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RICK HAGEN
DEAN VINCENT JOHNSON
CARL JORDAN
KAREN NICHOLSON

May 27, 2020

Mr. Jerry C. Alexander, Chair
State Bar of Texas Board of Directors
Passman and Jones
[REDACTED]

RE: Submission of Proposed Rule Recommendation – Rule 13.04, Texas Rules of Disciplinary Procedure

Dear Mr. Alexander:

Pursuant to section 81.0875 of the Texas Government Code, the Committee on Disciplinary Rules and Referenda initiated the rule proposal process for proposed Rule 13.04 of the Texas Rules of Disciplinary Procedure, relating to the voluntary appointment of a custodian attorney to assist with the cessation of practice. The Committee published the proposed rule in the *Texas Bar Journal* and the *Texas Register*. The Committee solicited and considered public comments and held a public hearing on the proposed rule. At its May 2020 meeting, the Committee voted to recommend the proposed rule to the Board of Directors (with an amendment).

Included in this submission packet, you will find the proposed rule recommended by the Committee, as well as other supporting materials. Section 81.0877 of the Government Code provides that the Board is to vote on each proposed disciplinary rule recommended by the Committee not later than the 120th day after the date the rule is received from the Committee. The Board can vote for or against a proposed rule or return a proposed rule to the Committee for additional consideration.

As a reminder, if a majority of the Board approves a proposed rule, the Board shall petition the Supreme Court of Texas to order a referendum on the proposed rule as provided by section 81.0878 of the Government Code.

As always, thank you for your attention to this matter and for your service to the State Bar. Should the Board require any other information, please do not hesitate to contact me.

Committee on Disciplinary Rules and Referenda
P.O. Box 12487, Austin, TX 78711

cdrr@texasbar.com

www.texasbar.com/cdrr

Sincerely,

A handwritten signature in dark ink, appearing to read "Lewis Kinard", written in a cursive style.

Lewis Kinard
Chair, Committee on Disciplinary Rules and
Referenda

cc: Randall O. Sorrels
Larry P. McDougal
Joe K. Longley
John Charles "Charlie" Ginn
Trey Apffel
John Sirman
Ray Cantu
KaLyn Laney
Seana Willing
Ross Fischer

Committee on Disciplinary Rules and Referenda

Overview of Proposed Rule

Texas Rules of Disciplinary Procedure

Rule 13.04. Voluntary Appointment of Custodian Attorney for Cessation of Practice

Provided here is a summary of the actions of the Committee on Disciplinary Rules and Referenda (Committee) related to proposed Rule 13.04 of the Texas Rules of Disciplinary Procedure (TRDP), pertaining to the voluntary appointment of a custodian attorney to assist with the cessation of practice.

Actions by the Committee

- **Initiation** – The Committee voted to initiate the rule proposal process at its January 16, 2020, meeting.
- **Publication** – The proposed rule was published in the March 2020 issue of the *Texas Bar Journal* and the February 28, 2020, issue of the *Texas Register*. The proposed rule was concurrently posted on the Committee’s website. Information about the public hearing and the submission of public comments was included in the publications and on the Committee’s website.
- **Additional Outreach** – Email notifications regarding the proposed rule were sent to all Texas lawyers (other than those who have voluntarily opted out of receiving email notices), Committee email subscribers, and other potentially interested parties on March 2, March 17, and April 1, 2020. An additional email notification was sent to Committee email subscribers on April 3, 2020.
- **Public Comments** – The Committee accepted public comments through April 10, 2020. The Committee received seven written public comments from seven individuals.
- **Public Hearing** – On April 7, 2020, the Committee held a public hearing by Zoom teleconference. Two individuals addressed the Committee at the public hearing.
- **Recommendation** – The Committee voted at its May 6, 2020, meeting to recommend the proposed rule to the Board of Directors (Board) with an amendment.

Overview

As background, Part XIII, TRDP, currently allows a court to assume jurisdiction of an attorney’s law practice and to appoint a custodian attorney to assist with the cessation of practice.¹ Current Rule 13.03, TRDP, provides that “[t]he custodian shall observe the attorney-client relationship and privilege” and limits the custodian attorney’s liability except for intentional misconduct or gross negligence.

¹ See Rule 13.03, TRDP.

In June 2019, the Board adopted a resolution requesting the Supreme Court of Texas consider adoption of a comment to Part XIII to extend this limitation of liability, as well as the attorney-client privilege, to volunteer custodian attorneys designated to assist with the cessation of practice without court appointment or supervision.² The Board believes there is a need for the voluntary appointment of custodian attorneys “independent of court supervision to mitigate the burden on courts and to protect the interests of clients in the event the need for a custodian attorney arises.”³ The Board indicated the limitation of liability should not apply if the custodian attorney takes over the legal representation of a client.⁴

Based on the Board’s resolution, in September 2019, the Supreme Court requested the Committee study and make recommendations on a comment to Part XIII.⁵

The Committee studied the issue and believes that, given the substantive nature of the protections sought, a rule change or addition is the appropriate avenue to address the Board’s concerns.⁶ Accordingly, in January 2020, the Committee initiated the rule proposal process for proposed Rule 13.04.

Proposed Rule 13.04 follows closely the intent indicated in current Rule 13.03 (court-appointed custodian attorney) in giving a volunteer custodian attorney the same limited liability protections when closing down a law practice. Proposed Rule 13.04 also provides that the volunteer custodian attorney “shall observe the attorney-client relationship and privilege as if the custodian were the attorney of the client.” The Committee carefully drafted proposed Rule 13.04 so that the limitation of liability only applies to the custodian attorney’s actions while assisting with the cessation of a law practice and not to any legal representation taken over by the custodian attorney.

Public Comments and Recommendation

The Committee published proposed Rule 13.04 for public comment in the March 2020 issue of the *Texas Bar Journal* and the February 28, 2020, issue of the *Texas Register*. Seven individuals provided written comments on proposed Rule 13.04, and two individuals addressed the Committee on the subject at its May 6, 2020, public hearing. Multiple comments⁷ expressed support for proposed Rule 13.04.⁸

² See State Bar Board of Directors Resolution (June 12, 2019) at page 9 of this packet.

³ See *id.*

⁴ See *id.*

⁵ See Letter from Chief Justice Nathan L. Hecht to Committee Chair Lewis Kinard (September 20, 2019) at page 8 of this packet.

⁶ See Letter from Committee Chair Lewis Kinard to Chief Justice Nathan L. Hecht and Justice Jane Bland (March 12, 2020) at page 11 of this packet.

⁷ See, e.g., public comment from Dawn Meade at page 16 of this packet; see also public hearing comments from Immediate Past Chair of the Board Laura Gibson and former Board Director Greg Sampson at pages 26 to 31 of this packet.

⁸ A public comment expressed concerns about holding public hearings on proposed rule changes given shutdowns associated with the current pandemic. See public comment from Ken Horwitz at page 21 of this packet. The Committee has continuously encouraged public participation in the rule proposal process and, accordingly, held its April 2020 public hearings via Zoom teleconference in order to facilitate the most public participation possible. The Committee

In response to a public comment,⁹ the Committee voted to amend proposed Rule 13.04 to clarify the limitation of liability as follows:

Except for intentional misconduct or gross negligence, no person acting as custodian attorney under this Rule ~~may~~ shall incur any liability by reason of the actions taken pursuant to this Rule.

At its May 6, 2020, meeting, the Committee voted to recommend proposed Rule 13.04, as amended, to the Board.¹⁰

Additional Documents

Included on the pages that follow are the recommended version of proposed Rule 13.04, the published proposal that appeared in the March 2020 issue of the *Texas Bar Journal*, and the public comments received.

found the April 2020 public hearings to be successful and to encourage valuable public input from individuals in a variety of geographic regions.

⁹ See public comment from Steven Hayes at page 15 of this packet.

¹⁰ In response to an April 2020 Board resolution, the Committee has initiated a separate rule proposal regarding temporary cessations of practice related to a disability.

Committee on Disciplinary Rules and Referenda Proposed Rule Changes

Texas Rules of Disciplinary Procedure

Rule 13.04. Voluntary Appointment of Custodian Attorney for Cessation of Practice (May 2020 Recommended Version)

Proposed Rule (Redline Version)

13.04. Voluntary Appointment of Custodian Attorney for Cessation of Practice: In lieu of the procedures set forth in Rules 13.02 and 13.03, an attorney ceasing practice or planning for the cessation of practice (“appointing attorney” for purposes of this Rule) may voluntarily designate a Texas attorney licensed and in good standing to act as custodian (“custodian attorney” for purposes of this Rule) to assist in the final resolution and closure of the attorney’s practice. The terms of the appointing documents, which shall be signed and acknowledged by the appointing attorney and custodian attorney, may include any of the following duties assumed:

- A. Examine the client matters, including files and records of the appointing attorney's practice, and obtain information about any matters that may require attention.
- B. Notify persons and entities that appear to be clients of the appointing attorney of the cessation of the law practice, and suggest that they obtain other legal counsel.
- C. Apply for extension of time before any court or any administrative body pending the client's employment of other legal counsel.
- D. With the prior consent of the client, file such motions and pleadings on behalf of the client as are required to prevent prejudice to the client's rights.
- E. Give appropriate notice to persons or entities that may be affected other than the client.
- F. Arrange for surrender or delivery to the client of the client's papers, files, or other property.

The custodian attorney shall observe the attorney-client relationship and privilege as if the custodian were the attorney of the client and may make only such disclosures as are necessary to carry out the purposes of this Rule. Except for intentional misconduct or gross negligence, no person acting as custodian attorney under this Rule shall incur any liability by reason of the actions taken pursuant to this Rule.

The privileges and limitations of liability contained herein shall not apply to any legal representation taken over by the custodian attorney.

Proposed Rule (Clean Version)

13.04. Voluntary Appointment of Custodian Attorney for Cessation of Practice: In lieu of the procedures set forth in Rules 13.02 and 13.03, an attorney ceasing practice or planning for the cessation of practice (“appointing attorney” for purposes of this Rule) may voluntarily designate a Texas attorney licensed and in good standing to act as custodian (“custodian attorney” for purposes of this Rule) to assist in the final resolution and closure of the attorney’s practice. The terms of the appointing documents, which shall be signed and acknowledged by the appointing attorney and custodian attorney, may include any of the following duties assumed:

- A. Examine the client matters, including files and records of the appointing attorney's practice, and obtain information about any matters that may require attention.
- B. Notify persons and entities that appear to be clients of the appointing attorney of the cessation of the law practice, and suggest that they obtain other legal counsel.
- C. Apply for extension of time before any court or any administrative body pending the client's employment of other legal counsel.
- D. With the prior consent of the client, file such motions and pleadings on behalf of the client as are required to prevent prejudice to the client's rights.
- E. Give appropriate notice to persons or entities that may be affected other than the client.
- F. Arrange for surrender or delivery to the client of the client's papers, files, or other property.

The custodian attorney shall observe the attorney-client relationship and privilege as if the custodian were the attorney of the client and may make only such disclosures as are necessary to carry out the purposes of this Rule. Except for intentional misconduct or gross negligence, no person acting as custodian attorney under this Rule shall incur any liability by reason of the actions taken pursuant to this Rule.

The privileges and limitations of liability contained herein shall not apply to any legal representation taken over by the custodian attorney.



The Supreme Court of Texas

CHIEF JUSTICE
NATHAN L. HECHT

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

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J. BRETT BUSBY
JANE N. BLAND

GENERAL COUNSEL
NINA HESS HSU

EXECUTIVE ASSISTANT
NADINE SCHNEIDER

PUBLIC INFORMATION OFFICER
OSLER McCARTHY

September 20, 2019

Mr. Lewis Kinard, Chair
Committee on Disciplinary Rules and Referenda
American Heart Association
[REDACTED]

Re: Request to draft comment language

Dear Lewis:

The Supreme Court asks the Committee on Disciplinary Rules and Referenda to study and make recommendations on a comment to Part XIII, Texas Rules of Disciplinary Procedure.

When an attorney dies or becomes incapacitated, Part XIII provides for court appointment of a custodian attorney to assist in winding down the attorney's practice. Part XIII also limits the court-appointed custodian attorney's liability and extends the attorney-client privilege to the court-appointed custodian attorney.

On June 12, 2019, the State Bar of Texas Board of Directors adopted a resolution asking the Court to add a comment to Part XIII to extend the limitation of liability and attorney-client privilege to custodian attorneys designated by attorneys in the course of succession planning. The Board believes that such a comment will encourage succession planning, which in turn better protects the interests of clients and mitigates the burden on the courts. The Board's Resolution is attached to this letter.

As always, the Court is grateful for the Committee's counsel and your leadership.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan L. Hecht", written over a horizontal line.

Nathan L. Hecht
Chief Justice



STATE BAR OF TEXAS BOARD OF DIRECTORS

RESOLUTION

WHEREAS, 36% of Texas attorneys are over 55 years of age, and the current median age of Texas-licensed attorneys is 49, and is expected to rise over the next ten to fifteen years; and

WHEREAS, the rapid rise of technological tools enable attorneys of all ages to maintain a practice without the assistance of support staff; and

WHEREAS, it is expected that the need for cessation of practice planning for attorneys will increase due to awareness and need; and

WHEREAS, Texas Rules of Disciplinary Procedure, Part XIII (TRDP Part XIII), provides for a court-supervised cessation of practice—through court appointment of one or more custodian attorneys—in the event an attorney dies, becomes incapacitated, or is otherwise unable to continue the practice of law; and

WHEREAS, the State Bar of Texas Board of Directors believes there is a need for attorneys to designate cessation of practice custodian attorneys independent of court supervision to mitigate the burden on courts and to protect the interests of clients in the event the need for a custodian attorney arises; and

WHEREAS, TRDP Part XIII, provides that court-appointed custodian attorneys are afforded a limitation of liability for acts taken under TRDP Part XIII, absent intentional misconduct or gross negligence; and

WHEREAS, court-appointed custodian attorneys acting under TRDP Part XIII are extended the attorney-client privilege as if the court-appointed custodian attorneys were the attorneys of the clients; and

WHEREAS, the potential for liability and the lack of attorney-client privilege would have a chilling effect on the willingness of attorneys to be designated as a custodian attorney by another attorney, outside of TRDP Part XIII.

BE IT RESOLVED, that the Board of Directors requests that the Supreme Court of Texas consider the adoption of a comment to TRDP Part XIII extending the Rule's limitation of liability to attorney-designated custodian attorneys, who are acting independently of court supervision, when the attorney-designated custodian attorney is assisting with the cessation of the designating attorney's practice of law and the designating attorney's clients have been notified. This limitation of liability would not apply to attorney-designated custodian attorneys when they take over the legal representation of client(s) of the designating attorney; and

BE IT FURTHER RESOLVED, that the Board of Directors requests that the Supreme Court of Texas consider the adoption of a comment to TRDP Part XIII extending the attorney-client privilege to attorney-designated custodian attorneys, who are acting independently of court supervision, when the attorney-designated custodian attorney is assisting with the cessation of the designating attorney's practice of law and the designating attorney's clients have been notified.

RESOLVED and adopted by the State Bar of Texas Board of Directors this 12th day of June, 2019.



Laura Gibson, Chair

LEWIS KINARD, CHAIR
TIMOTHY D. BELTON
AMY BRESNEN
CLAUDE DUCLOUX
HON. DENNISE GARCIA



RICK HAGEN
DEAN VINCENT JOHNSON
CARL JORDAN
KAREN NICHOLSON

March 12, 2020

The Hon. Nathan L. Hecht
Chief Justice, Supreme Court of Texas
[REDACTED]

The Hon. Jane Bland
Justice, Supreme Court of Texas
[REDACTED]

RE: Recommendation on a Comment to Part XIII, Texas Rules of Disciplinary Procedure

Dear Chief Justice Hecht and Justice Bland:

By letter dated September 20, 2019, the Supreme Court requested that the Committee on Disciplinary Rules and Referenda study and make recommendations on a “comment” to Part XIII, Texas Rules of Disciplinary Procedure.

We are confident that the Court’s referral resulted from a resolution dated June 12, 2019, from the State Bar of Texas Board of Directors asking this Court to consider adopting a comment (as opposed to a Rule of Disciplinary Procedure) to Part XIII, and through such comment, to extend the limitation of liability and attorney-client privilege to attorney-designated custodian attorneys who assist with the cessation of practice independent of court supervision. Rule 13.03, Texas Rules of Disciplinary Procedure, currently provides a limitation of liability when a court-appointed lawyer acts in good faith to assist in the closing-down of a lawyer’s practice. The question is, how can we extend that same limited protection to lawyers who have NOT sought court-appointment?

Comment v. Rule?

The Committee has studied the issue and believes that, given the substantive nature of the protections sought, a rule change or addition is the appropriate avenue to address the Board’s concerns. Accordingly, the Committee recently published proposed (new) **Rule 13.04**, Texas Rules of Disciplinary Procedure, in the *Texas Bar Journal* and *Texas Register* for public comment. Proposed Rule 13.04, which is attached to this letter, addresses the voluntary appointment of custodian attorneys to assist with the cessation of practice. In this proposed rule, we follow closely

Committee on Disciplinary Rules and Referenda
P.O. Box 12487, Austin, TX 78711

cdr@texasbar.com

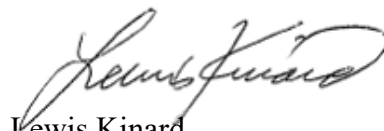
www.texasbar.com/cdr

the intent indicated in Rule 13.03 (court-appointed custodian) in giving volunteer custodians the same limited liability protections when closing down a law practice. Proposed Rule 13.04 also provides that the volunteer custodian attorney shall observe the attorney-client relationship and privilege as if the custodian were the attorney of the client.

We carefully drafted the proposed rule so that these liability protections only apply to actions while assisting with the cessation of a law practice and not to any legal representation taken over by the custodian attorney.

Thank you for requesting the Committee's feedback on this issue. Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Lewis Kinard", written in a cursive style.

Lewis Kinard
Chair, Committee on Disciplinary Rules and
Referenda

Attachment

cc: Martha Newton, Staff Attorney to Chief Justice Hecht
Jaclyn Daumerie, Supreme Court Rules Attorney

Committee on Disciplinary Rules and Referenda Proposed Rule Changes

Texas Rules of Disciplinary Procedure

Rule 13.04. Voluntary Appointment of Custodian Attorney for Cessation of Practice

The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the Committee publishes the following proposed rule. The Committee will accept comments concerning the proposed rule through April 10, 2020. Comments can be submitted at texasbar.com/CDRR or by email to CDRR@texasbar.com. A public hearing on the proposed rule will be held at 10:30 a.m. on April 7, 2020, in Room 101 of the Texas Law Center (1414 Colorado St., Austin, Texas, 78701).

Proposed Rule (Redline Version)

13.04. Voluntary Appointment of Custodian Attorney for Cessation of Practice: In lieu of the procedures set forth in Rules 13.02 and 13.03, an attorney ceasing practice or planning for the cessation of practice ("appointing attorney" for purposes of this Rule) may voluntarily designate a Texas attorney licensed and in good standing to act as custodian ("custodian attorney" for purposes of this Rule) to assist in the final resolution and closure of the attorney's practice. The terms of the appointing documents, which shall be signed and acknowledged by the appointing attorney and custodian attorney, may include any of the following duties assumed:

- A. Examine the client matters, including files and records of the appointing attorney's practice, and obtain information about any matters that may require attention.
- B. Notify persons and entities that appear to be clients of the appointing attorney of the cessation of the law practice, and suggest that they obtain other legal counsel.
- C. Apply for extension of time before any court or any administrative body pending the client's employment of other legal counsel.
- D. With the prior consent of the client, file such motions and pleadings on behalf of the client as are required to prevent prejudice to the client's rights.
- E. Give appropriate notice to persons or entities that may be affected other than the client.
- F. Arrange for surrender or delivery to the client of the client's papers, files, or other property.

The custodian attorney shall observe the attorney-client relationship and privilege as if the custodian were the attorney of the client and may make only such disclosures as are necessary to carry out the purposes of this Rule. Except for intentional misconduct or gross negligence, no person acting as custodian attorney under this Rule may incur any liability by reason of the actions taken pursuant to this Rule.

The privileges and limitations of liability contained herein shall not apply to any legal representation taken over by the custodian attorney.

Proposed Rule (Clean Version)

13.04. Voluntary Appointment of Custodian Attorney for Cessation of Practice: In lieu of the procedures set forth in Rules 13.02 and 13.03, an attorney ceasing practice or planning for the cessation of practice ("appointing attorney" for purposes of this Rule) may voluntarily designate a Texas attorney licensed and in good standing to act as custodian ("custodian attorney" for purposes of this Rule) to assist in the final resolution and closure of the attorney's practice. The terms of the appointing documents, which shall be signed and acknowledged by the appointing attorney and custodian attorney, may include any of the following duties assumed:

- A. Examine the client matters, including files and records of the appointing attorney's practice, and obtain information about any matters that may require attention.
- B. Notify persons and entities that appear to be clients of the appointing attorney of the cessation of the law practice, and suggest that they obtain other legal counsel.
- C. Apply for extension of time before any court or any administrative body pending the client's employment of other legal counsel.
- D. With the prior consent of the client, file such motions and pleadings on behalf of the client as are required to prevent prejudice to the client's rights.
- E. Give appropriate notice to persons or entities that may be affected other than the client.
- F. Arrange for surrender or delivery to the client of the client's papers, files, or other property.

The custodian attorney shall observe the attorney-client relationship and privilege as if the custodian were the attorney of the client and may make only such disclosures as are necessary to carry out the purposes of this Rule. Except for intentional misconduct or gross negligence, no person acting as custodian attorney under this Rule may incur any liability by reason of the actions taken pursuant to this Rule.

The privileges and limitations of liability contained herein shall not apply to any legal representation taken over by the custodian attorney. **TBJ**

**Committee on Disciplinary Rules and Referenda
Proposed Rule Changes**

**Texas Rules of Disciplinary Procedure
Rule 13.04. Voluntary Appointment of Custodian Attorney
For Cessation of Practice**

**Public Comments Received
Through April 10, 2020**

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Custodian Attorney for Cessation of Practice
Date: Monday, March 2, 2020 9:49:23 AM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Steven
Last Name	Hayes
Email	[REDACTED]
Member	Yes
Barcard	09280100

Feedback

Subject	Custodian Attorney for Cessation of Practice
----------------	--

Comments

I did not read the entire proposed rule carefully. But I thank the Committee for its work on this, and other, issues. In the last sentence of the penultimate paragraph of the proposed rule, it says "no person . . . may incur any liability" from serving as a custodian attorney. Did you intend to say "no person . . . will incur any liability"? The latter gives protection to the attorney, the former disallows the attorney to take on liability. I think. Yours, Steve

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Proposed Rule Change: Designation of atty for lawpractice cessation
Date: Monday, March 2, 2020 11:48:48 AM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Dawn
Last Name	Meade
Email	[REDACTED]
Member	Yes
Barcard	13879750

Feedback

Subject	Proposed Rule Change: Designation of atty for lawpractice cessation
----------------	---

Comments

This is a good rule. When I started my solo practice, my malpractice carrier required that I do this and I thought then that we probably ought to require same among our members who have solo offices.

From: [Gary E. Smith](#)
To: [cdrr](#)
Subject: Re: Proposed Rule Changes: Public Hearing Update & Reminder to Submit Comments
Date: Tuesday, March 17, 2020 10:19:21 AM

*** State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments**

Please stop changing rules.

Gary E. Smith, esq.



On Mar 17, 2020, at 10:12 AM, State Bar of Texas - CDRR <cdrr@texasbar.com> wrote:

State Bar of Texas



Proposed Rule Changes

Public Hearing Update & Public Comments Sought

Lawyer Advertising and Solicitation Rules

Voluntary Appointment of Custodian Attorney for Cessation of Practice

The Committee on Disciplinary Rules and Referenda recently published [proposed changes to Part VII \(Information about Legal Services\), Texas Disciplinary Rules of Professional Conduct](#), in the *Texas Bar Journal* and the *Texas Register*. The Committee also recently published [proposed Rule 13.04 \(Voluntary Appointment of Custodian Attorney for Cessation of Practice\), Texas Rules of Disciplinary Procedure](#).

The Committee will continue to accept comments concerning the proposed rule changes through April 10, 2020. Comments on the proposed rule changes can be submitted [here](#).

The Committee will hold public hearings on the proposed rule changes at 10:30 a.m. on April 7, 2020. **UPDATE: As a safety precaution related to the coronavirus, the Committee will hold the public hearings by teleconference only. Members of the public who wish to participate must call in toll-free using the following information:**

Telephone Number: 866-398-2885

Pass Code: 2020407

If you plan to participate in either public hearing, it is requested that you email CDRR@texasbar.com in advance of the hearing with your name and the public hearing item you wish to speak on so the Committee can group speakers by topic during the hearings. To allow enough time for all who wish to be heard during the hearings, the Committee may limit initial comments from each speaker to three minutes, and extend that time if the Committee needs further discussion with the speaker.

Additional Information

The Committee is responsible for overseeing the initial process for proposing a change or addition to the disciplinary rules (Gov't Code § 81.0873). For more information, go to texasbar.com/CDRR.

To subscribe to email updates, including notices of public hearings and published rules for comment, click [here](#).

Sincerely,

Committee on Disciplinary Rules and Referenda

Committee on Disciplinary Rules and Referenda

State Bar of Texas | 1414 Colorado | Austin, Texas 78701 | 800.204.2222

[Unsubscribe](#)



From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Proposed Rule 13.04
Date: Tuesday, March 17, 2020 11:38:05 AM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Richard
Last Name	Talbert
Email	[REDACTED]
Member	Yes
Barcard	19617550

Feedback

Subject	Proposed Rule 13.04
----------------	---------------------

Comments

..., may include any one or more of the following duties assumed: The custodian attorney shall observe the assumed limited scope attorney-client relationship and privilege of confidentiality as if...
.....no person acting as custodian attorney with limited scope under this rule shall incur any liability by reason of the actions taken within the limited scope pursuant to this Rule. The privileges and limitations of liability contained herein shall not apply to any legal representation taken over or assumed beyond the limited scope by the custodian attorney.

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Upcoming rule changes
Date: Tuesday, March 17, 2020 12:16:38 PM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	David
Last Name	Lacy
Email	[REDACTED]
Member	Yes
Barcard	11807500

Feedback

Subject	Upcoming rule changes
----------------	-----------------------

Comments

I don't think it looks good to be making rule changes when the whole populace of the bar is distracted with pandemic. Can't these changes to the rules wait until everyone can give them their full attention?

From: [Ken Horwitz](#)
To: [cdrr](#)
Subject: RE: New Proposed Rule Changes Published and Public Hearing Update
Date: Wednesday, April 1, 2020 9:21:56 AM

*** State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments**

The country is shut down and you are holding a public hearing?

Kenneth M. Horwitz
Glast, Phillips & Murray, P.C.
14801 Quorum Drive, Suite 500
Dallas, Texas 75254
(972) 419-8383 (phone)
(469) 206-5031 (fax)

This communication is not a "written opinion" within the meaning of Treasury Circular 230.

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From: State Bar of Texas - CDRR [mailto:cdrr@texasbar.com]
Sent: Wednesday, April 01, 2020 9:08 AM
To: Ken Horwitz
Subject: New Proposed Rule Changes Published and Public Hearing Update

State Bar of Texas



Proposed Rule Changes

**New Proposed Rule Changes Published
April 7, 2020, Public Hearing Update**

New Proposed Rule Changes Published for Public Comment

The Committee on Disciplinary Rules and Referenda has published [proposed changes to Rule 1.05](#).

[Texas Disciplinary Rules of Professional Conduct](#), in the April issue of the *Texas Bar Journal* and the March 27 issue of the *Texas Register*. The proposed rule changes relate to the disclosure of confidential information with regard to a client contemplating suicide.

The Committee has also published [proposed changes to Rule 8.03, Texas Disciplinary Rules of Professional Conduct, and Rules 1.06 and 9.01, Texas Rules of Disciplinary Procedure](#), in the April issue of the *Texas Bar Journal* and the March 27 issue of the *Texas Register*. The proposed rule changes relate to the reporting of professional misconduct and reciprocal discipline for federal court or federal agency discipline.

The Committee will accept comments concerning the above-referenced proposed rule changes through June 20, 2020. Comments on the proposed rule changes can be submitted [here](#).

Public hearings on the above-referenced proposed rule changes will be held at 10:30 a.m. on June 18, 2020. (Any updates to the public hearings will be posted at texasbar.com/cdrr/participate.)

April 7, 2020, Public Hearing Update

Lawyer Advertising and Solicitation Rules

Voluntary Appointment of Custodian Attorney for Cessation of Practice

The Committee on Disciplinary Rules and Referenda will hold a public hearing on [proposed changes to Part VII, Texas Disciplinary Rules of Professional Conduct](#), and [proposed Rule 13.04, Texas Rules of Disciplinary Procedure](#), at 10:30 a.m. on April 7, 2020. The Committee will continue to accept comments on these proposed rule changes through April 10, 2020. Comments can be submitted [here](#).

UPDATE: As a safety precaution related to the coronavirus, the Committee will hold the April 7 public hearings by teleconference only. The updated participation information is as follows and replaces the previous number provided:

Join from PC, Mac, iOS or Android Device:

Meeting URL: <https://texasbar.zoom.us/j/265275523>

Meeting ID: 265 275 523

Telephone Audio or Audio-Only:

888-788-0099 (Toll Free)

Meeting ID: 265 275 523

(Bridge will open at 10:00 a.m. Meeting will begin at 10:30 a.m.)

If you plan to participate in either public hearing on April 7, it is requested that you email CDRR@texasbar.com in advance of the hearing with your name and the public hearing item you wish to speak on so the Committee can group speakers by topic during the hearings. To allow enough time for all who wish to be heard during the hearings, the Committee may limit initial comments from each speaker to three minutes, and extend that time if the Committee needs further discussion with the speaker.

Additional Information

The Committee is responsible for overseeing the initial process for proposing a change or addition to the disciplinary rules (Gov't Code § 81.0873). For more information, go to texasbar.com/cdrr.

To subscribe to email updates, including notices of public hearings and published rules for comment, click [here](#).

Sincerely,
Committee on Disciplinary Rules and Referenda

Committee on Disciplinary Rules and Referenda

State Bar of Texas | 1414 Colorado | Austin, Texas 78701 | 800.204.2222

[Unsubscribe](#)



From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Proposed Rules Regarding "Competency Attorneys" and Similiar Proposals
Date: Wednesday, April 1, 2020 1:09:14 PM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Richard
Last Name	Edgell
Email	[REDACTED]
Member	Yes
Barcard	6420900

Feedback

Subject Proposed Rules Regarding "Competency Attorneys" and Similiar Proposals

Comments

1. Better Law already exists. 2. The Law has been Improved and "tweeked" for centuries. 3. The Law already provides a very high standard of "utmost good faith and fair dealing" under equitable and trust law to protect attorneys and everyone else. 4. The Texas Supreme Court is elected. 5. It is the Supreme Court for the Constitution, Laws, Statutes, and other laws of the State of the State of Texas, not the State Bar of Texas, which is or should be the attorneys who having fulfilled the requirements of the law and having been approved by the State Board of Law Examiners are entitled to license as an Attorney and Counselor at Law and having taken the oath provided by law are authorized to practice as Attorney and Counselor at Law in all the Courts of the State of Texas, and the Clerk of the Supreme Court of the Texas may affix the Seal of the Supreme Court of the Supreme Court, at Austin, or apparently has done so, for example, "this 5th day of November AD 1982" for Richard Baxter Edgell. 6. The State Bar of Texas is not an administrative agency. 7. The Texas Legislature cannot delegate judicial power it does not have to the State Bar of Texas or any other person or thing, because the Texas Constitution uses principles such as separation of powers and checks and balances between legislative, executive, and judicial branches and this is consistent with Federal law including the Constitution, Laws, and Statues of the United States. 8. Prior to entry into the Union or union with the Union, the Republic of Texas provided higher standards than the Constitution, Laws, and Statutes of the United States, including the "Rule" and "Open Courts." There is a Baylor Law School Law Review article which you can find which discusses this in detail. 9 Texas insisted, and the United States agreed, that Texas could have higher standards than the United States in the Texas judicial system. 10. The "Open courts" were not vigilante groups or the so-called "Klan." People have lied or been misinformed about this. 11. Concluding, rely on existing law, including trust law, which includes the utmost good faith and fair dealing standard, to avoid losing the work of all Texas ethnic groups who suffered, fought, and died to maintain high standards including Texas trust law and the utmost good faith and fair dealing standard in 1. previously stated. I strongly recommend that the proposed rules not be adopted because they are unconstitutional; violative of statutory law; arbitrary and capricious; not supported by substantial evidence as to their necessity or quality; not supported by subject matter jurisdiction, or notice jurisdiction because no one's life, liberty,. or property are safe while the Legislature, a governmental entity purporting to be like the Legislature, or other such entity, are in session (and the judicial power is different from the legislative power, and because of this we have the Open Courts of the State of Texas which are always to be in session), and further with regard to Texas jurisdiction generally, there are legal limits on any particular group of persons or people to change the laws of the State of Texas, especially those that have provided a higher standard than the Federal standard since the time of the Republic of Texas and before the Republic of the State of Texas; and for the other reasons stated in Government Code 2002 (which may have been amended; but which may be found and researched, unless perhaps you, for example, forge books, alter books, fail to return books, or engage in other such activity; in which case, the Open Records Act may provide you copies of certain records, subject to exceptions and restrictions for such things as privacy, health, and safety, if you provide

reasonable payment, for example for copying costs; and the Texas Open Records Act is similar to Federal Congressional legislation and meets Federal standards, most likely), I waive none of my rights. Respectfully submitted, Richard B. Edgell, Attorney at Law, SBOT 06420900 today when I checked by computer. I do not give my current address or residence in Mexico, to protect myself and others, including responsible police and judiciary, and I can do that, under Texas law, in Rio Rancho, this 1st day of April, AD 2002 Regardless of whom I am or hwe I identify myself, the arguments are still the same and can be judged on their merits..

