

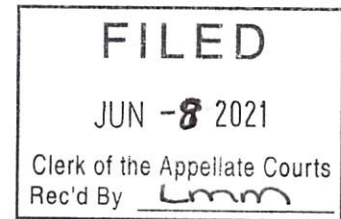
LAW OFFICES OF
SUMMERS, RUFOLO & RODGERS, P.C.

A Professional Corporation

Jerry H. Summers
Jeffrey W. Rufolo
Jimmy F. Rodgers, Jr.
Marya L. Schalk
Benjamin L. McGowan

The James Building
735 Broad Street, Suite 800
Chattanooga, Tennessee 37402

June 3, 2021



Clerk James M. Hivner
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

Re: Proposed Changes to Lawyer Advertising Rules; No. ADM 2020-01505

Dear Mr. Hivner and Members of the Tennessee Supreme Court,

I have previously voiced my objections to the proposed change to Tennessee Supreme Court Rule 8 and RPC's 7.1-7.6 pertaining to my continuing disdain for "deceptive" lawyer advertising as it exists in Tennessee in a letter dated January 6, 2021 (*See enclosed*). As further support of my contention that the existence of this authorized practice I am enclosing two examples which I respectfully submit demonstrates the distasteful (and in my limited view unethical) practices that exist in our State.

Exhibit one is a solicitation by an oncology medical practice in Chattanooga that provides a creative method of circumventing the Rule pertaining to the possible splitting of fees with non-lawyers which may be permissible under the proposed Rule change with a Washington, D.C., law firm soliciting Roundup cases.

Exhibit two is an article in the Daily Memphian newspaper dated May 9, 2021, of a billboard with the caption, "Let Us Be Your Voice" and an accompanying photo of a lawyer and gesture which I will leave to the Tennessee Supreme Court for interpretation.

Ironically, the main context of the article pertains to the personal injury solicitation war between the big spenders who pay out millions of dollars in the lucrative area of the law that exists to get the case based on slick ads and possibly "deceptive," exaggerated or misrepresentations to the American and Tennessee public.

Whether this rule change and its predecessors contribute favorably to the image of the legal profession is probably beyond the comprehension of this veteran of fifty-five years as a trial lawyer.

Sincerely yours,

SUMMERS, RUFOLO & RODGERS, P.C.

By: _____

A handwritten signature in blue ink that reads "Jerry H. Summers". The signature is written over a horizontal line that serves as a separator between the "By:" text and the printed name below.

Jerry H. Summers

JHS/cnw

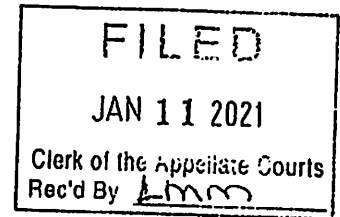
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The James Building
735 Broad Street, Suite 800
Chattanooga, Tennessee 37402

January 6, 2021



Clerk James M. Hivner
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

Re: Proposed Changes to Lawyer Advertising Rules; No. ADM 2020-01505

Dear Mr. Hivner and Members of the Tennessee Supreme Court,

By way of introduction I am a seventy-nine-year-old member of the Tennessee bar since 1966 with a trial practice representing plaintiffs primarily in personal injury cases, defendants in criminal cases, and labor unions. I have also served as an assistant district attorney, municipal court judge, and finalist for a federal judgeship appointment.

Although I do not believe that the original intent in the decision of Bates v. State Bar of Arizona in 1977 has been followed in the field of lawyer advertising, I am not writing to advocate the elimination of that plague upon the public, legal profession, and judiciary. That horse has left the barn jumped the fence and is gone out of reach.

I do continue my opposition and distaste for "deceptive advertising" as depicted in the blog I wrote from 2017-2020 titled www.truthinlawyeradvertising.com. The articles included in the blog state the objections to what myself and other individuals have with deceptive lawyer advertising.

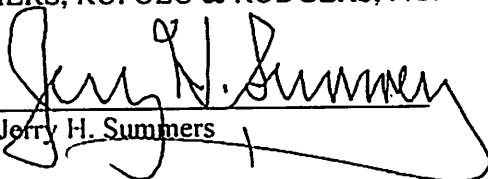
Rather than expand the rules on the subject I respectfully suggest and would hope that the Tennessee Supreme Court would re-address the contents of a proposed plan around 2012 that was submitted for some consideration to tighten rather than loosen the regulations on lawyer advertising. The beneficiaries of lawyer advertising for the most part are a few law firms that spend large amounts of money overstating their credentials, accomplishments, and records in all forms of the media that do not benefit the public or the legal profession.

I speak only for myself individually and not on behalf of any organization that I have been or am a member in my fifty-four years of law practice.

Sincerely yours,


SUMMERS, RUFOLO & RODGERS, P.C.

By:


Jerry H. Summers

JHS/cnw

TENNESSEE ONCOLOGY

a partner of  OneOncology

www.tnoncology.com

MEDICAL ONCOLOGY/
HEMATOLOGY

DEREK HOLLAND, M.D.

08/24/2020

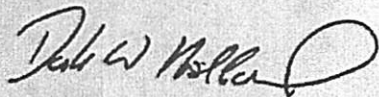
Dear Patient and Family,

I wanted to reach out to inform you that a link has been suggested between non-Hodgkin's lymphoma and the weed-killer Roundup. If you have been exposed to Roundup, you may be eligible to receive monetary damages. Tennessee Oncology has partnered with the legal services company MedLegal to identify patients who may be eligible. Tennessee Oncology has not and will not release your contact information to MedLegal. It will be necessary for you to contact them directly at 855- 533-HOPE (855-533-4673). They are sensitive to the personal nature of the call and commit to keeping the discussion brief and asking only those questions necessary to review your treatment and eligibility. Please note, there is a time limit for entering into the settlement claims process for eligible patients. Please mention the reference number above when calling.

Neither Tennessee Oncology nor I will receive financial compensation for this interaction. MedLegal does financial support to a Charitable Foundation that assists Tennessee Oncology patients who have financial needs related to their illness.

Thank you for allowing me to provide for your healthcare needs.

Sincerely,



DEREK HOLLAND, M.D.

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Daily Memphian

TRUTH IN PLACE.

