

RULE 1:19A. Committee On Attorney Advertising

1:19A-1. Appointment and Organization

(a) Appointment. The Supreme Court shall appoint a Committee on Attorney Advertising (hereinafter the Advertising Committee) consisting of seven members, five of whom shall be members of the bar and two of whom shall be public members. The initial members shall be appointed to terms of one, two, or three years. At the expiration of such terms all subsequent reappointments shall be for a term of three years. No member who has served four full three-year terms shall be eligible for immediate reappointment. A vacancy occurring during a term shall be filled for the unexpired portion thereof.

(b) Meetings; Quorum. A majority of the members of the Advertising Committee shall constitute a quorum, but no decision shall be made unless concurred in by a majority of those present. The Chair may designate subpanels of not fewer than three members, at least one of whom is a public member and a majority of whom shall be attorneys, in order to consider any matter and hold hearings, if necessary, and to report to the Advertising Committee. All final decisions shall be made by the Advertising Committee in accordance with these rules. The Advertising Committee shall meet at such times as directed by the Chair or the Supreme Court.

(c) Officers. The Court shall annually designate a member of the Advertising Committee to serve as Chair. A staff member of the Administrative Office of the Courts shall serve as Secretary.

Note: Adopted June 26, 1987, to be effective July 1, 1987; paragraph (a) amended July 10, 1998 to be effective September 1, 1998.

1:19A-2. Jurisdiction

(a) Advisory Opinions and Ethics Grievances. The Advertising Committee shall have the exclusive authority to consider requests for advisory opinions and ethics grievances concerning the compliance of advertisements and other related communications with Rules of Professional Conduct 7.1 "Communications Concerning a Lawyer's Service," 7.2 "Advertising," 7.3 "Personal Contact with Prospective Clients" (excluding subsections (c), (d), (e) and (f)), 7.4 "Communication of Fields of Practice," and 7.5 "Firm Names and Letterheads," and with any duly approved advertising guidelines promulgated by the Advertising Committee with the approval of the Supreme Court.

(b) Rules of Procedure. The Advertising Committee shall, consistent with these Rules, establish procedures, publish forms and maintain records as required for its conduct.

(c) Advertising Guidelines. The Advertising Committee may adopt advertising guidelines consistent with the Rules of Professional Conduct set forth in section (a) and with these Rules, after affording the bar an opportunity to comment and after approval by the Supreme Court. Advertising guidelines may include by way of example, but not by way of limitation, disclosure requirements, restrictions beyond those set forth in RPC 7.2(a), time, place, and manner regulations, guidelines for determining the application of the "predominantly informational" and "extreme portrayal" requirements, and, generally, any guideline that the Advertising Committee deems either necessary or desirable in clarifying the application of the Rules governing advertisements and other communications within its jurisdiction. Upon adoption all advertising guidelines shall be published initially in the New Jersey Law Journal and New Jersey Lawyer.

(d) Pre-publication Review. The Advertising Committee may, in its discretion, require any attorney or firm or association of attorneys that has hired an advertising agency, public relations counsel, or entity providing assistance in connection with advertising or other related communications within the jurisdiction of the Advertising Committee, to submit to the Advertising Committee before publication for its approval, disapproval, or modification any series of advertisements or other communications within its jurisdiction, any advertising program, or any general public relations program.

(e) Education. The Advertising Committee may undertake such action as it deems necessary (1) to educate the public concerning rational means of selecting counsel and of determining whether counsel is needed, and (2) to educate the bar concerning the ethical limitations of attorney advertising.

(f) Reports. The Advertising Committee shall monitor the impact of all advertising and other communications within its jurisdiction to determine the extent to which existing Rules and guidelines achieve their goals and the extent to which there is any need for revision. Without limiting the Advertising Committee's observations in any way, it should specifically monitor the impact of all rules and advertising guidelines, as they exist from time to time, to determine if consumers are obtaining enough information about their need for lawyers and to aid them in the selection of lawyers, if price competition is being achieved, if damage to the qualities of the profession that serve society is occurring, and if consumers are being damaged through non-rational appeals.