Committee on Disciplinary Rules and Referenda
Transcript of Public Hearing on Proposed Rule 13.04, Texas Rules of Disciplinary Procedure
(Voluntary Appointment of Custodian Attorney for Cessation of Practice)
April 7, 2020 – By Zoom Teleconference

Video of the full Committee meeting, including the public hearings, is available at [texasbar.com/CDRR](https://www.texasbar.com/CDRR).

Lewis Kinard:

All right, with that, we have concluded the, uh, public hearing on the changes to Part VII. So I'm going to call to order now the public hearing on proposed Rule 13.04, Texas Rules of Disciplinary Procedure, related to voluntary appointment of a custodian attorney for the cessation of practice. Now as with this last hearing, we ask each speaker- each speaker to limit your comments to three minutes and we'll- we'll, uh, call on those who have signed up to speak first, and then those who raise their hand to speak, uh, who may not have already signed up. I do have, uh, two people. Greg Sampson, uh, and/or, with or before Laura Gibson. So either or you, I think, you kind of indicated you might want to speak, so I had Greg on the top of my list as, uh, maybe had gotten in first. But, uh-

Laura Gibson:

And [inaudible], thank you very much. I appreciate it, Mr. Kinard. I'm Laura Gibson and I, uh, with Greg Sampson- Sampson have the pleasure and honor of co-chairing the succession planning task force. Uh, that was a task force created under then-President-elect Randy Sorrels. Um, during my tenure as Chair of the Board, Dean Schaffer, who at the time was handling special projects for the office of disciplinary counsel, brought it to my attention that we were really experiencing a very significant problem among- among the lawyers in the state of Texas. And that many of our lawyers were very stressed. And we- we needed some vehicle besides the current section 13 rules to allow for, uh, attorneys to designate a custodian attorney, uh, to do limited functions on their behalf, uh, in the event of certain circumstances.

Laura Gibson:

And I first want to speak [inaudible] on behalf of Rule 13.04, and to commend the Committee [inaudible] Claude Ducloux, uh, and- and other, their hard work in drafting 13.04. We on the task force believe that 13.04 is, uh, in desperate need. It was in desperate need, uh, before COVID-19 and we anticipate that it's going to be even more significant.

Laura Gibson:

Um, so first let me speak to 13.04, it allows the Bar, uh, Bar and our members to have another tool in their toolbox that protects their clients in the event of their permanent, uh, uh, their permanent closure of their- their law firm. So 13.04 speaks to final resolution and closure of an attorney's practice. And it sets forth six discrete acts- acts that the custodian attorney can perform, um, so as to protect the client's interests. And we think that's a wonderful rule and we are, uh, we think it's, uh, extremely necessary because it gives the custodian attorney, um, the protections that previously existed under, uh, 13.01. Um, and I'd hoped that you saw that, I guess that was a week ago today, uh, the other day, April 1, uh, President Sorrels in his presidential column announced that our attorneys can go online and literally in less than five minutes, designate not only one custodian attorney, but also an alternate custodian attorney.

Laura Gibson:

And I'm ex- extremely proud of the work of the task force. Um, that worked last year to make that process happen and to- un- unveil it. That was approved at our January Board meeting in Houston. And I- I next want to speak about, uh, the need for an additional rule, uh, in the form of 13.05. Uh, we had hoped to have that to this, um, all this group before, um, yesterday. Uh, but with the disruption of COVID-19 and the technological issues of working from home, we weren't able to get that to you sooner.

Laura Gibson:

Um, hopefully you've had the opportunity to look at 13.05 as we've proposed it. Uh, we've submitted a red line copy of it. Uh, and red lining it to 13.04 because it's very similar to 13.04. It allows for the, um, custodian attorney to do only the same six acts that 13.04 currently does, but it... and- and it only allows it for a specific duration. A duration of 120 days. It allows for an attorney now to designate a custodian attorney who can act on his or her behalf when there becomes a circumstance which might cause for a temporary cessation of practice.

Laura Gibson:

So we were mindful of the Committee's concerns that we didn't want an open-ended, um, situation where another attorney could come in and practice law on behalf of the attorney. But, um, if you look at 13, excuse me, 12.01, in section 12 of the- the rules. That deals with what happens when an attorney is disabled. And that allows, um, uh, or sets forth a mechanism for that attorney to become suspended and, um, prohibited from practicing law. And in our view, even before COVID-19, we needed something in between. Something where someone is not, um, in a situation where they should be suspended, um, but in a situation where they should be able to avail themselves of the same, um, act that a custodian attorney can do for a limited period of time. And we- we set forth 120 days, uh, in our proposed rule 13.05 that we submitted. Um, and there's a provision that says that if the, um, the attorneys- the appointing attorneys disability circumstance does not cease before the end of the 120 day period, um, and the attorney does not return to the practice fully enabled, uh, excuse me, fully competent to provide the legal service, then the custodian has to either, um, assist in the final resolution and closure or can petition the court to extend that period for a specified duration of time.

Laura Gibson:

So, um, I know hearing about the- the stress, um, and pressures that lawyers in Texas were under during COVID-19 that we absolutely needed this. Uh, and that the sooner we get it, the better it is not only for the lawyers, but especially for the clients affected by a temporary cessation of practice of law. So, um, with that let me stop and ask if there are any questions of me? Or if Greg wants to add anything?

Lewis Kinard:

Before we open for questions, Greg, do you want to- to add something to that?

Greg Sampson:

Uh, no I- uh, just that we were trying to follow what, sort of uh, uh, I think guidelines that were given to us in a conversation that we had after the last meeting. Trying not to, uh, create an entirely new arrangement of managing a practice other than- rather just allowing for this temporary, uh, cessation situation that we think is so common and needed, uh, particularly now. But, uh, so- so we were trying to

track it very closely, as well as 13.04, and we think it- it could work, but we would welcome any comments on that.

Greg Sampson:

My emphasis here would be on whatever will get 13.04, uh, to a referendum, uh, to allow lawyers to get the benefits of 13.04, um, that's the course we would like to, uh, encourage you all to follow. If 13.05 could be included because the need for that, uh, we would welcome that, but we certainly want to make sure that lawyers get the protection they need as custodians, at least under 13.04. So we- uh, we anticipate and- and understand you guys are interested in getting this to referendum very quickly, and we do appreciate that very much. And would like to- to assist in that in any way.

Lewis Kinard:

Well I definitely want to thank both of you. You've done a lot of work so far. You've put a lot into this. It's a- it's, uh, clearly when there's a need like this we want to get, uh, through as fast as possible. It's a process, though. And it's like, you know, the sausage and legislation thing. But, uh, the work that you've done certainly makes our work easier and we certainly have a lot more to work from rather than having to start from- from nothing just because someone's identified a need on that.

Lewis Kinard:

All right, anyone on the Committee have questions? I see Mr. Ducloux has raised his hand politely.

Claude Ducloux:

I- I want to thank the committee for doing that. This is, uh, what I was... after our- our, um, discussion at the last meeting [inaudible] especially, I was hopeful that, uh, you- you did exactly what I think you should have done, and that was to create a whole new rule 13.05. I was scared you were going to mess with 13.04 and I thought really, that was about cessation of practice. That-

Lewis Kinard:

Hm.

Claude Ducloux:

Thank you so much for supporting that. That's very important. And this gives a lot more flexibility to, uh, us proceeding [inaudible] temporary circumstances. 'Cause, remember, we're all about it- it's not only to help the attorney, but it's- it's for the clients too. So I'm glad to see that the first few things you put on there is there should be times if- if you don't know where that lawyer is, the clients should be told, "You need to get a new lawyer right now because we don't even know where he is." Uh, and the gives that sort of flexibility, too.

Claude Ducloux:

I just want to say thank you for not conflating the two concepts of a temporary cessation with a cessation. And [inaudible] phone. (Laughs) Um, so anyway, I just want to say thanks so much. I just saw this for the first time and I downloaded it and it's [inaudible] separate rule to consider and, uh, move on. Very good product.

Lewis Kinard:

Good. Thank you, Claude. Any other Committee members have questions or comments about, uh, Ms. Gibson's or Mr. Sampson's, uh, proposal and comments.

Amy Bresnen:

Is- is this- I mean, so y'all started writing this before COVID-19, so there must have been another pressing reason for this and- and I just wanted to... this is just for my own [inaudible]. Is- is the rule-

Laura Gibson:

Oh, yes. There was a very pressing need. Dean Schaffer who's here on the call, uh, actually had the title of, uh, appeals and special projects. Um, he was asked by Linda Acevedo to be responsible any time a lawyer, um, d-

Lewis Kinard:

Hm.

Laura Gibson:

Became disabled or disappeared. Uh, so we've had a- a really surge of suicides in our community in the last couple of years. Um, we've had situations where lawyers, um, get so overwhelmed by their practice of law and feel so isolated in this day of, you know, before- before now, when people were, you know, not interacting as much as they used to. They felt abandoned and a- alone. And they often disappeared. And, um, the client or oftentimes an office administrator or a spouse would call the State Bar and said, "You know, my boss hasn't shown up for work for a week and I've called his house and his cell phone and he's not returning his calls or her calls." And so, um, Dean has spent the last several years, kind of, coming up with a way to triage these situations to protect the client's interests and to help the attorney get through whatever he or she is going through. And so, um, Dean brought that to my attention, that we had this tremendous need, and he asked me if I, as chair of the State Bar Board, then, could do anything to try to address it. So, um, Greg and I worked as the co-leaders of the task force and we started meeting literally the day after the annual meeting last year, to figure out how do we come up with a process for designating custodians. And, uh, we wanted it to be broader than, than 13.04 because there certainly is a need. But we understood and, and completely agree that it would be better to have two rules, one to address the permanent cessation, where you have-

Unidentified Speaker:

Yeah.

Laura Gibson:

Um, and another to have a temporary cessation which is a harder animal to deal with because the reason for the temporary cessation, uh, differs and the solution for the temporary cessation, um-

Lewis Kinard:

Mm-hmm (affirmative).

Laura Gibson:

... differs as a result of that. And so we hope that 13.05, um, can, can provide us that... with that guidance. I mean I understand that Claude's point is we should probably go back and add a provision

about, uh, if the lawyers disappear for some specific duration, then the custodian needs to go ahead and close the practice.

Lewis Kinard:

Mm-hmm (affirmative).

Laura Gibson:

If the custodian can't find that lawyer in a, in a short period of time, um, then the custodian should be able to take action to notify the clients immediately. And as drafted 13.05 doesn't keep the custodian attorney from notifying the clients immediately. Um, but the... as soon as the custodian attorney is notified on notice that that lawyer is gone, I would think it would be incumbent upon that custodian to notify them so that they could make arrangements to have hearings handled or have their matters handled.

Amy Bresnen:

Mm-hmm (affirmative). Well that, I mean that, that makes sense also, was wondering if it had something to do with law firms downsizing, you know, or parties moving, you know, from one law firm to the other, if this is something that you had in mind.

Laura Gibson:

No, I mean it's, it's really an issue, um, limited to solo practitioners, um, for the most part, because if you have another attorney in your firm, so if I'm, you know, for a while I practiced with my husband. If Bill and I had a firm and I went AWOL, uh, he would already have permission on behalf of our clients to act, uh, for them. Um, but when you only have one attorney and a non-attorney support staff, then there's nobody there who can take action on behalf of that client. There's nobody who can, uh, look at the file to send that file back to the client without violating the attorney-client privilege. And so we, we decided we needed a mechanism to help those solo practitioners and their clients in that circumstance.

Amy Bresnen:

Okay. Thanks.

Lewis Kinard:

Thank you Amy, any other questions from the Committee to our speakers?

Claude Ducloux:

Thank you Dean for helping out with this too.

Greg Sampson:

Yes, thank you Dean.

Lewis Kinard:

Anyone else w- um, wanna speak on proposed 13.04 of the Rules of Disciplinary Procedure? If you're on, uh, uh, Zoom you can unmute yourself there, uh, wave your hand and we'll unmute you. Or use the hand raising tool down in the participants panel, it's sometimes hard to find, but it's there. Uh, anybody on the telephones, star nine unmutes you and you can, uh, speak now? Okay.

Laura Gibson:

Mr. Kinard, may I just, um, recognize the members of the succession planning taskforce for the record?

Lewis Kinard:

Yes, you may.

Laura Gibson:

Um, in addition to my coach here, Greg Sampson, I was joined by Bill Betts, Jackie Daumerie, Leslie Dippel, Kevin Mutscher, Jonathan Smaby, whose birthday is today, uh, Don Totusek, and our Bar professionals Brad Johnson, Dean Shaffer, Cory Squires, Craig Chapman, and the entire IT team. So I really appreciate the taskforce, um, really had a lot of work in front of them and we could not have done it without the, uh, State Bar, Bar professionals' assistance.

Lewis Kinard:

Great. I, I'm sure that's correct, 'cause I know how valuable they are to this Committee too. So great. Well just a reminder, public comments on, uh, 13.04 are being accepted through April 10th, and thank you again to those who have submitted them online already. Uh, I do encourage public and, and Bar membership to keep submitting feedback. We'll have to vote, uh, at our next meeting, May 6th, on whether to, um, move the 13.04 on to the Bar Board, uh, and the last meeting date we have before our June 9th deadline to get that part done. So if there's no other comments or speakers on 13.04, I'm gonna close the public hearing on that, and we're gonna move on to, uh, Agenda Item Four.

Lewis Kinard:

And before I do that though, anybody else, uh, here to speak or comment on anything else or provide comments to the Committee? I know we, we usually have a time on our agenda where we, especially these public hearings, we open up, uh, for, for other topics, maybe you've missed a public hearing or something else you wanna comment on about process or specific actions. If you're on the Zoom page, you can do this by opening the participants window, clicking raise hand, and let us know. If you're on the phone, you can do it by pressing star nine and speaking and let- telling us your name. Brad, Cory, do we have any hands raised?

Brad Johnson:

No, Chair, I don't, I don't see any.

Lewis Kinard:

Okay. All right. Uh, so Item Five. Any... Do we have a motion, uh, regarding the minutes from our last meeting?

LEWIS KINARD, CHAIR
TIMOTHY D. BELTON
AMY BRESNEN
CLAUDE DUCLOUX
HON. DENNISE GARCIA



RICK HAGEN
DEAN VINCENT JOHNSON
CARL JORDAN
KAREN NICHOLSON

May 27, 2020

Mr. Jerry C. Alexander, Chair
State Bar of Texas Board of Directors
Passman and Jones
[REDACTED]

RE: Submission of Proposed Rules Recommendation – Part VII, Texas Disciplinary Rules of Professional Conduct (Lawyer Advertising and Solicitation Rules)

Dear Mr. Alexander:

As you know, the Committee on Disciplinary Rules and Referenda previously submitted proposed changes to Part VII of the Texas Disciplinary Rules of Professional Conduct to the Board of Directors. On January 24, 2020, the Board voted to return the proposed rule changes to the Committee for additional consideration, including the possibility of amending the proposed rules to be consistent with the majority of other states regarding the use of trade names.

On February 5, 2020, the Committee initiated the rule proposal process for a revised proposal on Part VII. The Committee published the revised proposal in the *Texas Bar Journal* and the *Texas Register*. The Committee solicited and considered public comments and held a public hearing on the revised proposal. At its May 6, 2020, meeting, the Committee voted to recommend the revised proposal to the Board (with additional amendments).

The recommended proposal permits lawyers to practice law under a trade name that is not false or misleading. The recommended proposal also amends the previously submitted proposal by expanding an exemption from the advertising review filing requirements for certain communications that do not expressly offer legal services, as well as by clarifying a prohibition on stating or implying that results can be achieved by unlawful use of violence or other means that violate the Disciplinary Rules or other law.

Included in this submission packet, you will find the proposed rule changes recommended by the Committee, proposed comments to the proposed rules, and other supporting materials. Section 81.0877 of the Government Code provides that the Board is to vote on each proposed disciplinary rule recommended by the Committee not later than the 120th day after the date the

Committee on Disciplinary Rules and Referenda
P.O. Box 12487, Austin, TX 78711

cdrr@texasbar.com

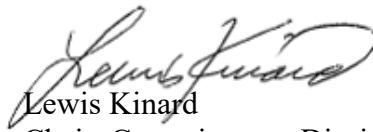
www.texasbar.com/cdrr

rule is received from the Committee. The Board can vote for or against a proposed rule or return a proposed rule to the Committee for additional consideration.

As a reminder, if a majority of the Board approves a proposed rule, the Board shall petition the Supreme Court of Texas to order a referendum on the proposed rule as provided by section 81.0878 of the Government Code.

As always, thank you for your attention to this matter and for your service to the State Bar. Should the Board require any other information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lewis Kinard", written in a cursive style.

Lewis Kinard
Chair, Committee on Disciplinary Rules and
Referenda

cc: Randall O. Sorrels
Larry P. McDougal
Joe K. Longley
John Charles "Charlie" Ginn
Trey Apffel
John Sirman
Ray Cantu
KaLyn Laney
Seana Willing
Ross Fischer

Committee on Disciplinary Rules and Referenda

Overview of Proposed Rule Changes

Texas Disciplinary Rules of Professional Conduct

Part VII. Information About Legal Services

Provided here is a summary of the actions of the Committee on Disciplinary Rules and Referenda (Committee) related to proposed changes to Part VII of the Texas Disciplinary Rules of Professional Conduct, which consists of the lawyer advertising and solicitation rules.

Background

- **Previous Submission to Board** – On January 9, 2020, the Committee submitted a previous proposal on Part VII to the Chair of the Board of Directors.
- **Previous Board Action** – On January 24, 2020, the Board of Directors (Board) voted to return the proposal to the Committee for additional consideration.

Recent Actions by the Committee

- **Initiation** – The Committee voted to initiate the rule proposal process for a revised proposal on Part VII at its February 5, 2020, meeting.
- **Publication** – The revised proposal was published in the March 2020 issue of the *Texas Bar Journal* and the February 28, 2020, issue of the *Texas Register*. The proposal was concurrently posted on the Committee’s website. Information about the public hearing and the submission of public comments was included in the publications and on the Committee’s website.
- **Additional Outreach** – Email notifications regarding the proposal were sent to all Texas lawyers (other than those who have voluntarily opted out of receiving email notices), Committee email subscribers, and other potentially interested parties on March 2, March 17, and April 1, 2020. An additional email notification was sent to Committee email subscribers on April 3, 2020.
- **Public Comments** – The Committee accepted public comments through April 13, 2020. The Committee received 24 written public comments from 22 individuals.
- **Public Hearing** – On April 7, 2020, the Committee held a public hearing by Zoom teleconference. Six individuals addressed the Committee at the public hearing.
- **Recommendation** – The Committee voted at its May 6, 2020, meeting to recommend the rule proposal to the Board with certain amendments.

Overview

As background, in June 2018, the Board adopted a resolution approving the submission of a report by the Advertising Review Committee to the Committee and requesting initiation of the rule proposal process for the lawyer advertising rules.

In September 2018, the Committee initiated the rule proposal process for the lawyer advertising and solicitation rules. Thereafter, the Committee published two different versions of proposed Part VII and held three public hearings on the proposed rule changes. During this process, the Committee received and considered 155 written public comments and 11 individuals addressed the Committee during the public hearings (with one individual speaking at two different hearings). The Committee responded to public input by making a number of amendments to the proposals. Ultimately, the Committee voted to recommend a set of proposed changes to the Board and submitted the proposal in January of this year.

On January 24, 2020, the Board voted to return the proposed rule changes to the Committee for additional consideration, including the possibility of amending the proposed rules to be consistent with the majority of other states regarding the use of trade names.

On February 5, 2020, the Committee initiated the rule proposal process for a revised proposal on Part VII. The Committee published the revised proposal in the *Texas Bar Journal* and the *Texas Register*, and held a public hearing on the revised proposal. The Committee received 24 written public comments from 22 individuals, and six individuals addressed the Committee at the public hearing. At its May 6, 2020, meeting, the Committee voted to recommend the revised proposal to the Board, with additional amendments based on the public feedback.

The recommended proposal provides that “(l)awyers may practice law under a trade name that is not false or misleading.”¹

The recommended proposal also amends the previously submitted proposal by expanding an exemption from the advertising review filing requirements. The amendment is intended to address concerns raised in public comments about a lack of clarity in the application of advertising review filing requirements to social media communications.² As amended, proposed Rule 7.05(g) exempts the following from the advertising review filing requirements, provided the communication otherwise complies with proposed Rules 7.01 to 7.03:

a communication in social media or other media, which does not expressly offer legal services, and that: (1) is primarily informational, educational, political, or artistic in nature, or made for entertainment purposes; or (2) consists primarily of the type of information commonly found on the professional resumes of lawyers.

In response to public comments,³ the Committee also amended proposed Rule 7.01(e) to clarify its scope. As amended, proposed Rule 7.01(e) reads, “A lawyer shall not state or imply that the lawyer can achieve results *in the representation by unlawful use of violence or means that violate these Rules or other law.*”⁴

¹ Proposed Rule 7.01(c).

² See public comment from Zach Wolfe at page 79 of this packet; see also public hearing transcript at pages 99 to 104 of this packet.

³ See public comments from Camden Chancellor at pages 60, 62, and 64 of this packet.

⁴ The newly added language is italicized for emphasis.

In general, the recommended version of the proposal simplifies and modernizes the advertising and solicitation rules.

In addition to the recent modifications already discussed, the recommended proposal notably: (1) continues to prohibit “a false or misleading communication about the qualifications or services of a lawyer or law firm” (*see* proposed Rule 7.01); (2) defines the terms “advertisement” and “solicitation communication” (*see* proposed Rule 7.01); (3) simplifies disclaimer requirements (*see* proposed Rules 7.01, 7.02, and 7.03); (4) continues to permit statements by a lawyer claiming certification by an organization as a specialist only if the certification is awarded by the Texas Board of Legal Specialization (TBLS) or an organization accredited by TBLS, but allows other statements regarding fields of practice or specialization so long as they are not false or misleading (*see* proposed Rules 7.01 and 7.02); (5) continues to prohibit solicitation through in-person contact or through telephone, social media, or other electronic communications that are live or electronically interactive, with certain limited exceptions (*see* proposed Rule 7.03); (6) exempts communications directed to “another lawyer,” to “a person who has a family, close personal, or prior business or professional relationship with the lawyer,” or to “a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters” from certain solicitation restrictions and from filing requirements (*see* proposed Rules 7.03 and 7.05); (7) exempts certain nominal gifts from the prohibition on giving anything of value to a person who makes a referral (*see* proposed Rule 7.03); (8) permits certain non-exclusive reciprocal referral agreements (*see* proposed Rule 7.03); (9) continues to allow attorneys to seek pre-approval of advertisements and solicitation communications (*see* proposed Rule 7.04); (10) exempts most parts of websites from filing requirements (*see* proposed Rule 7.05); and (11) expands the list of communications that are exempt from filing requirements (*see* proposed Rule 7.05).

Public Comments

In addition to the public comments previously discussed, the Committee received public feedback on a variety of issues. In response to its most recent published proposal, the Committee received five written public comments regarding trade names.⁵ Of those comments, three supported the proposal to allow nonmisleading trade names,⁶ while one opposed allowing the use of any trade names.⁷ Another comment supported the use of trade names “as long as it is clear to consumers that the entity is a law firm and that the services provided are legal in nature.”⁸

A different public comment raised concerns about proposed Rule 7.03,⁹ which addresses solicitation communications. Among the concerns raised was the inclusion of the phrase “substantially motivated by pecuniary gain” as part of the definition of “solicitation communication” in proposed Rule 7.01(b)(2). It is important to note that *current* Rule 7.03(a)

⁵ An additional public comment from Stephen Putonti (page 78) generally supported the proposed changes, while a comment from Ruben Robles (page 63) appeared to generally oppose the proposed changes.

⁶ *See* public comments from Christopher Gagne (page 59), Steve Waldman (page 66), and Jason Moore (page 94).

⁷ *See* public comment from Michael Sanders at page 61 of this packet.

⁸ *See* public comment from Andrew Cates at page 76 of this packet.

⁹ *See* public comment from David Eric Kassab at page 95 of this packet.

imposes its restrictions on solicitations only “when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain.”¹⁰ Current Rules 7.05(f)(3) and 7.07(e)(7) also provide exemptions from certain disclosure and filing requirements when there is no significant motivation for pecuniary gain. Thus, the proposed definition is not a departure from the current Rules in terms of making certain solicitation restrictions dependent on the lawyer’s motivation for pecuniary gain. Further, other components of proposed Rules 7.01 and 7.03, such as prohibitions on “a false or misleading communication about the qualifications or services of a lawyer or law firm”¹¹ or “a communication that involves coercion, duress, overreaching, intimidation, or undue influence,”¹² apply regardless of whether the communication meets the definition of a “solicitation communication” in proposed Rule 7.01(b)(2).

Additional Documents

Included on the pages that follow are the recommended proposal, proposed comments to the proposed rules (which were approved by the Committee at its May 2020 meeting), the published proposal that appeared in the March 2020 issue of the *Texas Bar Journal*, and the public comments received. For convenience, the Committee’s prior submission to the Board is available at www.texasbar.com/cdrradrulesjan2020.

¹⁰ Rule 7.3(b) of the American Bar Association Model Rules of Professional Conduct similarly utilizes a “significant motive” for pecuniary gain standard for its restriction on “live person-to-person” solicitations.

¹¹ Proposed Rule 7.01(a).

¹² Proposed 7.03(c).

Committee on Disciplinary Rules and Referenda Proposed Rule Changes

Texas Disciplinary Rules of Professional Conduct VII. INFORMATION ABOUT LEGAL SERVICES (May 2020 Recommended Version)

Proposed Rules (Clean Version)

Rule 7.01. Communications Concerning a Lawyer's Services

(a) A lawyer shall not make or sponsor a false or misleading communication about the qualifications or services of a lawyer or law firm. Information about legal services must be truthful and nondeceptive. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading. A statement is misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation, or if the statement is substantially likely to create unjustified expectations about the results the lawyer can achieve.

(b) This Rule governs all communications about a lawyer's services, including advertisements and solicitation communications. For purposes of Rules 7.01 to 7.06:

(1) An "advertisement" is a communication substantially motivated by pecuniary gain that is made by or on behalf of a lawyer to members of the public in general, which offers or promotes legal services under circumstances where the lawyer neither knows nor reasonably should know that the recipients need legal services in particular matters.

(2) A "solicitation communication" is a communication substantially motivated by pecuniary gain that is made by or on behalf of a lawyer to a specific person who has not sought the lawyer's advice or services, which reasonably can be understood as offering to provide legal services that the lawyer knows or reasonably should know the person needs in a particular matter.

(c) Lawyers may practice law under a trade name that is not false or misleading. A law firm name may include the names of current members of the firm and of deceased or retired members of the firm, or of a predecessor firm, if there has been a succession in the firm identity. The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm. A law firm with an office in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an

office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(d) A statement or disclaimer required by these Rules shall be sufficiently clear that it can reasonably be understood by an ordinary person and made in each language used in the communication. A statement that a language is spoken or understood does not require a statement or disclaimer in that language.

(e) A lawyer shall not state or imply that the lawyer can achieve results in the representation by unlawful use of violence or means that violate these Rules or other law.

(f) A lawyer may state or imply that the lawyer practices in a partnership or other business entity only when that is accurate.

(g) If a lawyer who advertises the amount of a verdict secured on behalf of a client knows that the verdict was later reduced or reversed, or that the case was settled for a lesser amount, the lawyer must state in each advertisement of the verdict, with equal or greater prominence, the amount of money that was ultimately received by the client.

Rule 7.02. Advertisements

(a) An advertisement of legal services shall publish the name of a lawyer who is responsible for the content of the advertisement and identify the lawyer's primary practice location.

(b) A lawyer who advertises may communicate that the lawyer does or does not practice in particular fields of law, but shall not include a statement that the lawyer has been certified or designated by an organization as possessing special competence or a statement that the lawyer is a member of an organization the name of which implies that its members possess special competence, except that:

(1) a lawyer who has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised, may state with respect to each such area, "Board Certified, area of specialization -- Texas Board of Legal Specialization"; and

(2) a lawyer who is a member of an organization the name of which implies that its members possess special competence, or who has been certified or designated by an organization as possessing special competence in a field of practice, may include a factually accurate, non-misleading statement of such membership or certification, but only if that organization has been accredited by the Texas Board of Legal Specialization as a bona fide organization that admits to membership or grants certification only on the basis of published criteria which the Texas Board of Legal Specialization has established as required for such certification.

(c) If an advertisement by a lawyer discloses a willingness to render services on a contingent fee basis, the advertisement must state whether the client will be obligated to pay for other expenses, such as the costs of litigation.

(d) A lawyer who advertises a specific fee or range of fees for an identified service shall conform to the advertised fee or range of fees for the period during which the advertisement is reasonably expected to be in circulation or otherwise expected to be effective in attracting clients, unless the advertisement specifies a shorter period. However, a lawyer is not bound to conform to the advertised fee or range of fees for a period of more than one year after the date of publication, unless the lawyer has expressly promised to do so.

Rule 7.03. Solicitation and Other Prohibited Communications

(a) The following definitions apply to this Rule:

(1) “Regulated telephone, social media, or other electronic contact” means telephone, social media, or electronic communication initiated by a lawyer, or by a person acting on behalf of a lawyer, that involves communication in a live or electronically interactive manner.

(2) A lawyer “solicits” employment by making a “solicitation communication,” as that term is defined in Rule 7.01(b)(2).

(b) A lawyer shall not solicit through in-person contact, or through regulated telephone, social media, or other electronic contact, professional employment from a non-client, unless the target of the solicitation is:

(1) another lawyer;

(2) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or

(3) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.

(c) A lawyer shall not send, deliver, or transmit, or knowingly permit or cause another person to send, deliver, or transmit, a communication that involves coercion, duress, overreaching, intimidation, or undue influence.

(d) A lawyer shall not send, deliver, or transmit, or knowingly permit or cause another person to send, deliver, or transmit, a solicitation communication to a prospective client, if:

(1) the communication is misleadingly designed to resemble a legal pleading or other legal document; or

(2) the communication is not plainly marked or clearly designated an “ADVERTISEMENT” unless the target of the communication is:

(i) another lawyer;

(ii) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or

(iii) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.

(e) A lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting or referring prospective clients for professional employment, except nominal gifts given as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

(1) This Rule does not prohibit a lawyer from paying reasonable fees for advertising and public relations services or the usual charges of a lawyer referral service that meets the requirements of Texas law.

(2) A lawyer may refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:

(i) the reciprocal referral agreement is not exclusive;

(ii) clients are informed of the existence and nature of the agreement; and

(iii) the lawyer exercises independent professional judgment in making referrals.

(f) A lawyer shall not, for the purpose of securing employment, pay, give, advance, or offer to pay, give, or advance anything of value to a prospective client, other than actual litigation expenses and other financial assistance permitted by Rule 1.08(d), or ordinary social hospitality of nominal value.