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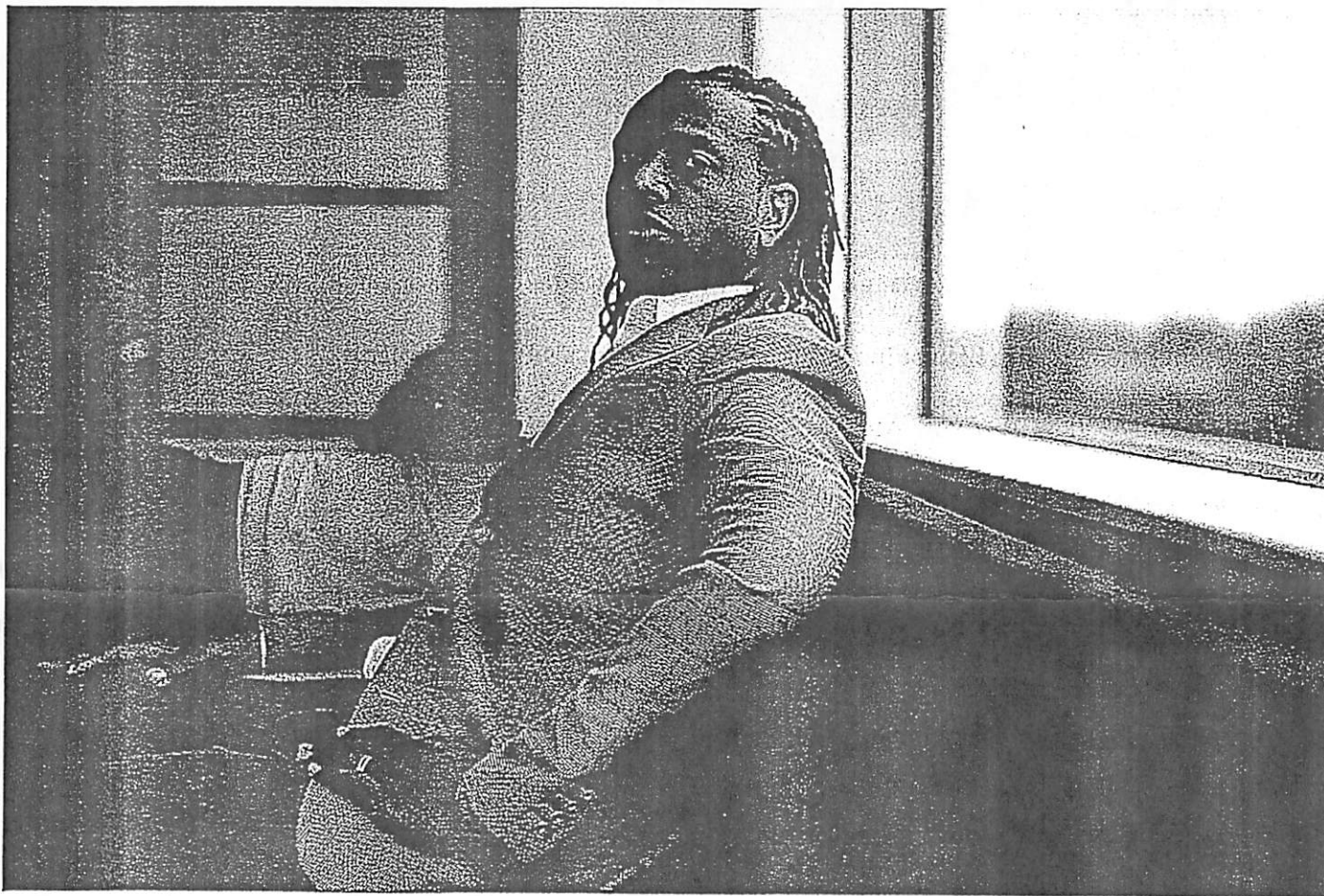
MEMPHIS SHELBY COUNTY STATE GOVERNMENT EDUCATION CRIMINAL JUSTICE DAILY BRIEFS BICENTENNIAL ELECTIONS SPIRIT OF MEMPHIS THE EA

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Personal injury law: A competitive game played out on TV

By Don Wade, Daily Memphian

Published: May 09, 2021 4:00 AM CT

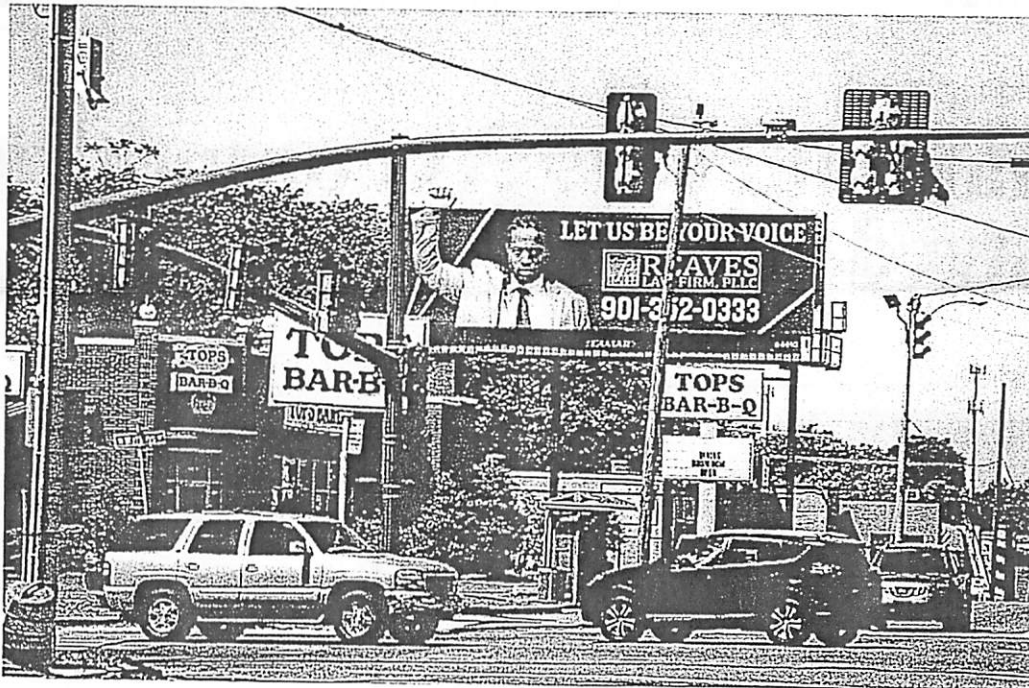


“That might be the biggest player in town — illegal solicitation,” said Henry Reaves of the Reaves law firm. End of the day, it hurts clients, and it hurts the profession. It’s definitely got an underbelly.” (Patrick Lantrip/Daily Memphian)

Some of them have names you know, and television commercials and billboards you have seen — perhaps over and over.

Coming Monday: He's one of the most recognizable names in town.

Corey B. Trotz smiling and telling you it's time to "Lawyer UP!"



A billboard promotes the Reaves Law Firm. (Mark Weber/The Daily Memphian)

Henry Reaves with his fist in the air, declaring: "Let Us Be Your Voice."

And Mike "It's EASY with Montesi!"

But they are hardly the only players in the local personal injury lawyer game. Yes, they spend millions of dollars on marketing, and they will tell you they have to in order to compete against one another — and also with national presence Morgan & Morgan and its droll tagline: "For the People."

[Opinion: Derek Chauvin trial is must-see TV thanks to legendary Memphis lawyer](#)

In fact, beyond this cast of characters with varying degrees of market celebrity are a slew of "bad actors," as Trotz calls them, engaging in illegal solicitation. Some have put down roots in Memphis while others swoop in when learning

of a potential multimillion-dollar case, such as a truck or bus accident with fatalities.

“With certain players in this field, it’s a dirty business,” said Howard Manis, managing partner of the local branch of The Cochran Firm on South Main.

“One of the worst-kept secrets is that anyone that has a wreck in Shelby County, you’re gonna get 60 calls,” said Reaves, who has been in the personal injury law business for a decade.

“They’ll promise you a loan, a car, the moon and the stars.”

Biggest player makes its own rules

Many of those promises break the law.

Multiple attorneys, including some who practice criminal law locally, confirmed to The Daily Memphian that the Tennessee Bureau of Investigation has been looking into a pattern of illegal solicitation in Shelby County by, and on behalf of, personal injury lawyers.

That TBI investigation is at least partly focused on the actions of former Shelby County Assistant District Attorney Glenda Adams, who was terminated last fall by District Attorney General Amy Weirich after allegedly misusing confidential information.

Specifically, multiple attorneys said, the TBI investigation includes trying to determine if Adams was accessing police reports from accidents and selling that information to personal injury lawyers, chiropractors and physical therapy clinics, among others.

Weirich recused her office from any investigation and potential prosecution, and the Tennessee District Attorneys General Conference appointed Gen. Bryant Dunaway to handle the “active and ongoing investigation.”