The Advertising Committee shall submit to the Supreme Court an annual report, the first of which shall be filed on January 1, 1988. The first report of the Advertising Committee should report on the experience of New Jersey, as well as other states concerning attorney advertising. Prior to submitting its first annual report, the Advertising Committee shall conduct at least one public hearing on the desirability of retaining, revising, or repealing the then-existing advertising Rules or guidelines, or adopting any other proposed Rule on attorney advertising. Public hearings shall be held in subsequent years in the discretion of the Advertising Committee or as directed by the Supreme Court.

Note: Adopted June 26, 1987 to be effective July 1, 1987; paragraph (c) amended July 10, 1998 to be effective September 1, 1998.

1:19A-3. Advisory Opinions

(a) Form of Inquiry. All inquiries shall be addressed to the Secretary. The Advertising Committee shall accept inquiries from any member of the New Jersey bar. Inquiries shall be in writing and shall have appended to them a copy of the questioned advertisement or other related communication and shall contain a certificate that any opinion of the Advertising Committee will not affect the interests of the parties to any pending action. The inquiry shall be accompanied by a letter brief or brief citing the Rules of Court, Rules of Professional Conduct or Advertising Guidelines, if any, that are applicable, and shall state clearly the factual situation in detail and the inquirer's position as to the propriety of the advertisement or other related communication.

(b) Disposition of Inquiries. The Advertising Committee shall, so far as practical, act on an inquiry at its next meeting following receipt of the inquiry, provided that the inquiry is received by the Secretary at least ten business days prior to the Advertising Committee's meeting. In its discretion the Advertising Committee may authorize oral argument, which shall be electronically or stenographically recorded and may be transcribed. The Advertising Committee may, in its discretion, reconsider a prior decision (provided that the same is final) at any time, but a reversal or modification of a prior decision shall have prospective effect only.

All advisory opinions shall be given in writing to the inquirer. The decision shall state the Advertising Committee's determination as to whether the advertisement or other related communication is proper; it shall also briefly state the rationale that supports it and the rule or rules relied upon. The Advertising Committee may condition its approval by requiring any reasonable changes that are, in its opinion, necessary to conform with the Rules of Court, Rules of Professional Conduct or Advertising Guidelines, including, but not limited to, disclosure requirements, and time, place, and manner regulations.

(c) Effect of Opinions; Publication. An opinion approving an advertisement or other communication shall, until and unless revised in accordance with section (d) or reconsidered, be a bar to prosecution of ethical charges against the lawyer or law firm, except for a prosecution based on a charge that it is false or misleading in violation of RPC 7.1(a)(1). An opinion disapproving an advertisement or other related communication shall, until and unless revised in accordance with section (d) or reconsidered, be binding upon the inquirer and anyone with actual or constructive knowledge thereof so that such use of a disapproved advertisement or other related communication shall be per se unethical conduct.

When the Advertising Committee believes it to be in the best interest of the bar or the public, it may publish its opinion in the New Jersey Law Journal and New Jersey Lawyer. Published opinions shall constitute constructive notice to, and shall be binding on, all members of the bar and in connection with any ethics proceedings, unless revised pursuant to section (d) or reconsidered.

(d) Petition for Review. Any aggrieved member of the New Jersey bar may seek review of any final action of the Advertising Committee relating to requests for advisory opinions in accordance with R. 1:19-8.

Note: Adopted June 26, 1987 to be effective July 1, 1987; paragraphs (a) and (c) amended July 10, 1998 to be effective September 1, 1998.

1:19A-4. Ethics Grievances

(a) Procedure for Considering Grievances. All ethics grievances alleging unethical conduct with respect to advertisements and other related communications set forth in Rule 1:19A-2(a) shall be considered solely by the Advertising Committee. Except as expressly stated herein, no District Ethics Committee shall take any action on such a grievance received by it, but shall forward it to the Secretary of the Advertising Committee for review and action.

