

**Lawyer Advertising Advisory Committees;  
Operating Rules, Procedures, and Fee Schedules**  
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**1. Purpose and administration**

Whereas Rule of Professional Conduct (RPC) 7.2B provides the Board of Governors shall:

Create two *Standing Lawyer Advertising Advisory Committees (Committees)*, one each for the North and South as set forth in Supreme Court Rule (SCR) 100, to review filings submitted under RPC 7.2A, and, respond to written requests under RPC 7.2B for voluntary Advance Opinions; and

Promulgate attendant bylaws, rules of procedure, and reasonable fees for Advance Opinion requests;

These operating rules and procedures are hereby created for: (1) the administrative use of the Committees and designated administrative staff assistant(s) of the State Bar of Nevada pursuant to RPCs 7.2A and 7.2B; (2) the creation of fee schedules for voluntarily requested Advance Opinions; and (3) guidance to advertising lawyers.

These Rules shall provide guidance in the implementation of RPCs 7.1-7.5. They shall not be construed to alter, enlarge, or abrogate any portion of the Rules of Professional Conduct and are to be applied in a manner that is consistent with those Rules and promotes the fair and just discharge of the Committees' responsibilities.

## 2. Definitions

- a. **Administrator.** The State Bar staff Administrator as provided for in RPC 7.2B is responsible for providing administrative support to the Committees, including but not limited to coordinating all filings and submissions.
- b. **Advance Advisory Opinion.** A voluntary, pre-dissemination opinion obtained from a Committee pursuant to RPC 7.2B(c).
- c. **Advertisement.** Any communication or solicitation as set forth in RPCs 7.1 through 7.5 in the public media, including print, radio, television, and the Internet.
- d. **Advertiser.** Any lawyer or law firm that communicates availability of legal services in Nevada or directed to Nevada residents within the meaning of RPCs 7.1-7.5.
- e. **Advertising Committee.** Either the Northern or Southern Advertising Committee promulgated by RPC 7.2B.
- f. **Advertising Database.** Computer system to be maintained by the State Bar and utilized by the Administrator, which shall be capable of providing relevant statistics and maintaining records in accordance with RPCs 7.1-7.5 and these rules.
- g. **Application.** The form to be completed and filed with Advance Advisory Opinion requests pursuant to RPC 7.2B. Compare to *filing form* in subparagraph (q), which applies to RPC 7.2A mandatory filings.
- h. **Approved.** An advertisement found *compliant* by the Committee or Bar Counsel. Compare to *filed* in subparagraph (p), which connotes submitted to the State Bar pursuant to RPC 7.2A but not reviewed.
- i. **Attorney/lawyer.** A person holding himself or herself out as an attorney or lawyer, or, performing services for which a law license is required in Nevada.
- j. **Bar.** The State Bar of Nevada.
- k. **Bar Counsel.** The State Bar of Nevada Bar Counsel or designee.
- l. **Campaign.** For the purposes of these rules, an advertising marketing *campaign* refers to a package presentation of bundled lawyer advertising. This will often include a specific ~~concept~~ that incorporates slogans, jingles, or images that may be used in multiple media and presented in

varying ways. The underlying concept and substantive content however is consistent. All materials must be submitted in a single presentation.

- m. **Compliant.** Comports with the Nevada Supreme Court Rules of Professional Conduct.
- n. **Derivative Advertisement.** An advertisement containing only a portion of a previously filed or approved advertisement, which is substantively identical to the filed or approved advertisement and does not contain any new substantive content.
- o. **Exempt Advertisements.** Advertisements which are exempt from filing under RPC 7.2A shall be limited to ~~derivatives~~ of a previously approved advertisement as set forth in subparagraph (n), *prima facie* ~~tombstone~~ advertisement as set forth below, and websites.
  - 1. **Tombstone.** Advertisements which are limited to the following information shall be considered ~~tombstone~~ advertisements which are exempt from filing under this Rule:
    - (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 nonacceptance 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.