That investigation could be wrapped up as soon as this month.

“It’s a big piece of the market in Memphis,” Reaves said. “That might be the biggest player in town — illegal solicitation.



Amy Weirich

“End of the day, it hurts clients, and it hurts the profession. It’s definitely got an underbelly.”

Free (lawyer) speech

Decades ago, the prevailing thought was that legislation allowing lawyers to advertise would pose the greatest threat to the profession.

And to be sure, there are personal injury lawyers not only upset by the illegal solicitation in the market, but the vast amounts of money some competitors spend on advertising, especially when some of the ads “make you cringe,” Manis said.

Lundy Daniel started his law firm here in 1968. Today, his son Ben Daniel and his wife Elizabeth are co-owners of Daniel Law Firm.

“He was old school and he taught me to be against (advertising your services),” Ben said of his father. “My personal opinion is it is not professional. But my opinion doesn’t carry a lot of weight.”

Weirich fires longtime Shelby County assistant prosecutor Glenda Adams

“It obviously works.”

Until the late 1970s, however, advertising wasn’t even an option. In 1977, the United States Supreme Court, in *Bates v. State Bar of Arizona*, ruled that bans on lawyer advertising were impermissible on the grounds that such advertising was commercial speech entitled to protection under the First and Fourteenth Amendments.

The ban probably lasted as long as it did because “the concern was it would be taking advantage of less sophisticated clients,” said Steve Mulroy, a professor at the University of Memphis Cecil C. Humphreys School of Law and a board member of the Memphis Bar Association.

That said, Mulroy believes the Arizona attorneys who sued to advertise were in the right.

“To the extent it encourages us to be a more litigious society and encourages

frivolous lawsuits, that's a bad thing," Mulroy said. "On the other hand, I don't have the same distaste for it the way many people do.

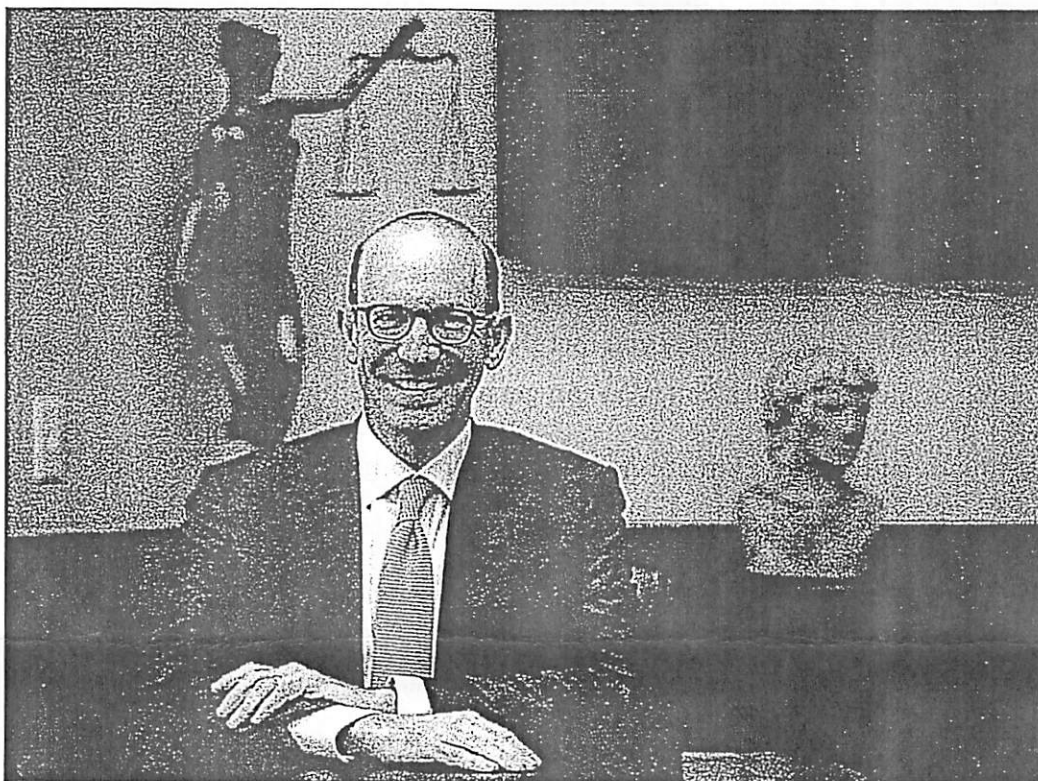
"There is the cliché of the ambulance chaser, but (personal injury lawyers) represent the little guy that doesn't get representation otherwise.

"I don't see people looking down on the lawyers who represent the insurance companies that keep the little guy from getting compensated."

Who you gonna call?

James Curry, 55, is personal injury lawyer affiliated with the Daniels Firm. He does not do any television or billboard advertising.

But right after law school, he was selling Yellow Pages ads to personal injury lawyers as he tried to gain solid financial footing.



"We've heard of folks appearing at the accident scene," said Corey B. Trotz of Nahon, Saharovich & Trotz. "They're finding people at their most vulnerable. And they may offer money and lawyers can't loan money. That's illegal." (Patrick Lantrip/Daily Memphian)

"Great sales job," Curry said. "No business wanted to be left out of the Yellow Pages."

Yes, it was a different era.

As part of the Supreme Court's ruling in *Bates v. State Bar of Arizona*, the majority opinion stated that disallowing lawyer advertising serves to "inhibit the free flow of information and keep the public in ignorance."

In other words, not everyone in the general public has the same and equal access to representation.

Mulroy says there can be a socio-economic divide, and Reaves notes there is a racial divide that heavily influences marketing budgets.

"A lot of ads, in whatever city, are directed at African Americans," he said. "Probably 99% of advertising goes toward African Americans. They tend to be more litigious."

And there is good reason, based on Reaves' experience: "If you live in Whitehaven and get in the same exact accident as someone in Germantown, the insurance company is going to offer you less. They have to get an attorney to get a fair amount."

The task of finding an attorney also can be tougher.

"If you're making \$75,000 to \$100,000 a year, you have a lawyer in your network," Reaves said. "Somebody you met through your child's school, at your church or plays golf with you. You can get a personal referral.

"People that don't have that kind of network, they're gonna call off TV."

The cost of doing business

While Mulroy does not find many of the personal injury ads to be done in good taste, he adds: "I don't see anything in the ads that I would consider deceptive or misleading."

Personal injury attorney James Curry says some of the ads "make you roll your eyes," but he also takes up for two of the biggest advertisers in the market.

"I have friends who work at these firms and they're ... good lawyers," Curry said. "Corey B. Trotz (Nahon, Saharovich & Trotz), that's an excellent firm. Gatti, Keltner, Bienvenu & Montesi, they're great lawyers."

The man, the face, the jingle: Personal injury lawyer Corey B. Trotz

Henry Reaves, 40, grew up here and remembers when Trotz and others were just getting started with advertising on TV.

“They were like pioneers because at that time it was looked down upon,” Reaves said. “It wasn’t socially acceptable.”

Now, Reaves says he spends “north of a million dollars (annually) to be competitive,” adding: “And I’m probably fifth in my market with TV advertising.”

Trotz says their firm spends in the millions each year, noting they have more than a half-dozen offices in the region.

When Trotz started advertising on TV about 25 years ago, he says, “There was a stigma attached. I did think it through. But to me, it’s about providing good quality legal services and getting clients in an ethical manner.”

Trotz’s ads have turned him into everything from a mountain climber to a football player, to a race car driver, to a man lost in the woods.