An ethics grievance concerning advertising or other related communications by an attorney shall be filed with the Secretary of the Advertising Committee. Grievances shall be accepted from members of the public and the bar. The Advertising Committee may on its own motion initiate an ethics grievance. Upon receipt of an ethics grievance alleging unethical conduct the Secretary of the Advertising Committee shall acknowledge receipt to the grievant and may forward a copy of the grievance to the attorney or law firm responsible for an initial written response, provided that if the Secretary concludes that even if true the alleged facts show beyond debate no violation of the Rules, the grievance may be dismissed. If the Secretary requests a response, the lawyer or law firm shall file with the Secretary and serve (personally or by mail) upon the grievant a responding letter brief or brief within fourteen (14) days after service. Such lawyer or law firm shall also file with the Secretary a true copy of the advertisement, tape recording, video tape, or other related communication for the Advertising Committee's use, provided that no such filing shall be required for any advertisement or other related communication that was disseminated more than three years prior to receipt of the grievance by the

Advertising Committee. The failure of an attorney or law firm to file and serve a response together with a true copy of the advertisement or other related communication as set forth above may, in the Advertising Committee's discretion, be taken as an adverse inference of an ethical violation.

(b) Initial Review and Dismissal by Advertising Committee. At the conclusion of the expiration of time provided for the attorney's filing of any initial response the Advertising Committee shall review the matter. If it concludes there is a need for further investigation, the Advertising Committee shall direct the Secretary to proceed accordingly and it shall reconsider the matter following such further investigation. Upon any matter within its jurisdiction coming to its attention, the Advertising Committee may arrange an informal conference with the lawyer or law firm. If the Advertising Committee concludes that there is no unethical conduct, it shall dismiss the grievance and so notify the parties in writing, briefly stating the reasons therefor. An appeal from the decision of the Advertising Committee to dismiss a grievance shall be available in accordance with Rule 1:20-15(e), but the Disciplinary Review Board shall be limited in its review to the legal conclusion of the Advertising Committee as to whether there is unethical conduct.

(c) Formal Complaint and Answer. In all other cases where the Advertising Committee concludes that the facts may demonstrate by clear and convincing evidence that unethical conduct has occurred, it shall direct the Secretary to file a formal complaint in accordance with Rule 1:20-4(d). The Secretary shall serve the formal complaint upon the original grievant, if any, and upon the respondent, who shall be required to file a formal answer within ten days of service of the formal complaint, all in accordance with Rule 1:20-4(e).

(d) Hearing Where Material Facts Not Disputed. Where in the opinion of the Advertising Committee there are no material controverted issues of fact, it shall bring the matter on for oral argument (which shall be electronically or stenographically recorded) on notice to the respondent. The Advertising Committee shall designate a presenter. The sole issue before the Advertising Committee shall be whether, and the extent to which, discipline is required. The Advertising Committee shall prepare a written dated report containing its findings of fact on each issue presented in accordance with Rule 1:20-6(c)(2)(E). If public discipline is recommended, the report shall also contain a specific recommendation as to the extent thereof. Unless it dismisses the matter, the Advertising Committee shall promptly file its report and recommendation with the Disciplinary Review Board, which shall proceed in accordance with Rule 1:20-15(f). Dismissals shall be appealable and notice thereof given, as set forth in section (b) above.

(e) Hearings Where Material Facts Are Disputed. Where in the opinion of the Advertising Committee there are material controverted issues of fact (including, but not limited to, instances of alleged false, fraudulent, misleading, or deceptive advertisements or other communications), it may, after the filing of a formal complaint and answer, (1) hear and determine the matter itself in accordance with Rule 1:20-6(a) and (c) (in which case the hearing shall be electronically or stenographically transcribed), or (2) refer the matter to the appropriate District Ethics Committee for hearings in accordance with Rule 1:20-6 and the filing of a report with the Advertising Committee, which report shall be limited to findings of fact on the issues presented, in accordance with Rule 1:20-6(c)(2)(E). In either event the Advertising Committee shall, unless it dismisses the matter, render its report and recommendation to the Disciplinary Review Board in accordance with Rule 1:20-6(c)(2)(E). If public discipline is recommended, the report shall also contain a specific recommendation as to the extent thereof. If the matter is dismissed, notification of parties and appeal shall be the same as set forth in section (b) above.