(g) This Rule does not prohibit communications authorized by law, such as notice to members of a class in class action litigation.

Rule 7.04. Filing Requirements for Advertisements and Solicitation Communications

(a) Except as exempt under Rule 7.05, a lawyer shall file with the Advertising Review Committee, State Bar of Texas, no later than ten (10) days after the date of dissemination of an advertisement of legal services, or ten (10) days after the date of a solicitation communication sent by any means:

(1) a copy of the advertisement or solicitation communication (including packaging if applicable) in the form in which it appeared or will appear upon dissemination;

(2) a completed lawyer advertising and solicitation communication application; and

(3) payment to the State Bar of Texas of a fee authorized by the Board of Directors.

(b) If requested by the Advertising Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in an advertisement or solicitation communication.

(c) A lawyer who desires to secure pre-approval of an advertisement or solicitation communication may submit to the Advertising Review Committee, not fewer than thirty (30) days prior to the date of first dissemination, the material specified in paragraph (a), except that in the case of an advertisement or solicitation communication that has not yet been produced, the documentation will consist of a proposed text, production script, or other description, including details about the illustrations, actions, events, scenes, and background sounds that will be depicted. A finding of noncompliance by the Advertising Review Committee is not binding in a disciplinary proceeding or action, but a finding of compliance is binding in favor of the submitting lawyer as to all materials submitted for pre-approval if the lawyer fairly and accurately described the advertisement or solicitation communication that was later produced. A finding of compliance is admissible evidence if offered by a party.

Rule 7.05. Communications Exempt from Filing Requirements

The following communications are exempt from the filing requirements of Rule 7.04 unless they fail to comply with Rules 7.01, 7.02, and 7.03:

(a) any communication of a bona fide nonprofit legal aid organization that is used to educate members of the public about the law or to promote the availability of free or reduced-fee legal services;

(b) information and links posted on a law firm website, except the contents of the website homepage, unless that information is otherwise exempt from filing;

(c) a listing or entry in a regularly published law list;

(d) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or law firm, or a business card;

(e) a professional newsletter in any media that it is sent, delivered, or transmitted only to:

(1) existing or former clients;

(2) other lawyers or professionals;

(3) persons known by the lawyer to be experienced users of the type of legal services involved for business matters;

(4) members of a nonprofit organization which has requested that members receive the newsletter; or

- (5) persons who have asked to receive the newsletter;
- (f) a solicitation communication directed by a lawyer to:
 - (1) another lawyer;
 - (2) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or
 - (3) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters;
- (g) a communication in social media or other media, which does not expressly offer legal services, and that:
 - (1) is primarily informational, educational, political, or artistic in nature, or made for entertainment purposes; or
 - (2) consists primarily of the type of information commonly found on the professional resumes of lawyers;
- (h) an advertisement that:
 - (1) identifies a lawyer or a firm as a contributor or sponsor of a charitable, community, or public interest program, activity, or event; and
 - (2) contains no information about the lawyers or firm other than names of the lawyers or firm or both, location of the law offices, contact information, and the fact of the contribution or sponsorship;
- (i) communications that contain only the following types of information:
 - (1) the name of the law firm and any lawyer in the law firm, office addresses, electronic addresses, social media names and addresses, telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession, such as “attorney,” “lawyer,” “law office,” or “firm;”
 - (2) the areas of law in which lawyers in the firm practice, concentrate, specialize, or intend to practice;
 - (3) the admission of a lawyer in the law firm to the State Bar of Texas or the bar of any court or jurisdiction;
 - (4) the educational background of the lawyer;

- (5) technical and professional licenses granted by this state and other recognized licensing authorities;
- (6) foreign language abilities;
- (7) areas of law in which a lawyer is certified by the Texas Board of Legal Specialization or by an organization that is accredited by the Texas Board of Legal Specialization;
- (8) identification of prepaid or group legal service plans in which the lawyer participates;
- (9) the acceptance or nonacceptance of credit cards;
- (10) fees charged for an initial consultation or routine legal services;
- (11) identification of a lawyer or a law firm as a contributor or sponsor of a charitable, community, or public interest program, activity or event;
- (12) any disclosure or statement required by these Rules; and
- (13) any other information specified in orders promulgated by the Supreme Court of Texas.

Rule 7.06. Prohibited Employment

- (a) A lawyer shall not accept or continue employment in a matter when that employment was procured by conduct prohibited by Rules 7.01 through 7.03, 8.04(a)(2), or 8.04(a)(9), engaged in by that lawyer personally or by another person whom the lawyer ordered, encouraged, or knowingly permitted to engage in such conduct.
- (b) A lawyer shall not accept or continue employment in a matter when the lawyer knows or reasonably should know that employment was procured by conduct prohibited by Rules 7.01 through 7.03, 8.04(a)(2), or 8.04(a)(9), engaged in by another person or entity that is a shareholder, partner, or member of, an associate in, or of counsel to that lawyer's firm; or by any other person whom the foregoing persons or entities ordered, encouraged, or knowingly permitted to engage in such conduct.
- (c) A lawyer who has not violated paragraph (a) or (b) in accepting employment in a matter shall not continue employment in that matter once the lawyer knows or reasonably should know that the person procuring the lawyer's employment in the matter engaged in, or ordered, encouraged, or knowingly permitted another to engage in, conduct prohibited by Rules 7.01 through 7.03, 8.04(a)(2), or 8.04(a)(9) in connection with the matter unless nothing of value is given thereafter in return for that employment.

Proposed Rules (Redline Version)

Rule 7.01. Communications Concerning a Lawyer's Services ~~Firm Names and Letterhead~~

(a) A lawyer shall not make or sponsor a false or misleading communication about the qualifications or services of a lawyer or law firm. Information about legal services must be truthful and nondeceptive. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading. A statement is misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation, or if the statement is substantially likely to create unjustified expectations about the results the lawyer can achieve. A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the names of a professional corporation, professional association, limited liability partnership, or professional limited liability company may contain "P.C.," "L.L.P.," "P.L.L.C.," or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. Nothing herein shall prohibit a married woman from practicing under her maiden name.

(b) This Rule governs all communications about a lawyer's services, including advertisements and solicitation communications. For purposes of Rules 7.01 to 7.06:

(1) An "advertisement" is a communication substantially motivated by pecuniary gain that is made by or on behalf of a lawyer to members of the public in general, which offers or promotes legal services under circumstances where the lawyer neither knows nor reasonably should know that the recipients need legal services in particular matters.

(2) A "solicitation communication" is a communication substantially motivated by pecuniary gain that is made by or on behalf of a lawyer to a specific person who has not sought the lawyer's advice or services, which reasonably can be understood as offering to provide legal services that the lawyer knows or reasonably should know the person needs in a particular matter.

~~A firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.~~

(c) Lawyers may practice law under a trade name that is not false or misleading. A law firm name may include the names of current members of the firm and of deceased or retired members of the firm, or of a predecessor firm, if there has been a succession in the firm identity. The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm. A law firm with an office in more than one jurisdiction may use the same

name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located. The name of a lawyer occupying a judicial, legislative, or public executive or administrative position shall not be used in the name of a firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) A statement or disclaimer required by these Rules shall be sufficiently clear that it can reasonably be understood by an ordinary person and made in each language used in the communication. A statement that a language is spoken or understood does not require a statement or disclaimer in that language. A lawyer shall not hold himself or herself out as being a partner, shareholder, or associate with one or more other lawyers unless they are in fact partners, shareholders, or associates.

(e) A lawyer shall not state or imply that the lawyer can achieve results in the representation by unlawful use of violence or means that violate these Rules or other law. A lawyer shall not advertise in the public media or seek professional employment by any communication under a trade or fictitious name, except that a lawyer who practices under a firm name as authorized by paragraph (a) of this Rule may use that name in such advertisement or communication but only if that name is the firm name that appears on the lawyer's letterhead, business cards, office sign, fee contracts, and with the lawyer's signature on pleadings and other legal documents.

(f) A lawyer may state or imply that the lawyer practices in a partnership or other business entity only when that is accurate. A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.02(a).

(g) If a lawyer who advertises the amount of a verdict secured on behalf of a client knows that the verdict was later reduced or reversed, or that the case was settled for a lesser amount, the lawyer must state in each advertisement of the verdict, with equal or greater prominence, the amount of money that was ultimately received by the client.

Rule 7.02. Advertisements Communications Concerning a Lawyer's Services

(a) An advertisement of legal services shall publish the name of a lawyer who is responsible for the content of the advertisement and identify the lawyer's primary practice location. A lawyer shall not make or sponsor a false or misleading communication about the qualifications or the services of any lawyer or firm. A communication is false or misleading if it:

(1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) contains any reference in a public media advertisement to past successes or results obtained unless

~~(i) the communicating lawyer or member of the law firm served as lead counsel in the matter giving rise to the recovery, or was primarily responsible for the settlement or verdict.~~

~~(ii) the amount involved was actually received by the client,~~

~~(iii) the reference is accompanied by adequate information regarding the nature of the case or matter, and the damages or injuries sustained by the client, and~~

~~(iv) if the gross amount received is stated, the attorney's fees and litigation expenses withheld from the amount are stated as well;~~

~~(3) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate these rules or other law;~~

~~(4) compares the lawyer's services with other lawyers' services, unless the comparison can be substantiated by reference to verifiable, objective data;~~

~~(5) states or implies that the lawyer is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official;~~

~~(6) designates one or more specific areas of practice in an advertisement in the public media or in a solicitation communication unless the advertising or soliciting lawyer is competent to handle legal matters in each such area of practice; or~~

~~(7) uses an actor or model to portray a client of the lawyer or law firm.~~

(b) A lawyer who advertises may communicate that the lawyer does or does not practice in particular fields of law, but shall not include a statement that the lawyer has been certified or designated by an organization as possessing special competence or a statement that the lawyer is a member of an organization the name of which implies that its members possess special competence, except that:

(1) a lawyer who has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised, may state with respect to each such area, "Board Certified, area of specialization -- Texas Board of Legal Specialization"; and

(2) a lawyer who is a member of an organization the name of which implies that its members possess special competence, or who has been certified or designated by an organization as possessing special competence in a field of practice, may include a factually accurate, non-misleading statement of such membership or certification, but only if that organization has been accredited by the Texas Board of Legal Specialization as a bona fide organization that admits to membership or grants certification only on the basis of published criteria which the Texas Board of Legal Specialization has established as required for such certification.

~~Rule 7.02(a)(6) does not require that a lawyer be certified by the Texas Board of Legal Specialization at the time of advertising in a specific area of practice, but such certification shall conclusively establish that such lawyer satisfies the requirements of Rule 7.02(a)(6) with respect to the area(s) of practice in which such lawyer is certified.~~

~~(c) If an advertisement by a lawyer discloses a willingness to render services on a contingent fee basis, the advertisement must state whether the client will be obligated to pay for other expenses, such as the costs of litigation. A lawyer shall not advertise in the public media or state in a solicitation communication that the lawyer is a specialist except as permitted under Rule 7.04.~~

~~(d) A lawyer who advertises a specific fee or range of fees for an identified service shall conform to the advertised fee or range of fees for the period during which the advertisement is reasonably expected to be in circulation or otherwise expected to be effective in attracting clients, unless the advertisement specifies a shorter period. However, a lawyer is not bound to conform to the advertised fee or range of fees for a period of more than one year after the date of publication, unless the lawyer has expressly promised to do so. Any statement or disclaimer required by these rules shall be made in each language used in the advertisement or solicitation communication with respect to which such required statement or disclaimer relates; provided however, the mere statement that a particular language is spoken or understood shall not alone result in the need for a statement or disclaimer in that language.~~

Rule 7.03. Solicitation and Other Prohibited Communications ~~Prohibited Solicitations and Payments~~

~~(a) The following definitions apply to this Rule:~~

~~(1) “Regulated telephone, social media, or other electronic contact” means telephone, social media, or electronic communication initiated by a lawyer, or by a person acting on behalf of a lawyer, that involves communication in a live or electronically interactive manner.~~

~~(2) A lawyer “solicits” employment by making a “solicitation communication,” as that term is defined in Rule 7.01(b)(2).~~

~~A lawyer shall not by in person contact, or by regulated telephone or other electronic contact as defined in paragraph (f) seek professional employment concerning a matter arising out of a particular occurrence or event, or series of occurrences or events, from a prospective client or nonclient who has not sought the lawyer's advice regarding employment or with whom the lawyer has no family or past or present attorney client relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. Notwithstanding the provisions of this paragraph, a lawyer for a qualified nonprofit organization may communicate with the organization's members for the purpose of educating the members to understand the law, to recognize legal problems, to make intelligent selection of counsel, or to use legal services. In those situations where in person or telephone or other electronic contact is permitted by this paragraph, a lawyer shall not have such a contact with a prospective client if:~~

~~(1) the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment;~~

~~(2) the communication contains information prohibited by Rule 7.02(a); or~~

~~(3) the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.~~

(b) A lawyer shall not solicit through in-person contact, or through regulated telephone, social media, or other electronic contact, professional employment from a non-client, unless the target of the solicitation is:

(1) another lawyer;

(2) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or

(3) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.

~~A lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting prospective clients for, or referring clients or prospective clients to, any lawyer or firm, except that a lawyer may pay reasonable fees for advertising and public relations services rendered in accordance with this Rule and may pay the usual charges of a lawyer referral service that meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.~~

(c) A lawyer shall not send, deliver, or transmit, or knowingly permit or cause another person to send, deliver, or transmit, a communication that involves coercion, duress, overreaching, intimidation, or undue influence. A lawyer, in order to solicit professional employment, shall not pay, give, advance, or offer to pay, give, or advance anything of value, other than actual litigation expenses and other financial assistance as permitted by Rule 1.08(d), to a prospective client or any other person; provided however, this provision does not prohibit the payment of legitimate referral fees as permitted by Rule 1.04(f) or by paragraph (b) of this Rule.

(d) A lawyer shall not send, deliver, or transmit, or knowingly permit or cause another person to send, deliver, or transmit, a solicitation communication to a prospective client, if:

(1) the communication is misleadingly designed to resemble a legal pleading or other legal document; or

(2) the communication is not plainly marked or clearly designated an "ADVERTISEMENT" unless the target of the communication is:

(i) another lawyer;

(ii) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or

(iii) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.

~~A lawyer shall not enter into an agreement for, charge for, or collect a fee for professional employment obtained in violation of Rule 7.03(a), (b), or (c).~~

(e) A lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting or referring prospective clients for professional employment, except nominal gifts given as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

(1) This Rule does not prohibit a lawyer from paying reasonable fees for advertising and public relations services or the usual charges of a lawyer referral service that meets the requirements of Texas law.

(2) A lawyer may refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:

(i) the reciprocal referral agreement is not exclusive;

(ii) clients are informed of the existence and nature of the agreement; and

(iii) the lawyer exercises independent professional judgment in making referrals.

~~A lawyer shall not participate with or accept referrals from a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.~~

(f) A lawyer shall not, for the purpose of securing employment, pay, give, advance, or offer to pay, give, or advance anything of value to a prospective client, other than actual litigation expenses and other financial assistance permitted by Rule 1.08(d), or ordinary social hospitality of nominal value. As used in paragraph (a), "regulated telephone or other electronic contact" means any electronic communication initiated by a lawyer or by any person acting on behalf of a lawyer or law firm that will result in the person contacted communicating in a live, interactive manner with any other person by telephone or other electronic means. For purposes of this Rule a website for a lawyer or law firm is not considered a communication initiated by or on behalf of that lawyer or firm.

(g) This Rule does not prohibit communications authorized by law, such as notice to members of a class in class action litigation.

Rule 7.04. Filing Requirements for Advertisements and Solicitation Communications
Advertisements in the Public Media

(a) Except as exempt under Rule 7.05, a lawyer shall file with the Advertising Review Committee, State Bar of Texas, no later than ten (10) days after the date of dissemination of an advertisement of legal services, or ten (10) days after the date of a solicitation communication sent by any means:

- (1) a copy of the advertisement or solicitation communication (including packaging if applicable) in the form in which it appeared or will appear upon dissemination;
- (2) a completed lawyer advertising and solicitation communication application; and
- (3) payment to the State Bar of Texas of a fee authorized by the Board of Directors.

~~A lawyer shall not advertise in the public media by stating that the lawyer is a specialist, except as permitted under Rule 7.04(b) or as follows:~~

~~(1) A lawyer admitted to practice before the United States Patent Office may use the designation "Patents," "Patent Attorney," or "Patent Lawyer," or any combination of those terms. A lawyer engaged in the trademark practice may use the designation "Trademark," "Trademark Attorney," or "Trademark Lawyer," or any combination of those terms. A lawyer engaged in patent and trademark practice may hold himself or herself out as specializing in "Intellectual Property Law," "Patent, Trademark, Copyright Law and Unfair Competition," or any of those terms.~~

~~(2) A lawyer may permit his or her name to be listed in lawyer referral service offices that meet the requirements of Occupational Code Title 5, Subtitle B, Chapter 952, according to the areas of law in which the lawyer will accept referrals.~~

~~(3) A lawyer available to practice in a particular area of law or legal service may distribute to other lawyers and publish in legal directories and legal newspapers (whether written or electronic) a listing or an announcement of such availability. The listing shall not contain a false or misleading representation of special competence or experience, but may contain the kind of information that traditionally has been included in such publications.~~

(b) If requested by the Advertising Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in an advertisement or solicitation communication. A lawyer who advertises in the public media:

- ~~(1) shall publish or broadcast the name of at least one lawyer who is responsible for the content of such advertisement; and~~
- ~~(2) shall not include a statement that the lawyer has been certified or designated by an organization as possessing special competence or a statement that the lawyer is a member of an organization the name of which implies that its members possess special competence, except that:~~

~~(i) a lawyer who has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised, may state with respect to each such area, “Board Certified, area of specialization — Texas Board of Legal Specialization;” and~~

~~(ii) a lawyer who is a member of an organization the name of which implies that its members possess special competence, or who has been certified or designated by an organization as possessing special competence, may include a factually accurate statement of such membership or may include a factually accurate statement, “Certified area of specialization name of certifying organization,” but such statements may be made only if that organization has been accredited by the Texas Board of Legal Specialization as a bona fide organization that admits to membership or grants certification only on the basis of objective, exacting, publicly available standards (including high standards of individual character, conduct, and reputation) that are reasonably relevant to the special training or special competence that is implied and that are in excess of the level of training and competence generally required for admission to the Bar; and~~

~~(3) shall, in the case of infomercial or comparable presentation, state that the presentation is an advertisement;~~

~~(i) both verbally and in writing at its outset, after any commercial interruption, and at its conclusion; and~~

~~(ii) in writing during any portion of the presentation that explains how to contact a lawyer or law firm.~~

(c) A lawyer who desires to secure pre-approval of an advertisement or solicitation communication may submit to the Advertising Review Committee, not fewer than thirty (30) days prior to the date of first dissemination, the material specified in paragraph (a), except that in the case of an advertisement or solicitation communication that has not yet been produced, the documentation will consist of a proposed text, production script, or other description, including details about the illustrations, actions, events, scenes, and background sounds that will be depicted. A finding of noncompliance by the Advertising Review Committee is not binding in a disciplinary proceeding or action, but a finding of compliance is binding in favor of the submitting lawyer as to all materials submitted for pre-approval if the lawyer fairly and accurately described the advertisement or solicitation communication that was later produced. A finding of compliance is admissible evidence if offered by a party. Separate and apart from any other statements, the statements referred to in paragraph (b) shall be displayed conspicuously, and in language easily understood by an ordinary consumer.

~~(d) Subject to the requirements of Rules 7.02 and 7.03 and of paragraphs (a), (b), and (c) of this Rule, a lawyer may, either directly or through a public relations or advertising representative, advertise services in the public media, such as (but not limited to) a telephone directory, legal~~

~~directory, newspaper or other periodical, outdoor display, radio, television, the Internet, or electronic, or digital media.~~

~~(e) All advertisements in the public media for a lawyer or firm must be reviewed and approved in writing by the lawyer or a lawyer in the firm.~~

~~(f) A copy or recording of each advertisement in the public media and relevant approval referred to in paragraph (e), and a record of when and where the advertisement was used, shall be kept by the lawyer or firm for four years after its last dissemination.~~

~~(g) In advertisements in the public media, any person who portrays a lawyer whose services or whose firm's services are being advertised, or who narrates an advertisement as if he or she were such a lawyer, shall be one or more of the lawyers whose services are being advertised.~~

~~(h) If an advertisement in the public media by a lawyer or firm discloses the willingness or potential willingness of the lawyer or firm to render services on a contingent fee basis, the advertisement must state whether the client will be obligated to pay all or any portion of the court costs and, if a client may be liable for other expenses, this fact must be disclosed. If specific percentage fees or fee ranges of contingent fee work are disclosed in such advertisement, it must also disclose whether the percentage is computed before or after expenses are deducted from the recovery.~~

~~(i) A lawyer who advertises in the public media a specific fee or range of fees for a particular service shall conform to the advertised fee or range of fees for the period during which the advertisement is reasonably expected to be in circulation or otherwise expected to be effective in attracting clients, unless the advertisement specifies a shorter period; but in no instance is the lawyer bound to conform to the advertised fee or range of fees for a period of more than one year after the date of publication.~~

~~(j) A lawyer or firm who advertises in the public media must disclose the geographic location, by city or town, of the lawyer's or firm's principal office. A lawyer or firm shall not advertise the existence of any office other than the principal office unless:~~

~~(1) that other office is staffed by a lawyer at least three days a week; or~~

~~(2) the advertisement states:~~

~~(i) the days and times during which a lawyer will be present at that office, or~~

~~(ii) that meetings with lawyers will be by appointment only.~~

~~(k) A lawyer may not, directly or indirectly, pay all or a part of the cost of an advertisement in the public media for a lawyer not in the same firm unless such advertisement discloses the name and address of the financing lawyer, the relationship between the advertising lawyer and the financing lawyer, and whether the advertising lawyer is likely to refer cases received through the advertisement to the financing lawyer.~~

~~(l) If an advertising lawyer knows or should know at the time of an advertisement in the public media that a case or matter will likely be referred to another lawyer or firm, a statement of such fact shall be conspicuously included in such advertisement.~~

~~(m) No motto, slogan or jingle that is false or misleading may be used in any advertisement in the public media.~~

~~(n) A lawyer shall not include in any advertisement in the public media the lawyer's association with a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.~~

~~(o) A lawyer may not advertise in the public media as part of an advertising cooperative or venture of two or more lawyers not in the same firm unless each such advertisement:~~

~~(1) states that the advertisement is paid for by the cooperating lawyers;~~

~~(2) names each of the cooperating lawyers;~~

~~(3) sets forth conspicuously the special competency requirements required by Rule 7.04(b) of lawyers who advertise in the public media;~~

~~(4) does not state or imply that the lawyers participating in the advertising cooperative or venture possess professional superiority, are able to perform services in a superior manner, or possess special competence in any area of law advertised, except that the advertisement may contain the information permitted by Rule 7.04(b)(2); and~~

~~(5) does not otherwise violate the Texas Disciplinary Rules of Professional Conduct.~~

~~(p) Each lawyer who advertises in the public media as part of an advertising cooperative or venture shall be individually responsible for:~~

~~(1) ensuring that each advertisement does not violate this Rule; and~~

~~(2) complying with the filing requirements of Rule 7.07.~~

~~(q) If these rules require that specific qualifications, disclaimers or disclosures of information accompany communications concerning a lawyer's services, the required qualifications, disclaimers or disclosures must be presented in the same manner as the communication and with equal prominence.~~

~~(r) A lawyer who advertises on the Internet must display the statements and disclosures required by Rule 7.04.~~

Rule 7.05. Communications Exempt from Filing Requirements ~~Prohibited Written, Electronic, Or Digital Solicitations~~

The following communications are exempt from the filing requirements of Rule 7.04 unless they fail to comply with Rules 7.01, 7.02, and 7.03:

(a) any communication of a bona fide nonprofit legal aid organization that is used to educate members of the public about the law or to promote the availability of free or reduced-fee legal services;

(b) information and links posted on a law firm website, except the contents of the website homepage, unless that information is otherwise exempt from filing;

(c) a listing or entry in a regularly published law list;

(d) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or law firm, or a business card;

(e) a professional newsletter in any media that it is sent, delivered, or transmitted only to:

(1) existing or former clients;

(2) other lawyers or professionals;

(3) persons known by the lawyer to be experienced users of the type of legal services involved for business matters;

(4) members of a nonprofit organization which has requested that members receive the newsletter; or

(5) persons who have asked to receive the newsletter;

(f) a solicitation communication directed by a lawyer to:

(1) another lawyer;

(2) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or

(3) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters;

(g) a communication in social media or other media, which does not expressly offer legal services, and that:

(1) is primarily informational, educational, political, or artistic in nature, or made for entertainment purposes; or

(2) consists primarily of the type of information commonly found on the professional resumes of lawyers;

(h) an advertisement that:

(1) identifies a lawyer or a firm as a contributor or sponsor of a charitable, community, or public interest program, activity, or event; and

(2) contains no information about the lawyers or firm other than names of the lawyers or firm or both, location of the law offices, contact information, and the fact of the contribution or sponsorship;

(i) communications that contain only the following types of information:

(1) the name of the law firm and any lawyer in the law firm, office addresses, electronic addresses, social media names and addresses, telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession, such as “attorney,” “lawyer,” “law office,” or “firm;”

(2) the areas of law in which lawyers in the firm practice, concentrate, specialize, or intend to practice;

(3) the admission of a lawyer in the law firm to the State Bar of Texas or the bar of any court or jurisdiction;

(4) the educational background of the lawyer;

(5) technical and professional licenses granted by this state and other recognized licensing authorities;

(6) foreign language abilities;

(7) areas of law in which a lawyer is certified by the Texas Board of Legal Specialization or by an organization that is accredited by the Texas Board of Legal Specialization;

(8) identification of prepaid or group legal service plans in which the lawyer participates;

(9) the acceptance or nonacceptance of credit cards;

(10) fees charged for an initial consultation or routine legal services;

(11) identification of a lawyer or a law firm as a contributor or sponsor of a charitable, community, or public interest program, activity or event;

(12) any disclosure or statement required by these Rules; and

(13) any other information specified in orders promulgated by the Supreme Court of Texas.

~~(a) A lawyer shall not send, deliver, or transmit or knowingly permit or knowingly cause another person to send, deliver, or transmit a written, audio, audio-visual, digital media, recorded telephone message, or other electronic communication to a prospective client for the purpose of obtaining professional employment on behalf of any lawyer or law firm if:~~

~~(1) the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment;~~

~~(2) the communication contains information prohibited by Rule 7.02 or fails to satisfy each of the requirements of Rule 7.04(a) through (c), and (g) through (q) that would be applicable to the communication if it were an advertisement in the public media; or~~

~~(3) the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.~~

~~(b) Except as provided in paragraph (f) of this Rule, a written, electronic, or digital solicitation communication to prospective clients for the purpose of obtaining professional employment:~~

~~(1) shall, in the case of a non-electronically transmitted written communication, be plainly marked "ADVERTISEMENT" on its first page, and on the face of the envelope or other packaging used to transmit the communication. If the written communication is in the form of a self-mailing brochure or pamphlet, the word "ADVERTISEMENT" shall be:~~

~~(i) in a color that contrasts sharply with the background color; and~~

~~(ii) in a size of at least 3/8" vertically or three times the vertical height of the letters used in the body of such communication, whichever is larger~~

~~(2) shall, in the case of an electronic mail message, be plainly marked "ADVERTISEMENT" in the subject portion of the electronic mail and at the beginning of the message's text;~~

~~(3) shall not be made to resemble legal pleadings or other legal documents;~~

~~(4) shall not reveal on the envelope or other packaging or electronic mail subject line used to transmit the communication, or on the outside of a self-mailing brochure or pamphlet, the nature of the legal problem of the prospective client or non-client; and~~

~~(5) shall disclose how the lawyer obtained the information prompting the communication to solicit professional employment if such contact was prompted by a specific occurrence involving the recipient of the communication, or a family member of such person(s).~~

~~(c) Except as provided in paragraph (f) of this Rule, an audio, audio-visual, digital media, recorded telephone message, or other electronic communication sent to prospective clients for the purpose of obtaining professional employment:~~

~~(1) shall, in the case of any such communication delivered to the recipient by non-electronic means, plainly and conspicuously state in writing on the outside of any envelope or other packaging used to transmit the communication, that it is an "ADVERTISEMENT."~~

~~(2) shall not reveal on any such envelope or other packaging the nature of the legal problem of the prospective client or non-client;~~

~~(3) shall disclose, either in the communication itself or in accompanying transmittal message, how the lawyer obtained the information prompting such audio, audio-visual, digital media, recorded telephone message, or other electronic communication to solicit professional employment, if such contact was prompted by a specific occurrence involving the recipient of the communication or a family member of such person(s);~~

~~(4) shall, in the case of a recorded audio presentation or a recorded telephone message, plainly state that it is an advertisement prior to any other words being spoken and again at the presentation's or message's conclusion; and~~

~~(5) shall, in the case of an audio-visual or digital media presentation, plainly state that the presentation is an advertisement;~~

~~(i) both verbally and in writing at the outset of the presentation and again at its conclusion; and~~

~~(ii) in writing during any portion of the presentation that explains how to contact a lawyer or law firm.~~

~~(d) All written, audio, audio-visual, digital media, recorded telephone message, or other electronic communications made to a prospective client for the purpose of obtaining professional employment of a lawyer or law firm must be reviewed and either signed by or approved in writing by the lawyer or a lawyer in the firm.~~

~~(e) A copy of each written, audio, audio-visual, digital media, recorded telephone message, or other electronic solicitation communication, the relevant approval thereof, and a record of the date of each such communication; the name, address, telephone number, or electronic address to which each such communication was sent; and the means by which each such communication was sent shall be kept by the lawyer or firm for four years after its dissemination.~~

~~(f) The provisions of paragraphs (b) and (c) of this Rule do not apply to a written, audio, audiovisual, digital media, recorded telephone message, or other form, of electronic solicitation communication:~~

~~(1) directed to a family member or a person with whom the lawyer had or has an attorney client relationship;~~

~~(2) that is not motivated by or concerned with a particular past occurrence or event or a particular series of past occurrences or events, and also is not motivated by or concerned with the prospective client's specific existing legal problem of which the lawyer is aware;~~

~~(3) if the lawyer's use of the communication to secure professional employment was not significantly motivated by a desire for, or by the possibility of obtaining, pecuniary gain; or~~

~~(4) that is requested by the prospective client.~~

Rule 7.06. Prohibited Employment

(a) A lawyer shall not accept or continue employment in a matter when that employment was procured by conduct prohibited by ~~any of~~ Rules 7.01 through 7.03~~5~~, 8.04(a)(2), or 8.04(a)(9), engaged in by that lawyer personally or by another ~~any other~~ person whom the lawyer ordered, encouraged, or knowingly permitted to engage in such conduct.

(b) A lawyer shall not accept or continue employment in a matter when the lawyer knows or reasonably should know that employment was procured by conduct prohibited by ~~any of~~ Rules 7.01 through 7.03~~5~~, 8.04(a)(2), or 8.04(a)(9), engaged in by another ~~any other~~ person or entity that is a shareholder, partner, or member of, an associate in, or of counsel to that lawyer's firm; or by any other person whom ~~any of~~ the foregoing persons or entities ordered, encouraged, or knowingly permitted to engage in such conduct.

(c) A lawyer who has not violated paragraph (a) or (b) in accepting employment in a matter shall not continue employment in that matter once the lawyer knows or reasonably should know that the person procuring the lawyer's employment in the matter engaged in, or ordered, encouraged, or knowingly permitted another to engage in, conduct prohibited by ~~any of~~ Rules 7.01 through 7.03~~5~~, 8.04(a)(2), or 8.04(a)(9) in connection with the matter unless nothing of value is given thereafter in return for that employment.