“We take what we do seriously,” he says more than once during the course of an interview, “but we don’t take ourselves seriously.”

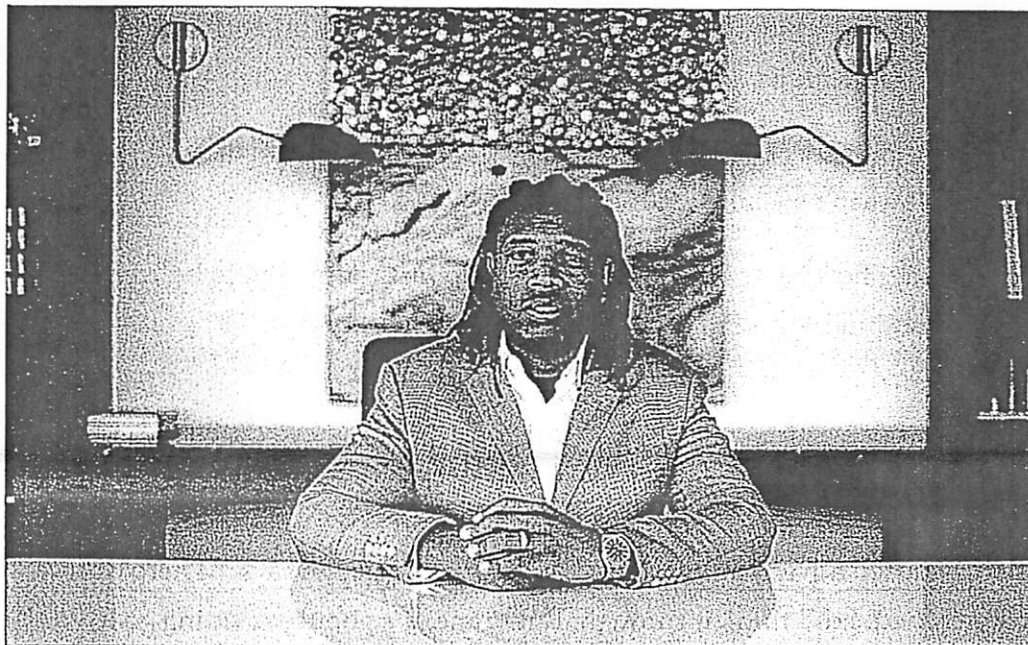
Some commercials, Reaves says, go too far.

“We’re helping people at, arguably, one of the lowest points of their lives,” he said. “I can’t get on board with Car Wreck Cowboy (the logo is a cowboy hat and kerchief) or dancing bears. Somebody’s wife got hit by an 18-wheeler and is now a quadriplegic, and they have five kids and you bring out dancing bears? That shows how you feel about your target market.”

For his part, Reaves has done several commercials that feel more like PSAs — for example, talking about staying safe during the pandemic — and he also has spots that highlight the women in his firm and what they’ve accomplished.

He says because of the cost and necessity of advertising, it’s difficult to get

established as a personal injury attorney. The cases themselves also present challenges.



“You have to front money to build cases up,” said Henry Reaves of the Reaves law firm. “If I have a case for \$1 million, I have to put \$100,000 into it.” (Patrick Lantrip/Daily Memphian)

“A case can be worth \$100,000 or a million, depending how you approach it,” said Manis of The Cochran Firm, which 16 years after founder Johnnie Cochran Jr.’s death still makes liberal use of his name and likeness in its advertisements.

“Our firm isn’t afraid to write a check to get an expert to make it worth a million instead of \$100,000.”

Manis also says “Tennessee presents some difficulties. First, there’s a one-year statute of limitations and, second, you’ve got a cap on damages.

Compensatory is capped at \$750,000.”

Said Reaves: “You have to front money to build cases up. If I have a case for \$1 million, I have to put \$100,000 into it. Another economic aspect is you have to wait for your money. Even if it’s a million-dollar case, it’s still a two- or three-year wait.”

Curry only “runs up against the cap every couple of years,” but added “It’s a tough climate with COVID. Basically, no jury trials in 2020 and no trials (yet)

in 2021. The insurance companies know they can offer lower settlements because they know it will be a year, year and a half, before we can get a trial in front of a jury.

“When I first started, settlements were better,” Curry continued. “Now, there’s the theory that firms that are advertising are getting a high volume of cases and can’t take all the cases to trial, and so you’re settling and taking a lesser amount.”

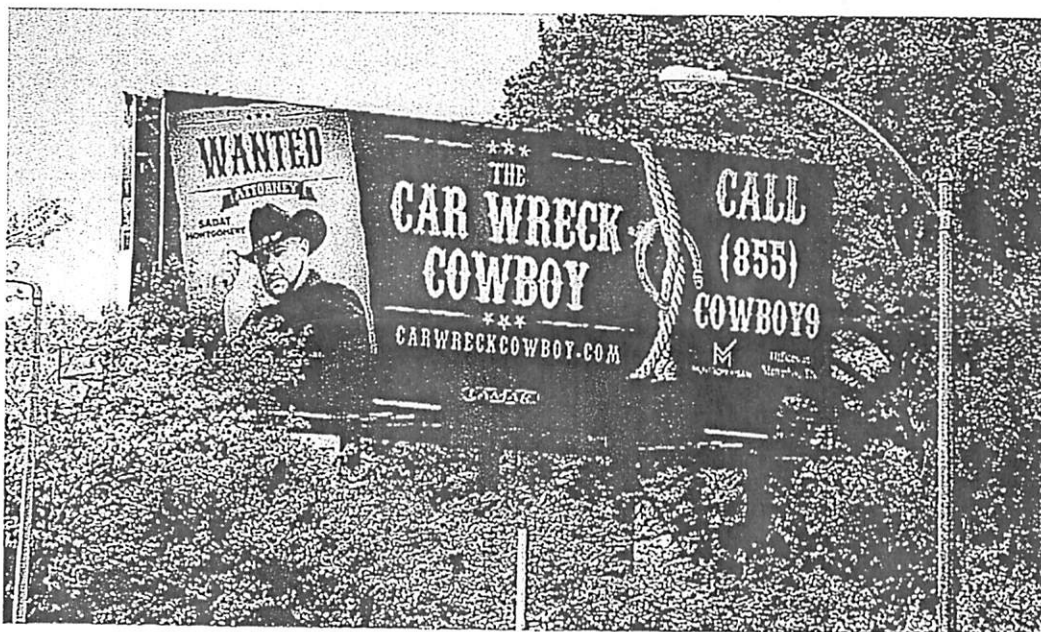
Claiming victory

No matter to what degree firms advertise, none seem shy about using their websites to boast of their biggest triumphs.

From the Daniel Law Firm site: “Wrongful death trucking wreck settled without a trial — \$2,850,000.”

At Gatti, Keltner, Bienvenu & Montesi, there is an image of a hand holding a bag of cash next to the words, “Over \$500 million recovered.”

[Sanford: Judge Harry Wellford left a legacy of leadership in politics and the law](#)



A billboard promotes attorney Sadat Montgomery, the Car Wreck Cowboy. (Mark Weber/The Daily Memphian)

At Carwreckcowboy.com, a \$1.7 million brain injury case settlement is noted, along with the \$680,000 in fees and \$1,000 in expenses.

At Nahon, Saharovich & Trotz, the firm's site lists its media mentions, including The New York Times, CNN, PBS, ABC's "Good Morning America" and Court TV, among others.

Reaves says Morgan & Morgan, as the world's largest personal injury law firm, is the "big foot" presence here ("Size Matters," as their ads proclaim), but he doesn't mind.

