



& Policies & Procedures

for Lawyer Advertising

On December 9, 2004, the Supreme Court of Mississippi approved the Policies and Procedures regarding the submission of advertising presented by The Mississippi Bar for implementing the provisions of Rule 7.5 of the Mississippi Rules of Professional Conduct (MRPC).

Rule 7.5, MRPC, requires that certain advertisements be submitted. The Policies and Procedures outline how a submission is to be made and what fees are to be paid dependent upon whether the submission is made prior to its dissemination.

Because the Office of General Counsel for The Mississippi Bar (OGCMB) acts as custodian of submitted advertisements for the Supreme Court of Mississippi, each mandatory submission must be separately made, providing those items required by Rule 7.5(c), MRPC, as “items to be submitted.” This also requires an attorney making multiple submissions to submit each separately. For example, each television or radio commercial must be submitted on a separate form of media (CD, video, etc.). The submission of several commercials on

one tape or CD is not a proper submission within the Rules or the Policies and Procedures, as each one must be separately submitted.

The submission of an advertisement pursuant to Rule 7.5, MRPC, does not trigger an evaluation of compliance with the advertising rules, but only “submission” as the Rule requires. The only way one can have an advertisement evaluated for compliance within the rules is to request an Optional Advisory Opinion in accordance with Rule 7.5(d), MRPC.

Rule 7.5(d), MRPC, details how an Optional Advisory Opinion is to be obtained and what must be submitted. As stated in the Rule, a request is eligible for an Opinion only if it is made prior to dissemination of the advertisement and only if it allows OGCMB forty-five (45) days for evaluation.

As stated in the Policies and Procedures, the request for an Optional Advisory Opinion is separate and distinct from the mandatory submission requirement. Should a lawyer properly request an Optional Advisory Opinion within the proper time frame and pay the appropriate fee, the lawyer is still required to

submit the advertisement separately in accordance with the mandatory submission requirement outlined in Rule 7.5(c), MRPC, should it ever be disseminated.

Because the OGCMB acts as custodian of requests for Optional Advisory Opinions for the Supreme Court of Mississippi, each mandatory submission must be separately made, providing those items required by Rule 7.5(d)(1), MRPC, as “items to be submitted to obtain Advisory Opinion.” This also requires an attorney making multiple requests for Optional Advisory Opinions to submit each separately. For example, each television or radio commercial must be submitted on a separate form of media (CD, video, etc.). The submission of several commercials on one tape or CD for the purpose of receiving an Optional Advisory Opinion is not a proper request within the Rules or the Policies and Procedures, as each one must be separately requested.

Rules 7.1 through 7.7, MRPC, address lawyer advertising in Mississippi. All lawyers should review these Rules to insure that they are in compliance.

Policies & Procedures for Lawyer Advertising

POLICIES AND PROCEDURES

FOR SUBMISSION OF ADVERTISEMENTS TO THE OFFICE OF GENERAL COUNSEL FOR THE MISSISSIPPI BAR

*as approved by Order of the Supreme Court of Mississippi
December 9, 2004

In accordance with Rule 7.5(g), MRPC, the Office of General Counsel of the Mississippi Bar promulgates the following Policies and Procedures for submission of advertisements by members of the Mississippi Bar:

I. Mandatory Submissions

A. A copy or recording of any advertisement to be published shall be submitted to the Office of General Counsel of the Mississippi Bar (OGCMB) prior to its first dissemination.

1. In accordance with Rule 7.2(a), MRPC, an advertisement is an active quest for clients involving a public or non-public communication. The term "advertisement" includes, but is not limited to, communication by means of telephone, television, radio, motion picture, computer-accessed communication, newspaper, sign, directory, listing or though written communication.

2. In accordance with Rule 7.5(b), MRPC, the following are exempt from the submission requirement:

- a. Any advertisement that contains no illustrations and no information other than that set forth in Rules 7.2 and 7.4;
- b. Any telephone directory advertisement;
- c. Notices or announcements that do not solicit clients, but rather state new or changed associations or membership of firms, changed location of offices, the opening of new offices, and similar changes relating to a lawyer or law firm;
- d. Professional business cards or letterhead;
- e. On premises office signage;
- f. Notices and paid listings in law directories addressed primarily to other members of the legal profession;
- g. Advertisements in professional, trade, academic, resource or specialty publications circulated to specific subscribing audiences rather than the general public at large that announce the availability of a lawyer or law firm to practice a particular type of law in many jurisdictions and that are not for the purpose of soliciting clients to commence or join in specific litigation to be performed in Mississippi;
- h. Internet Web pages viewed via a Web browser, in a search initiated by a person without solicitation.

- i. Informative or scholarly writings in professional, trade or academic publications;
- j. A communication mailed only to existing clients, former clients or other lawyers;
- k. Any written communications requested by a prospective client; and,
- l. Any notices or publications required by law

B. A submission of advertisement is defined as "each advertisement" unless the same advertisement is to be republished in print or electronic media utilizing the same script. Any change to the form or content of an advertisement after submission will require a new submission. If there is no change to the form or content of an advertisement, a new submission is not required upon a new dissemination of the advertisement.