~~Rule 7.07. Filing Requirements for Public Advertisements and Written, Recorded, Electronic, or Other Digital Solicitations~~

~~(a) Except as provided in paragraphs (c) and (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas, no later than the mailing or sending by any means, including electronic, of a written, audio, audio-visual, digital or other electronic solicitation communication:~~

~~(1) a copy of the written, audio, audio-visual, digital, or other electronic solicitation communication being sent or to be sent to one or more prospective clients for the purpose of obtaining professional employment, together with a representative sample of the envelopes or other packaging in which the communications are enclosed;~~

~~(2) a completed lawyer advertising and solicitation communication application form; and~~

~~(3) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such solicitations.~~

~~(b) Except as provided in paragraph (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas, no later than the first dissemination of an advertisement in the public media, a copy of each of the lawyer's advertisements in the public media. The filing shall include:~~

~~(1) a copy of the advertisement in the form in which it appears or will appear upon dissemination, such as a videotape, audiotape, DVD, CD, a print copy, or a photograph of outdoor advertising;~~

~~(2) a production script of the advertisement setting forth all words used and describing in detail the actions, events, scenes, and background sounds used in such advertisement together with a listing of the names and addresses of persons portrayed or heard to speak, if the advertisement is in or will be in a form in which the advertised message is not fully revealed by a print copy or photograph;~~

~~(3) a statement of when and where the advertisement has been, is, or will be used;~~

~~(4) a completed lawyer advertising and solicitation communication application form; and~~

~~(5) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such advertisements.~~

~~(c) Except as provided in paragraph (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas no later than its first posting on the internet or other comparable network of computers information concerning the lawyer's or lawyer's firm's website. As used in this Rule, a "website" means a single or multiple page file, posted on a computer server, which describes a lawyer or law firm's practice or qualifications, to which public access is provided through publication of a uniform resource locator (URL). The filing shall include:~~

~~(1) the intended initial access page of a website;~~

~~(2) a completed lawyer advertising and solicitation communication application form; and~~

~~(3) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be set for the sole purpose of defraying the expense of enforcing the rules related to such websites;~~

~~(d) A lawyer who desires to secure an advance advisory opinion, referred to as a request for pre-approval, concerning compliance of a contemplated solicitation communication or advertisement may submit to the Advertising Review Committee, not less than thirty (30) days prior to the date of first dissemination, the material specified in paragraph (a) or (b), or the intended initial access page submitted pursuant to paragraph (c), including the application form and required fee; provided however, it shall not be necessary to submit a videotape or DVD if the videotape or DVD has not then been prepared and the production script submitted reflects in detail and accurately the actions, events, scenes, and background sounds that will be depicted or contained on such videotapes or DVDs, when prepared, as well as the narrative transcript of the verbal and printed portions of such advertisement. If a lawyer submits an advertisement or solicitation communication for pre-approval, a finding of noncompliance by the Advertising Review Committee is not binding in a disciplinary proceeding or disciplinary action but a finding of compliance is binding in favor of the submitting lawyer as to all materials actually submitted for pre-approval if the representations, statements, materials, facts and written assurances received in connection therewith are true and are not misleading. The finding of compliance constitutes admissible evidence if offered by a party.~~

~~(e) The filing requirements of paragraphs (a), (b), and (c) do not extend to any of the following materials, provided those materials comply with Rule 7.02(a) through (c) and, where applicable, Rule 7.04(a) through (c):~~

~~(1) an advertisement in the public media that contains only part or all of the following information:~~

~~(i) the name of the lawyer or firm and lawyers associated with the firm, with office addresses, electronic addresses, telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession such as “attorney”, “lawyer”, “law office”, or “firm;”~~

~~(ii) the particular areas of law in which the lawyer or firm specializes or possesses special competence;~~

~~(iii) the particular areas of law in which the lawyer or firm practices or concentrates or to which it limits its practice;~~

~~(iv) the date of admission of the lawyer or lawyers to the State Bar of Texas, to particular federal courts, and to the bars of other jurisdictions;~~

~~(v) technical and professional licenses granted by this state and other recognized licensing authorities;~~

~~(vi) foreign language ability;~~

~~(vii) fields of law in which one or more lawyers are certified or designated, provided the statement of this information is in compliance with Rule 7.02(a) through (c).~~

~~(viii) identification of prepaid or group legal service plans in which the lawyer participates;~~

~~(ix) the acceptance or nonacceptance of credit cards;~~

~~(x) any fee for initial consultation and fee schedule;~~

~~(xi) other publicly available information concerning legal issues, not prepared or paid for by the firm or any of its lawyers, such as news articles, legal articles, editorial opinions, or other legal developments or events, such as proposed or enacted rules, regulations, or legislation;~~

~~(xii) in the case of a website, links to other websites;~~

~~(xiii) that the lawyer or firm is a sponsor of a charitable, civic, or community program or event, or is a sponsor of a public service announcement;~~

~~(xiv) any disclosure or statement required by these rules; and~~

~~(xv) any other information specified from time to time in orders promulgated by the Supreme Court of Texas;~~

~~(2) an advertisement in the public media that:~~

~~(i) identifies one or more lawyers or a firm as a contributor to a specified charity or as a sponsor of a specified charitable, community, or public interest program, activity, or event; and~~

~~(ii) contains no information about the lawyers or firm other than names of the lawyers or firm or both, location of the law offices, and the fact of the sponsorship or contribution;~~

~~(3) a listing or entry in a regularly published law list;~~

~~(4) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or firm, or a tombstone professional card;~~

~~(5) in the case of communications sent, delivered, or transmitted to, rather than accessed by, intended recipients, a newsletter, whether written, digital, or electronic, provided that it is sent, delivered, or transmitted only to:~~

~~(i) existing or former clients;~~

~~(ii) other lawyers or professionals; or~~

~~(iii) members of a nonprofit organization that meets the following conditions: the primary purposes of the organization do not include the rendition of legal services; the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization; the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and the person for whom the legal services are rendered, and not the organization, is recognized as the client of the lawyer who is recommended, furnished, or paid by the organization;~~

~~(6) a solicitation communication that is not motivated by or concerned with a particular past occurrence or event or a particular series of past occurrences or events, and also is not motivated by or concerned with the prospective client's specific existing legal problem of which the lawyer is aware;~~

~~(7) a solicitation communication if the lawyer's use of the communication to secure professional employment was not significantly motivated by a desire for, or by the possibility of obtaining, pecuniary gain; or~~

~~(8) a solicitation communication that is requested by the prospective client.~~

~~(f) if requested by the Advertising Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in any advertisement in the public media or solicitation communication by which the lawyer seeks paid professional employment.~~

TO: CDRR

FROM: Subcommittee (Vincent R. Johnson, chair; Claude Ducloux; Amy Bresnen)

Date: May 1, 2020

RE: Revised Proposed Comments to Texas Rules 7.01 to 7.06

Proposed Comment to Proposed Texas Rule 7.01

[1] This Rule governs all communications about a lawyer's services, including firm names, letterhead, and professional designations. Whatever means are used to make known a lawyer's services, statements about them must be truthful and not misleading. As subsequent provisions make clear, some rules apply only to "advertisements" or "solicitation communications." A statement about a lawyer's services falls within those categories only if it was "substantially motivated by pecuniary gain," which means that pecuniary gain was a substantial factor in the making of the statement.

Misleading Truthful Statements

[2] Misleading truthful statements are prohibited by this Rule. For example, a truthful statement is misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

Use of Actors

[3] The use of an actor to portray a lawyer in a commercial is misleading if there is a substantial likelihood that a reasonable person will conclude that the actor is the lawyer who is offering to provide legal services. Whether a disclaimer—such as a statement that the depiction is a "dramatization" or shows an "actor portraying a lawyer"—is sufficient to make the use of an actor not misleading depends on a careful assessment of the relevant facts and circumstances, including whether the disclaimer is conspicuous and clear. Similar issues arise with respect to actors portraying clients in commercials. Such a communication is misleading if there is a substantial likelihood that a reasonable person will reach erroneous conclusions based on the dramatization.

Intent to Refer Prospective Clients to Another Firm

[4] A communication offering legal services is misleading if, at the time a lawyer makes the communication, the lawyer knows or reasonably should know, but fails to disclose, that a prospective client responding to the communication is likely to be referred to a lawyer in another firm.

Unjustified Expectations

[5] A communication is misleading if there is a substantial likelihood that it will create unjustified expectations on the part of prospective clients about the results that can be achieved. A communication that truthfully reports results obtained by a lawyer on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the

same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Depending on the facts and circumstances, the inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to mislead the public.

Required Statements and Disclaimers

[6] A statement or disclaimer required by these Rules must be presented clearly and conspicuously such that it is likely to be noticed and reasonably understood by an ordinary person. In radio, television, and Internet advertisements, verbal statements must be spoken in a manner that their content is easily intelligible, and written statements must appear in a size and font, and for a sufficient length of time, that a viewer can easily see and read the statements.

Unsubstantiated Claims and Comparisons

[7] An unsubstantiated claim about a lawyer's or law firm's services or fees, or an unsubstantiated comparison of the lawyer's or law firm's services or fees with those of other lawyers or law firms, may be misleading if presented with such specificity as to lead a reasonable person to conclude that the comparison or claim can be substantiated.

Public Education Activities

[8] As used in these Rules, the terms "advertisement" and "solicitation communication" do not include statements made by a lawyer that are not substantially motivated by pecuniary gain. Thus, communications which merely inform members of the public about their legal rights and about legal services that are available from public or charitable legal-service organizations, or similar non-profit entities, are permissible, provided they are not misleading. These types of statements may be made in a variety of ways, including community legal education sessions, know-your-rights brochures, public service announcements on television and radio, billboards, information posted on organizational social media sites, and outreach to low-income groups in the community, such as in migrant labor housing camps, domestic violence shelters, disaster resource centers, and dilapidated apartment complexes.

Web Presence

[9] A lawyer or law firm may be designated by a distinctive website address, e-mail address, social media username or comparable professional designation that is not misleading and does not otherwise violate these Rules.

Past Success and Results

[10] A communication about legal services may be misleading because it omits an important fact or tells only part of the truth. A lawyer who knows that an advertised verdict was later reduced or reversed, or that the case was settled for a lesser amount, must disclose those facts with equal or greater prominence to avoid creating unjustified expectations on the part of potential clients. A lawyer may claim credit for a prior judgement or settlement only if the lawyer played a substantial role in obtaining that result. This standard is satisfied if the lawyer served as lead counsel or was primarily responsible for the settlement. In other cases, whether the standard is met depends on the facts. A lawyer who did not play a substantial role in obtaining an advertised judgment or settlement is subject

to discipline for misrepresenting the lawyer's experience and, in some cases, for creating unjustified expectations about the results the lawyer can achieve.

Related Rules

[11] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. *See* Rule 8.04(a)(3); *see also* Rule 8.04(a)(5) (prohibiting communications stating or implying an ability to improperly influence a government agency or official).

Proposed Comment to Proposed Texas Rule 7.02

[1] These Rules permit the dissemination of information that is not false or misleading about a lawyer's or law firm's name, address, e-mail address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language abilities; names of references and, with their consent, names of clients regularly represented; and other similar information that might invite the attention of those seeking legal assistance.

Communications about Fields of Practice

[2] Lawyers often benefit from associating with other lawyers for the development of practice areas. Thus, practitioners have established associations, organizations, institutes, councils, and practice groups to promote, discuss, and develop areas of the law, and to advance continuing education and skills development. While such activities are generally encouraged, participating lawyers must refrain from creating or using designations, titles, or certifications which are false or misleading. A lawyer shall not advertise that the lawyer is a member of an organization whose name implies that members possess special competence, unless the organization meets the standards of Rule 7.02(b). Merely stating a designated class of membership, such as Associate, Master, Barrister, Diplomate, or Advocate, does not, in itself, imply special competence violative of these Rules.

[3] Paragraph (b) of this Rule permits a lawyer to communicate that the lawyer does or does not practice in particular areas of law. A lawyer is generally permitted to state that the lawyer "concentrates in" or is a "specialist," practices a "specialty," or "specializes in" particular fields based on the lawyer's experience, specialized training or education, but such communications are subject to the "false and misleading" standard applied by Rule 7.01 to communications concerning a lawyer's services.

[4] The Patent and Trademark Office has a long-established policy of designating lawyers practicing before the Office. The designation of Admiralty practice also has a long historical tradition associated with maritime commerce and the federal courts. A lawyer's communications about these practice areas are not prohibited by this Rule.

Certified Specialist

[5] This Rule permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by the Texas Board of Legal Specialization or by an organization that applies

standards of experience, knowledge and proficiency to ensure that a lawyer's recognition as a specialist is meaningful and reliable, if the organization is accredited by the Texas Board of Legal Specialization. To ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

Proposed Comment to Proposed Texas Rule 7.03

Solicitation by Public and Charitable Legal Services Organizations

[1] Rule 7.01 provides that a "solicitation communication" is a communication substantially motivated by pecuniary gain." Therefore, the ban on solicitation imposed by paragraph (b) of this Rule does not apply to the activities of lawyers working for public or charitable legal services organizations.

Communications Directed to the Public or Requested

[2] A lawyer's communication is not a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is made in response to a request for information, including an electronic search for information. The terms "advertisement" and "solicitation communication" are defined in Rule 7.01(b).

The Risk of Overreaching

[3] A potential for overreaching exists when a lawyer, seeking pecuniary gain, solicits a person known to be in need of legal services via in-person or regulated telephone, social media, or other electronic contact. These forms of contact subject 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.

[4] The potential for overreaching that is inherent in in-person or regulated telephone, social media, or other electronic contact justifies their prohibition, since lawyers have alternative means of conveying necessary information. In particular, communications can be sent by regular mail or e-mail, or by other means that do not involve communication in a live or electronically interactive manner. These forms of communications make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, with minimal risk of overwhelming a person's judgment.

[5] The contents of live person-to-person contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

Targeted Mail Solicitation

[6] Regular mail or e-mail targeted to a person that offers to provide legal services that the lawyer knows or reasonably should know the person needs in a particular matter is a solicitation communication within the meaning of Rule 7.01(b)(2), but is not prohibited by subsection (b) of this Rule. Unlike in-person and electronically interactive communication by “regulated telephone, social media, or other electronic contact,” regular mail and e-mail can easily be ignored, set aside, or reconsidered. There is a diminished likelihood of overreaching because no lawyer is physically present and there is evidence in tangible or electronic form of what was communicated. See *Shapero v. Kentucky B. Ass’n*, 486 U.S. 466 (1988).

Personal, Family, Business, and Professional Relationships

[7] There is a substantially reduced likelihood that a lawyer would engage in overreaching against a former client, a person with whom the lawyer has a close personal, family, business or professional relationship, or in situations in which the lawyer is motivated by considerations other than pecuniary gain. Nor is there a serious potential for overreaching when the person contacted is a lawyer or is known to routinely use the type of legal services involved for business purposes. Examples include persons who routinely hire outside counsel to represent an entity; entrepreneurs who regularly engage business, employment law, or intellectual property lawyers; small business proprietors who routinely hire lawyers for lease or contract issues; and other people who routinely retain lawyers for business transactions or formations.

Constitutionally Protected Activities

[8] Paragraph (b) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee, or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries. See *In re Primus*, 436 U.S. 412 (1978).

Group and Prepaid Legal Services Plans

[9] This Rule does not prohibit a lawyer from contacting representatives of organizations or entities that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries, or other third parties. Such communications may provide information about the availability and terms of a plan which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to persons who are seeking legal services for themselves. Rather, it is usually addressed to a fiduciary seeking a supplier of legal services for others, who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the information transmitted is functionally similar to the types of advertisements permitted by these Rules.

Designation as an Advertisement

[10] For purposes of paragraph (d)(2) of this Rule, a communication is rebuttably presumed to be “plainly marked or clearly designated an ‘ADVERTISEMENT’” if: (a) in the case of a letter transmitted in an envelope, both the outside of the envelope and the first page of the letter state the word “ADVERTISEMENT” in bold face all-capital letters that are 3/8” high on a uncluttered background; (b) in the case of an e-mail message, the first word in the subject line is “ADVERTISEMENT” in all capital letters; and (c) in the case of a text message or message on social media, the first word in the message is “ADVERTISEMENT” in all capital letters.

Paying Others to Recommend a Lawyer

[11] This Rule allows a lawyer to pay for advertising and communications, including the usual costs of printed or online directory listings or advertisements, television and radio airtime, domain-name registrations, sponsorship fees, and group advertising. A lawyer may compensate employees, agents, and vendors who are engaged to provide marketing or client development services, such as publicists, public-relations personnel, business-development staff, television and radio station employees or spokespersons, and website designers.

[12] This Rule permits lawyers to give nominal gifts as an expression of appreciation to a person for recommending the lawyer's services or referring a prospective client. The gift may not be more than a token item as might be given for holidays, or other ordinary social hospitality. A gift is prohibited if offered or given in consideration of any promise, agreement, or understanding that such a gift would be forthcoming or that referrals would be made or encouraged in the future.

[13] A lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rule 5.04(a) (division of fees with nonlawyers) and Rule 5.04(c) (nonlawyer interference with the professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.01 (communications concerning a lawyer's services). To comply with Rule 7.01, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. *See also* Rule 5.03 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.04(a)(1) (duty to avoid violating the Rules through the acts of another).

Charges of and Referrals by a Legal Services Plan or Lawyer Referral Service

[14] A lawyer may pay the usual charges of a legal services plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Qualified referral services are consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements.

[15] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association.

Reciprocal Referral Arrangements

[16] A lawyer does not violate paragraph (e) of this Rule by agreeing to refer clients to another lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive, the client

is informed of the referral agreement, and the lawyer exercises independent professional judgment in making the referral. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. A lawyer should not enter into a reciprocal referral agreement with another lawyer that includes a division of fees without determining that the agreement complies with Rule 1.04(f).

Meals or Entertainment for Prospective Clients

[17] This Rule does not prohibit a lawyer from paying for a meal or entertainment for a prospective client that has a nominal value or amounts to ordinary social hospitality.

Proposed Comment to Proposed Texas Rule 7.04

[1] The Advertising Review Committee shall report to the appropriate disciplinary authority any lawyer whom, based on filings with the Committee, it reasonably believes disseminated a communication that violates Rules 7.01, 7.02, or 7.03, or otherwise engaged in conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects. See Rule 8.03(a).

Multiple Solicitation Communications

[2] Paragraph (a) does not require that a lawyer submit a copy of each written solicitation letter a lawyer sends. If the same form letter is sent to several persons, only a representative sample of each form letter, along with a representative sample of the envelopes used to mail the letters, need be filed.

Requests for Additional Information

[3] Paragraph (b) does not empower the Advertising Review Committee to seek information from a lawyer to substantiate statements or representations made or implied in communications about legal services that were not substantially motivated by pecuniary gain.

Proposed Comment to Proposed Texas Rule 7.05

[1] This Rule exempts certain types of communications from the filing requirements of Rule 7.04. Communications that were not substantially motivated by pecuniary gain do not need to be filed.

Website-Related Filings

[2] While the entire website of a lawyer or law firm must be compliant with Rules 7.01 and 7.02, the only material on the website that may need to be filed pursuant to this Rule is the contents of the homepage. However, even a homepage does not need to be filed if the contents of the homepage are exempt from filing under the provisions of this Rule. Under Rule 7.04(c), a lawyer may voluntarily seek pre-approval of any material that is part of the lawyer's website.

Proposed Comment to Proposed Texas Rule 7.06

[1] This Rule deals with three different situations: personal disqualification, imputed disqualification, and referral-related payments.

Personal Disqualification

[2] Paragraph (a) addresses situations where the lawyer in question has violated the specified advertising rules or other provisions dealing with serious crimes and barratry. The Rule makes clear that the offending lawyer cannot accept or continue to provide representation. This prohibition also applies if the lawyer ordered, encouraged, or knowingly permitted another to violate the Rules in question.

Imputed Disqualification

[3] Second, paragraph (b) addresses whether other lawyers in a firm can provide representation if a person or entity in the firm has violated the specified advertising rules or other provisions dealing with serious crimes and barratry, or has ordered, encouraged, or knowingly permitted another to engage in such conduct. The Rule clearly indicates that the other lawyers cannot provide representation if they knew or reasonably should have known that the employment was procured by conduct prohibited by the stated Rules. This effectively means that, in such cases, the disqualification that arises from a violation of the advertising rules and other specified provisions is imputed to other members of the firm.

Restriction on Referral-Related Payments

[4] Paragraph (c) deals with situations where a lawyer knows or reasonably should know that a case referred to the lawyer or the lawyer's law firm was procured by violation of the advertising rules or other specified provisions. The Rule makes clear that, even if the lawyer's conduct did not violate paragraph (a) or (b), the lawyer can continue to provide representation only if the lawyer does not pay anything of value, such as a referral fee, to the person making the referral.

Committee on Disciplinary Rules and Referenda Proposed Rule Changes

Texas Disciplinary Rules of Professional Conduct

VII. INFORMATION ABOUT LEGAL SERVICES

(Lawyer Advertising and Solicitation Rules)

The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the Committee publishes the following proposed rules. The Committee will accept comments concerning the proposed rules through April 10, 2020. Comments can be submitted at texasbar.com/CDRR or by email to CDRR@texasbar.com. A public hearing on the proposed rules will be held at 10:30 a.m. on April 7, 2020, in Room 101 of the Texas Law Center (1414 Colorado St., Austin, Texas, 78701).

Background and Summary

The Committee previously published proposed changes to Part VII of the Texas Disciplinary Rules of Professional Conduct in the *Texas Bar Journal*, in the *Texas Register*, and on the State Bar of Texas website. After receiving numerous public comments, the Committee incorporated many suggested revisions into the version of the proposed rules that it recommended to the State Bar of Texas Board of Directors. At its January 24, 2020, meeting, the Board voted to return the proposal to the Committee for additional consideration, including specifically the possibility of amending the proposed rules to be consistent with the majority of other states regarding the use of trade names.

The Committee now publishes this revised draft of proposed changes to Part VII of the Texas Disciplinary Rules of Professional Conduct. The new draft consists of six proposed rules, numbered 7.01 to 7.06, which are identical to the proposal submitted to the Board, with the exception that previously proposed Rule 7.07 has been eliminated. This means that the current blanket prohibition on the use of trade names by lawyers in private practice is not part of the new draft. However, proposed Rule 7.01 will continue to prohibit a lawyer from making or sponsoring any false or misleading communication about the qualifications or services of a lawyer or law firm.

Proposed Rules (Clean Version)

Rule 7.01 Communications Concerning a Lawyer's Services

(a) A lawyer shall not make or sponsor a false or misleading communication about the qualifications or services of a lawyer or law firm. Information about legal services must be truthful and nondeceptive. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading. A statement is misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation, or if the statement is substantially likely to create unjustified expectations about the results the lawyer can achieve.

(b) This Rule governs all communications about a lawyer's services,

including advertisements and solicitation communications. For purposes of Rules 7.01 to 7.06:

(1) An "advertisement" is a communication substantially motivated by pecuniary gain that is made by or on behalf of a lawyer to members of the public in general, which offers or promotes legal services under circumstances where the lawyer neither knows nor reasonably should know that the recipients need legal services in particular matters.

(2) A "solicitation communication" is a communication substantially motivated by pecuniary gain that is made by or on behalf of a lawyer to a specific person who has not sought the lawyer's advice or services, which reasonably can be understood as offering to provide legal services that the lawyer knows or reasonably should know the person needs in a particular matter.

(c) A law firm name may include the names of current members of the firm and of deceased or retired members of the firm, or of a predecessor firm, if there has been a succession in the firm identity. The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm. A law firm with an office in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(d) A statement or disclaimer required by these Rules shall be sufficiently clear that it can reasonably be understood by an ordinary person and made in each language used in the communication. A statement that a language is spoken or understood does not require a statement or disclaimer in that language.

(e) A lawyer shall not state or imply that the lawyer can achieve results by violence or means that violate these Rules or other law.

(f) A lawyer may state or imply that the lawyer practices in a partnership or other business entity only when that is accurate.

(g) If a lawyer who advertises the amount of a verdict secured on

behalf of a client knows that the verdict was later reduced or reversed, or that the case was settled for a lesser amount, the lawyer must state in each advertisement of the verdict, with equal or greater prominence, the amount of money that was ultimately received by the client.

Rule 7.02 Advertisements

(a) An advertisement of legal services shall publish the name of a lawyer who is responsible for the content of the advertisement and identify the lawyer's primary practice location.

(b) A lawyer who advertises may communicate that the lawyer does or does not practice in particular fields of law, but shall not include a statement that the lawyer has been certified or designated by an organization as possessing special competence or a statement that the lawyer is a member of an organization the name of which implies that its members possess special competence, except that:

(1) a lawyer who has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised, may state with respect to each such area, "Board Certified, area of specialization -- Texas Board of Legal Specialization;" and

(2) a lawyer who is a member of an organization the name of which implies that its members possess special competence, or who has been certified or designated by an organization as possessing special competence in a field of practice, may include a factually accurate, non-misleading statement of such membership or certification, but only if that organization has been accredited by the Texas Board of Legal Specialization as a bona fide organization that admits to membership or grants certification only on the basis of published criteria which the Texas Board of Legal Specialization has established as required for such certification.

(c) If an advertisement by a lawyer discloses a willingness to render services on a contingent fee basis, the advertisement must state whether the client will be obligated to pay for other expenses, such as the costs of litigation.

(d) A lawyer who advertises a specific fee or range of fees for an identified service shall conform to the advertised fee or range of fees for the period during which the advertisement is reasonably expected to be in circulation or otherwise expected to be effective in attracting clients, unless the advertisement specifies a shorter period. However, a lawyer is not bound to conform to the advertised fee or range of fees for a period of more than one year after the date of publication, unless the lawyer has expressly promised to do so.

Rule 7.03 Solicitation and Other Prohibited Communications

(a) The following definitions apply to this Rule:

(1) "Regulated telephone, social media, or other electronic contact" means telephone, social media, or electronic communication initiated by a lawyer, or by a person acting on behalf of a lawyer, that involves communication in a live or electronically interactive manner.

(2) A lawyer "solicits" employment by making a "solicitation communication," as that term is defined in Rule 7.01(b)(2).

(b) A lawyer shall not solicit through in-person contact, or through regulated telephone, social media, or other electronic contact, professional employment from a non-client, unless the target of the solicitation is:

(1) another lawyer;

(2) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or

(3) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.

(c) A lawyer shall not send, deliver, or transmit, or knowingly permit or cause another person to send, deliver, or transmit, a communication that involves coercion, duress, overreaching, intimidation, or undue influence.

(d) A lawyer shall not send, deliver, or transmit, or knowingly permit or cause another person to send, deliver, or transmit, a solicitation communication to a prospective client, if:

(1) the communication is misleadingly designed to resemble a legal pleading or other legal document; or

(2) the communication is not plainly marked or clearly designated as "ADVERTISEMENT" unless the target of the communication is:

(i) another lawyer;

(ii) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or

(iii) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.

(e) A lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting or referring prospective clients for professional employment, except nominal gifts given as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

(1) This Rule does not prohibit a lawyer from paying reasonable fees for advertising and public relations services or the usual charges of a lawyer referral service that meets the requirements of Texas law.

(2) A lawyer may refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:

(i) the reciprocal referral agreement is not exclusive;

(ii) clients are informed of the existence and nature of the agreement; and

(iii) the lawyer exercises independent professional judgment in making referrals.

(f) A lawyer shall not, for the purpose of securing employment, pay, give,

advance, or offer to pay, give, or advance anything of value to a prospective client, other than actual litigation expenses and other financial assistance permitted by Rule 1.08(d), or ordinary social hospitality of nominal value.

(g) This Rule does not prohibit communications authorized by law, such as notice to members of a class in class action litigation.

Rule 704 Filing Requirements for Advertisements and Solicitation Communications

(a) Except as exempt under Rule 705, a lawyer shall file with the Advertising Review Committee, State Bar of Texas, no later than ten (10) days after the date of dissemination of an advertisement of legal services, or ten (10) days after the date of a solicitation communication sent by any means:

(1) a copy of the advertisement or solicitation communication (including packaging if applicable) in the form in which it appeared or will appear upon dissemination;

(2) a completed lawyer advertising and solicitation communication application; and

(3) payment to the State Bar of Texas of a fee authorized by the Board of Directors.

(b) If requested by the Advertising Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in an advertisement or solicitation communication.

(c) A lawyer who desires to secure pre-approval of an advertisement or solicitation communication may submit to the Advertising Review Committee, not fewer than thirty (30) days prior to the date of first dissemination, the material specified in paragraph (a), except that in the case of an advertisement or solicitation communication that has not yet been produced, the documentation will consist of a proposed text, production script, or other description, including details about the illustrations, actions, events, scenes, and background sounds that will be depicted. A finding of noncompliance by the Advertising Review Committee is not binding in a disciplinary proceeding or action, but a finding of compliance is binding in favor of the submitting lawyer as to all materials submitted for pre-approval if the lawyer fairly and accurately described the advertisement or solicitation communication that was later produced. A finding of compliance is admissible evidence if offered by a party.

Rule 705 Communications Exempt from Filing Requirements

The following communications are exempt from the filing requirements of Rule 704 unless they fail to comply with Rules 701, 702, and 703:

(a) any communication of a bona fide nonprofit legal aid organization that is used to educate members of the public about the law or to promote the availability of free or reduced-fee legal services;

(b) information and links posted on a law firm website, except the contents of the website homepage, unless that information is otherwise exempt from filing;

(c) a listing or entry in a regularly published law list;

(d) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or law firm, or a business card;

(e) a professional newsletter in any media that it is sent, delivered, or transmitted only to:

(1) existing or former clients;

(2) other lawyers or professionals;

(3) persons known by the lawyer to be experienced users of the type of legal services involved for business matters;

(4) members of a nonprofit organization which has requested that members receive the newsletter; or

(5) persons who have asked to receive the newsletter;

(f) a solicitation communication directed by a lawyer to:

(1) another lawyer;

(2) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or

(3) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters;

(g) a communication on a professional social media website to the extent that it contains only resume-type information;

(h) an advertisement that:

(1) identifies a lawyer or a firm as a contributor or sponsor of a charitable, community, or public interest program, activity, or event; and

(2) contains no information about the lawyers or firm other than names of the lawyers or firm or both, location of the law offices, contact information, and the fact of the contribution or sponsorship;

(i) communications that contain only the following types of information:

(1) the name of the law firm and any lawyer in the law firm, office addresses, electronic addresses, social media names and addresses, telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession, such as "attorney," "lawyer," "law office," or "firm;"

(2) the areas of law in which lawyers in the firm practice, concentrate, specialize, or intend to practice;

(3) the admission of a lawyer in the law firm to the State Bar of Texas or the bar of any court or jurisdiction;

(4) the educational background of the lawyer;

(5) technical and professional licenses granted by this state and other recognized licensing authorities;

- (6) foreign language abilities;
- (7) areas of law in which a lawyer is certified by the Texas Board of Legal Specialization or by an organization that is accredited by the Texas Board of Legal Specialization;
- (8) identification of prepaid or group legal service plans in which the lawyer participates;
- (9) the acceptance or nonacceptance of credit cards;
- (10) fees charged for an initial consultation or routine legal services;
- (11) identification of a lawyer or a law firm as a contributor or sponsor of a charitable, community, or public interest program, activity or event;
- (12) any disclosure or statement required by these Rules; and
- (13) any other information specified in orders promulgated by the Supreme Court of Texas.

Rule 7.06 Prohibited Employment

- (a) A lawyer shall not accept or continue employment in a matter when that employment was procured by conduct prohibited by Rules 7.01 through 7.03, 8.04(a)(2), or 8.04(a)(9), engaged in by that lawyer personally or by another person whom the lawyer ordered, encouraged, or knowingly permitted to engage in such conduct.
- (b) A lawyer shall not accept or continue employment in a matter when the lawyer knows or reasonably should know that employment was procured by conduct prohibited by Rules 7.01 through 7.03, 8.04(a)(2), or 8.04(a)(9), engaged in by another person or entity that is a shareholder, partner, or member of, an associate in, or of counsel to that lawyer's firm; or by any other person whom the foregoing persons or entities ordered, encouraged, or knowingly permitted to engage in such conduct.
- (c) A lawyer who has not violated paragraph (a) or (b) in accepting employment in a matter shall not continue employment in that matter once the lawyer knows or reasonably should know that the person procuring the lawyer's employment in the matter engaged in, or ordered, encouraged, or knowingly permitted another to engage in, conduct prohibited by Rules 7.01 through 7.03, 8.04(a)(2), or 8.04(a)(9) in connection with the matter unless nothing of value is given thereafter in return for that employment.

Proposed Rules (Redline Version)

Rule 7.01. Communications Concerning a Lawyer's Services ~~Firm Names and Letterhead~~

- (a) A lawyer shall not make or sponsor a false or misleading communication about the qualifications or services of a lawyer or law firm. Information about legal services must be truthful and nondeceptive. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading. A statement is misleading if there is

a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation, or if the statement is substantially likely to create unjustified expectations about the results the lawyer can achieve. A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the names of a professional corporation, professional association, limited liability partnership, or professional limited liability company may contain "P.C.," "L.L.P.," "P.L.L.C.," or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. Nothing herein shall prohibit a married woman from practicing under her maiden name.

