

Nevada tightens rules governing ads involving attorneys

By Geoff Dornan, Northern Nevada Business Weekly

Broadcasters in Nevada, who found a lifeline with advertising by attorneys during the recession, aren't worried about new rules that tighten the standards on commercials from law firms.

"I don't think there is much angst," said Bob Fisher, president of the Nevada Association of Broadcasters, who said broadcasters believe the new rules ultimately will help the viewing public make good decisions.

The Nevada Supreme Court last month signed off on revisions to the rules governing lawyer advertising.

State Bar President Frank Flaherty said the revisions come after what he termed "an extended shake-down cruise" testing the rules originally put in place in 2007.

"There were major revisions to the rules in 2007," he said. "The rules at that time were attempting to regulate taste. That becomes subjective and you can have First Amendment issues."

The rules were originally written because of numerous complaints by the public as well as other lawyers.

The 2007 rules, he said, "got rid of the taste requirements."

"That allowed us to focus on false and deceptive ads and not get bogged down in 1st Amendment battles with lawyers with big checkbooks," he said. "Now it's whether it's false, deceptive or misleading."

One place where the rules were tightened, he said, is the use of actors. Now actors have to be clearly identified as such. In the past, disclosure was only required when it could be confusing to the public.

The ad must also give the name of the lawyer or partners who will actually provide the services touted by the ad.

He said a number of ads say such things as the client only has to pay the lawyer if they win.

"Sometimes when you lose, you have to pay the other guy's costs," he said. The new rules require that be disclosed.

He said lawyers can continue to cite their record and results.

"But you can only cite the results if you were lead counsel in the matter or key in the result," he said.

And from now on, the dollar amount must be the amount actually received by the client. If a gross amount received is stated, attorney's fees, litigation expenses and other amounts withheld from what the client received must be stated as well.

Ads listing a specific fee or range of fees must list how long those fees are in effect and any other limiting conditions on the fees.

On disclaimers, he said if the ad is run in Spanish or any other language, any disclaimers must also be in that language.

"And for print ads, disclaimers must be big enough to see," Flaherty said pointing out that some current disclaimers are in print so small it's nearly impossible to read.

Likewise, the rules say any disclaimers in a TV ad must not only be readable but remain on screen long enough to be read.

For the past five years, all lawyer advertising has been required to be submitted to review committees. Because of

First Amendment issues – prior restraint – Flaherty said the bar can't require they be submitted before publication. Instead, they must be submitted within 15 days of publication or broadcast. If a review committee of volunteers finds any ad deceptive or misleading, it must be taken down or stopped.

“But lawyers have to submit all their ads,” he said.

Fisher said the state's broadcasters followed the proposed changes in advertising rules carefully because commercials placed by law firms were a critically important source of revenue until election ads this year soaked up large amounts of available air time.

“Attorney advertising is good, especially if it delivers a positive message,” Fisher said.