"I appreciate having them in the market because it pushes me," he said. "He (founder John Morgan) is one of the great marketers of our time, and he's not gonna get credit for that."

As for his own marketing plan, Reaves says another police shooting inspired the fist-in-the-air pose that now accompanies the "Let Us Be Your Voice" tag line.

He also figures that despite the big initial outlay to compete with the other personal injury firms that advertise, he has an edge that they do not.

"I stand out in a city like Memphis," said Reaves, who is Black. "I don't look like Corey B. Trotz or anyone else.

"I'm going to have a built-in advantage there."

If it walks like a duck ...

On the other side of things, Reaves and Manis both say any personal injury lawyers doing really well, in a short time frame without advertising, raises questions.

"Multiple people already have been identified as using information to illegally solicit personal injury cases," Manis said. "I interviewed somebody for a position in our office, and when he or she told me the size of the practice and the amount of the business, I knew there was only one way they generated that amount of business in that amount of time.

“We’ve had cases taken right out from under us. You’ve got to lock down a case or somebody will steal it from you.”

Howard Manis
The Cochran Firm

“Needless to say, I didn’t hire them.”

Said Reaves: “Where there’s smoke, there’s usually fire.”

Trotz noted there’s a 30-day waiting period to contact an accident victim.

“And then you can send them a letter,” he said. “But you’re not supposed to get the accident report.

“We’ve heard of folks appearing at the accident scene. Maybe they got it from the police scanner. Or you hear of somebody in a hospital that an attorney pays off to send them cases.

“They’re finding people at their most vulnerable,” Trotz added. “And they may offer money and lawyers can’t loan money. That’s illegal.”

Said Manis: “We’ve had cases taken right out from under us. You’ve got to lock down a case or somebody will steal it from you.”

Catching the unscrupulous operators, Trotz says, is difficult: “They’ve got burner phones and it’s almost impossible to do something about it.”

Perhaps the TBI investigation will change things.

Reaves doesn’t understand why authorities have not been able to make some progress with the problem.

“If you can find one person selling dope in North Memphis,” he said, “why can’t you stop this, which has been going on forever? Just have a sting operation.”

It's a living

Given that his dad founded the Daniel Law Firm more than 50 years ago, Ben Daniel does not see a need to change his stance on advertising.

"My experience is, if we take care of our clients and do a good job, they'll refer four or five people," he said. "We'll have all the business we can handle."

Accidents will continue to happen.

People will continue to need representation.

"You never know when you're gonna get in a car accident and need a personal injury attorney," said Reaves, who previously worked as a lawyer for a big insurance company. "I learned their tricks. I learned their tactics," he says in one of his ads.

"Injury lawyers provide an essential service and the fact that they get a cut of the total reward makes sense, provides incentive," Mulroy said.

"To make a living, they may feel like they have to advertise," he said. "Some of the ads would be ads I wouldn't run ..."

But advertising is a subjective business.

One person laughs at the Car Wreck Cowboy and another person recoils.

COVID-19 jail lawsuit dismissed after both sides reach settlement

One person likes it that she has unintentionally memorized the jingle to *call 683-7-0-0-0*, and it leaves someone else annoyed.

James Curry, the personal injury lawyer who decades ago sold those Yellow Pages ads, sometimes asks himself if he would jump the into the big-money TV advertising pool if he had that kind of budget.

He says he doubts he would. But, in full disclosure, if his practice started to struggle and he was considering alternatives, then maybe James Curry would wind up on TV and saying, "no recovery, no fee."

"If I'm not practicing law," he said with a laugh, "I'm selling cars on Summer

Avenue.”

TOPICS

PERSONAL INJURY LAWYERS	HENRY REAVES	COREY B. TROTZ	
MORGAN & MORGAN	STEVE MULROY	JAMES CURRY	BEN DANIEL
MIKE MONTESI	HOWARD MANIS	THE COCHRAN FIRM	SUBSCRIBER ONLY



Don Wade

Don Wade has been a Memphis journalist since 1998 and he has won awards for both his sports and news/feature writing. He is originally from Kansas City and is married with three sons.

FILED
MAR 10 2021
Clerk of the Appellate Courts
Rec'd By lmm

John Griffith, Franklin, President

Suzanne Keith, Executive Director
skeith@ttla.org



March 10, 2021

629 Woodland Street | Nashville, TN 37206 | 615.329.3000 | fax 615.329.8131

Clerk James M. Hivner
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

RE: Proposed Changes to Lawyer Advertising Rules: No. ADM 2020-01505

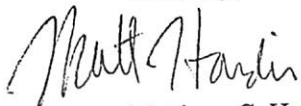
Dear Mr. Hivner and Members of the Tennessee Supreme Court:

On behalf of the Tennessee Trial Lawyers Association (TTLA), the TTLA would like to register its support for the Board of Professional Responsibility's changes in proposed rules submitted and the Petition For The Adoptions of Revisions to Tenn. Sup. Ct. R. 8, RPCs 7.1, 7.2, 7.3, 7.4, 7.5 and 7.6.

Of particular concern to the TTLA are the Rules which address solicitation of clients following a car wreck. The TTLA shares the Board of Professional Responsibility's concerns related to use of the term, "sophisticated user of legal services" as having potential to expand solicitation in such a manner that would potentially shield unscrupulous business practices. It is TTLA's position that third party gunners, medical groups and the like who solicit individuals within thirty (30) days after car wrecks should not be protected as appropriate business development under the Rules. It is the potential injury clients and those who have lost loved ones who are most vulnerable immediately after an accident and need protection.

There is a fine line that must be taken between providing access to attorneys and unwanted solicitation. It is TTLA's belief that the Board of Professional Responsibility's suggestions better protect potential clients, and it is our hope that the Supreme Court adopts their suggestions.

Sincerely,


Matthew C. Hardin


John Griffith

Immediate Past President of the TTLA

President of the TTLA



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appellatecourtclerk - ADM 2020-01505

From: Beverly Washington <beverly@matthardinlaw.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 3/10/2021 5:47 PM
Subject: ADM 2020-01505
Cc: Matt Hardin <matt@matthardinlaw.com>
Attachments: TTLA ltr to Clerk Hivner 3-10-21.pdf

See attached letter.

BEVERLY WASHINGTON
Paralegal

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224 West Gay Street, Suite 200
Lebanon, Tennessee 37087
(P) [615.547.2683](tel:615.547.2683)

CLARKSVILLE OFFICE
128 North 2nd Street, Suite 209
Clarksville, Tennessee 37040
(P) [931.274.7788](tel:931.274.7788)

MEMPHIS OFFICE
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(P) [901.201.4478](tel:901.201.4478)

COOKEVILLE OFFICE
320 East Broad, Suite 100
Cookeville, Tennessee 38501
(P) [931.754.1188](tel:931.754.1188)

BOWLING GREEN OFFICE
2501 Crossings Blvd, Suite 216
Bowling Green, Kentucky 42104
(P) [270.282.0110](tel:270.282.0110)

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FILED

MAR 11 2021

Clerk of the Appellate Courts
Rec'd By Lmm

IN THE SUPREME COURT OF TENNESSEE

IN RE:)

PETITION FOR THE ADOPTION OF)
REVISIONS TO TENN. SUP. CT. R. 8,)
RPCs 7.1, 7.2, 7.3, 7.4, 7.5, and 7.6)

No. ADM2020-01505

**REPLY OF THE TENNESSEE BAR ASSOCIATION TO THE COMMENT
OF THE BOARD OF PROFESSIONAL RESPONSIBILITY TO PETITION
OF THE TENNESSEE BAR ASSOCIATION FOR THE ADOPTION
OF REVISIONS TO TENN. SUP. CT. R. 8, RPCs 7.1, 7.2, 7.3, 7.4, 7.5, and 7.6**

The Tennessee Bar Association (“TBA”) files this reply to the comment submitted by the Board of Professional Responsibility to the TBA’s petition asking the Court to adopt revisions to the portions of the Tennessee Rules of Professional Conduct focused on advertising of services by attorneys. The Board organized its Comment into three sections (Proposed Rule 7.1, Proposed Rule 7.3, and Proposed Rule 7.6), and this reply will address each section below. The TBA has only addressed the portions of the Board’s Comment that include objections but appreciates that the Board has not objected to parts of its proposed amendments.