(b) This Rule governs all communications about a lawyer's services, including advertisements and solicitation communications. For purposes of Rules 7.01 to 7.06:

(1) An "advertisement" is a communication substantially motivated by pecuniary gain that is made by or on behalf of a lawyer to members of the public in general, which offers or promotes legal services under circumstances where the lawyer neither knows nor reasonably should know that the recipients need legal services in particular matters.

(2) A "solicitation communication" is a communication substantially motivated by pecuniary gain that is made by or on behalf of a lawyer to a specific person who has not sought the lawyer's advice or services, which reasonably can be understood as offering to provide legal services that the lawyer knows or reasonably should know the person needs in a particular matter.

A firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) A law firm name may include the names of current members of the firm and of deceased or retired members of the firm, or of a predecessor firm, if there has been a succession in the firm identity. The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm. A law firm with an office in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located. ~~The name of a lawyer occupying a judicial, legislative, or public executive or administrative position shall not be used in the name of a firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.~~

(d) A statement or disclaimer required by these Rules shall be sufficiently clear that it can reasonably be understood by an ordinary person and made in each language used in the communication. A statement that a language is spoken or understood does not require a statement

or disclaimer in that language. A lawyer shall not hold himself or herself out as being a partner, shareholder, or associate with one or more other lawyers unless they are in fact partners, shareholders, or associates.

(e) A lawyer shall not state or imply that the lawyer can achieve results by violence or means that violate these Rules or other law. A lawyer shall not advertise in the public media or seek professional employment by any communication under a trade or fictitious name, except that a lawyer who practices under a firm name as authorized by paragraph (a) of this Rule may use that name in such advertisement or communication but only if that name is the firm name that appears on the lawyer's letterhead, business cards, office sign, fee contracts, and with the lawyer's signature on pleadings and other legal documents.

(f) A lawyer may state or imply that the lawyer practices in a partnership or other business entity only when that is accurate. A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.02(a).

(g) If a lawyer who advertises the amount of a verdict secured on behalf of a client knows that the verdict was later reduced or reversed, or that the case was settled for a lesser amount, the lawyer must state in each advertisement of the verdict, with equal or greater prominence, the amount of money that was ultimately received by the client.

Rule 702. Advertisements Communications Concerning a Lawyer's Services

(a) An advertisement of legal services shall publish the name of a lawyer who is responsible for the content of the advertisement and identify the lawyer's primary practice location. A lawyer shall not make or sponsor a false or misleading communication about the qualifications or the services of any lawyer or firm. A communication is false or misleading if it:

(1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) contains any reference in a public media advertisement to past successes or results obtained unless

(i) the communicating lawyer or member of the law firm served as lead counsel in the matter giving rise to the recovery, or was primarily responsible for the settlement or verdict.

(ii) the amount involved was actually received by the client,

(iii) the reference is accompanied by adequate information regarding the nature of the case or matter, and the damages or injuries sustained by the client, and

(iv) if the gross amount received is stated, the attorney's fees and litigation expenses withheld from the amount are stated as well;

(3) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate these rules or other law;

(4) compares the lawyer's services with other lawyers' services, unless the comparison can be substantiated by reference to verifiable, objective data;

(5) states or implies that the lawyer is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official;

(6) designates one or more specific areas of practice in an advertisement in the public media or in a solicitation communication unless the advertising or soliciting lawyer is competent to handle legal matters in each such area of practice; or

(7) uses an actor or model to portray a client of the lawyer or law firm.

(b) A lawyer who advertises may communicate that the lawyer does or does not practice in particular fields of law, but shall not include a statement that the lawyer has been certified or designated by an organization as possessing special competence or a statement that the lawyer is a member of an organization the name of which implies that its members possess special competence, except that:

(1) a lawyer who has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised, may state with respect to each such area, "Board Certified, area of specialization -- Texas Board of Legal Specialization;" and

(2) a lawyer who is a member of an organization the name of which implies that its members possess special competence, or who has been certified or designated by an organization as possessing special competence in a field of practice, may include a factually accurate, non-misleading statement of such membership or certification, but only if that organization has been accredited by the Texas Board of Legal Specialization as a bona fide organization that admits to membership or grants certification only on the basis of published criteria which the Texas Board of Legal Specialization has established as required for such certification.

Rule 7.02(a)(6) does not require that a lawyer be certified by the Texas Board of Legal Specialization at the time of advertising in a specific area of practice, but such certification shall conclusively establish that such lawyer satisfies the requirements of Rule 7.02(a)(6) with respect to the area(s) of practice in which such lawyer is certified.

(c) If an advertisement by a lawyer discloses a willingness to render services on a contingent fee basis, the advertisement must state whether the client will be obligated to pay for other expenses, such as the costs of litigation. A lawyer shall not advertise in the public media or state in a solicitation communication that the lawyer is a specialist except as permitted under Rule 7.04.

(d) A lawyer who advertises a specific fee or range of fees for an identified service shall conform to the advertised fee or range of fees for the period during which the advertisement is reasonably expected to be in circulation or otherwise expected to be effective in attracting clients, unless the advertisement specifies a shorter period. However, a lawyer is not bound to conform to the advertised fee or range of fees for a period of more than one year after the date of publication, unless the lawyer has expressly promised to do so. Any statement or disclaimer required by

these rules shall be made in each language used in the advertisement or solicitation communication with respect to which such required statement or disclaimer relates; provided however, the mere statement that a particular language is spoken or understood shall not alone result in the need for a statement or disclaimer in that language.

Rule 7.03. Solicitation and Other Prohibited Communications Prohibited Solicitations and Payments

(a) The following definitions apply to this Rule:

(1) "Regulated telephone, social media, or other electronic contact" means telephone, social media, or electronic communication initiated by a lawyer, or by a person acting on behalf of a lawyer, that involves communication in a live or electronically interactive manner.

(2) A lawyer "solicits" employment by making a "solicitation communication," as that term is defined in Rule 7.01(b)(2).

A lawyer shall not by in person contact, or by regulated telephone or other electronic contact as defined in paragraph (f) seek professional employment concerning a matter arising out of a particular occurrence or event, or series of occurrences or events, from a prospective client or nonclient who has not sought the lawyer's advice regarding employment or with whom the lawyer has no family or past or present attorney client relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. Notwithstanding the provisions of this paragraph, a lawyer for a qualified nonprofit organization may communicate with the organization's members for the purpose of educating the members to understand the law, to recognize legal problems, to make intelligent selection of counsel, or to use legal services. In those situations where in person or telephone or other electronic contact is permitted by this paragraph, a lawyer shall not have such a contact with a prospective client if:

(1) the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment;

(2) the communication contains information prohibited by Rule 7.02(a); or

(3) the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(b) A lawyer shall not solicit through in-person contact, or through regulated telephone, social media, or other electronic contact, professional employment from a non-client, unless the target of the solicitation is:

(1) another lawyer;

(2) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or

(3) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.

A lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting prospective clients for, or referring clients or prospective clients to, any lawyer or firm,

except that a lawyer may pay reasonable fees for advertising and public relations services rendered in accordance with this Rule and may pay the usual charges of a lawyer referral service that meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.

(c) A lawyer shall not send, deliver, or transmit, or knowingly permit or cause another person to send, deliver, or transmit, a communication that involves coercion, duress, overreaching, intimidation, or undue influence. A lawyer, in order to solicit professional employment, shall not pay, give, advance, or offer to pay, give, or advance anything of value, other than actual litigation expenses and other financial assistance as permitted by Rule 1.08(d), to a prospective client or any other person; provided however, this provision does not prohibit the payment of legitimate referral fees as permitted by Rule 1.04(f) or by paragraph (b) of this Rule.

(d) A lawyer shall not send, deliver, or transmit, or knowingly permit or cause another person to send, deliver, or transmit, a solicitation communication to a prospective client, if:

(1) the communication is misleadingly designed to resemble a legal pleading or other legal document; or

(2) the communication is not plainly marked or clearly designated an "ADVERTISEMENT" unless the target of the communication is:

(i) another lawyer;

(ii) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or

(iii) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.

A lawyer shall not enter into an agreement for, charge for, or collect a fee for professional employment obtained in violation of Rule 7.03(a), (b), or (c).

(e) A lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting or referring prospective clients for professional employment, except nominal gifts given as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

(1) This Rule does not prohibit a lawyer from paying reasonable fees for advertising and public relations services or the usual charges of a lawyer referral service that meets the requirements of Texas law.

(2) A lawyer may refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:

(i) the reciprocal referral agreement is not exclusive;

(ii) clients are informed of the existence and nature of the agreement; and

(iii) the lawyer exercises independent professional judgment in making referrals.

A lawyer shall not participate with or accept referrals from a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.

(f) A lawyer shall not, for the purpose of securing employment, pay, give, advance, or offer to pay, give, or advance anything of value to a prospective client, other than actual litigation expenses and other financial assistance permitted by Rule 1.08(d), or ordinary social hospitality of nominal value. As used in paragraph (a), “regulated telephone or other electronic contact” means any electronic communication initiated by a lawyer or by any person acting on behalf of a lawyer or law firm that will result in the person contacted communicating in a live, interactive manner with any other person by telephone or other electronic means. For purposes of this Rule a website for a lawyer or law firm is not considered a communication initiated by or on behalf of that lawyer or firm.

(g) This Rule does not prohibit communications authorized by law, such as notice to members of a class in class action litigation.

Rule 704. Filing Requirements for Advertisements and Solicitation Communications Advertisements in the Public Media

(a) Except as exempt under Rule 705, a lawyer shall file with the Advertising Review Committee, State Bar of Texas, no later than ten (10) days after the date of dissemination of an advertisement of legal services, or ten (10) days after the date of a solicitation communication sent by any means:

(1) a copy of the advertisement or solicitation communication (including packaging if applicable) in the form in which it appeared or will appear upon dissemination;

(2) a completed lawyer advertising and solicitation communication application; and

(3) payment to the State Bar of Texas of a fee authorized by the Board of Directors.

A lawyer shall not advertise in the public media by stating that the lawyer is a specialist, except as permitted under Rule 704(b) or as follows:

(1) A lawyer admitted to practice before the United States Patent Office may use the designation “Patents,” “Patent Attorney,” or “Patent Lawyer,” or any combination of those terms. A lawyer engaged in the trademark practice may use the designation “Trademark,” “Trademark Attorney,” or “Trademark Lawyer,” or any combination of those terms. A lawyer engaged in patent and trademark practice may hold himself or herself out as specializing in “Intellectual Property Law,” “Patent, Trademark, Copyright Law and Unfair Competition,” or any of those terms.

(2) A lawyer may permit his or her name to be listed in lawyer referral service offices that meet the requirements of Occupational Code Title 5, Subtitle B, Chapter 952, according to the areas of law in which the lawyer will accept referrals.

(3) A lawyer available to practice in a particular area of law or legal

service may distribute to other lawyers and publish in legal directories and legal newspapers (whether written or electronic) a listing or an announcement of such availability. The listing shall not contain a false or misleading representation of special competence or experience, but may contain the kind of information that traditionally has been included in such publications.

(b) If requested by the Advertising Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in an advertisement or solicitation communication. A lawyer who advertises in the public media:

(1) shall publish or broadcast the name of at least one lawyer who is responsible for the content of such advertisement; and

(2) shall not include a statement that the lawyer has been certified or designated by an organization as possessing special competence or a statement that the lawyer is a member of an organization the name of which implies that its members possess special competence, except that:

(i) a lawyer who has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised, may state with respect to each such area, “Board Certified, area of specialization—Texas Board of Legal Specialization;” and

(ii) a lawyer who is a member of an organization the name of which implies that its members possess special competence, or who has been certified or designated by an organization as possessing special competence, may include a factually accurate statement of such membership or may include a factually accurate statement, “Certified area of specialization name of certifying organization,” but such statements may be made only if that organization has been accredited by the Texas Board of Legal Specialization as a bona fide organization that admits to membership or grants certification only on the basis of objective, exacting, publicly available standards (including high standards of individual character, conduct, and reputation) that are reasonably relevant to the special training or special competence that is implied and that are in excess of the level of training and competence generally required for admission to the Bar; and

(3) shall, in the case of infomercial or comparable presentation, state that the presentation is an advertisement;

(i) both verbally and in writing at its outset, after any commercial interruption, and at its conclusion; and

(ii) in writing during any portion of the presentation that explains how to contact a lawyer or law firm.

(c) A lawyer who desires to secure pre-approval of an advertisement or solicitation communication may submit to the Advertising Review Committee, not fewer than thirty (30) days prior to the date of first dissemination, the material specified in paragraph (a), except that in the case of an advertisement or solicitation communication that has not yet been produced, the documentation will consist of a proposed text, production script, or other description, including details about the illustrations, actions, events, scenes, and background sounds that will

be depicted. A finding of noncompliance by the Advertising Review Committee is not binding in a disciplinary proceeding or action, but a finding of compliance is binding in favor of the submitting lawyer as to all materials submitted for pre-approval if the lawyer fairly and accurately described the advertisement or solicitation communication that was later produced. A finding of compliance is admissible evidence if offered by a party. Separate and apart from any other statements, the statements referred to in paragraph (b) shall be displayed conspicuously, and in language easily understood by an ordinary consumer.

(d) Subject to the requirements of Rules 7.02 and 7.03 and of paragraphs (a), (b), and (c) of this Rule, a lawyer may, either directly or through a public relations or advertising representative, advertise services in the public media, such as (but not limited to) a telephone directory, legal directory, newspaper or other periodical, outdoor display, radio, television, the Internet, or electronic, or digital media.

(e) All advertisements in the public media for a lawyer or firm must be reviewed and approved in writing by the lawyer or a lawyer in the firm.

(f) A copy or recording of each advertisement in the public media and relevant approval referred to in paragraph (e), and a record of when and where the advertisement was used, shall be kept by the lawyer or firm for four years after its last dissemination.

(g) In advertisements in the public media, any person who portrays a lawyer whose services or whose firm's services are being advertised, or who narrates an advertisement as if he or she were such a lawyer, shall be one or more of the lawyers whose services are being advertised.

(h) If an advertisement in the public media by a lawyer or firm discloses the willingness or potential willingness of the lawyer or firm to render services on a contingent fee basis, the advertisement must state whether the client will be obligated to pay all or any portion of the court costs and, if a client may be liable for other expenses, this fact must be disclosed. If specific percentage fees or fee ranges of contingent fee work are disclosed in such advertisement, it must also disclose whether the percentage is computed before or after expenses are deducted from the recovery.

(i) A lawyer who advertises in the public media a specific fee or range of fees for a particular service shall conform to the advertised fee or range of fees for the period during which the advertisement is reasonably expected to be in circulation or otherwise expected to be effective in attracting clients, unless the advertisement specifies a shorter period; but in no instance is the lawyer bound to conform to the advertised fee or range of fees for a period of more than one year after the date of publication.

(j) A lawyer or firm who advertises in the public media must disclose the geographic location, by city or town, of the lawyer's or firm's principal office. A lawyer or firm shall not advertise the existence of any office other than the principal office unless:

(1) that other office is staffed by a lawyer at least three days a week; or

(2) the advertisement states:

(i) the days and times during which a lawyer will be present at that office, or

(ii) that meetings with lawyers will be by appointment only.

(k) A lawyer may not, directly or indirectly, pay all or a part of the cost of an advertisement in the public media for a lawyer not in the same firm unless such advertisement discloses the name and address of the financing lawyer, the relationship between the advertising lawyer and the financing lawyer, and whether the advertising lawyer is likely to refer cases received through the advertisement to the financing lawyer.

(l) If an advertising lawyer knows or should know at the time of an advertisement in the public media that a case or matter will likely be referred to another lawyer or firm, a statement of such fact shall be conspicuously included in such advertisement.

(m) No motto, slogan or jingle that is false or misleading may be used in any advertisement in the public media.

(n) A lawyer shall not include in any advertisement in the public media the lawyer's association with a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.

(o) A lawyer may not advertise in the public media as part of an advertising cooperative or venture of two or more lawyers not in the same firm unless each such advertisement:

(1) states that the advertisement is paid for by the cooperating lawyers;

(2) names each of the cooperating lawyers;

(3) sets forth conspicuously the special competency requirements required by Rule 7.04(b) of lawyers who advertise in the public media;

(4) does not state or imply that the lawyers participating in the advertising cooperative or venture possess professional superiority, are able to perform services in a superior manner, or possess special competence in any area of law advertised, except that the advertisement may contain the information permitted by Rule 7.04(b)(2); and

(5) does not otherwise violate the Texas Disciplinary Rules of Professional Conduct.

(p) Each lawyer who advertises in the public media as part of an advertising cooperative or venture shall be individually responsible for:

(1) ensuring that each advertisement does not violate this Rule; and

(2) complying with the filing requirements of Rule 7.07.

(q) If these rules require that specific qualifications, disclaimers or disclosures of information accompany communications concerning a lawyer's services, the required qualifications, disclaimers or disclosures must be presented in the same manner as the communication and with equal prominence.

(r) A lawyer who advertises on the Internet must display the statements and disclosures required by Rule 7.04.

Rule 7.05. Communications Exempt from Filing Requirements Prohibited Written, Electronic, Or Digital Solicitations

The following communications are exempt from the filing requirements of Rule 7.04 unless they fail to comply with Rules 7.01, 7.02, and 7.03:

(a) any communication of a bona fide nonprofit legal aid organization that is used to educate members of the public about the law or to promote the availability of free or reduced-fee legal services;

(b) information and links posted on a law firm website, except the contents of the website homepage, unless that information is otherwise exempt from filing;

(c) a listing or entry in a regularly published law list;

(d) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or law firm, or a business card;

(e) a professional newsletter in any media that it is sent, delivered, or transmitted only to:

(1) existing or former clients;

(2) other lawyers or professionals;

(3) persons known by the lawyer to be experienced users of the type of legal services involved for business matters;

(4) members of a nonprofit organization which has requested that members receive the newsletter; or

(5) persons who have asked to receive the newsletter;

(f) a solicitation communication directed by a lawyer to:

(1) another lawyer;

(2) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or

(3) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters;

(g) a communication on a professional social media website to the extent that it contains only resume-type information;

(h) an advertisement that:

(1) identifies a lawyer or a firm as a contributor or sponsor of a charitable, community, or public interest program, activity, or event; and

(2) contains no information about the lawyers or firm other than names of the lawyers or firm or both, location of the law offices, contact information, and the fact of the contribution or sponsorship;

(i) communications that contain only the following types of information:

(1) the name of the law firm and any lawyer in the law firm, office addresses, electronic addresses, social media names and addresses,

telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession, such as "attorney," "lawyer," "law office," or "firm;"

(2) the areas of law in which lawyers in the firm practice, concentrate, specialize, or intend to practice;

(3) the admission of a lawyer in the law firm to the State Bar of Texas or the bar of any court or jurisdiction;

(4) the educational background of the lawyer;

(5) technical and professional licenses granted by this state and other recognized licensing authorities;

(6) foreign language abilities;

(7) areas of law in which a lawyer is certified by the Texas Board of Legal Specialization or by an organization that is accredited by the Texas Board of Legal Specialization;

(8) identification of prepaid or group legal service plans in which the lawyer participates;

(9) the acceptance or nonacceptance of credit cards;

(10) fees charged for an initial consultation or routine legal services;

(11) identification of a lawyer or a law firm as a contributor or sponsor of a charitable, community, or public interest program, activity or event;

(12) any disclosure or statement required by these Rules; and

(13) any other information specified in orders promulgated by the Supreme Court of Texas.

(a) A lawyer shall not send, deliver, or transmit or knowingly permit or knowingly cause another person to send, deliver, or transmit a written, audio, audio visual, digital media, recorded telephone message, or other electronic communication to a prospective client for the purpose of obtaining professional employment on behalf of any lawyer or law firm if:

(1) the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment;

(2) the communication contains information prohibited by Rule 7.02 or fails to satisfy each of the requirements of Rule 7.04(a) through (e), and (g) through (q) that would be applicable to the communication if it were an advertisement in the public media; or

(3) the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(b) Except as provided in paragraph (f) of this Rule, a written, electronic, or digital solicitation communication to prospective clients for the purpose of obtaining professional employment:

(1) shall, in the case of a non-electronically transmitted written communication, be plainly marked "ADVERTISEMENT" on its first

page, and on the face of the envelope or other packaging used to transmit the communication. If the written communication is in the form of a self-mailing brochure or pamphlet, the word "ADVERTISEMENT" shall be:

(i) in a color that contrasts sharply with the background color; and

(ii) in a size of at least 3/8" vertically or three times the vertical height of the letters used in the body of such communication, whichever is larger

(2) shall, in the case of an electronic mail message, be plainly marked "ADVERTISEMENT" in the subject portion of the electronic mail and at the beginning of the message's text;

(3) shall not be made to resemble legal pleadings or other legal documents;

(4) shall not reveal on the envelope or other packaging or electronic mail subject line used to transmit the communication, or on the outside of a self-mailing brochure or pamphlet, the nature of the legal problem of the prospective client or non-client; and

(5) shall disclose how the lawyer obtained the information prompting the communication to solicit professional employment if such contact was prompted by a specific occurrence involving the recipient of the communication, or a family member of such person(s).

(c) Except as provided in paragraph (f) of this Rule, an audio, audio-visual, digital media, recorded telephone message, or other electronic communication sent to prospective clients for the purpose of obtaining professional employment:

(1) shall, in the case of any such communication delivered to the recipient by non-electronic means, plainly and conspicuously state in writing on the outside of any envelope or other packaging used to transmit the communication, that it is an "ADVERTISEMENT."

(2) shall not reveal on any such envelope or other packaging the nature of the legal problem of the prospective client or non-client;

(3) shall disclose, either in the communication itself or in accompanying transmittal message, how the lawyer obtained the information prompting such audio, audio-visual, digital media, recorded telephone message, or other electronic communication to solicit professional employment, if such contact was prompted by a specific occurrence involving the recipient of the communication or a family member of such person(s);

(4) shall, in the case of a recorded audio presentation or a recorded telephone message, plainly state that it is an advertisement prior to any other words being spoken and again at the presentation's or message's conclusion; and

(5) shall, in the case of an audio-visual or digital media presentation, plainly state that the presentation is an advertisement;

(i) both verbally and in writing at the outset of the presentation and again at its conclusion; and

(ii) in writing during any portion of the presentation that explains how to contact a lawyer or law firm.

(d) All written, audio, audio-visual, digital media, recorded telephone message, or other electronic communications made to a prospective client for the purpose of obtaining professional employment of a lawyer or law firm must be reviewed and either signed by or approved in writing by the lawyer or a lawyer in the firm.

(e) A copy of each written, audio, audio-visual, digital media, recorded telephone message, or other electronic solicitation communication, the relevant approval thereof, and a record of the date of each such communication; the name, address, telephone number, or electronic address to which each such communication was sent; and the means by which each such communication was sent shall be kept by the lawyer or firm for four years after its dissemination.

(f) The provisions of paragraphs (b) and (c) of this Rule do not apply to a written, audio, audiovisual, digital media, recorded telephone message, or other form, of electronic solicitation communication:

(1) directed to a family member or a person with whom the lawyer had or has an attorney-client relationship;

(2) that is not motivated by or concerned with a particular past occurrence or event or a particular series of past occurrences or events, and also is not motivated by or concerned with the prospective client's specific existing legal problem of which the lawyer is aware;

(3) if the lawyer's use of the communication to secure professional employment was not significantly motivated by a desire for, or by the possibility of obtaining, pecuniary gain; or

(4) that is requested by the prospective client.

Rule 7.06. Prohibited Employment

(a) A lawyer shall not accept or continue employment in a matter when that employment was procured by conduct prohibited by ~~any of~~ Rules 7.01 through 7.03~~5~~, 8.04(a)(2), or 8.04(a)(9), engaged in by that lawyer personally or by ~~another~~ ~~any other~~ person whom the lawyer ordered, encouraged, or knowingly permitted to engage in such conduct.

(b) A lawyer shall not accept or continue employment in a matter when the lawyer knows or reasonably should know that employment was procured by conduct prohibited by ~~any of~~ Rules 7.01 through 7.03~~5~~, 8.04(a)(2), or 8.04(a)(9), engaged in by ~~another~~ ~~any other~~ person or entity that is a shareholder, partner, or member of, an associate in, or of counsel to that lawyer's firm; or by any other person whom ~~any of~~ the foregoing persons or entities ordered, encouraged, or knowingly permitted to engage in such conduct.

(c) A lawyer who has not violated paragraph (a) or (b) in accepting employment in a matter shall not continue employment in that matter once the lawyer knows or reasonably should know that the person procuring the lawyer's employment in the matter engaged in, or ordered, encouraged, or knowingly permitted another to engage in, conduct prohibited by ~~any of~~ Rules 7.01 through 7.03~~5~~, 8.04(a)(2), or 8.04(a)(9) in

connection with the matter unless nothing of value is given thereafter in return for that employment.

Rule 7.07. Filing Requirements for Public Advertisements and Written, Recorded, Electronic, or Other Digital Solicitations

(a) Except as provided in paragraphs (c) and (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas, no later than the mailing or sending by any means, including electronic, of a written, audio, audio visual, digital or other electronic solicitation communication:

(1) a copy of the written, audio, audio visual, digital, or other electronic solicitation communication being sent or to be sent to one or more prospective clients for the purpose of obtaining professional employment, together with a representative sample of the envelopes or other packaging in which the communications are enclosed;

(2) a completed lawyer advertising and solicitation communication application form; and

(3) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such solicitations.

(b) Except as provided in paragraph (c) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas, no later than the first dissemination of an advertisement in the public media, a copy of each of the lawyer's advertisements in the public media. The filing shall include:

(1) a copy of the advertisement in the form in which it appears or will appear upon dissemination, such as a videotape, audiotape, DVD, CD, a print copy, or a photograph of outdoor advertising;

(2) a production script of the advertisement setting forth all words used and describing in detail the actions, events, scenes, and background sounds used in such advertisement together with a listing of the names and addresses of persons portrayed or heard to speak, if the advertisement is in or will be in a form in which the advertised message is not fully revealed by a print copy or photograph;

(3) a statement of when and where the advertisement has been, is, or will be used;

(4) a completed lawyer advertising and solicitation communication application form; and

(5) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such advertisements.

(c) Except as provided in paragraph (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas no later than its first posting on the internet or other comparable network of computers information concerning the lawyer's or lawyer's firm's

website. As used in this Rule, a "website" means a single or multiple page file, posted on a computer server, which describes a lawyer or law firm's practice or qualifications, to which public access is provided through publication of a uniform resource locator (URL). The filing shall include:

(1) the intended initial access page of a website;

(2) a completed lawyer advertising and solicitation communication application form; and

(3) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be set for the sole purpose of defraying the expense of enforcing the rules related to such websites;

(d) A lawyer who desires to secure an advance advisory opinion, referred to as a request for pre-approval, concerning compliance of a contemplated solicitation communication or advertisement may submit to the Advertising Review Committee, not less than thirty (30) days prior to the date of first dissemination, the material specified in paragraph (a) or (b), or the intended initial access page submitted pursuant to paragraph (c), including the application form and required fee; provided however, it shall not be necessary to submit a videotape or DVD if the videotape or DVD has not then been prepared and the production script submitted reflects in detail and accurately the actions, events, scenes, and background sounds that will be depicted or contained on such videotapes or DVDs, when prepared, as well as the narrative transcript of the verbal and printed portions of such advertisement. If a lawyer submits an advertisement or solicitation communication for pre-approval, a finding of noncompliance by the Advertising Review Committee is not binding in a disciplinary proceeding or disciplinary action but a finding of compliance is binding in favor of the submitting lawyer as to all materials actually submitted for pre-approval if the representations, statements, materials, facts and written assurances received in connection therewith are true and are not misleading. The finding of compliance constitutes admissible evidence if offered by a party.

(e) The filing requirements of paragraphs (a), (b), and (c) do not extend to any of the following materials, provided those materials comply with Rule 7.02(a) through (c) and, where applicable, Rule 7.04(a) through (c):

(1) an advertisement in the public media that contains only part or all of the following information:

(i) the name of the lawyer or firm and lawyers associated with the firm, with office addresses, electronic addresses, telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession such as "attorney," "lawyer," "law office," or "firm;"

(ii) the particular areas of law in which the lawyer or firm specializes or possesses special competence;

(iii) the particular areas of law in which the lawyer or firm practices or concentrates or to which it limits its practice;

(iv) the date of admission of the lawyer or lawyers to the State Bar of Texas, to particular federal courts, and to the bars of other jurisdictions;

(v) technical and professional licenses granted by this state and other recognized licensing authorities;

(vi) foreign language ability;

(vii) fields of law in which one or more lawyers are certified or designated, provided the statement of this information is in compliance with Rule 7.02(a) through (c);

(viii) identification of prepaid or group legal service plans in which the lawyer participates;

(ix) the acceptance or nonacceptance of credit cards;

(x) any fee for initial consultation and fee schedule;

(xi) other publicly available information concerning legal issues, not prepared or paid for by the firm or any of its lawyers, such as news articles, legal articles, editorial opinions, or other legal developments or events, such as proposed or enacted rules, regulations, or legislation;

(xii) in the case of a website, links to other websites;

(xiii) that the lawyer or firm is a sponsor of a charitable, civic, or community program or event, or is a sponsor of a public service announcement;

(xiv) any disclosure or statement required by these rules; and

(xv) any other information specified from time to time in orders promulgated by the Supreme Court of Texas;

(2) an advertisement in the public media that:

(i) identifies one or more lawyers or a firm as a contributor to a specified charity or as a sponsor of a specified charitable, community, or public interest program, activity, or event; and

(ii) contains no information about the lawyers or firm other than names of the lawyers or firm or both, location of the law offices, and the fact of the sponsorship or contribution;

(3) a listing or entry in a regularly published law list;

(4) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or firm, or a tombstone professional card;

(5) in the case of communications sent, delivered, or transmitted to, rather than accessed by, intended recipients, a newsletter, whether written, digital, or electronic, provided that it is sent, delivered, or transmitted only to:

(i) existing or former clients;

(ii) other lawyers or professionals; or

(iii) members of a nonprofit organization that meets the following conditions: the primary purposes of the organization do not

include the rendition of legal services; the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization; the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and the person for whom the legal services are rendered, and not the organization, is recognized as the client of the lawyer who is recommended, furnished, or paid by the organization;

(6) a solicitation communication that is not motivated by or concerned with a particular past occurrence or event or a particular series of past occurrences or events, and also is not motivated by or concerned with the prospective client's specific existing legal problem of which the lawyer is aware;

(7) a solicitation communication if the lawyer's use of the communication to secure professional employment was not significantly motivated by a desire for, or by the possibility of obtaining, pecuniary gain; or

(8) a solicitation communication that is requested by the prospective client.

(f) if requested by the Advertising Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in any advertisement in the public media or solicitation communication by which the lawyer seeks paid professional employment. **TBJ**

Committee on Disciplinary Rules and Referenda Proposed Rule Changes

Texas Disciplinary Rules of Professional Conduct Part VII. Information about Legal Services (Lawyer Advertising and Solicitation Rules)

Public Comments Received Through April 13, 2020

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Excessive Advertising
Date: Monday, March 2, 2020 10:33:27 AM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Fatima
Last Name	Badreddine
Email	[REDACTED]
Member	Yes
Barcard	24111249

Feedback

Subject	Excessive Advertising
----------------	-----------------------

Comments

I transferred to Texas within the past year from Arizona. I believe that these rules are moving in the right direction and are much needed in Texas. The amount of attorney advertising out here is excessive. The attorney referrals to so-called pain management providers is also uncalled for, excessive, and in my opinion, a conflict of interest. However, I think the rule on advertising verdict amounts should preclude advertising these amounts because there is no way to advertise in a manner that is not misleading to the public. How can a single advertisement explain that a verdict was reached due to the egregious factual circumstances specific to that case that are not likely to apply to the client's case? For instance, the Thomas J. Henry firm often advertises verdicts worth millions for cases that (to my knowledge) involved DWI and/or death. I'm not against advertising, but it should not be misleading and reasonable expectations must be set.