(f) Action by Disciplinary Review Board on Reports Recommending Discipline. Where the Advertising Committee files with the Board a report recommending discipline, the Board shall, except as stated below, proceed in accordance with Rule 1:20-15(f). In considering a report and recommendation of the Advertising Committee the Board shall accept the facts found as conclusive. The sole issues to be determined shall be the legal conclusion reached by the Advertising Committee as to whether there is unethical conduct and the extent of final discipline to be imposed.

(g) Attorney for Respondent; Subpoenas. Insofar as necessary, Rules 1:20-4(g)(2) and 1:20-7(i) shall be applicable to proceedings by the Advertising Committee. Subpoenas may be signed either by any member of the Advertising Committee, or by its Secretary.

(h) Dual Grievances. When the ethical issues presented in a grievance involve both aspects of advertising and other related communications within the jurisdiction of the Advertising Committee and also other ethical issues not ordinarily within its jurisdiction, the Advertising Committee shall take jurisdiction of the entire matter if the grievance is predominantly related to advertising and other related communications within its jurisdiction. In all other cases of dual grievances, the Advertising Committee may accept such grievances. If it accepts such grievances the Advertising Committee shall, to the extent necessary to conclude all aspects of the grievance, exercise all the jurisdiction and functions of a District Ethics Committee. Otherwise, the Advertising Committee may decline jurisdiction in writing and refer its entire file in the matter to the appropriate District Ethics Committee. A District Ethics Committee to whom a dual ethics grievance has been referred in accordance with this section shall take jurisdiction over the entire matter and proceed in accordance with Rule 1:20-3(g). To the extent necessary to conclude all aspects of the grievance so referred, a District Ethics Committee shall exercise all the jurisdiction and functions of the Advertising Committee.

Note: Adopted June 26, 1987 to be effective July 1, 1987; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraphs (b), (c), (d), (e), (f), (g) and (h) amended July 10, 1998 to be effective September 1, 1998.

1:19A-5. Records; Confidentiality

The Advertising Committee shall maintain such records and file such reports as shall be required by the Administrative Director of the Courts or the Supreme Court. With respect to requests for advisory opinions, both the request and the advisory opinion shall be available to the public; otherwise proceedings concerning advisory opinions shall be confidential except as ordered by the Supreme Court. With respect to ethics grievances, confidentiality shall be maintained in accordance with Rule 1:20-9.

Note: Adopted June 26, 1987 to be effective July 1, 1987; amended July 10, 1998 to be effective September 1, 1998.

1:19A-6. Immunity

The Rules governing immunity of ethics and fee arbitration committee members and the Secretary thereof, as well as grievants, clients, and witnesses as set forth in R. 1:20-7(e) and (f), shall apply to all proceedings of the Advertising Committee. This immunity shall not, however, extend to any publication or distribution of information in violation of the confidentiality provisions of Rule 1:19A-5.

Note: Adopted June 26, 1987 to be effective July 1, 1987; amended July 10, 1998 to be effective September 1, 1998.

1:19A-7. Referral to Office of Attorney Ethics

Wherever appropriate the Advertising Committee may bring to the attention of the Director of the Office of Attorney Ethics facts that it believes may constitute cause for temporary suspension, including, but not limited to, an attorney's use of a disapproved advertisement or other related communication. The Director may take such action as appropriate, including an emergent application for temporary suspension pursuant to Rule 1:20-11.

Note: Adopted June 26, 1987 to be effective July 1, 1987; amended July 13, 1994 to be effective September 1, 1994; amended July 10, 1998 to be effective September 1, 1998.

1:19A-8. Telephone Inquiries

Telephone inquiries to the Committee on Attorney Advertising shall be made in accordance with R. 1:19-9.

Note: Adopted July 10, 1998 to be effective September 1, 1998.