PROPOSED RPC 7.1

Moving RPC 7.2(a) and 7.2(b) to RPC 7.1(b) and 7.1(c): The Board did not object to the revised, updated language of proposed RPC 7.2(a) and 7.2(b), however the Board objected to the TBA’s proposal to move RPC 7.2(a) and RPC 7.2(b) to create RPC 7.1(b) and (c). The TBA believes that moving proposed, revised RPC 7.2(a) and RPC 7.2(b) into RPC 7.1(b) and (c) is consistent with the goal of streamlining the focus of these provisions towards one rule that simply

prohibits false and misleading advertising. Accordingly, the TBA affirms its position that proposed, revised RPC 7.2(a) and RPC 7.2(b) should be moved into RPC 7.1(b) and (c).

Proposed Addition of Comments to RPC 7.1: The Board supports the addition of proposed Comment [6] to RPC 7.1, however, it objected to proposed Comments [5] and [7]. According to the Board, proposed Comments [5] and [7] are not in the Model Rules. The Board provides no further objection or argument for the exclusion of those comments. For the reasons detailed in its Petition, the TBA affirms its position that proposed Comments [5] and [7] should be added to RPC 7.1.

Proposed Addition of Rules Regarding Specialization in RPC 7.1 and Removal from RPC 7.4: The Board's comment indicates that it would prefer to keep rules for specialization separate, in RPC 7.4, arguing that those rules are helpful to consumers and attorneys. Respectfully, the TBA disagrees that a separate RPC 7.4 regarding specialization is more helpful to consumers and attorneys. The TBA believes that lawyers ought to be free to advertise any practice areas or specializations if the advertisement is not false or misleading. Accordingly, the TBA affirms its position that specialization guidance best fits in the comments to RPC 7.1

PROPOSED RPC 7.3

Proposed RPC 7.3(b): The Board objects to the TBA's proposed RPC 7.3(b), unless comment [2] from the ABA Model Rules is added. The TBA believes that the Board's suggestion is helpful and that comment [2] from the ABA Model Rules should be added.

Proposed RPC 7.3(b)(2) Regarding Solicitation of Potential Clients: The TBA proposed to expand the category of potential clients that may be solicited to include "sophisticated user of legal services." The Board opposes this expansion, advocating for the ABA Model Rule exception of "person who routinely uses for business purposes" instead. The Board's argument

involves concern that individuals involved in protracted domestic litigation or multiple criminal charges might qualify as sophisticated users of legal services. The TBA believes that there are people who can be fairly viewed for purposes of solicitation as “sophisticated users of legal services” beyond just businesspeople. The TBA respectfully also submits that the rules, even under the TBA’s proposal, would still provide protections such as the inability to solicit individuals in a divorce case for 30 days and still provide protections against solicitations involving fraud, duress, coercion, or overreaching in any circumstances. Accordingly, the TBA affirms its position that the category of potential clients that may be solicited as an exception to the general rule should be expanded to include “sophisticated user of legal services.”

Proposed RPC 7.3(c): The Board objects to the deletion of the requirement in RPC 7.3(b)(6)(ii) that the nature of a proposed representation appear on the outside of any envelope sent as advertising material to a proposed client. The TBA agrees with the Board’s objection, however, only as to envelopes or other communications that are actually mailed. Given the increasing use of electronic media for communications, similar requirements should not be imposed upon emails, text messages, or other forms of electronic communications.

Proposed RPC 7.3(f): The TBA has proposed language in RPC 7.3(f) to allow a lawyer to compensate employees or lawyers in their own firm for recommending or securing the attorney’s services. The Board opposes this proposal, arguing that it may be contrary to the prohibition on fee sharing in RPC 5.4. The TBA submits that RPC 7.3(f) would not change the restriction on fee-sharing with non-lawyers in RPC 5.4. Indeed, proposed RPC 7.3(f) makes plain that while an attorney can provide compensation, such compensation cannot be in the form of sharing a fee or part of a fee. The TBA reaffirms the belief that it remains important and constructive to consider that many Tennessee law firms already pay in-house employees who help

with marketing efforts, and this proposed revision to the rules would operate to level the playing field for firms that may not have the resources to hire, for example, a Chief Marketing Officer. Further, to the extent that the Board's objection is driven by any concerns regarding pay to paralegals or other employees of a firm for helping bring in clients, it is also important to emphasize that the TBA's proposed revision would not change the fact that any solicitations that involve "coercion, duress, fraud, harassment, intimidation, overreaching or undue influence" would still be prohibited as would solicitations during the first 30 days after a personal injury.

Proposed RPC 7.3(f)(5): The Board also opposes the TBA's proposed RPC 7.3(f)(5) allowing reciprocal referral agreements. It appears that the Board's only argument for its opposition involves repeating the concerns that are encompassed in proposed comment [11] to the revision. The TBA disagrees with the Board's objection, and notes that the very purpose of Comment [11] is to provide guidance relating to reciprocal agreements so that they are undertaken in compliance with the rule and not otherwise. The TBA believes the guidance, prohibitions, and safeguards in place are adequate to protect against the Board's concerns. Accordingly, the TBA affirms its position that RPC 7.3(f)(5) should be revised as proposed in its Petition.

PROPOSED RPC 7.6

Proposed Removal of Catch-All Language in RPC 7.6: The TBA proposed removing the "catch-all" language in RPC 7.6. The Board opposes removing the catch-all language, arguing that this language is a necessary safeguard to ensure quality representation. For the reasons detailed in its Petition, the TBA affirms its position that the catch-all language should be removed from RPC 7.6.

Respectfully submitted,

TENNESSEE BAR ASSOCIATION

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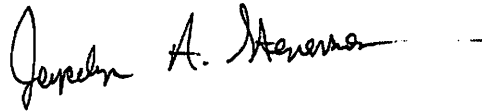
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/s/ Brian S. Faughnan

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing will be served, within 7 days of the filing of this document, upon the individuals and organizations identified in Exhibit A to the petition by email.

A handwritten signature in black ink, appearing to read "Joycelyn A. Stevenson". The signature is written in a cursive style with a horizontal line extending to the right.

JOYCELYN A. STEVENSON

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March 5, 2021

VIA E-Mail: appellatecourtclerk@tncourts.gov

James Hivner, Clerk of Appellate Courts
Tennessee Supreme Court
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

Re: No. ADM2020-01505

Dear Mr. Hivner:

I am writing to you and the Tennessee Supreme Court on behalf of the Knoxville Bar Association (KBA) Board of Governors regarding the proposed changes to TENN. SUP. CT. R. 8, RPCs 7.1, 7.2, 7.3, 7.4, 7.5, and 7.6.