2. **Derivative (Post review) exemptions.** Once an advertisement or written solicitation is filed and/or approved, the following need not be re-filed or re-approved, whichever applies:

(a) derivatives of the approved advertisement as defined in these rules, provided the information is taken verbatim from the approved version and adds no new substantive information or content; and

(b) non-substantive changes such as new address, practice areas, new colors, or new music.

3. **Websites.** Websites are exempt from mandatory filing until further directive of the Board of Governors. This subject may be revisited as part of the first advertising program review or sooner as the Board deems necessary and proper. This waiver from *filing* shall not be construed to exempt websites from *compliance* with the substantive Rules of Professional Conduct. **Further, websites may also be voluntarily submitted for RPC 7.2B advisory opinions.**

- p. **Filed.** An advertisement only *submitted* to the State Bar of Nevada pursuant to RPC 7.2A, but not yet reviewed.
- q. **Filing form.** The completed form which shall accompany all mandatory filings pursuant to RPC 7.2A.
- r. **Pre-approval.** An Advanced Opinion of Compliance, issued prior to first dissemination, pursuant to RPC 7.2B.
- s. **Rules.**
  - 1. Advertising Committee Rule (ACR)
  - 2. Rules of Professional Conduct (RPC)
  - 3. Supreme Court Rules (SCR).
- t. **Substantiating information.** Prove-up information required for any substantive content in an advertisement warranting factual evidence of truth and/or to obviate the potentially misleading content, such as testimonials, endorsements, or past results.

- u. **Substantive content.** Text or information other than phone numbers, addresses, e-mail or website designations.
- v. **Substantive modification.** Any addition, deletion, or change in text or context beyond simple changes in phone numbers, addresses, e-mail or website designations.

### 3. **Committee Composition and Appointment.**

As set forth in RPC 7.2B(a)(1):

(a) **Composition.** Each Committee shall have a minimum of 5 volunteer members, 4 of whom shall be members of the State Bar of Nevada and 1 of whom may be a non-lawyer. Each Committee shall also have a minimum of 5 members to serve as ad hoc or conflict replacements when needed. Members must have a full-time business or residential presence in the respective district of the Committee.

(b) **Appointment.** Members shall be appointed by the Board of Governors and serve 2-year terms, subject to reappointment at the Board's discretion. No member shall serve a lifetime total of more than 12 years. Members may be removed by the Board of Governors for cause.

4. **Meetings; general powers; minimum duties; conflicts.** The Committee shall meet at least once per month on a predetermined time and date to review all matters submitted before it within the preceding 30 days, and for such time periods as the Committee's business requires. Meetings are convened at the direction of the Chair. Timely advance notice of all Committee meetings shall be sent to all members in writing by the Administrator. For the purpose of this rule, e-mail may constitute written notice.

(a) **Minimum duties.** Each Committee shall meet at least once monthly on a predetermined date to review all matters before it in a timely fashion. Advance opinions shall be provided within 30 days of submission to the Committee.

(b) **Conflicts.** A Committee member conflicted from a particular review may not vote or otherwise participate in the review and resolution of the matter unless the submitting advertising attorney chooses to waive the conflict.

(c) **Conflict of Interest Policy.** Each Committee member shall, upon appointment and annually thereafter, sign and submit to the Administrator a current copy of the State Bar Board of Governors' Conflict of Interest Policy.

## 5. Filing Forms.

- (a) Each advertiser shall submit an original and one copy of the applicable official form(s) provided by the State Bar of Nevada and approved by the Committee.
- (b) Only one form is required for each advertisement.
- (c) New form requirements.

1. **A new form shall be filed** by the advertiser if a previously approved advertisement contains a modification of substantive content. A substantive modification is defined as any addition, deletion, or change in text or context beyond simple changes in phone numbers, addresses, or e-mail or website designations.

