



**KANSAS BAR
ASSOCIATION**

TO: The Honorable Kellie Warren
And Members of the Senate Judiciary Committee

FROM: Joseph Molina
On Behalf of the Kansas Bar Association

RE: SB 150 – Defining and prohibiting certain deceptive lawsuit advertising practices and restricting the use or disclosure of protected health information to solicit individuals for legal services

DATE: February 22, 2021

Chairman Warren and Members of the Senate Judiciary Committee:

During the hearing on SB 150, prohibiting certain legal advertisements the committee had several questions which needed further explanation. I provide this updated information in hopes that it clarifies, our position at it relates to these questions.

1. Have there been any disciplinary actions in Kansas that are addressed by SB 150 and if so how frequently or how many?

According to the Office of the Disciplinary Administrator, there have been no disciplinary actions in Kansas or complaints relating to advertising that would be prohibited under SB 150 (ex. Attorney advertisement misuses the word “recall” and Kansan suffers injury from discontinuing the use of medication.)

It is a violation of the Rules of Professional Conduct for an attorney to include in an advertisement a false or misleading statement that a medication or device has been recalled. See, KRPC 7.1.

2. Do the rules of professional conduct apply only to attorneys or to “client generators”? Do the rules apply to out of state attorneys and if so how are they enforced?

The rules of professional conduct apply to attorneys. Any attorneys involved with “client generators” are responsible for the client generators’ conduct and compliance with the rules.

All states have rules of professional conduct. The Kansas Disciplinary Administrator may report violations of out-of-state attorneys to the disciplinary administrator in the attorney’s state/s of

licensure for enforcement action. Specifically, all states have adopted the prohibition of misleading and deceptive ads under KRPC 7.1.

3. What is the remedy for people harmed by an attorney that has violated the rules and been disciplined? How may they recover damages?

Victims of a lawyer's dishonest conduct may recover financial losses through the Lawyers' Fund for Client Protection that is funded through the annual licensure fees paid by Kansas licensed attorneys. (Ex. Client loss of retainer fees due an attorney's mental illness or addiction may be reimbursed through the fund.) In addition, many Kansas attorneys carry malpractice insurance so victims of attorney negligence can recover their losses. Victims may also recover their losses through civil actions for negligence. The Supreme Court may, as a condition of reinstatement to the practice of law, require restitution be paid to victims. In these situations, the Kansas Supreme Court orders the attorney to pay restitution to their victims.

4. Is false and misleading information about a medication contained within an advertisement for a lawyer's services a violation of Rule 7.1? Is it a communication about a lawyer's services or not?

According to the Office of the Disciplinary Administrator, the answer is yes, false, and misleading information about a medication or device contained within an advertisement for a lawyer's services a violation of Rule 7.1.

It is also a violation of Rule 8.4(c) which states that a lawyer commits professional misconduct by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

5. What is the process by which the public complains to the Court if they are dissatisfied with the Court's regulation of the legal profession?

The public can provide comments to the Kansas Supreme Court on a variety of rules under consideration by the judicial branch. Most recently, the professional rules were revised and the went into effect on September 29, 2020. Prior to becoming final, the draft rules were posted on the judicial branch's website for 120 days for review and comment by the public. The Court has a Public Information Officer, Lisa Taylor, who citizens can give their questions or comments. In recent years, Appellate Court jurists have made unprecedented efforts to meet with members of the public in person. The Supreme Court has a travel docket that is well attended.

The Kansas Bar Association appreciates this opportunity to answer the committee's questions and am happy to visit with the committee to further explain our opposition to SB 150.