The KBA's Professionalism Committee carefully considered the Court's Order and recommended the following to the KBA Board of Governors at its meeting on February 19, 2021:

- (1) Objection to the vagueness of the first part of the proposed definition of the term "sophisticated user of legal services" in R.P.C. 7.3(b)(2), which is in Comment [4] (any individual "who has had significant dealings with the legal profession");
- (2) Request clarification of R.P.C. 7.3(b) regarding the phrase "except as otherwise provided in paragraph (d)," since (b) and (d) are both phrased as prohibitions;
- (3) Objection to proposed R.P.C. 7.3(f) in its entirety, given concerns about the approval of providing things of value to "employees" or other nonlawyer agents for recommending a lawyer's services and the express approval of "reciprocal referral agreements" with nonlawyer professionals; and
- (4) Objection to the proposed deletion of the definition of "intermediary organization" in R.P.C. 7.6 and to the deletion of the catchall reference to other "similar organizations."

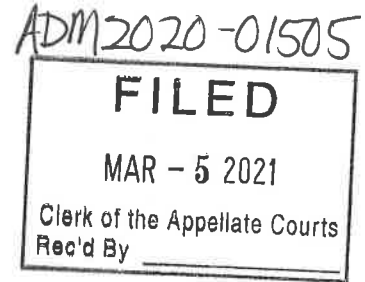
During the meeting, the Board of Governors engaged in extended discussion about the proposed changes and unanimously voted to support the Professionalism Committee's recommendation.

As always, the KBA appreciates the invitation to consider and comment on proposed rules changes.

Sincerely,

Cheryl G. Rice, President
Knoxville Bar Association

cc: Marsha Watson, KBA Executive Director (via e-mail)



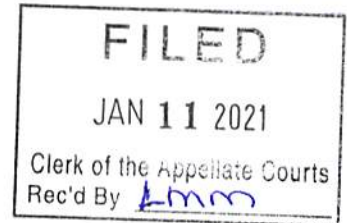
LAW OFFICES OF
SUMMERS, RUFOLO & RODGERS, P.C.

A Professional Corporation

Jerry H. Summers
Jeffrey W. Rufolo
Jimmy F. Rodgers, Jr.
Marya L. Schalk
Benjamin L. McGowan

The James Building
735 Broad Street, Suite 800
Chattanooga, Tennessee 37402

January 6, 2021



Clerk James M. Hivner
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

Re: Proposed Changes to Lawyer Advertising Rules; No. ADM 2020-01505

Dear Mr. Hivner and Members of the Tennessee Supreme Court,

By way of introduction I am a seventy-nine-year-old member of the Tennessee bar since 1966 with a trial practice representing plaintiffs primarily in personal injury cases, defendants in criminal cases, and labor unions. I have also served as an assistant district attorney, municipal court judge, and finalist for a federal judgeship appointment.

Although I do not believe that the original intent in the decision of Bates v. State Bar of Arizona in 1977 has been followed in the field of lawyer advertising, I am not writing to advocate the elimination of that plague upon the public, legal profession, and judiciary. That horse has left the barn jumped the fence and is gone out of reach.

I do continue my opposition and distaste for "deceptive advertising" as depicted in the blog I wrote from 2017-2020 titled www.truthinlawyeradvertising.com. The articles included in the blog state the objections to what myself and other individuals have with deceptive lawyer advertising.

Rather than expand the rules on the subject I respectfully suggest and would hope that the Tennessee Supreme Court would re-address the contents of a proposed plan around 2012 that was submitted for some consideration to tighten rather than loosen the regulations on lawyer advertising. The beneficiaries of lawyer advertising for the most part are a few law firms that spend large amounts of money overstating their credentials, accomplishments, and records in all forms of the media that do not benefit the public or the legal profession.

I speak only for myself individually and not on behalf of any organization that I have been or are a member in my fifty-four years of law practice.

Sincerely yours,

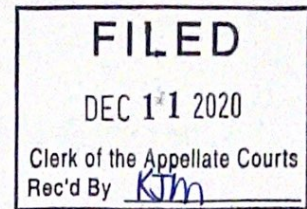
SUMMERS, RUFOLO & RODGERS, P.C.

By:


Jerry H. Summers

JHS/cnw

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



**IN RE: PETITION FOR THE ADOPTIONS OF REVISIONS TO TENN.
SUP. CT R. 8, RPCs 7.1, 7.2, 7.3, 7.4, 7.5 AND 7.6**

No. ADM2020-01505

**COMMENT OF THE BOARD OF PROFESSIONAL RESPONSIBILITY
TO PETITION FOR THE ADOPTION OF REVISIONS TO TENN. SUP.
CT R. 8, RPCs 7.1, 7.2, 7.3, 7.4, 7.5, AND 7.6**

The Board of Professional Responsibility (the Board) pursuant to this Court's Order filed November 13, 2020, respectfully submits the following comments to proposed amendments to Tenn. Sup. Ct. R. 8, RPC's 7.1, 7.2, 7.3, 7.4, 7.5 and 7.6.

The Tennessee Bar Association's (TBA) Petition is a compilation of proposed rules from the Association of Professional Responsibility Lawyers (APRL) and amendments to the Model Rules of Professional Conduct approved by the American Bar Association (ABA) in 2018. While numerous states are considering amending these rules, fewer than ten jurisdictions have implemented changes¹.

Proposed RPC 7.1 – Communications Concerning a Lawyer's Services

The TBA's proposed RPC 7.1 adds subsections (b) and (c) which are currently addressed in Tenn. Sup. Ct. R. 8 RPC 7.2(a) and (b). Tennessee's current RPC 7.2(a)

¹ Implementation of Amendments to ABA Model Rules of Professional Conduct on Lawyer Advertising. (Jan 2, 2020) https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/1-state-action-summary71-75.pdf.

which allows an attorney to advertise services is a dated version of Model Rule 7.2 (a) which allows an attorney to communicate information regarding the lawyer's services. The Board supports the updated language in proposed RPC 7.1(b) but disagrees with moving this provision to RPC 7.1. When the ABA considered revisions to these rules, the ABA's Executive Summary noted the following concern:

A dizzying number of state variations in the rules governing lawyer advertising exist. There are vast departures from the Model Rules and numerous differences between jurisdictions. These differences cause compliance confusion among intra-state and interstate lawyers and firms, time-consuming and expensive litigation, and enforcement uncertainties for bar regulators. At the same time, changes in the law on commercial speech, trends in the profession including increased cross-border practice and intensified competition from inside and outside the profession, and technological advances demand greater uniformity, more simplification, and focused enforcement.²

While the Board understands the TBA's proposed amendments intend to simplify and condense lawyer advertising rules, moving Tennessee's rules contrary to the existing framework in the Model Rules is confusing and contradictory to the need for uniformity in advertising rules as more attorneys and firms practice across state lines. Accordingly, the Board respectfully asserts current Tenn. Sup. Ct. R. 8 RPC 7.2(a) should be updated with the revised language but the rule should remain in RPC 7.2 consistent with the Model Rules. The Board respectfully asserts that current Tenn. Sup. Ct. R.8 RPC 7.2(b) requiring attorneys retain a copy of advertisements not be moved to proposed RPC 7.1(c).

² ABA proposed Model Rules of Professional Conduct 7.1 through 7.5. Revised 101. Executive Summary (August 2018). <https://www.americanbar.org/content/dam/aba/images/abanews/2018-AM-Resolutions/101.pdf>.

The Board objects to comments [5] and [7] to proposed RPC 7.1 which are not included in the Model Rules. Proposed RPC 7.1 comment [6], which is included as comment [1] to Model Rule 7.2, outlines specific information that attorneys may publicly disseminate. The Board believes comment [6]'s listing of information appropriate for public dissemination is helpful to attorneys and consumers and supports adding comment [6].