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Proposed rule changes: Lawyer Advertising
Date: Monday, March 2, 2020 11:26:00 AM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Dawn
Last Name	Meade
Email	[REDACTED]
Member	Yes
Barcard	13879750

Feedback

Subject	Proposed rule changes: Lawyer Advertising
----------------	---

Comments

I have a comment on Rule 7.06. Prohibited Employment. Specifically, Rule 7.06(c) should be stricken or altered. As a 28 year litigator, I understand the need to draft the rules to punish "laundered" cases: Those referred to an "innocent" attorney by less scrupulous attorneys who chase business and attain it illegally so it may be "referred" to others for a part of the fee. Nevertheless, this Rule places an unacceptably high burden on attorneys to whom cases are referred, and puts them in the position of, after rendering services for their client, being punished and forced to sacrifice all of the time and work because of the origin of the case. I don't believe for one second that, unless the referring attorney is a known scoundrel, most attorneys would have any way to know that a referral found its origins in rules violations, especially violations that occurred by a person other than the lawyer. Whenever a client is referred to me, I always inquire about how they found me. I do securities fraud and frankly, more than half of them can't articulate who even sent them my way. Many times they have made an initial inquiry only to be sent from firm to firm until they find someone who knows that I "do that kind of law." If they were originally sent on that journey to find "me" by a lawyer who impermissibly solicited them, I could be a year into representation before something triggers a memory and the client tells me off the cuff that, "I saw John Doe's commercial last night. I forgot that guy called me last year and sent me to X, who sent me to you." That scenario, which likely plays out often, is akin to an "innocent purchaser" situation and no attorney who has worked hard to represent someone should be punished by a strict liability, "catch-all rule." I suggest, at the very least, some alteration like what I set out below: (c) A lawyer who has not violated paragraph (a) or (b) in accepting employment in a matter ("reporting attorney"), but who subsequently discovers that the referring attorney violated paragraph (a) or (b) shall: (1) immediately report the violation to the State Bar _____; (2) within 30 days of the report made pursuant to (c)(1), submit to the _____ a written explanation of how the case came to be referred to the reporting attorney; and (3) respond within 30 days of receiving any further inquiry made by _____, regarding the report made by the reporting attorney pursuant to (c)(1). (d) If, after investigation of the issue, _____ informs the reporting attorney that _____ determined the reporting attorney should have known that s/he accepted employment in a matter where a lawyer violated paragraph (a) or (b), then the reporting attorney shall not continue employment in connection with the matter unless nothing of value is given thereafter in return for that employment.

From: [JR Smith](#)
To: [cdrr](#)
Subject: RE: Seeking Comments on Proposed Rule Changes: Lawyer Advertising & Cessation of Practice
Date: Monday, March 2, 2020 12:57:03 PM

*** *State Bar of Texas* External Message * - Use Caution Before Responding or Opening Links/Attachments**

I do not think lawyers should be allowed to advertise

J. R. Smith

j

From: State Bar of Texas - CDJR [mailto:cdrr@texasbar.com]
Sent: Monday, March 02, 2020 9:35 AM
To: [REDACTED]
Subject: Seeking Comments on Proposed Rule Changes: Lawyer Advertising & Cessation of Practice

State Bar of Texas



Proposed Rule Changes

Public Comments Sought

Lawyer Advertising and Solicitation Rules

The Committee on Disciplinary Rules and Referenda has published [proposed changes to Part VII \(Information about Legal Services\), Texas Disciplinary Rules of Professional Conduct](#), in the March issue of the *Texas Bar Journal* and the February 28 issue of the *Texas Register*. The published proposal includes revisions to the previously recommended rule changes. For a summary and background of the latest revisions, and to view the proposed rule changes, please click [here](#).

The Committee will accept comments concerning the proposed rule changes through April 10, 2020. Comments on the proposed rule changes can be submitted [here](#).

A public hearing on the proposed rule changes will be held at 10:30 a.m. on April 7, 2020, at the Texas Law Center in Austin.

Voluntary Appointment of Custodian Attorney for Cessation of Practice

The Committee has also published [proposed Rule 13.04 \(Voluntary Appointment of Custodian Attorney for Cessation of Practice\), Texas Rules of Disciplinary Procedure](#), in the March issue of the *Texas Bar Journal* and the February 28 issue of the *Texas Register*.

The Committee will accept comments concerning the proposed rule through April 10, 2020. Comments on the proposed rule can be submitted [here](#).

A public hearing on the proposed rule will be held at 10:30 a.m. on April 7, 2020, at the Texas Law Center in Austin.

Additional Information

The Committee is responsible for overseeing the initial process for proposing a change or addition to the disciplinary rules (Gov't Code § 81.0873). For more information, go to texasbar.com/CDRR.

To subscribe to email updates, including notices of public hearings and published rules for comment, click [here](#).

Sincerely,
Committee on Disciplinary Rules and Referenda

Committee on Disciplinary Rules and Referenda

State Bar of Texas | 1414 Colorado | Austin, Texas 78701 | 800.204.2222

[Unsubscribe](#)



From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Support elimination of attorney trade name prohibition
Date: Monday, March 2, 2020 1:03:06 PM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Christopher
Last Name	Gagne
Email	[REDACTED]
Member	Yes
Barcard	24060906

Feedback

Subject	Support elimination of attorney trade name prohibition
----------------	--

Comments

I whole heartedly agree with and support the proposed changes to the attorney advertising rules that would eliminate the prohibition against using a law firm trade name. It is long overdue to move Texas into conformity with other jurisdictions that permit the use of trade names for law firms. Please pass the proposed rule change as soon as possible. Sincerely, Chris Gagne

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Proposed change to 7.01 (e)
Date: Monday, March 2, 2020 2:55:31 PM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Camden
Last Name	Chancellor
Email	[REDACTED]
Member	Yes
Barcard	24082800

Feedback

Subject	Proposed change to 7.01 (e)
----------------	-----------------------------

Comments

This proposed rule absolutely shall not be implemented. A licensed lawyer in the state of texas can, and will, at all times, be able to propose the use of force, or deadly force, when the same force is not a violation of Texas Law. As an attorney at law, I have had situations where my clients had civil proof of right of possession and ownership over surface premises or personal property... and Texas law allows for the use of force to prevent harm to one's self, or to those under one's protection. A lawyer can and will use force if the lawyer so decides, and the consequences of the use of force are not violations of criminal law. A lawyer may use deadly force to protect another. A lawyer may use DEADLY FORCE to defend against the taking of certain property. An intent to use force in advance is acceptable if people are warned as concerns trespassing or violation of Texas castle doctrine. You shall not pass this proposed change.

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Trade Names
Date: Monday, March 2, 2020 3:01:01 PM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Michael
Last Name	Sanders
Email	[REDACTED]
Member	Yes
Barcard	24007981

Feedback

Subject	Trade Names
----------------	-------------

Comments

Do not allow the use of trade names. It cheapens the profession. They are almost always misleading. One firm in the state has been using a trade name for years and continues to do so. The firm's name implies a level of intelligence that the attorneys at the firm do not have. The use of trade names will cause unending fights between lawyers over trademarks and trade names. There are plenty of ways for the public to find out which lawyers practice in which areas. We do not need the people choosing lawyers based upon who came up with the best trade name. As I understand it, part of the justification for this change is that the majority of other states allow trade names. My response: So What? The majority of other states do things that we do not do in Texas. I do not want the way we do things in Texas in general, and the practice of law in particular, to be governed by standards enacted just because the majority of other states use that standard.

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: As regards 701(e)
Date: Monday, March 2, 2020 8:27:09 PM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Camden
Last Name	Chancellor
Email	[REDACTED]
Member	Yes
Barcard	24082800

Feedback

Subject	As regards 701(e)
----------------	-------------------

Comments

This also carries a potential restraint of trade against lawyers offering security services. The proposed rule is vague enough to incorporate anti-competitive activities which are allowed to licensed attorneys. I'm not aware of Prohibition's against attorneys offering other services. Therefore the proposed rule limits the ability of licensed attorneys to give presentations concerning the use of force and/or to offer services in connection with personal protection services.

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Proposed Changes to Part VII
Date: Tuesday, March 3, 2020 2:44:01 PM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Ruben
Last Name	Robles
Email	[REDACTED]
Member	Yes
Barcard	17118400

Feedback

Subject	Proposed Changes to Part VII
---------	------------------------------

Comments

From the proposed changes I infer that someone believes that lawyers are being too dignified in their advertising; they are bringing too much honor to our profession; the public needs less protection from deceitful, aggressive and downright embarrassing lawyer ads. I'd like to meet that person and I'd like to have that person watch some daytime and late night TV with me. These proposed changes can only bring more disparagement of our profession. But I guess that's the goal. Maybe after 35 years of practice it's time for me to retire while I retain a modicum of dignity. Thanks.

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: 7.01 (e) proposed
Date: Tuesday, March 3, 2020 3:34:12 PM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Camden
Last Name	Chancellor
Email	[REDACTED]
Member	Yes
Barcard	24082800

Feedback

Subject	7.01 (e) proposed
----------------	-------------------

Comments

The State of Texas has a penal code exception that a woman is not prosecuted for violence against her unborn child. The State Bar of Texas professional conduct rules do not contain any such exception. Therefore this new provision would apply to lawyers who advertise reproductive rights relating to abortion. These lawyers are therefore encouraging results based on violence against unborn children, and the state bar did not incorporate an appropriate exception.

Supreme Court of Texas

P.O. Box 12248

Austin, Texas 78711

Date: February 28, 2020

Subject: Suggestions and comments Texas Disciplinary Rules of Professional Conduct

Attn: Blake A. Hawthorne, Clerk of the Court, Texas

I was troubled by the areas of concerns with the professional responsibility of law firms. I'm expressing my concerns and I want to voice my opinions, regarding the community health assistance call WELLNESS of individuals (attorney and their administrative assistance). A liberate work life is needed in all sectors of society and keeping and holding the communities accountable for their service in honesty and structural integrity. Cognitive health is a part of this. The following below is informational and hopefully assistable in having the knowledge and experience in handling cases.

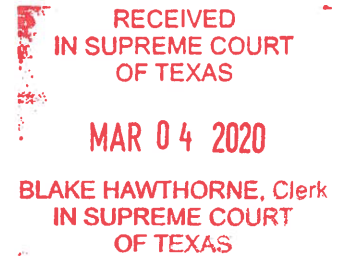
Information about legal service plays a vital part of the first basic legal research in knowing what to look for and how to start. Let me give you a short version.

7.1 thru 7.4 starts the process of **communication** and provides the public with a basic understanding on how to research looking for your attorney that deals with your problem of concerns, and this is your goal. If there is a problem in this area, for example, if one of the staff of the law firm has a cognitive mental considering, we may have a problem with understanding. Harmful information makes our community sad/sick and having a concern for citizens, even in our workplace. So, please don't let us have a disaster in our basic research legal search and knowing the federal, state and administrative legal system and how it can assist us (the citizens).

Thank you for your time and understanding of these matters,



Cassandra Benton, if you wish to contact me, feel free: Cell [REDACTED]



From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: State Bar Rules - Changes to Part VII (information about Legal Services)
Date: Thursday, March 5, 2020 9:27:48 AM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Steve
Last Name	Waldman
Email	[REDACTED]
Member	Yes
Barcard	20679550

Feedback

Subject	State Bar Rules - Changes to Part VII (information about Legal Services)
----------------	--

Comments

I support the changes. The extensive use of domain names, and inroads by national and international law firms and legal services corporations, have reformatted the practice of law. We can operate on the same principles as banks and other financial institutions. There is nothing misleading about a trade name per se. And a law firm name that incorporates the names of lawyers from other states or countries is a trade name.

From: [James Adams](#)
To: [cdrr](#)
Cc: [James Wester](#)
Subject: My objections to Proposed Rules
Date: Saturday, March 7, 2020 10:19:01 AM

*** State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments**

Please consider my objections herein.

J. Collier Adams, Jr.

SBN 00863400

----- Forwarded Message -----

From: James Adams <[REDACTED]>
To: James Wester <james.wester@texasbar.com>
Sent: Saturday, March 7, 2020, 10:05:16 AM CST
Subject: An interesting article showed up in the Wall Street Journal [edited somewhat]

Mr. Wester,

1. The editorial board of the Wall Street Journal points out that the USSCT "*Janus* decision held that government union positions in collective bargaining are inherently political because they implicate matters of public interest."

I see at page 182 of the March 2020 issue of the Texas Bar Journal the proposed Rule 7.05 (a) where nonprofits are given preferential treatment by the Bar.

The current trend of vilifying people and activities that actually make money that can be taxed to pay off the national debt seems to me to be very self-destructive. Given that some nonprofits are far richer, and I submit greedier, than many for profit activities, there is no justification for giving nonprofits a political advantage about "educat[ing] members of the public about the law."

Enviro groups routinely misrepresent, in my view, the early and important case of *Martin v. Waddell* wherein enviro NGO's and their lawyers claim that the *Martin* case stands for the preposterous proposition that States own all natural resources in the state absolutely. But the case deals only with the Duke of York's wrongful sale of Common Right of Piscary off the sea shores of New Jersey to a private firm.

In addition, I've seen claims that a Public Trust Theory of natural resources somehow exists in isolation from the fiduciary duty of the Trustee State toward the true Beneficiaries being the citizens, not animals and habitat. American private property cannot be held in common after the issuance of the land patent in perpetuity; and statutes of limitation cannot make the resulting involuntary servitude of Feudal Law legal, and the US Constitution's Contracts Clause cannot be rendered meaningless by state or federal enactments. In addition, elevating animals and habitat over human rights and dignity smacks of some sort of psychological sociopathy.

I also heard Ken Kramer (a representative of the Sierra Club) tell a conference of law students many of whom were in the administrative law section that ancient land rights to groundwater are a legal fiction. The Sierra Club itself is a greater legal fiction than our ancient and essential rights that predate even the US Constitution.

My point in relating this is to say that just because an organization is a bona fide nonprofit does not justify political favoritism seen in the proposed rule.

(If you wish, I could go on in greater detail how a certain administrative law lawyer erroneously claimed that, because oil and gas rights come from regulation [not land law!], that land rights to groundwater likewise come from administrative regulation.)

2. Given that so many students are now being taught to be as delicate as snowflakes, I object to Proposed Rule 7.03 (c) use of the words "overreaching" and "undue influence" because they are too vague.

In addition, some consideration needs to be given to the direction from which "coercion, duress" and intimidation" are to come from. In other words, is the complainer who has to feel coercion or does the offending lawyer need to be intending coercion. Is reasonable coercion in a billing statement enough to trigger a violation? What about consequences of failing to comply with an intent to sue letter? Is that coercion, too?

3. Texas' state bar going ipso facto to the UBE is inherently political because there are a lot of political issues in other states that are a waste of time to test students over, especially so when the basic fundamentals of the law are not being taught.

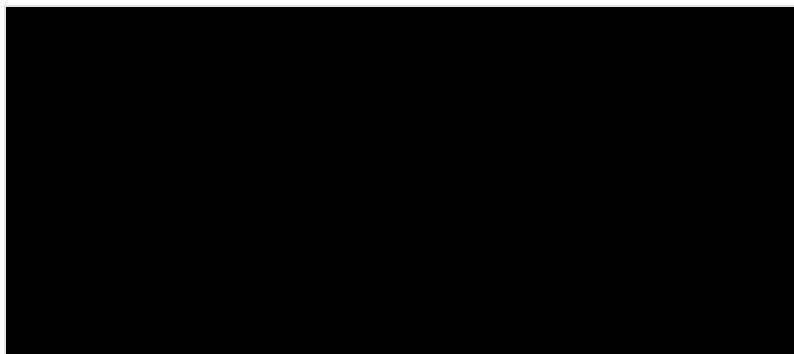
An administrator in an obscure position (pursuant to conversations to which the members of the bar are not privy) should not determine the qualifications of those who practice next to us. Otherwise, as one commentator sagely notes, we are seeing signs that lawyer qualifications are a waste of time.

All the best.

Thank you for your service.

J. Collier Adams Jr
SBN 00863400

[Opinion | Free Speech for Lawyers](#)



Opinion | Free Speech for Lawyers



The Editorial Board

The Supreme Court may soon hear challenges to bar-association dues.

<https://www.wsj.com/articles/free-speech-for-lawyersfree-speech-for-lawyers-11583451282>

From: [Gary E. Smith](#)
To: [cdrr](#)
Subject: Re: Proposed Rule Changes: Public Hearing Update & Reminder to Submit Comments
Date: Tuesday, March 17, 2020 10:19:21 AM

*** State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments**

Please stop changing rules.

Gary E. Smith, esq.



On Mar 17, 2020, at 10:12 AM, State Bar of Texas - CDRR <cdrr@texasbar.com> wrote:

State Bar of Texas



Proposed Rule Changes

Public Hearing Update & Public Comments Sought

Lawyer Advertising and Solicitation Rules

Voluntary Appointment of Custodian Attorney for Cessation of Practice

The Committee on Disciplinary Rules and Referenda recently published [proposed changes to Part VII \(Information about Legal Services\), Texas Disciplinary Rules of Professional Conduct](#), in the *Texas Bar Journal* and the *Texas Register*. The Committee also recently published [proposed Rule 13.04 \(Voluntary Appointment of Custodian Attorney for Cessation of Practice\), Texas Rules of Disciplinary Procedure](#).

The Committee will continue to accept comments concerning the proposed rule changes through April 10, 2020. Comments on the proposed rule changes can be submitted [here](#).

The Committee will hold public hearings on the proposed rule changes at 10:30 a.m. on April 7, 2020. **UPDATE: As a safety precaution related to the coronavirus, the Committee will hold the public hearings by teleconference only. Members of the public who wish to participate must call in toll-free using the following information:**

Telephone Number: 866-398-2885

Pass Code: 2020407

If you plan to participate in either public hearing, it is requested that you email CDRR@texasbar.com in advance of the hearing with your name and the public hearing item you wish to speak on so the Committee can group speakers by topic during the hearings. To allow enough time for all who wish to be heard during the hearings, the Committee may limit initial comments from each speaker to three minutes, and extend that time if the Committee needs further discussion with the speaker.

Additional Information

The Committee is responsible for overseeing the initial process for proposing a change or addition to the disciplinary rules (Gov't Code § 81.0873). For more information, go to texasbar.com/CDRR. To subscribe to email updates, including notices of public hearings and published rules for comment, click [here](#).

Sincerely,

Committee on Disciplinary Rules and Referenda

Committee on Disciplinary Rules and Referenda

State Bar of Texas | 1414 Colorado | Austin, Texas 78701 | 800.204.2222

[Unsubscribe](#)



From: [Lewis Kinard](#)
To: [Brad Johnson](#)
Cc: [Cory Squires](#)
Subject: FW: Proposed Rule Changes: Public Hearing Update & Reminder to Submit Comments
Date: Tuesday, March 17, 2020 1:48:06 PM
Attachments: [image003.png](#)

*** State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments**

Please use the email below as an additional comment.



Lewis Kinard

Executive Vice President, General Counsel &
Assistant Corporate Secretary
American Heart Association
7272 Greenville Ave., Dallas TX 75231
O 214.706.1246

"KEEP CALM – AND WASH YOUR HANDS!"

Executive Assistant: [REDACTED] 214.706.1175

The AHA takes personal privacy seriously. Read more at: www.Heart.org/Privacy.

From: Jonathan Vickery <[REDACTED]>
Sent: Tuesday, March 17, 2020 10:36 AM
To: Lewis Kinard <[REDACTED]>
Subject: FW: Proposed Rule Changes: Public Hearing Update & Reminder to Submit Comments

*** **CAUTION:** This email originated from outside of the **American Heart Association**. Do **not** click links or open attachments unless you recognize the sender and know the content is safe. ***

Hi Lewis

I have a quick question. Is there any definition of "Reduced fee" or "bona fide Legal Aid organization", I raise this question in regards to the proposed rule changes and specifically 7.05 (a).

Rule 7.05 Communications Exempt from Filing Requirements

The following communications are exempt from the filing requirements of Rule 7.04 unless they fail to comply with Rules 7.01, 7.02, and 7.03:
(a) any communication of a bona fide nonprofit legal aid organization that is used to educate members of the public about the law or to promote the availability of free or reduced-fee legal services;

What prevents private attorneys who take advantage of a non profit status to attract low to moderate prospective clients with so called reduced fees and call themselves legal services organizations yet receive no funding for free legal services to low income individuals.

Jonathan W. Vickery
Associate Director & Director of Grants
Attorney at law
P.O. Box 12886
Austin, Texas 78711
512.320.0099, ext. 110
www.teajf.org



*Are You Banking on Justice?
Find a Prime Partner near you.*

From: State Bar of Texas - CDRR <cdr@texasbar.com>

Sent: Tuesday, March 17, 2020 10:12 AM

To: Jonathan Vickery <[REDACTED]>

Subject: Proposed Rule Changes: Public Hearing Update & Reminder to Submit Comments

State Bar of Texas



Proposed Rule Changes

Public Hearing Update & Public Comments Sought

Lawyer Advertising and Solicitation Rules

Voluntary Appointment of Custodian Attorney for Cessation of Practice

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Telephone Number: 866-398-2885

Pass Code: 2020407

If you plan to participate in either public hearing, it is requested that you email CDRR@texasbar.com in advance of the hearing with your name and the public hearing item you wish to speak on so the Committee can group speakers by topic during the hearings. To allow enough time for all who wish to be heard during the hearings, the Committee may limit initial comments from each speaker to three minutes, and extend that time if the Committee needs further discussion with the speaker.

Additional Information

The Committee is responsible for overseeing the initial process for proposing a change or addition to the disciplinary rules (Gov't Code § 81.0873). For more information, go to texasbar.com/CDRR.

To subscribe to email updates, including notices of public hearings and published rules for comment, click [here](#).

Sincerely,

Committee on Disciplinary Rules and Referenda

Committee on Disciplinary Rules and Referenda

State Bar of Texas | 1414 Colorado | Austin, Texas 78701 | 800.204.2222

[Unsubscribe](#)



From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Upcoming rule changes
Date: Tuesday, March 17, 2020 12:16:38 PM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	David
Last Name	Lacy
Email	[REDACTED]
Member	Yes
Barcard	11807500

Feedback

Subject	Upcoming rule changes
----------------	-----------------------

Comments

I don't think it looks good to be making rule changes when the whole populace of the bar is distracted with pandemic. Can't these changes to the rules wait until everyone can give them their full attention?

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Rule 7.01 proposed changes
Date: Tuesday, March 17, 2020 2:35:26 PM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Andrew
Last Name	Cates
Email	[REDACTED]
Member	Yes
Barcard	24059549

Feedback

Subject	Rule 7.01 proposed changes
---------	----------------------------

Comments

I support the ability of firms to operate under trade names as long as it is clear to consumers that the entity is a law firm and that the services provided are legal in nature. I do not believe that it misleads consumers, and I do not believe that it minimizes the professionalism of the legal industry.

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Rule 7.01
Date: Thursday, March 19, 2020 10:54:23 AM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	David
Last Name	Sprott
Email	[REDACTED]
Member	Yes
Barcard	24046895

Feedback

Subject	Rule 7.01
---------	-----------

Comments

In 7.01(a) I would recommend removing the word "nondeceptive" from the second sentence. In my opinion the word is unnecessary in conjunction with the other language in the paragraph that prohibits "false and misleading" statements. Also, I am now confused about what firm names we can use. The prohibition on trade names has been removed, but the use of the names of attorneys in the firm named appears to be optional with the use of "may" in 7.01(c).

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Lawyer Advertising and Solicitation Rules
Date: Friday, March 20, 2020 6:35:01 PM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Stephen
Last Name	Putonti
Email	[REDACTED]
Member	Yes
Barcard	24011461

Feedback

Subject	Lawyer Advertising and Solicitation Rules
---------	---

Comments

I like the proposed changes and support them wholeheartedly

Memo

To: Texas Committee on Disciplinary Rules and Referenda

From: Zach Wolfe

Re: Public Comment on Proposed Changes to Texas Disciplinary Rules of Professional Conduct 7.01-7.06 (the "Advertising Rules")

Date: 3/31/20

A. Overview

- My focus is on application of the Advertising Rules to social media. I am a practicing Texas litigator who has taught CLE programs on this topic for ethics credit.
- The overhaul of the Advertising Rules is a welcome change. The old rules were unwieldy and difficult to apply to current reality, especially social media.
- A literal application of the current rules could mean that a lawyer has to file every social media post with the Advertising Review Committee.
- In addition, the current rules could be read to require all lawyers to file their LinkedIn profiles (and other "landing page" profiles). Hardly any Texas lawyer does this.
- The new rules offer some guidance by now defining "advertisement." The definition has three elements: (1) communication to the public, (2) offers or promotes legal services, and (3) substantially motivated by pecuniary gain.
- The new definition of "advertisement" is helpful, but could be improved.
- The Advertising Review Committee's current Interpretive Comment 17 provides helpful guidance that "b logs or status updates considered to be educational or informational in nature are not required to be filed with the Advertising Review Department."
- Consistent with Interpretive Comment 17, the new definition of "advertisement" should include a carve-out or safe harbor to confirm that educational communications are not "advertisements."
- The new Rule 7.05 expands the exemptions from the filing requirement to include "a communication on a professional social media website to the extent that it

contains only resume-type information.” Again, this is an improvement, but it could be better.

- It is unclear whether the typical lawyer LinkedIn profile—which often includes endorsements and recommendations—would fall under this exemption. This should be clarified.

B. My Perspective

My perspective on the Advertising Rules and their application to social media is based on several things:

- I have been a practicing Texas litigator for over 20 years.
- My current practice focuses on representing both employers and employees in disputes involving non-competes, trade secrets, and other departing employee issue. There is no board certification for this practice area.
- I am a frequent user of social media for both professional networking and sharing educational content with other lawyers and the public.
- I publish a weekly blog, Five Minute Law (www.fiveminutelaw.com), which focuses on litigation-related topics for both lawyers and non-lawyers.
- I have written about the ethics of lawyer use of social media in Texas at my blog and have presented the topic several times at continuing legal education programs.

C. Problems with the Current Rules

The first problem is that the Texas advertising rules were written specifically to regulate plaintiff’s personal injury lawyers, but they apply to everybody.

So, for example, we get a rule that says a communication about past results is false and misleading unless:

- (i) the communicating lawyer or member of the law firm served as lead counsel in the matter giving rise to the recovery, or was primarily responsible for the settlement or verdict,
- (ii) the amount involved was actually received by the client,
- (iii) the reference is accompanied by adequate information regarding the nature of the case or matter, and the damages or injuries sustained by the client, and

(iv) if the gross amount received is stated, the attorney's fees and litigation expenses withheld from the amount are stated as well.

The problems are obvious. What if you weren't lead counsel? What if you're a defense lawyer who got a take-nothing verdict, so no amount was "actually received by the client"? What if you're a transactional lawyer and there was no litigation, settlement, or verdict at all?

Fortunately, the Advertising Review Committee of the State Bar recognized the problem and published Interpretive Comment 26. It says, essentially, comply with the parts of the rule that apply to your situation, and don't worry about the rest.

Even aside from these specific flaws, the way the current rules define false or misleading communications by reference to specific instances is flawed. I've always thought it would make more sense to have one general rule, i.e. don't make false or misleading statements. The new proposed Rule 7.01(a) essentially does that. This is a definite improvement.

Another problem with the current rules is that, generally, a lawyer can't say "I specialize" or "I'm a specialist"—*even if it's true*—if the lawyer is not board certified in that practice area.

Of course, the reality is that *most* lawyers specialize in particular areas of law but are not board certified. And what do you do if you specialize in, for example, non-compete and trade secret litigation? There's no board certification for that.

The answer is that you just use a different word. Rather than say "specialize," you say that your practice "focuses" on a particular area of law.

Obviously, this puts form over substance. A limitation so easily avoided seems silly.

The new Rule 7.02 seems to fix this. It allows a lawyer to say the lawyer "practices in particular fields of law" and removes the prohibition on a non-certified lawyer saying the lawyer is a "specialist." It even appears that under the new rule a non-certified lawyer could say "specialize" or "specialist," provided that statement is not false or misleading.

That is what the rule should be. The only constituencies that might have a reason to oppose this are board-certified lawyers and the Texas Board of Legal Specialization.

So I applaud this and the other proposed improvements to the "false and misleading" rules. But that still leaves the problem of social media.

D. Problems Applying the Current Rules to Social Media

Obviously, the current advertising ethics rules were not written with social media in mind, and applying them to social media is difficult.

The fundamental problem is that lawyers do not usually think of their social media profiles or posts as advertising, but these communications could be considered advertising under a literal application of the current rules. That would mean for every profile or post, the lawyer would need to fill out an application, pay a fee, and file a copy with the Advertising Review Committee of the State Bar of Texas.

Take LinkedIn. It is by far the most popular platform for professional networking for lawyers. Almost every Texas lawyer has a LinkedIn profile.

The profile includes an “About” section that usually contains a self-promoting description of the lawyer’s practice written by the lawyer, an “Experience” section showing the firms the lawyer has worked for, and an “Education” section with the lawyer’s degrees. These sections are followed by the “Skills and Endorsements” section and the “Recommendations” section (more about those later).

In short, the point of the profile is to promote the lawyer’s experience and qualifications as a lawyer. And in the vast majority of cases, the profile is set to be viewable by the public. So is it an “advertisement” that must be filed?

It sure sounds like advertising, and the Advertising Review Committee has said it is. Interpretive Comment 17(C) says: “Landing pages such as those on Facebook, Twitter, LinkedIn, etc. where the landing page is generally available to the public are advertisements.”

It therefore appears that, generally, Texas lawyers must file their LinkedIn profiles.

Of course, hardly any lawyers do this. I have plenty of anecdotal evidence from raising this question at multiple CLE presentations. It appears that thousands of Texas lawyers are currently breaking the rules by not filing their LinkedIn profiles (arguably).

This is an untenable situation.

One possible solution is for a lawyer to limit the material in the LinkedIn profile to matters that are exempt from the filing requirement under current Rule 7.07(e). The exemption includes some basic resume-type information, including “the particular areas of law in which the lawyer or firm practices.”

That helps, but it does not entirely solve the problem. Remember Endorsements and Recommendations. They expressly promote the qualifications and experience of the lawyer,

and they do not seem to fall under any existing exemption. So, even a lawyer who tries to limit her profile to material that falls under an exemption is still going to have a hard time achieving strict compliance.

And the problem is not limited to *profiles*. There is also the problem of social media *posts*.

E. The Problem with Social Media Posts

Let's take a typical LinkedIn post by a lawyer. The lawyer shares an article that recognizes the lawyer's firm as a top firm in a particular practice area, adding the comment "Congrats to my wonderful colleagues!" If the lawyer published this in a magazine, we would all agree it's an advertisement. But it is unlikely the lawyer will consider the social media post an advertisement, and even less likely the lawyer will file it with the Advertising Review Committee.

I suppose the Bar could take a hard line and strictly enforce the filing requirement. But the likely result would not be lawyers filing their LinkedIn profiles and posts as advertisements, but lawyers getting off LinkedIn. That would not benefit the profession or the public.

The problem is even greater on Twitter. A lawyer who is active on Twitter may share dozens of tweets, retweets, and responses to tweets in a day. But we don't want to make the evaluate each tweet to determine if it's an "advertisement," file a copy of each one that crosses the line into advertising, and pay multiple fees each day.

F. The "Educational or Informational" Solution

Interpretive Comment 17 offers a potential solution by drawing a line between "educational or informational" content and advertising: "Blogs or status updates considered to be educational or informational in nature are not required to be filed with the Advertising Review Department."

So, a lawyer who wants to post content on social media can avoid violating the filing rule by keeping the content "educational or informational" rather than self-promotional.

For example, a tweet that comments on a recent Texas Supreme Court decision would not be advertising, because it's educational or informational, but a tweet that says "my firm just won a huge case for our client X at the Texas Supreme Court" might be advertising.

It's not a perfect solution, but it helps.

G. The Proposed New Definition of "Advertisement"

The new Rule 7.01 improves on the situation by defining "advertisement." The proposed definition is "a communication substantially motivated by pecuniary gain that is made by

or on behalf of a lawyer to members of the public in general, which offers or promotes legal services under circumstances where the lawyer neither knows nor reasonably should know that the recipients need legal services in particular matters.”

The last part of the definition is there to distinguish an advertisement from a “solicitation.” I will focus on the first part.

The proposed definition has three elements:

- (1) communication to the public
- (2) offers or promotes legal services
- (3) substantially motivated by pecuniary gain

One of these things is not like the other. Elements 1 and 2 are objective. Element 3 is subjective. In other words, you can evaluate elements 1 and 2 solely by looking at the communication on its face. Element 3, in contrast, requires looking into the mind of the lawyer who made the communication.