### 2. **A new form is not required:**

(i) each time an identical advertisement is disseminated or an identical form of solicitation is sent or delivered, or a derivative of a previously-approved advertisement is disseminated; or

(ii) when an advertiser responds to a request for substantiating information from the Committee or the State Bar.

- (d) Required format.
  - 1. Each form for a submitted written or electronic advertisement shall be accompanied by two copies of the advertisement.
  - 2. Each form for an audio or video advertisement shall be accompanied by two copies of the advertisement and the final production script. A recording of each audio or video advertisement that has been previously submitted for pre-approval must be submitted to the committee at or about the time the advertisement is actually disseminated regardless of whether it receives pre-approval.
  - 3. Audio and video recordings shall be submitted in CD or DVD format, respectively.
  - 4. Any advertisement in a non-English language must be submitted with an English translation of that advertisement.

## **6. Review of mandatory filings under RPC 7.2A.**

RPCs 7.2A and 7.2B allow two separate filings under these rules: (i) advertisements all lawyers must file (mandatory); and (ii) specific requests for an Advance Advisory Opinion (optional).

All mandatory filings must be made available by the Administrator to the relevant Committee. Any potentially violative advertisements may also be reviewed by Bar Counsel in the normal course pursuant to SCR 105.

### **(a) The administrator shall:**

1. *Acknowledgment.* Acknowledge receipt of all advertisements filed pursuant to RPC 7.2A in writing, including a disclaimer %receipt does not connote approval,+ and providing the procedures for obtaining Advisory Opinions under RPC 7.2B.
2. *Database.* Enter all relevant information into the advertising database. ACR 2(f).
3. *Committee.* Make all filings available to the relevant Committee in the preferred format as determined by the respective chair within ten (10) days of receipt by the State Bar. This time period may be extended by the respective chairs for good cause, such as high volume of complaints received or other exigent circumstances which may occur.
4. *Bar Counsel.* Forward an additional copy of any potentially violative advertisements to Bar Counsel for review in the normal course pursuant to SCR 105.

### **(b) The Committee may:**

Pursuant to RPC 7.2B(b) below, the Committee may process filings under RPC 7.2A as follows:

*The committee may issue advisory opinions on any advertisement filed with the state bar. If the committee finds that an advertisement does not comply with these rules, it may issue an advisory opinion to bar counsel within 30 days of its review. The opinion must include the basis for the Committee's finding of noncompliance and a recommendation that bar counsel issue a notice to the lawyer or law firm requesting a correction or withdrawal of the advertisement. If bar counsel accepts the committee's recommendation and issues*

*the notice, the advertising lawyer or law firm has 30 days to respond to bar counsel's notice. Bar counsel may initiate appropriate disciplinary action if the lawyer or law firm fails to file a timely response.*

**7. Advance Opinion filings (Pre-dissemination review) under RPC 7.2B.**

**(a) The Administrator shall:**

1. *Acknowledgment.* Acknowledge receipt of the advance opinion request in writing; and provide the submitting attorney with both the date the request was forwarded to the Committee and the date of the next regularly scheduled meeting.

2. *Database.* Enter all relevant information into the advertising database. ACR 2(f).

3. *Committee.* Forward to the relevant Committee in the preferred format as determined by the respective Chair within three (3) business days of receipt by the State Bar.

4. *Notice of deficiency.* Notify the submitting attorney within **three (3) business days of receipt of any deficiency** in filing which prevents the processing of the request for an Advance Opinion, **such as failure to include the required fee set forth in ACR 8.**

**(b) The Committee shall:**

**Opinion of non-compliance**

1. *Findings.* Within 30 days of submission, the committee shall issue an advance written opinion to the lawyer or law firm submitting the request for pre-dissemination review. The opinion shall include a finding of whether the proposed advertisement is in compliance with these Rules. If the Committee finds that the advertisement is non-compliant, then the opinion shall also include the basis for the finding and instructions on how the proposed advertisement can be corrected. The lawyer or law firm whose advertisement the Committee has found to be non-compliant shall be notified of the procedure for requesting a hearing and shall be afforded an opportunity for a hearing on the Committee's findings.