The TBA's proposed petition removes current rules for specialization in Tenn. Sup. Ct. R. 8 RPC 7.4 and instead offers guidance in Proposed RPC 7.1 Comments [9] and [10]. Model Rule 7.2(c) addresses specialization requirements similar to existing Tenn. Sup. Ct. R. 8 RPC 7.4. The Board believes these rules provide specificity regarding expertise which is helpful to consumers and attorneys and objects to moving these specialization rules into comments.

The TBA's petition removes requirements for firm names, currently included in existing Tenn. Sup. Ct. R. 8 RPC 7.5, and instead offers direction in proposed RPC 7.1 Comments [11] through [13]. In 2018, the American Bar Association approved amendments removing requirements for firm names from the rules and instead offering guidance in comments [5] through [8] to Model Rule 7.1. The Board recognizes the overarching principle of these proposed amendments is simplifying attorney advertising rules while creating uniformity. Accordingly, the Board supports deleting Tenn. Sup. Ct. R. 8 RPC 7.5 and instead offering guidance regarding firm names in comments [11] through [13].

Proposed Rule 7.3 – Solicitation of Clients

The Board supports proposed RPC 7.3(a) which defines “solicitation” consistent with Model Rule 7.3(a). Proposed RPC 7.3(b) narrows prohibited solicitations to “in-person by face-to-face contact or live telephone”. While the TBA’s proposed RPC 7.3(b) is similar to Model Rule 7.3(b), the Board believes the following language of Model Rule 7.3 comment 2 elucidates the prohibited contact:

“Live person-to-person contact” means in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications where the person is subject to a direct personal encounter without time for reflection. Such person-to-person contact does not include chat rooms, text messages or other written communications that recipients may easily disregard. A potential for overreaching exists when a lawyer, seeking pecuniary gain, solicits a person known to be in need of legal services. This form of contact subjects a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to fully evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer’s presence and insistence upon an immediate response. The situation is fraught with the possibility of undue influence, intimidation, and overreaching.

Accordingly, the Board respectfully objects to proposed RPC 7.3(b) narrowing the prohibited contact unless comment [2] is added.

Proposed Rule 7.3(b)(2) expands the category of potential clients that may be solicited to include “sophisticated user of legal services”. This term is defined in proposed RPC 7.3, Comment [4] as “an individual who has had significant dealings with the legal profession or who regularly retains legal services for business purposes”. The Board is concerned that the proposed definition of a sophisticated user could arguably be expanded to include an individual involved in protracted domestic litigation or multiple criminal charges. Accordingly, the Board

objects to the language in comment [4] “an individual who has had significant dealings with the legal profession”. Model Rule 7.3(b)(3) allows an attorney to solicit a “person who routinely uses for business purposes the type of legal services offered by the attorney.” The Board supports this exception using the language of Model Rule 7.3(b)(3).

Proposed RPC 7.3(c) requires the words “Advertising Material” be included on the “outside envelope, if any...” but deletes the requirement of current Tenn. Sup. Ct. R. 8, RPC 7.3(c)(6)(ii) that any communication seeking employment by a specific client in a specific matter shall not disclose the subject matter of the proposed representation on the outside of the envelope. The Board respectfully asserts that a potential client may not want their specific legal matter (example a DUI, etc.) specified on a postcard or self-mailing brochure. Accordingly, the Board objects to the deletion of Tenn. Sup. Ct. R. 8, RPC 7.3(c)(6)(ii)’s requirement from proposed RPC 7.3(c).

Proposed RPC 7.3(f) allows an attorney to compensate a person who is an employee or lawyer in the same firm for recommending or securing the services of the attorney. This proposed Rule is broader than Model Rule 7.2(b) and current Tenn. Sup. Ct. R. 8, RPC 7.2(c) which prohibits an attorney from giving anything of value to a person for recommending the lawyer’s services with limited exceptions. The Board respectfully suggests the broad language allowing compensation for referrals to “an employee or lawyer in the same firm” in proposed RPC 7.3(f) may be contrary to the prohibition of fee sharing with nonlawyers outlined in Tenn. Sup. Ct. R. 8, RPC 5.4(a) and therefore the Board objects to proposed RPC 7.3(f).

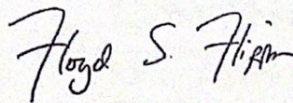
Proposed RPC 7.3(f)(5) and RPC 7.3 Comment [11] allow reciprocal referral agreements similar to Model Rule 7.2(b)(4). Proposed comment [11] lists the potential ethical problems raised by reciprocal agreements, i.e. interference with the lawyer’s professional

judgement, fee sharing and conflicts of interest. The Board objects to proposed RPC 7.3(f)(5) allowing reciprocal agreements based upon the concerns outlined in proposed comment [11].

Proposed RPC 7.6: Intermediary Organizations

Proposed RPC 7.6 deletes the substance of the definition of an “intermediary organization” and is inconsistent with the definition of an intermediary organization in Tenn. Sup. Ct. R. 44. The purpose of current Tenn. Sup. Ct. R 8 RPC 7.6 and Tenn. Sup. Ct. R. 44 is to protect the public from unscrupulous business models by requiring participating attorneys to ensure the referring organization meets criteria specified in Tenn. Sup. Ct. R. 44. While recognizing the great need for access to justice, the Board respectfully objects to this amendment due to concern that the amendment diminishes the current safeguards in place to ensure quality representation.

RESPECTFULLY SUBMITTED,



Floyd Flippin, Chair (BPR No. 010442)
Board of Professional Responsibility of the
Supreme Court of Tennessee

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Sandy Garrett

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Certificate of Service

I certify that the foregoing has been mailed to Joycelyn Ashanti Stevenson, Esq., Executive Director, Tennessee Bar Association, 221 4th Avenue North, Suite 400, Nashville, Tennessee 37219 by U.S. mail, on this the 11th day of December, 2020.

By:

Floyd S. Flippin

Floyd Flippin, Chair (BPR No. 010442)
Chairman of the Board

By:

Sandy Garrett

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JESSICA STANFORD
JUSTINA HOOK

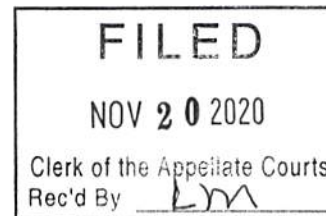
*RULE 31 MEDIATOR

**ALSO LICENSED IN KENTUCKY

*CERTIFIED AS A SPECIALIST IN
CIVIL TRIAL AND PRETRIAL
PRACTICE BY NATIONAL BOARD
OF TRIAL ADVOCACY

November 17, 2020

James M. Hivner
Clerk of Tennessee Appellate Court
100 Supreme Court Building
401 Seventh Avenue North
Nashville, Tennessee 37219



ADM 2020-01505

Re: Petition for the Adoption of Revisions to Supreme Court Rule 8 – Advertising

Dear Mr. Hivner:

While I do not have a problem with most of the proposed changes, I do believe that Tennessee needs to adopt and include in its advertising requirements that out of state law firms specify that they are not licensed in Tennessee or located in Tennessee. I believe this protects the public, and that there are sufficient unique issues under Tennessee law such that outside firms often make serious errors that do not serve the public as well as attorneys licensed and educated in Tennessee law. Many other states have this requirement, and it appears to me that it is in the public's best interest.

With best wishes, I remain,

Very truly yours,

Helen Sfikas Rogers

HSR/zc

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