It would be preferable to make the definition entirely objective. The focus should be on the substance of the communication, not its motivation.

The problem with the subjective element, in a nutshell, is that there is almost always *some* pecuniary motivation to content a lawyer shares on social media. Even when a lawyer shares a post that is entirely educational, the lawyer is probably hoping that the post will help to generate interest from a potential client or referral source.

I’ll use myself as an example. My last three blog posts covered application of force majeure clauses, drafting considerations for Texas non-competes, and a recent Texas Supreme Court case on whether an exchange of emails established an enforceable purchase agreement.

Each of these posts was primarily “educational” in its content, for both lawyers and members of the public. And at the risk of flattering myself, I would also say the content was *helpful* to understanding the topics.

Was my motivation purely educational? Of course not.

Yes, I enjoy educating people, but my blog posts are also part of an overall networking and business development strategy. Obviously, I am hoping that these posts will help generate referrals by other lawyers or inquiries by potential clients. You might call that a “pecuniary” motivation.

H. Applying the New Definition of “Advertisement”

So would my blog posts be “advertisements” under the new proposed definition?

Probably not. That's because my posts do not "offer or promote legal services," at least not expressly. Ignoring the advice of marketing experts, I never add a "call to action" to my posts, e.g. "if you need help with drafting a force majeure clause or a non-compete, please contact me." I avoid the call to action because it sounds too "salesy" for my taste, but also because I don't want to turn my educational blog post into an advertisement that I'm supposed to file.

Plus, I could make a case that the post was only *partly*, not "substantially," motivated by pecuniary gain.

The problem is the "probably." It would be better if the new definition would provide more certainty that an educational post is not an advertisement, following Interpretive Comment 17. The "motivated by pecuniary gain" element adds some uncertainty.

To mitigate this problem I propose the following modification:

An "advertisement" is a communication substantially motivated by pecuniary gain that is made by or on behalf of a lawyer to members of the public in general, ~~which~~ and that offers or promotes legal services under circumstances where the lawyer neither knows nor reasonably should know that the recipients need legal services in particular matters. A communication, including an article, blog post, or social media post, that is primarily educational or informational and does not expressly promote the experience or qualifications of the lawyer or solicit potential clients is not a communication that "offers or promotes legal services."

This continues existing policy (under Interpretive Comment 17) but provides more certainty.

I. The New Exemption for Resume-Type Information

The new Rule 7.05 expands the list of things that are exempt from the filing requirement. It includes a new exemption for "resume-type information" on social media:

(g) a communication on a professional social media website to the extent that it contains only resume-type information.

This is a welcome improvement. It potentially solves the problem with LinkedIn profiles—and other social media profiles—discussed above. Lawyers should be free to post resume-like information about their experience and qualifications on their social media profiles without worrying about whether they are required to file the profiles as advertisements.

The problem with the proposed exemption is that the term "resume-type information" is vague. In particular, it is not clear whether resume-type information includes endorsements

and recommendations, and therefore it is not clear whether the exemption solves the LinkedIn profile problem.

To address this issue with more certainty, I propose the following revision:

(g) a communication on a professional social media website to the extent that it contains only resume-type information; “resume-type information” includes third-party endorsements and recommendations and other information about experience and qualifications customarily provided on social media profiles, provided the information is not false or misleading under Rule 7.01;

Again, lawyers are *already sharing this information*. We need a rule that accommodates this reality. A situation where thousands of lawyers are potentially violating the rules by not filing their profiles does not increase public confidence in the legal profession.

H. Conclusion: Lawyer Use of Social Media Should be Encouraged

The assumption that implicitly underlies my comments is that the rules should *encourage* lawyers to engage with other lawyers and the public on social media. There is a real benefit to both lawyers and non-lawyers when lawyers freely share information on social media. Any rule that would have a chilling effect on lawyer engagement on social media should be avoided.

Granted, there is a danger to the public from unscrupulous lawyers using social media, just like there was a potential danger when we allowed lawyers to write articles in magazines, place ads in the yellow pages, record TV and radio commercials, and put up billboards. But the general prohibition on false or misleading communications can do most of the work. Protecting the public does not require antiquated and byzantine rules that were never intended for social media.

I hope my comments are helpful to the Committee’s admirable effort to update and streamline the Texas advertising rules for the social media era.

Disclaimer

These are solely my personal opinions, not the opinions of my firm or clients.

From: [Ken Horwitz](#)
To: [cdrr](#)
Subject: RE: New Proposed Rule Changes Published and Public Hearing Update
Date: Wednesday, April 1, 2020 9:21:56 AM

*** State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments**

The country is shut down and you are holding a public hearing?

Kenneth M. Horwitz
Glast, Phillips & Murray, P.C.
14801 Quorum Drive, Suite 500
Dallas, Texas 75254
(972) 419-8383 (phone)
(469) 206-5031 (fax)

This communication is not a "written opinion" within the meaning of Treasury Circular 230.

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From: State Bar of Texas - CDRR [mailto:cdrr@texasbar.com]
Sent: Wednesday, April 01, 2020 9:08 AM
To: Ken Horwitz
Subject: New Proposed Rule Changes Published and Public Hearing Update

State Bar of Texas



Proposed Rule Changes

**New Proposed Rule Changes Published
April 7, 2020, Public Hearing Update**

New Proposed Rule Changes Published for Public Comment

The Committee on Disciplinary Rules and Referenda has published [proposed changes to Rule 1.05](#).

[Texas Disciplinary Rules of Professional Conduct](#), in the April issue of the *Texas Bar Journal* and the March 27 issue of the *Texas Register*. The proposed rule changes relate to the disclosure of confidential information with regard to a client contemplating suicide.

The Committee has also published [proposed changes to Rule 8.03, Texas Disciplinary Rules of Professional Conduct, and Rules 1.06 and 9.01, Texas Rules of Disciplinary Procedure](#), in the April issue of the *Texas Bar Journal* and the March 27 issue of the *Texas Register*. The proposed rule changes relate to the reporting of professional misconduct and reciprocal discipline for federal court or federal agency discipline.

The Committee will accept comments concerning the above-referenced proposed rule changes through June 20, 2020. Comments on the proposed rule changes can be submitted [here](#).

Public hearings on the above-referenced proposed rule changes will be held at 10:30 a.m. on June 18, 2020. (Any updates to the public hearings will be posted at texasbar.com/cdrr/participate.)

April 7, 2020, Public Hearing Update

Lawyer Advertising and Solicitation Rules

Voluntary Appointment of Custodian Attorney for Cessation of Practice

The Committee on Disciplinary Rules and Referenda will hold a public hearing on [proposed changes to Part VII, Texas Disciplinary Rules of Professional Conduct](#), and [proposed Rule 13.04, Texas Rules of Disciplinary Procedure](#), at 10:30 a.m. on April 7, 2020. The Committee will continue to accept comments on these proposed rule changes through April 10, 2020. Comments can be submitted [here](#).

UPDATE: As a safety precaution related to the coronavirus, the Committee will hold the April 7 public hearings by teleconference only. The updated participation information is as follows and replaces the previous number provided:

Join from PC, Mac, iOS or Android Device:

Meeting URL: <https://texasbar.zoom.us/j/265275523>

Meeting ID: 265 275 523

Telephone Audio or Audio-Only:

888-788-0099 (Toll Free)

Meeting ID: 265 275 523

(Bridge will open at 10:00 a.m. Meeting will begin at 10:30 a.m.)

If you plan to participate in either public hearing on April 7, it is requested that you email CDRR@texasbar.com in advance of the hearing with your name and the public hearing item you wish to speak on so the Committee can group speakers by topic during the hearings. To allow enough time for all who wish to be heard during the hearings, the Committee may limit initial comments from each speaker to three minutes, and extend that time if the Committee needs further discussion with the speaker.

Additional Information

The Committee is responsible for overseeing the initial process for proposing a change or addition to the disciplinary rules (Gov't Code § 81.0873). For more information, go to texasbar.com/cdrr.

To subscribe to email updates, including notices of public hearings and published rules for comment, click [here](#).

Sincerely,
Committee on Disciplinary Rules and Referenda

Committee on Disciplinary Rules and Referenda

State Bar of Texas | 1414 Colorado | Austin, Texas 78701 | 800.204.2222

[Unsubscribe](#)



From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Proposed Rules Regarding "Competency Attorneys" and Similiar Proposals
Date: Wednesday, April 1, 2020 1:09:14 PM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Richard
Last Name	Edgell
Email	[REDACTED]
Member	Yes
Barcard	6420900

Feedback

Subject	Proposed Rules Regarding "Competency Attorneys" and Similiar Proposals
----------------	--

Comments

1. Better Law already exists. 2. The Law has been Improved and "tweeked" for centuries. 3. The Law already provides a very high standard of "utmost good faith and fair dealing" under equitable and trust law to protect attorneys and everyone else. 4. The Texas Supreme Court is elected. 5. It is the Supreme Court for the Constitution, Laws, Statutes, and other laws of the State of the State of Texas, not the State Bar of Texas, which is or should be the attorneys who having fulfilled the requirements of the law and having been approved by the State Board of Law Examiners are entitled to license as an Attorney and Counselor at Law and having taken the oath provided by law are authorized to practice as Attorney and Counselor at Law in all the Courts of the State of Texas, and the Clerk of the Supreme Court of the Texas may affix the Seal of the Supreme Court of the Supreme Court, at Austin, or apparently has done so, for example, "this 5th day of November AD 1982" for Richard Baxter Edgell. 6. The State Bar of Texas is not an administrative agency. 7. The Texas Legislature cannot delegate judicial power it does not have to the State Bar of Texas or any other person or thing, because the Texas Constitution uses principles such as separation of powers and checks and balances between legislative, executive, and judicial branches and this is consistent with Federal law including the Constitution, Laws, and Statues of the United States. 8. Prior to entry into the Union or union with the Union, the Republic of Texas provided higher standards than the Constitution, Laws, and Statutes of the United States, including the "Rule" and "Open Courts." There is a Baylor Law School Law Review article which you can find which discusses this in detail. 9 Texas insisted, and the United States agreed, that Texas could have higher standards than the United States in the Texas judicial system. 10. The "Open courts" were not vigilante groups or the so-called "Klan." People have lied or been misinformed about this. 11. Concluding, rely on existing law, including trust law, which includes the utmost good faith and fair dealing standard, to avoid losing the work of all Texas ethnic groups who suffered, fought, and died to maintain high standards including Texas trust law and the utmost good faith and fair dealing standard in 1. previously stated. I strongly recommend that the proposed rules not be adopted because they are unconstitutional; violative of statutory law; arbitrary and capricious; not supported by substantial evidence as to their necessity or quality; not supported by subject matter jurisdiction, or notice jurisdiction because no one's life, liberty,. or property are safe while the Legislature, a governmental entity purporting to be like the Legislature, or other such entity, are in session (and the judicial power is different from the legislative power, and because of this we have the Open Courts of the State of Texas which are always to be in session), and further with regard to Texas jurisdiction generally, there are legal limits on any particular group of persons or people to change the laws of the State of Texas, especially those that have provided a higher standard than the Federal standard since the time of the Republic of Texas and before the Republic of the State of Texas; and for the other reasons stated in Government Code 2002 (which may have been amended; but which may be found and researched, unless perhaps you, for example, forge books, alter books, fail to return books, or engage in other such activity; in which case, the Open Records Act may provide you copies of certain records, subject to exceptions and restrictions for such things as privacy, health, and safety, if you provide

reasonable payment, for example for copying costs; and the Texas Open Records Act is similar to Federal Congressional legislation and meets Federal standards, most likely), I waive none of my rights. Respectfully submitted, Richard B. Edgell, Attorney at Law, SBOT 06420900 today when I checked by computer. I do not give my current address or residence in Mexico, to protect myself and others, including responsible police and judiciary, and I can do that, under Texas law, in Rio Rancho, this 1st day of April, AD 2002 Regardless of whom I am or hwe I identify myself, the arguments are still the same and can be judged on their merits..

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Proposed Advertising Rule Changes
Date: Friday, April 3, 2020 1:04:24 PM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	John
Last Name	Kirtley
Email	[REDACTED]
Member	Yes
Barcard	11534050

Feedback

Subject	Proposed Advertising Rule Changes
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Comments

Here are my concerns. Rule 7.03. Solicitation and Other Prohibited Communications Prohibited Solicitations and Payments (a) The following definitions apply to this Rule: (1) "Regulated telephone, social media, or other electronic contact" means telephone, social media, or electronic communication initiated by a lawyer, or by a person acting on behalf of a lawyer, that involves communication in a live or electronically interactive manner. (2) A lawyer "solicits" employment by making a "solicitation communication," as that term is defined in Rule 7.01(b)(2). (b) A lawyer shall not solicit through in-person contact, or through regulated telephone, social media, or other electronic contact, professional employment from a non-client, unless the target of the solicitation is: (1) another lawyer; (2) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or (3) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters. My Concern: Many lawyer websites have a "live chat" feature that pops up as soon as one enters the website. The person HAS the option of declining, but the chat is "initiated" by the lawyer's webpage. Will this rule eliminate that feature? Rule 703 (cont'd) (e) A lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting or referring prospective clients for professional employment, except nominal gifts given as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services. (1) This Rule does not prohibit a lawyer from paying reasonable fees for advertising and public relations services or the usual charges of a lawyer referral service that meets the requirements of Texas law. (2) A lawyer may refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if: (i) the reciprocal referral agreement is not exclusive; (ii) clients are informed of the existence and nature of the agreement; and (iii) the lawyer exercises independent professional judgment in making referrals. Question - Does this rule potentially prohibit lawyers, as many do extensively in mass torts, from paying for "leads?" Rule 7.04. Filing Requirements for Advertisements and Solicitation Communications Advertisements in the Public Media (a) Except as exempt under Rule 7.05, a lawyer shall file with the Advertising Review Committee, State Bar of Texas, no later than ten (10) days after the date of dissemination of an advertisement of legal services, or ten (10) days after the date of a solicitation communication sent by any means: (1) a copy of the advertisement or solicitation communication (including packaging if applicable) in the form in which it appeared or will appear upon dissemination; (2) a completed lawyer advertising and solicitation communication application; and (3) payment to the State Bar of Texas of a fee authorized by the Board of Directors. Question - Is this not considered a "prior restraint" on free speech? What is considered a "reasonable" fee? Thanks, John John T. Kirtley, III Ferrer, Poirot & Wansbrough 2603 Oak Lawn Ave., Suite 300 Dallas, Texas 75219 214-521-4412 American Board of Trial Advocates Board Certified – Personal Injury Trial Law Texas Board of Legal Specialization Board Certified – Civil Trial Law National Board of Trial Advocacy Licensed in TX, AR, CO, D.C., GA, IL, MA, MN, MO, NC, NY, PA, WI and WV <http://www.lawyerworks.com> "Speak up for those who cannot speak for

themselves, for the rights of all who are destitute." Proverbs 31:8.

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Proposed changes re: use of Trade Names
Date: Monday, April 6, 2020 2:28:24 PM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Jason
Last Name	Moore
Email	[REDACTED]
Member	Yes
Barcard	24053373

Feedback

Subject	Proposed changes re: use of Trade Names
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Comments

I support changing the Texas Disciplinary Rules of Professional Conduct to eliminate the blanket ban on the use of Trade Names. I have no comment regarding the other proposed changes, not as to the specific changes implemented to remove the blanket ban on Trade Names. The blanket ban on Trade Names is a significant limitation on at least one subset of Texas law firms, namely those firms who practice in Intellectual Property law. Texas is home to many boutique firms whose practice primarily or exclusive in the area of patent preparation and prosecution before the U.S. Patent and Trademark Office. This a practice at a federal level and generally clients are drawn from the entire U.S. and even abroad. Prohibiting Texas firms from indicating, in their firm name, that they practice patent law or intellectual property makes it much harder for potential clients to find these firms, especially when other states have not such prohibition.



April 13, 2020

Via Electronic Mail: CDRR@texasbar.com

Committee on Disciplinary Rules and Referenda
1414 Colorado Street
Austin, Texas 78701

Re: Comment to Proposed Changes to Part VII. Information about Legal Services (Lawyer Advertising and Solicitation Rules)

Dear Committee on Disciplinary Rules and Referenda,

I have spent my entire ten-year legal career representing victims of legal malpractice and lawyer misconduct. Over the years, I have assisted victims of barratry with bringing civil claims against the attorneys (and others) who illegally solicited them. The Committee's proposed changes to Rule 7.03 will effectively abolish the civil barratry statute, and promote barratry, not deter it.

"The ordinary meaning of barratry is vexatious incitement to litigation, especially by soliciting potential legal clients." *Neese v. Lyon*, 479 S.W.3d 368, 376 (Tex. App.—Dallas 2015, no pet.) (citing BLACK'S LAW DICTIONARY (10th ed. 2014)). "It has long been a crime in Texas." *Id.*; see also TEX. PEN. CODE § 38.12. "The purpose of the barratry statute is to protect vulnerable and unknowing individuals from overreaching or improper behavior on the part of lawyers." *Enochs v. Brown*, 872 S.W.2d 312, 318 (Tex. App.—Austin 1994, no writ), disapproved on other grounds, *Roberts v. Williamson*, 111 S.W.3d 113 (Tex. 2003).

Because Texas barratry restrictions had been rarely enforced, the Legislature passed SB 1716 that amended Texas Government Code § 82.065 and added § 82.0651, which provides remedies for victims who are subjected to barratrous conduct. Under the current version of § 82.0651, a client may bring an action to void a contract procured as a result of conduct violating Section 38.12(a) or (b) of the Texas Penal Code or Rule 7.03 of the Texas Disciplinary Rules of Professional Conduct and recover statutory damages, penalties, and attorney's fees. See TEX. GOV. CODE § 82.0651(a). The statute also permits a person who was solicited by conduct that violates these same rules and statutes but who did not enter into a contract to file a civil action against any person who committed barratry. *Id.* at § 82.0651(b). The stated purpose of § 82.0651 is "to protect those in need of legal services against unethical, unlawful solicitation and to provide efficient and economical procedures to secure that protection." *Id.* at § 82.0651(e).

The proposed changes to Rule 7.03 will make disciplinary proceedings relating to barratry nearly impossible, and virtually abolish civil barratry claims under § 82.0651.

The proposed amendment to Rule 7.03(a)(2) defines “solicits” as a “solicitation communication” and therefore requires a showing that the communication was “substantially motivated by pecuniary gain,” but how is that ever demonstrated? A lawyer accused of barratry could easily argue that the “primary” motivation was to aid the client, and not to obtain a pecuniary gain. This is the position taken by nearly every one of the attorneys I have sued for barratry. For instance, our law firm represented four separate families who had been improperly solicited to hire a San Antonio attorney.¹ The attorney’s father owned a company called “Group of Legal Specialties” that was used to solicit clients. That company provided funeral homes with a brochure on how to bait the clients into requesting legal services under the promise that their funeral expenses would be paid for.² After the attorney was sued, he argued that his father’s company “had nothing to do with his firm” and was simply to “to help Mexican nationals get funeral expenses paid in traumatic death cases.”³ This amendment would create a loophole in Rule 7.03 that would allow any attorney accused of barratry to state he was not “substantially motivated by pecuniary gain,” but by the desire to help the client with their claims.

The amendment to Rule 7.03(b) would also promote barratry, not deter it. Generally, any in-person contact initiated for the purpose of soliciting employment is prohibited by Chapter 38.12 of the Penal Code, unless the conduct is authorized by the Texas Disciplinary Rules of Professional Conduct. *See* TEX. PEN. CODE §§ 38.12(a)(2), (c). Yet, the proposed change to Rule 7.03(b) permits in-person contact if the “target” of the solicitation is “a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.” Thus, under the amendment, it would no longer be unethical or a crime to solicit a client through in-person contact so long as the lawyer “knows” the person to be an “experienced user” – whatever that means – of business-related legal services. But the purpose of the barratry statute is to protect “vulnerable and unknowing” individuals against unlawful in-person solicitation, no matter the type of legal services that they need. *See Enochs*, 872 S.W.2d at 318. A person with a business-related claim is just as vulnerable as one with a personal injury claim, and they deserve the same protection. Not to mention that permitting in-person solicitation of potential clients with business-related claims will promote the vexatious incitement of unmeritorious litigation.

To demonstrate, allow me to share with the Committee a real-life situation that our firm encountered. Our law firm represented more than 300 individuals who were improperly solicited in-person by Houston-area attorneys to file claims against BP after the Deepwater Horizon oil spill. These clients owned small businesses along the Gulf Coast and were solicited in-person at their businesses by “marketers” hired by the attorneys. The lower level “marketers” were paid \$250 per client that they signed up. These “marketers” literally went door-to-door looking for clients, and even followed the potential clients home if the clients were spotted driving a company vehicle that indicated there may be a viable economic business claim that the lawyers could pursue. The potential clients were marketing materials that were never approved by the State Bar, and were

¹ <https://www.expressnews.com/business/local/article/San-Antonio-lawyer-Cesar-Ornelas-II-facing-14902879.php>

² A copy of that brochure is attached to this letter in Tab 1.

³ <https://www.abqjournal.com/1352333/law-firm-accused-of-ambulance-chasing-2.html>

pressured to hire the attorneys based on false or misleading statements by the “marketers.” The lawyers accumulated thousands of clients through this improper solicitation and bombarded BP with these claims. Eventually, the lawyers withdrew when the main “marketer” was indicted, and it was determined that many of the individuals solicited to file economic claims actually had no economic damages from the oil spill. Still, this scenario demonstrates that in-person solicitation of potential clients with business-related claims will promote the vexatious incitement of litigation, and even individuals with business-related claims are deserving of protection.

The proposed amendment to Rules 7.03(e) and (f) will also promote barratry, not deter it.

The amendment to Rule 7.03(e) provides that a lawyer may pay, offer to pay, or give something of value to a nonlawyer who is soliciting employment “nominal gifts” if “given as an expression of appreciation” and that are “neither intended nor reasonably expected to be a form of compensation for recommending a lawyer’s services.” But what exactly is a nominal gift? The proposed amendment is vague, and would allow a loophole to any barratry prosecution, disciplinary proceeding, or civil barratry claim. This amendment will give any lawyer guilty of barratry an easy way to escape those charges because it will allow the attorney to argue that any payment to the “marketer” was of “nominal” value or was done as an “expression of appreciation” and was never intended as compensation for the solicitation of legal services. The amendment places an unreasonably high burden on the grievance committee, the prosecutor, or any attorney who is pursuing a barratry claim.

Similarly, the proposed amendment to Rule 7.03(f) would allow an attorney to “secure employment” by paying, giving, or offering to pay or give, “ordinary social hospitality of nominal value.” Again, what is nominal value? What is social hospitality? This amendment would create another loophole for attorneys guilty of barratry as it would allow them to argue that the payments to the potential clients of \$1,000 were “nominal” expressions of “social hospitality” and not payments to induce the client to secure the lawyer’s employment. Victims of barratry are often those in dire financial situations, so they are vulnerable to predatory tactics. The hiring of an attorney should not be based on which one will offer the most “social hospitality” and should be done at the client’s free will, not by coercion in a time of distress. Again, the barratry statutes are there to prevent lawyers and others from engaging in predatory tactics to secure employment on vulnerable and unknowing individuals. *Enochs*, 872 S.W.2d at 318. The amendment would promote these predatory tactics, not deter them.

Barratry is still a problem in Texas, and its victims are real. My client Lacy Reese is one of these victims, and she testified to her experience in her deposition, a portion of which I would like to share with the Committee. Ms. Reese lost her husband to a tragic vehicle accident and was immediately solicited to hire attorney Houston attorney Michael Pohl while she was at her husband’s funeral, just days after the accident. Ms. Reese gave this response when asked why she was bringing her civil barratry lawsuit:

You know, I would like for this to stop and that people don't have to go through this. That when their husband died that they don't come to their funeral and leave a card at the door to tell me that he has got two lawyers

that can represent me when I am in my time of need. I am here so that nobody else has to they broke the law. They broke the law. They deceived me by going through Helping Hands [the runner's company]. And that is not right. That is not a right conduct for a lawyer.

You trust them, you trust everything that they say and everything that they do. And to find out that they came to my house, knowing that they were breaking a law, and put me in the middle of that. And then having me sign all of this stuff, knowing that my mind's messed up because my husband got his skull crashed on the side of the road in Texas.

And you know what's so sad is, how the hell did they know? What did they do? They sat there and watched the news and everything until somebody came up and said, Hey, this man died. You need to get down there to Arkansas and get this woman to sign all of these sheets.

...
You know, when this stuff happens, they will -- they can help you with the funeral costs, what he told me, with costs with the vehicle being in Texas and that kind of stuff. And that that was what they were there for, is to help people, and then to help you find a person to represent you for a lawsuit.

It was difficult enough for Ms. Reese to prove her barratry claims under the barratry statutes as they are. The proposed amendments would give unscrupulous lawyers like those who solicited Ms. Reese another out and would make it difficult, if not impossible, for victims like Ms. Reese to prove their claims. The amendments will deter attorneys like me from pursuing the claims, so the entire purpose of the enactment of the civil barratry statute will be thwarted. In short, by approving the amendments, the Committee is promoting barratry, not deterring it.

If the Committee has any questions or would like any additional information from me, please do not hesitate to contact me at [REDACTED].

Sincerely,

THE KASSAB LAW FIRM

David Eric Kassab

Committee on Disciplinary Rules and Referenda
Transcript of Public Hearing on
Proposed Changes to Part VII, Texas Disciplinary Rules of Professional Conduct
(Information About Legal Services)
April 7, 2020 – By Zoom Teleconference

Video of the full Committee meeting, including the public hearings, is available at [texasbar.com/CDRR](https://www.texasbar.com/CDRR).

Lewis Kinard:

So, we're going to move on now to Agenda Item 3, the public hearings. Now I'm going to call to order the public hearing on the proposed changes to Part VII of the Texas Disciplinary Rules of Professional Conduct. These are the proposed advertising and solicitation rules.

Lewis Kinard:

And although the public hearing officially was scheduled to discuss the most recent version of those proposed rules, the Committee will consider all comments received from all drafts as we move closer to make [inaudible] recommendation to the Board of Directors.

Lewis Kinard:

So, now, we're on Item 3. Uh, I have a list of people who have signed up to speak and we're going to call Zach Wolfe first.

Zach Wolfe:

Thank you. Good to be here.

Lewis Kinard:

Thanks for ... Thanks for, um ... Thanks for your comments, your submission, and, and we appreciate, uh, your interest in, in helping us understand your perspective on the draft.

Zach Wolfe:

Well, it's my pleasure to participate in this process. Uh, I'm going to have a general comment and then two specific comments, uh, if, if time allows.

Lewis Kinard:

That's a good point, Zach. I probably should have started off, and, and your timer hadn't started. We're-

Zach Wolfe:

Okay.

Lewis Kinard:

We're going to ask, uh, everybody to limit their initial comments to about three minutes. The Committee may ask you a lot of questions and keep things going after that. That's fine. We want to make sure we have time for everybody, uh, and we can follow up and, and keep things going.

Lewis Kinard:

So, we ask everybody who is on there, again, stay muted until called upon. There is a way to raise your hand over in the participant's panel if you know how to navigate Zoom. Um, if not, do something and get our attention. We'll, we'll try to call on you. So with that, Zach, sorry. You're cued again.

Zach Wolfe:

All right. Thank you. Well, first of all, I just want to commend the Committee for these proposed revisions. I, I thought it was funny that somebody might say the rules change too often. It seems to me like changing the ethics rules is, is harder than getting a constitutional amendment.

Zach Wolfe:

It doesn't seem to happen that often, and, and with these advertising rules, I think some change is needed. And just to give briefly some background on, on who I am and, and my interest in this issue, I've been a litigator in Texas for over 20 years, and in recent years, I have often given CLE presentations on the ethics of lawyers using social media.

Zach Wolfe:

And in those presentations, I explain to people that the present advertising rules for lawyers are really not well-suited for application to the way lawyers use social media and, and just, in general, network today. And I think the changes that have been proposed recognize that. So, in general, I, I, I support those changes. I ... and I think they are an improvement.

Zach Wolfe:

I, uh, submitted a memo where I proposed two possible changes to the proposed rules that I think would be improvements and those changes are intended to, to address two particular problems. I think it's important when we're talking about these rules that we're not too abstract about it.

Zach Wolfe:

Uh, so, I'm going to focus on two kind of practical problems that come up for lawyers when they're using social media, in particular, and trying to follow the ethics rules. So, the first problem is the, the LinkedIn profile problem. I think almost every Texas lawyer probably has a LinkedIn account and a LinkedIn profile.

Zach Wolfe:

If you apply the existing rules literally, then there's probably a good case to be made that you need to file your LinkedIn profile as advertising with the State Bar, and you can see that in Interpretative Comment, 17(C), from the Advertising Review Committee. That comment says, "Landing pages such as those on Facebook, Twitter, LinkedIn, et cetera, where the landing page is generally available to the public are advertisements."

Zach Wolfe:

So, the problem is, in my experience, and, and this is, admittedly, anecdotal evidence, but I think it's pretty powerful. Hardly any Texas lawyer does that. In all the presentations I've given, I think I've encountered one who had filed his LinkedIn profile. So, I don't think is a good situation and I think some

clarification is necessary because I don't think the typical LinkedIn profile, uh, ought to be required to be filed as advertising.

Zach Wolfe:

Now, I've noticed the proposed rules have a new exemption for resume-type information, and I think that potentially solves the problem, but it may not be sufficient to solve the problem, for one thing, because most lawyers have endorsements on their LinkedIn profile and some also have recommendations, and it's not clear whether resume-type information would include endorsements and recommendations.

Zach Wolfe:

So, my suggestion is that the exemption dealing with resume-type information, add something to clarify, uh, what resume-type information includes, and the goal would be to make it so that the, the typical social media profile that isn't soliciting any business, uh, but is just stating the lawyer's qualifications and may include endorsements and, and other customary things, that that would fall under the exemption.

Zach Wolfe:

And I suggested some language to do that, but there ... I'm sure ... There are smarter people than me who could come up with better language, but I think it would be good to have some kind of ... sort of carve out or safe harbor for that type of information. So, that's my first suggestion to the Committee.

Zach Wolfe:

Uh, my second suggestion goes more generally to the question of, uh, things that lawyers post on social media, so this could be ... This could be a tweet. This could be a comment or a post in LinkedIn. This could be a post on Facebook.

Zach Wolfe:

The Advertising Review Committee, again, has given some helpful guidance on this in Interpretive Comment 17, where they have said, "Blogs or status updates considered to be educational or informational, in nature, are not required to be filed with the Advertising Review Department."

Zach Wolfe:

And, so, what I've said when I've given CLE presentations on this to lawyers is, is, "Look, try to make your social media content educational and informational rather than making a sales pitch, and if you do that, you are ... your post is probably not going to be considered advertising."

Zach Wolfe:

And that's important because, obviously, we don't want a situation where lawyers are wondering whether every tweet they send out, uh, might need to be filed with the State Bar. That would be extremely cumbersome, and I think we want to encourage lawyers to put out educational information on social media.

Zach Wolfe:

So, again, I think the, the proposed changes, uh, are, are a good improvement because they, for the first time, have a definition of advertisement. My suggestion that I laid out in my memo was that we might

want to have a ... an express, uh, carve out or safe harbor similar to what we already have in Interpretive Comment 17.

Zach Wolfe:

It makes it clear that an educational or informational post that does not expressly promote the experience or qualifications of the lawyer or solicit potential clients is not going to be considered a communication that, quote, offers or promotes legal services, close quote.

Zach Wolfe:

So, again, I ... There could probably ... There might be some other language to accomplish what I'm suggesting, but I think the, the overall suggestion is include some kind of express safe harbor for educational-type content that lawyers put out on social media. Those are my comments and thank you for, uh, listening and, and giving me this time.

Lewis Kinard:

Thanks so much. We appreciate all the thought and effort you put into this. Um, it's always helpful. You know, we're a small committee, and we don't have all the perspectives that are out there, so it's good to have people willing to take the time and share, uh, both thoughts and s- uh, suggestions and, and not just criticism. But, anyway, we, we like to get that kind of input.

Lewis Kinard:

So, I'm going to open this up to the Committee. Any questions for Mr. Wolfe? Anyone want more information, uh, on these topics? Yes, Claude.

Claude Ducloux:

Uh, I ... Zach, let me just say, first of all, I think I speak on behalf of the whole Committee. We were blown away with the amount of time and intellectual honesty you put into that memo. It was very, very useful; very helpful to us and I think you're right.