A submission of advertisement to the OGCMB shall consist of the following:

1. A copy of the advertisement or communication in the form or forms in which it is to be disseminated;
2. A transcript, if the advertisement or communication is on videotape or audiotape;
3. A statement of when and where the advertisement has been, is, or will be used.

C. Fee

1. A fee of twenty-five dollars (\$25) per submission of advertisement or communication timely filed is required.
2. A fee of one hundred and fifty dollars (\$150) per submission of advertisement or communication not timely filed is required.
3. The fee shall be made payable to "The Mississippi Bar."
4. Accounting - The OGCMB will receive the fee and deposit it accordingly. The accounting office for The Mississippi Bar will create a new line item and keep a record of the fees submitted.
5. The OGCMB's use of the fees submitted will be limited to the administration and enforcement of the advertising rules as stated in Rule 7.5(c)(4), MRPC.

D. Timeliness of Filing - A submission will be deemed "timely filed" if it is submitted prior to its "first dissemination" as stated in Rule 7.5(a), MRPC.

E. Retention of Mandatory Submissions

1. Each submission will be assigned a docket number and docketed in a docket book. The information contained in the docket book will include the docket number; the date of the submission; the name of

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the lawyer or firm making the submission; the type of advertisement submitted; and, whether an optional advisory opinion was also requested.

2. Storage - the submission will be retained for a period of three (3) years from the date of submission in accordance with Rule 7.2(h), MRPC.

F. A request for an Optional Advisory Opinion submitted in accordance with Rule 7.5(d), MRPC, does not fulfill the mandatory submission requirement as stated in Rule 7.5(c), MRPC. Each must be filed separately with the appropriate fee.

II. Optional Advisory Opinion

A. As stated in Rule 7.5(d), MRPC, a lawyer may request an advisory opinion concerning the compliance of a contemplated advertisement or communication with the Rules in advance of disseminating the advertisement or communication by submitting the advertisement or communication and the appropriate fee to the OGCMB at least forty-five days prior to dissemination.

B. Upon receipt of a request for an Optional Advisory Opinion, the OGCMB will evaluate all advertisements and communications submitted to it pursuant to this Rule for compliance with the applicable requirements set forth in Rule 7.5, MRPC. The OGCMB will render its advisory opinion within forty-five days of receipt of a request. However, if the OGCMB determines that there is reasonable doubt that the advertisement or communication is in compliance with the Rules and that further examination is warranted but that such examination cannot be completed within the forty-five day time period, it will so advise the filing lawyer within the forty-five day time period. In the latter event, the OGCMB will complete its review as promptly as circumstances reasonably allow. If the OGCMB does not send any correspondence or notice to the lawyer within forty-five days, the advertisement or communication will be deemed approved.

C. A submission of advertisement to obtain an Optional Advisory Opinion shall consist of the following:

1. A copy of the advertisement or communication in the form or forms in which it is to be disseminated;
2. A transcript, if the advertisement or communication is on videotape or audiotape;
3. A statement of when and where the advertisement has been, is, or will be used.

D. Fee

1. A fee of fifty dollars (\$50) per submission to obtain an Optional Advisory Opinion is required.
2. The fee shall be made payable to "The Mississippi Bar."

3. Accounting - The OGCMB will receive the fee and deposit it accordingly. The accounting office for The Mississippi Bar will create a new line item and keep a record of the fees submitted.

4. The OGCMB's use of the fees submitted will be used only for the purposes of evaluation and/or review of advertisements and preparing the Optional Advisory Opinion as provided in Rule 7.5(d)(1), MRPC.

E. Timeliness of Filing - A submission to obtain an Optional Advisory Opinion will be deemed "timely filed" if it is submitted forty-five (45) days prior to its "first dissemination" with the proper fee. Dissemination of an advertisement during the above described forty-five (45) day period prior to the OGCMB rendering its Optional Advisory Opinion will result in the advertisement being returned without opinion along with a refund of the fee.

F. Retention of Optional Advisory Opinion Requests

1. Each Request will be assigned a docket number and docketed in a docket book. The information contained in the docket book will include the docket number; the date of the request; the name of the lawyer or firm making the request; and, the type of advertisement for which an opinion is being requested.

G. Change of Circumstances - If a change of circumstances occurs regarding an advertisement or communication that was previously submitted for an Optional Advisory Opinion that raises a substantial possibility that the advertisement or communication has become false or misleading as a result of the change in circumstances, the lawyer shall promptly resubmit the advertisement or a modified advertisement to the OGCMB along with an explanation of the change of circumstances and a fee of twenty dollars (\$20) per "submission of advertisement or communication." Resubmissions will be docketed as described above and the fee received will be used only for the purposes of evaluation and/or review of advertisements and preparing the Advisory Opinion.

H. A submission under the mandatory submission requirement as stated in Rule 7.5(c), MRPC, does not constitute a request for an Optional Advisory Opinion in accordance with Rule 7.5(d), MRPC. Each must be filed separately with the appropriate fee.