, the required words or statements should appear on the same page as the statement requiring the disclosure or disclaimer.

GUIDELINE 6: FILING EXEMPTIONS

A lawyer or law firm shall file with the state bar (1) a copy or recording of all advertisements disseminated in exchange for something of value; and (2) written or recorded communications the lawyer causes to be disseminated for the purpose of advertising legal services. Websites are not considered to be advertisements subject to filing requirements.

Additionally, the following information in advertisements and written communications will be presumed to not violate the provisions of Rule 7.1 and do not need to be filed:

(A) **Tombstone advertisements** that include only the following information:

- The name of the lawyer, office addresses and telephone numbers, office hours and designations such as “attorney” or “law firm;”
- 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;
- Technical and professional licenses granted by the state or other recognized licensing authorities;
- Foreign language ability;
- Fields of law in which the lawyer is certified or designated subject to the requirements of Rule 7.4;
- Prepaid or group legal service plans in which the lawyer participates;

- Acceptance of credit cards;
- Fee for initial consultation and fee schedule, subject to the disclosure requirements relating to contingency fees and range of fees;
- Current membership or positions held with the State Bar of Nevada, its sections or committees, together with the dates of membership;
- Military service, including branch and dates of service; and
- Common salutary language such as “best wishes,” “good luck,” “happy holidays,” “pleased to announce,” or “proudly serving your community.”

(B) **Listings in regularly published law list; newsletters or other similar publications** directed primarily to other lawyers and legal professionals;

(C) **Announcements** regarding change of address, affiliation or staffing; and

(D) **Derivatives of previously filed advertisements** as long as there has been no substantive change to the advertisement.