No referral shall be made to Bar Counsel under this subparagraph without providing the submitting attorney a reasonable opportunity to voluntarily comply with the Committee's findings.

2. *Appeal.* An Advance Opinion of Non-compliance by one Committee may be appealed by the requestor in writing to the other Committee, which decision shall be controlling.

3. *Limitations; when binding on discipline authority.* The Committees are primarily dedicated to providing independent, volunteer peer Advance Opinions to lawyers upon request as a safe-harbor to future disciplinary action only. No request for an Advance Opinion shall be granted after a disciplinary investigation is commenced on the subject advertisement. In the event an opinion is issued by a committee during or after a disciplinary review is in progress, the decision of any disciplinary panel convened pursuant to SCR 105 shall be controlling.

In the event the Rules of Professional Conduct are amended by the Supreme Court of Nevada after an Advance Opinion of Compliance is rendered, the Supreme Court Rules shall be controlling.

An Advance Opinion of Noncompliance shall not be binding on any disciplinary panel or Bar Counsel. An Advance Opinion of Compliance is binding on the disciplinary panel and Bar Counsel in favor of the advertising lawyer provided that the representations, statements, materials, facts and written assurances received in connection therewith are true and not misleading. An Advance Opinion of Compliance constitutes admissible evidence if offered by a party.

## **8. Advance Opinion Request Fee Schedule.**

The following non-refundable fees shall apply to requests for Advance (pre-dissemination) Advisory Opinions under RPC 7.2B and ACR 7:

(a) billboards	\$250
(b) radio or television spots	\$250
(c) telephone directory yellow page	\$350

(d) written solicitations \$250

*As described in RPC 7.3, including but not limited to flyers, inserts, newspapers, pamphlets, and postcards. For the purpose of this subsection, business cards that have information beyond the tombstone exceptions defined in subsection (b) shall be considered a written solicitation.*

(e) media campaigns [See ACR 2(l)] \$3,000

*In addition to written materials, marketing executives and the advertising lawyer shall be provided the opportunity to make oral presentation to the Committee.*

With the exception of (1) media campaigns and (2) the exemptions set forth in ACR 2(o), **a separate fee will be assessed for each advertisement** for which an Advance Opinion is requested under RPC 7.2B.

## **9. Open records.**

All Committee records and applications submitted under these rules shall be available for public viewing upon reasonable request with the exception of such content that is (1) personal in nature such as payment information and non-public contact information, (2) proprietary, or (3) otherwise protected by law.

Requests for review shall be submitted to the Administrator and, if a question arises, decided by the Chair of the respective Committee.

**10. Conference Calls.** The Committee may, at the discretion of the Chair, conduct its business by conference call but, in such an event, any action taken must be reduced to writing and signed by the Chair.

**11. Quorum.** A simple majority of the then-appointed Committee members shall constitute a quorum.

**12. Votes.** Each Committee member present at a Committee meeting shall have a single vote. All matters subject to a vote shall be decided by a simple majority of those members attending the meeting.

**13. Appearances.** Subject to facility space constraints, interested persons are welcome to attend any public Committee meeting. The Committee, however, is not a court or adjudicatory body and therefore oral presentations or argument by or for an Advertiser shall not be permitted, except as specifically provided for during pre-dissemination review of media campaigns in ACR 8(e).

**14. Public Comment.** Public comment shall be included on the agenda of each regularly scheduled Committee meeting. The Chair may, as needed, limit the discussion to pertinent subject matter and the time permitted for each person wishing to address the Committee.

**15. Attendance.** Committee members are expected to attend all Committee meetings absent good cause shown at the discretion of the Chair.

**16. Rules of Procedure.** Committee meetings shall be governed by Roberts Rules of Order.