Claude Ducloux:

We live in a Yelp culture and we need to absorb, uh, the, the pervasiveness of social media in making sure that we address something even in comments or these, these rules. Um, you know, those things that people post on LinkedIn about recommending me or you, we don't even ask for those, and so all of a sudden it just appears.

Claude Ducloux:

So, it ... it's hard for us to say, "Oh, my gosh! Somebody posted that I'm a great lawyer. Do I have to go call the State Bar about that?" And, so, it ... there needs to be those sorts of ex- exemptions. Um, uh, and right now, at least we have a little bit of a bright line in ... by saying, "Look, we want you to blog. We don't want you to, to say, 'and if you want information, call me at my office.'"

Claude Ducloux:

Just like you, when I lecture on this, I say, "Look, here's the ... here's the bright line. We want you to blog. We want you to say what you think under this Supreme Court decision or this new labor statute or

whatever it is, that's very helpful to lawyers. Then don't end it with, 'and call me at my office 'cause I have three lawyers ready to help you at any time.'"

Claude Ducloux:

That's sort of a bright line, but I, I like ... I just wanted to say, before I turn it over to the real geniuses like, uh, uh, Dean Johnson, how impressed I was and how thoroughly I read and appreciated how much work you put into that.

Zach Wolfe:

Well, you're very welcome, and I appreciate you taking the time to read it, and, and I'll just throw in, Claude, that I, I, I tell lawyers the same thing you do. You know, marketing experts talk about the call to action-

Lewis Kinard:

Exactly.

Zach Wolfe:

... and I tell them, "Look, if you're going to have a call to action, meaning, 'Hey, if you need help with an issue like this, call me,'" that's okay, but that's going to turn it into advertising and then you're going to have to file that and, and follow all the advertising rules.

Claude Ducloux:

Agreed.

Amy Bresnen:

Dean, did, did you ... did you want to say something?

Vincent Johnson:

Uh, no. I, I agree with Claude's comments. I, I thought the, uh, memo that we got was very good, and, uh, you know, there are, uh, two or three or four issues we have to work out in the, uh-

Claude Ducloux:

Yeah.

Vincent Johnson:

... in the Committee, but, yeah. They're all worth thinking about, uh, and ... uh, uh, and thinking of how they fit into the architecture of, of all of, uh, Part VII.

Amy Bresnen:

And, and just as, as a side note, I would encourage everybody to read Zach's blogs. Uh, they're very good. In fact, they're so good that I recently cited him in a law review article, which will come out this summer.

Zach Wolfe:

Oh, thank you, Amy.

Dean Johnson:

Good. Good.

Amy Bresnen:

They're very, very intellectual, so...

Zach Wolfe:

I appreciate it.

Amy Bresnen:

[inaudible] everybody.

Lewis Kinard:

All right. Anyone else on the Committee have questions for Mr. Wolfe? Good. Thank you. It doesn't mean we may not, uh, send more questions to you as we work through these, uh, suggestions, but, uh, we appreciate it very much, which I think now at least some of the comments may need to be adjusted to be just a little more clear, so I, I appreciated it.

Lewis Kinard:

All right. Charles Quaid, uh, also signed up to speak. Uh, do we have him here?

Claude Ducloux:

I see him down the corner.

Charles Quaid:

Yes.

Lewis Kinard:

All right. Hi, Mr. Quaid. Thank you for taking the time and, and we appreciate your comments and your request to speak, so, um, you've got about three minutes and then we may have questions.

Charles Quaid:

All right. Well, initially, I was more here to ask questions of the board for clarification. Uh, my concern is the drafting of 7.02(b)(2). It seems, um, extremely vague and I'll give you an example. A couple associations of lawyers, um, that by their name imply maybe expertise, so I don't know if they're covered or not by this rule.

Charles Quaid:

One would be the First Amendment Lawyers Association. Another one to be the American Academy of Matrimonial Lawyers. Uh, the International Association of Collaborative Professionals. Uh, those organizations names, if I'm remembering those those organizations, I can't say that because of the name of the organization in any kind of resume or listing on my website. That's kind of my first clarification.

Lewis Kinard:

You know, and I'll, I'll speak first and let others join in. The, the language there is about, uh, associations in ... that, that in their title imply some special skills, not necessarily an area of focus.

Lewis Kinard:

So if it were, uh, the Association of Board Certified, uh, Leash Law Attorneys, then ... and there isn't really such a board specialization; at least, I don't think there is.

Claude Ducloux:

I think quotes are fine.

Lewis Kinard:

Uh, Claude ... Claude knows more about this than I do, but, uh, that's the type of, of a restriction that it's implying. You know, it's, it's, uh, [inaudible].

Lewis Kinard:

If, if it's an Association of Matrimonial Lawyers, that doesn't infer any particular skillset, level of competency or expertise, and that's, that's the distinction there, and I'll let someone clarify even better, if they can.

Claude Ducloux:

And like TAFLS, the Texas Association of Family Law Specialists, means they're specialists, so they have to qualify under this rule, but-

Lewis Kinard:

Uh-huh (affirmative).

Claude Ducloux:

... National Association of Consumer Bankruptcy Counsel, that's not ... doesn't need to quantify. [inaudible] Anything that helps you professionally, provides resources, camaraderie, uh, you know, counsel, that's fine.

Charles Quaid:

Okay. And then the second point on the rule of clarification is, I know that those organizations just mentioned that, that used the word "specialist," I guess, it will be the subject of the rule, can be ... go through a vetting process by the Texas Board of Legal Specialization for the Texas Board of Legal Specialization to say, "We say grace over this organization. You can now put that in your advertisement."

Charles Quaid:

What I want to know are two things. One, if you have an organization that meets the criteria that has already been approved, will that automatically get approved by the Texas Board of Legal Specialization?

Charles Quaid:

And, two, is there a criteria that the Texas Board of Legal Specialization applies objectively to those qual- to qualify such an organization?

Lewis Kinard:

Okay, Claude.

Claude Ducloux:

Um, I was a former chair and I know even as far ... uh, as far back as 20 years ago, they were developing ... Uh, they knew this was coming, uh, and they said ... and I don't know what it is. We don't have it, but, yes.

Claude Ducloux:

They were working on it and it's just gotta be realistic. It's gotta be a real test. It can't just be fill out a form and send us a \$450 fee and another 169 for the plaque. Uh, you know, uh, like Super Lawyers.

Claude Ducloux:

So, uh, you know, yes, they were developing realistic... Saying, "Yeah, people have to qualify. They have to go through this peer-reviewed process, and they have to pass an examination." That was the general- [crosstalk]

Charles Quaid:

And then you just raised something. Super Lawyers, Best Lawyers in America. Uh, by what you said in your first comments, they're not covered by this rule. That's not prohibited. That is, Super Lawyers doesn't mean anything more than, I'm a member of the Academy of Matrimonial Lawyers. Does it?

Claude Ducloux:

No. I- I- uh, Super Lawyers is, uh... Whoever thought of that has the corner office for life.

Charles Quaid:

(Laughs) Okay. All right. Thank you very much. If you have any questions, I'll [inaudible]

Lewis Kinard:

Any other questions for Mr. Quaid?

Amy Bresnen:

More of, I- I- I guess this is more of a comment. I think that there's some confusion about the "and" that's, uh, you know, it's 7.02(B)(1) and (2), and so right now there's an "and" that should really be read as an "or." And Brad and I were discussing this at length yesterday, and I just want to make sure that that- that is how the [inaudible] is reading it, as well. The- I mean, I could- I could read- I- I mean, I could read both- both of the pro- provisions or, I mean, if you all have the rules in front of you-

Charles Quaid:

I do know- Amy, that's- that's fine. It should be "and" because you can be board certified and also be a member of TAFLS. So that's why it needs to be an "and", you don't have to just say, "I'm a board

certified in family law," I can also say that I'm a member of the Texas Association of Family Law Specialists. So I think "and" is appropriate. That's just my thought, sorry.

Lewis Kinard:

Yeah I was just looking at it to see if you can, uh, fail one and it knocks you out of the other, but I don't think- think that's a problem.

Amy Bresnen:

Okay. That- that was my understanding as well.

Lewis Kinard:

So I see them as additive, um, sort of fine-tuning exceptions, so. Okay. Any other, uh, comments or questions for Mr. Quaid? All right. Uh, Cory, do we have anyone else who's interested in speaking on the advertising rules?

Brad Johnson:

And- and if anyone who's- those are the only people who had signed up, Lewis. If anyone- we had a couple of comments that people tentative- tentatively may want to speak, if anyone- I think we have one hand raised, um.

Lewis Kinard:

Okay.

Brad Johnson:

If anyone does wanna speak, um, if you can, go ahead and raise your hand using Zoom, which you can also just [inaudible] in the video. Um, you should be able to click on the participants button near the bottom of your screen, which'll- will open a window on the right [crosstalk]-

Claude Ducloux:

[inaudible] I see David Bouschor.

David Bouschor:

Yes.

Claude Ducloux:

David Bouschor.

Lewis Kinard:

All right Mr. Bouschor, uh, if you'd just tell us- uh, we'll call on you next, uh, tell us who you are, and- and give us your comments.

David Bouschor:

Hi, my name is David Bouschor. I'm an attorney in Texas. Uh, I am board certified in family law. Uh, I also do quite a few mediations, and I'm also on the board of, uh, CDT. Uh, I guess I- I'm jumping off of maybe

what Mr. Quaid said, uh, my concern is there are, uh, certifications for mediators, master mediators, uh, it's credentialing. There's also credentialing under the Collaborative Law Group. They are real tests, they are real hoops that you need to jump through, but they may be considered a, uh, saying we're better than anybody else. I mean, you- you- you are- you are going an extra mile and getting the grade by your peers or by time or by tests, or whatever, much in the specialization exam. But I don't think we should throw that baby out with the bathwater because we want attorney mediators to be skilled, we want attorney collaborators to be skilled, and if these- if the mediation groups and the collaborative groups are coming up with certifications that raise them above, uh... I mean, this is gonna help our profession not hurt it. So I guess- I guess that's my comment.

Lewis Kinard:

Okay. So I take that as supportive of the exi- of the proposed language. Is that right?

David Bouschor:

Well, the way that I read the propose- I mean, if it's being interpreted that those are included in this language, uh, a master mediator for instance, then I would be supportive of the language. But if, to me it's a little vague, as to whether... 'Cause this could be read that it's not a board, uh, Texas Board of Legal Specialization, which of course there isn't for mediation, uh, that, uh, it- it would preclude you as an attorney mediator from putting that on your website. So, I think- I think maybe it's a clarification. Less vagueness on some of these things, especially for what we- what- for what the Bar wants to promote. Uh, because it's real easy to try and get rid of things we're- we're trying to get rid of and throw, like I said, throw the baby out with the bathwater. So I'm not sure I'm supporting or not, it really depends on how it's interpreted.

Lewis Kinard:

Sure. Claude, did, um, I- I think the subcommittee or- or- Professor Johnson, uh- Dean Johnson, uh, y'all may have already thought through this one. So I- I'll call on you to see if you think about it.

Claude Ducloux:

I- yeah, I- I don't think, you know, there are all sorts of voluntary mediator associations. I don't think- that never honestly crossed my mind, that that would be prohibited from Texas Association. We- we all know it's a voluntary organization, it's- it's not- they're not try- I- uh, you know, um... I think the designations are more the number of mediations you've done, rather than your, um, skill level. I- I- I just don't think that that's a problem under this rule. But that's my own interpretation.

Lewis Kinard:

Uh Amy, Dean Johnson, any other response here?

Amy Bresnen:

I- I think that- that some of the confusion may lie with the fact that, um- that not- I mean there're- there're [inaudible] specializations, you know there's not a board certified exam for all of these different areas of law. And as far as actual- I mean, when you go on the T- TBLS website you can see the steps for individual attorneys to get board- board certified. But there's no information on how an organization would be designated, um, you know, as a specialization or, you know, uh [inaudible]. I mean this [inaudible] this [inaudible] the- the- this is something that just came- came to, uh, my attention Saturday. And so- and I think part of the problem is, you know, like I was saying, that people are

[inaudible] that think the "and" is meant to include an additional requirement in order to list that specialization.

Claude Ducloux:

I- I'll tell you we- 20 years ago, we- when the, um- the mediator group started asking us to consider forming an especialization for mediators, we really looked at it and- and we- but there's no objective criteria. It's like, you know, who's the best... And I'm- I'm not comparing it to comedians but what it takes to be a good mediator are a set of skills that you really don't learn in law school. And- and, um, the best mediators get hired because they know how to, um, connect with people, how to- to release pressure, how to address fears, how to do those sorts of things. And I don't think you- we- we decided we couldn't test on that. We just couldn't test on what made a great mediator objectively and say, "Okay, you get 620 points and you only get 610 points."

Lewis Kinard:

So what would Mr. Bouschor be able to say and not say under this rule, and how is that different from the current rule? I think that's really what, uh- what I wanna come down to.

Claude Ducloux:

I think that the Texas Association of- of Credentialed Mediators and everything are just fine. Um, it's a private group that assesses its members itself, uh, I don't look at it any different than being a member of the Association of, uh, you know, Bankruptcy- Consumer Bankruptcy Attorneys.

Lewis Kinard:

So- and I- I agree. I think being a member of the Association of, um, whatever kind of mediators. And maybe it's auto parts defect mediators, or something. That's not a problem. I think if- if the Association itself said, uh, of Excellent Specialized Mediation Experts or something like that, that would probably cross that line.

Claude Ducloux:

You know, also back in the, um, early 2000s, the Supreme Court appointed about 15 of us to a commission on whether or not mediators oughta be licensed. And after hearing both sides of the story, the- the, uh, Supreme Court said, "You know what? We agree with-" and there's sort of two factions. They said, "The market oughta choose the mediators," and then, uh, you had another faction from another city I won't mention where all the judges appointed the mediators and said, "Oh no no no! No, we- we want you to have to have a license so only we can be appointed." Well, the Supreme Court came down the side of free enterprise. It said, "Look, the market should determine who the best mediators are. We're not gonna impose any certification whatsoever in the State of Texas."

Lewis Kinard:

All right, good. Uh, okay. And someone else wanted to speak I think. Um, Cindi, I can't see your- all of your last name. It looked like you were trying to raise your hand there.

Claude Ducloux.:

Cindi Barela.

Lewis Kinard:

Barela something. (Laughs) Sorry, Zoom is cutting us off there.

Cindi Barela Graham:

That's okay. My name is Cindi Barela Graham. Uh-

Lewis Kinard:

Thank you.

Cindi Barela Graham:

[crosstalk] and Claude, you're dating yourself because I've been [inaudible] now for a while.

Claude Ducloux:

(Laughs)

Cindi Barela Graham:

So I have a question about the comments. And the comments I'm really concerned are about under 7.02, um, number two versus number four. So number two talks about being able to say that a lawyer concentrates in, is a specialist, practices a specialty or specializes in. And then number four actually talks about certification under the Board- uh, under TBLS Board. And then- and number four also goes on and says, "Oh you can say you're, um, certified in a specialty, but it has to be by an organize- organization that applies standards of experience, knowledge, and proficiency to ensure that a lawyer's recognition as a specialist is meaning and reliable- meaningful and reliable, if the organization is accredited by TBLS." So does that mean that- that TBLS has to approve anybody- anybody that has that standard of experience, knowledge, and proficiency? Or are we gonna get caught up with... Because to me, a specialist in something is credentialed or some modification. I guess when we're talking about credentials, is that gonna be kinda deemed okay, just don't use the word "specialist"? So I guess some guidance there would be helpful.

Vincent Johnson:

I- I think the law has clarified over the last 30 years that to- to take the position that using the word "specialist" can be an accurate description of what a lawyer does. That, uh- that most lawyers do specialize, and- and there's nothing wrong for them to say that they specialize. So that's helpful to, uh, clients, uh, selecting a lawyer and- and so, uh, it- we don't start out with the presumption that, uh- that using the word "specialize" uh, is- is- is somehow, uh, unconstitutional and improper. Uh, uh, what the- what the, um, uh, American Bar Association, the Model Rules, and most have- have them, is to say that if you are implying a special competence and you are anchoring that into some type of certification it has to be a real certification. The, um- and so using the word "specialize" uh, um, is- is, uh, permissible, constitutionally protected if it's true. Um, um, trying to bolster that with- with certifications, um, becomes misleading unless- unless there's, um, uh, real merit to the certification process.

Lewis Kinard:

You know, I think that's- that's the underpin there, is it's gotta be true and not deceptive or misleading. So if someone says, "I specialize in,"- and the rule says- this proposed language says you can say what you do and don't do. Uh, and saying I specialize in, again, you know, auto part defects or something,

that's- that's a specialization, that's fine. But it's when you say, "I'm certified in auto part defect remedy law," and there isn't such a thing, uh, that's the deceptive part. So really the general specific- general statement of it's gotta be true and not deceptive or misleading. Uh, the rest of this is sort of expanding on that- that statement.

Cindi Barela Graham:

So terms like "credentialed" or "mastered" aren't gonna be, I guess, against these rules then.

Claude Ducloux:

Not in my opinion.

Cindi Barela Graham:

Okay. That answers what we needed. Thank you.

Lewis Kinard:

Thank you for participating. We appreciate it.

Cindi Barela Graham:

[crosstalk]

Lewis Kinard:

All of these questions by the way help us understand, again, we- we may not have thought of it all. I like hearing the questions. I don't mind disagreeing with people, I- I think it's great. We wanna hash this out and make sure we get it as- as good as we can before this goes up for referendum. So I'm sorry, someone else was gonna speak?

Cindi Barela Graham:

I was saying that I do think that it does help to have these, um, especially the comments to the rules are very helpful. Uh, and I think Mr. Wolfe's point about, um, what you can put on Facebook, what you can put on Twitter, what you can put on your LinkedIn profile were unbelievably helpful. Um, and- and- so Mr. Wolfe, thank you for that, 'cause I think that that- that was very helpful, at least to me, and I'm sure it would be to many other people if there were things like that added.

Lewis Kinard:

You know, you- what you just said raised a point I probably should've clarified earlier as well. Uh, the rules are- are what the Bar votes on. Uh, the comments are only our recommendation to the Supreme Court who then issues comments, uh, if and when a rule is adopted. So, uh, we make our recommendations, I don't expect a lot of problems with that, but we- we do want the comment and feedback on those comments because by the time we send them in, we're representing that we've incorporated all the feedback and made adjustments where we think was appropriate. And- and we send the comments that go with it, by the way. So all these comments that are posted on- on the website in public are all part of the bundle that goes to the Board and then the Court. I- and those- so it is important to talk about those comments as you understand them and question them too. So thank you for doing that.

Faye Bracey:

This is Faye Bracey, I have a question. Uh-

Lewis Kinard:

Yes, Ms. Bracey.

Faye Bracey:

Specifically about, um, the comments to the old Rule 7.01. So I'm talking firm names, so we're talking trade names. I haven't seen the comments, sorry about that. But I wondered if we were maintaining the model rule comment that kept the fact that trade names are false or misleading. Which is in the Model Rules, but I don't- it was prohibited under our rules, but I'm not sure it's- it's not in these rules that it's prohibited. So I wondered if the comments had talked about trade names. And I guess I could go video. It doesn't show me how, but.

Lewis Kinard:

(Laughs) Maybe a start video button.

Faye Bracey:

I am dressed, I am dressed, but, um, I'm not [crosstalk].

Lewis Kinard:

(Laughs) That's okay.

Faye Bracey:

Anyways, that was just a concern I had. I, um, was actually teaching Dean Johnson's ethics class, and one of the students when I put out these proposals asked me that question and I said I thought it would be covered in the comments.

Lewis Kinard:

Well I'll [inaudible] Dean Johnson [crosstalk].

Faye Bracey:

[inaudible] is it there?

Amy Bresnen:

Yeah I, um- I think we should pass to Dean Johnson for that one.

Lewis Kinard:

Who's on mute by the way.

Amy Bresnen:

Oh.

Claude Ducloux:

We can't hear you.

Dennise Garcia:

[crosstalk] space bar.

Vincent Johnson:

... Mute now.

Lewis Kinard:

There you go.

Vincent Johnson:

So, uh, in- in the, uh, two years of work on the advertising roles, the- the- the big hot button topic has been trade names. And, um, the, um, uh, the- the comments that we received, hundreds of comments, uh, um, more of them dealt with the issue of trade names. Folk- folks feel very deeply on that issue one way or the other. We have, uh, uh, written the proposal different ways at different times. Uh, and so, um, at a- at a certain point, uh, I was of the opinion that, uh, that if we tried to do anything with regard to changing the trade name prohibition that it would just be utterly toxic. Uh, and it- it- it would torpedo any referendum and, uh- and so we- we- we wrote the draft of the rules that way. Uh, saying that, uh- that, um, uh, trade names were prohibited. The, uh, that we were continuing that traditional rule. Uh, and then when they, um, uh, the draft was forwarded I believe to the State Bar Board of Directors.

Vincent Johnson:

Uh, it was sent back to us. And the indication as I understood it was that, uh, they thought we needed to address the trade name issue. Uh, and, uh, so there's, uh, been a, um, a complete shift of, uh, um, the terrain nationally with regard to the use of trade names. So the- the ABA now permits it, uh, under the Model Rules. And I think that it is a very large majority of states that now permit it. I think it's only a small number, I think in the single digits, uh, that, uh, continues the trade name prohibition. And so I think where the draft is now is that we have- have um, uh, eliminated the trade name prohibition. And, uh, and then I- I- I- I think we were advised to comment, uh, uh, accordingly but I- I don't have the comments in front of me.

Lewis Kinard:

And Dean Johnson, isn't it correct that the ABA's model, uh, has also removed that prohibition?

Vincent Johnson:

Yes.

Faye Bracey:

Okay. But it is in their comments that trade names are false and misleading. Um, so I just wondered if we were gonna keep... I'm pulling mine, Vincent.

Vincent Johnson:

Mm-hmm (affirmative).

Faye Bracey:

Um, so that was my query. Well, I- I see it is not in the rules, I know it's a hot topic, um, I just wondered if we were going to say anything in the comments because... I'll just get off and let you look at, um, the comments to the Model Rules. I'll send you an email, Vincent-

Vincent Johnson:

Mm-hmm (affirmative).

Faye Bracey:

... With the model rule comment number. But uh-

Vincent Johnson:

I- I believe that what, uh, the, uh, our comments now say is that a trade name cannot be false or misleading. So it's just-

Faye Bracey:

[crosstalk] thank you.

Vincent Johnson:

... A general rule applied to, uh, [crosstalk]-

Faye Bracey:

That's what the Model Rules say.

Vincent Johnson:

... In particular.

Faye Bracey:

But [inaudible]-

Lewis Kinard:

And that- that's in- that's in line with everything else. The general position on all these is you have to be honest and not deceptive. And so, the rest of the advertising rules hang on that. And so a trade- we're just saying that by- that by definition, trade name isn't deemed deceptive but you can't have a deceptive trade name. And that's... You know, we had one comment saying, you know, "I wanna be, you know, Bruno Mars IP Law." And- as opposed to Bruno Mars Attorney at Law, and I- I'm making up the name by the way. But the- the idea is that you- you can add into your firm name, uh, more descriptive terms about what you do, uh, who you are, the type of law you practice. Uh the... You can't say, "I'm Bruno Mars Best Lawyer in Town," or, "Achieves Highest Verdicts Every Time, you know, dot com." And that's- that's where you kinda have to get into that line. So I think we're gonna be pushing a lot over to the advertising committee to (laughs) work through, especially first, uh, months after this comes out. But I- but it should settle out like it's done in other states. I'm sorry, someone else on the Committee wanna talk? Claude?

Claude Ducloux:

Yeah. We- we talked about this so much, for those of you listening, and I was the- I tell ya, I was in the camp that I could not see that it could survive a constitutional challenge if five lawyers got together and said, "North Dallas Construction Lawyers." You know, that tells everybody what they do in that building. If you're looking for a construction lawyer, that's where they are. They don't say, "Best Lawyers in The Universe," they just say... Or, you know, East Houst- or, name it Belleville, uh, Texas Family Law, you know, Firm. That's all it is. Now, what we got the pushback was, "Well, what if they call themselves Taco Shack Lawyers?" And I'm saying, "Well if you wanna go and get a lawyer at Taco Shack, you pretty much know what you're getting." And I still don't think that that's gonna survive a constitutional challenge. And that's, I think-

Lewis Kinard:

You want rice and beans with that?

Claude Ducloux:

Yeah. (Laughs) And that's what I think- what the Board- Board of Directors said, "You know, we've gotta move into the 21st century." Most states say as long it's, uh, non-deceptive... People who run restaurants can say, "We serve Mexican food." They don't just have to say, "Jones and Medina." "Well what do you do there?" "We're a restaurant. No I can't tell you that."

Faye Bracey:

Well, there- there are trade names right now on TV.

Claude Ducloux:

Sure.

Faye Bracey:

Just like a lawyer, you know.

Claude Ducloux:

Absolutely.

Faye Bracey:

And my question is, do you only do motorcycle law?

Lewis Kinard:

Mm-hmm (affirmative)

Faye Bracey:

You're gonna address it in the comments. My understanding of what you said is you're going to say it's not. It's going to be in the comments just like in Model Rules that it cannot be false or misleading.

Claude Ducloux:

Right. That's what it is now.

Faye Bracey:

Leave it up to the committee every time.

Amy Bresnen:

But-

Faye Bracey:

To figure out what's false misleading.

Amy Bresnen:

I mean, that- that is [inaudible] right?

Lewis Kinard:

I'm sorry, you broke up, Amy.

Amy Bresnen:

I'm- I was saying that it's- it's sort of redundant to put in the comments that the trade name can't be false and misleading since that's stated in the rules that the communication advertisement can't be false or misleading. But, anyway.

Faye Bracey:

I get you.

Lewis Kinard:

Yeah, the rule trumps.

Faye Bracey:

Okay. So it's not going to be in rule as prohibited any longer. Period. That's a change in these rules, correct?

Lewis Kinard:

It is.

Faye Bracey:

Okay. Thank you. That's all I've got.

Lewis Kinard:

That's okay. Thank you for- for coming, Ms. Bracey. Anyone else have comments on the advertising rules?

Brad Johnson:

I believe a Mr. Schwartz has his hand raised, if you'd like to unmute him, Cory?

Julian Schwartz:

Electronically and, um, and on video and it's a- it's fascinating to me how much, uh, participating on these video calls is reminding me how we're all continuing to struggle with the need not to touch our faces too much. I'm- I've touched my face at least a half a dozen times in the last five minutes.

Julian Schwartz:

Um, I appreciate very much the opportunity, uh, to be a part of the hearing. Uh, of course, our goal is to understand the proposed rule changes and, uh, and to ensure that we are complying, uh, with any rules that are ultimately put into effect, uh, by the Supreme Court. There are others that have- have made inquiry, uh, and this specifically relates to the inquiry related to the mediators and, uh, attorneys that practice in the collaborative [inaudible]. Um, and so I apologize I'm- I'm beating the horse a little bit here, but at the end of the day, we just, we really want to have clarity on what the proposed rules mean and how they may a- apply. A- and of course the ultimate goal is to ensure that, uh, clients have, um, have truthful information, uh, with which to be able to make informed choices about which lawyers are ultimately going to represent them for whatever their particular issue is in whatever particular [inaudible] group that they are going to be in.

Julian Schwartz:

And so, um, to that end, I wanted to just repose the questions, um, uh, that have been addressed previously just to make sure I've got clarity. Um, and- and I'll pose the questions, uh, with the parallels of the mediators and the collaborators. Um, specifically the mediators have, um, an organization called the Texas, no, let's see... Texas Mediator Credentialing Association. Um, there are other mediator groups out there as well, but that's a mediator, uh, group that has a credentialing program in which one can qualify as a candidate for credentialed mediator, the next level up is credentialed mediator, the next level up is credentialed advanced mediator, and then the final level, credentialed distinguished mediator.

Julian Schwartz:

On the cort- on- on the collaborative side, uh, through Collaborative Divorce Texas, there is a credentialing program where one can qualify to be a credentialed collaborative professional or a master credentialed collaborative prof- professional. Both programs involve a- a combination of variables and factors which include training, experience, um, and, uh, generally service to the community. Um, those sorts of things. And they're- they're fairly well articulated on both of their websites. My takeaway from the conversations, uh, today are that merely listing that one is a member of either one of those organizations does not run afoul of the proposed rule change. Am I correct in that understanding?

Claude Ducloux:

As far as I'm concerned, yes. You're absolutely correct.

Lewis Kinard:

I agree.

Julian Schwartz:

And so the second part of the question is if one has achieved one of those credentialing designations through one of those organizations, that run afoul of the proposed rule change in the absence of, uh,

the, uh, Texas Board of Legalized Specialization having considered and blessed the program? Does that question make sense?

Lewis Kinard:

So you're asking if the Texas Board of Legal Specialization has approved the program, the credentialing program of whatever it is, uh, can you claim that you have passed or met the standards of that credential?

Julian Schwartz:

A- actually that's- that's not, uh, not the way I was going to ask it.

Lewis Kinard:

Okay.

Julian Schwartz:

Um, although I- I would be hopeful that if the Texas Board of Legaliza- uh, Texas Board of Legal Specialization had blessed the program, then that's clearly a yes. Um-

Lewis Kinard:

It is.

Julian Schwartz:

The question is, what happens if the Texas Board of Legal Specialization has not taken up the issue of that credentialing program, and so it has not been previously submitted. Uh, does a lawyer listing that they are a distinguished mediator or a credentialed collaborative professional, they list that on their resume, is that violating this proposed rule change?

Claude Ducloux:

Let- let me try and address that.

Lewis Kinard:

Okay.

Claude Ducloux:

Remember the whole point of the- it, uh, of specialization is that there needs to be a test involved, an objective test, which they can't do with mediators. That's why they- they're hands-off of mediators. Um, and I- I like exactly what you said, the fact that you are credentialed mediator. Anybody can go to their website and look what the criteria is, and it doesn't involve an academic test of their skills. It involves the number that they have done which, in itself, is very helpful to anyone going to do it. Uh, it involves community service, it involves that sort of thing. So they can see, oh, this doesn't involve a test. It's not likely, ever, to go the Texas Board of Legal Specialization as a specialty. It is a practice group and I think that's where we should develop these bright lines.

Claude Ducloux:

Practice groups, no matter how intense their- their collaborative, uh, work, are different from people who claim a specialty, which can be tested objectively.

Julian Schwartz:

And so, uh, take that comment, that helps greatly. I- I- I perceived that also to apply to the Collaborative Divorce Credentialing Program. I would submit that practice of collaborative law is not a really testable, uh, um, skill set. That's a much more, um, well it is related to experience and training, and it, to some extent, is related the ones in a nature and skill, just like with a mediator. Um, there are gifted mediators right out of the gate and there's others, it doesn't matter how many they do, it's just not their bailiwick. (laughs)

Claude Ducloux:

I used to say it this way: there are people that can go through 40 hours and not be able to settle anything, just like a comedian. You can go through 48 hours of stand-up comedian school, and never know how to crack a joke. It's an innate skill that people have. You know?

Julian Schwartz:

So, uh, my last question is, uh, will there be anything related to the proposed rules such as comment that might be included with the proposed rules that will give guidance, uh, on this, uh, for general, uh, generally the bar out there?

Claude Ducloux:

It- it would be helpful, wouldn't it? We could think about that. We don't have anything ready.

Lewis Kinard:

Yeah we- we typically put comments together and submit them once we get the rules, uh, finalized. Sometimes they are in draft, uh, and are posted as well, but at this point, we hadn't really finalized all the comments. Um, and- and, uh, that's partly what these hearings are for is to help, uh, inform that part of the drafting. If, you know, if it's sometimes that needs to be clarified, that's what a comment's supposed to do, right? So we work on the rule language, get it the best we can get it. And then if still may need a little bit of, for example, types of illustration, that's what we do in the comments.

Julian Schwartz:

Okay. Um, I gather we obviously can submit a written comment through the tenth and so we might, uh-

Lewis Kinard:

Yes.

Julian Schwartz:

Some of us might put our heads together and- and give you some material that might be of some help for you. We-

Lewis Kinard:

We welcome that, thank you.

Julian Schwartz:

Thank you for the time.

Lewis Kinard:

Thank you. All right, uh, anyone else, uh, would like to speak on the- the advertising rules, changes to Part VII of the Texas Disciplinary Rules for Professional Conduct? See any hands raised, Brad, Cory?

Brad Johnson:

I don't- I don't see any hands, Lewis. Um, if anyone is on the phone and not on the computer and needs to raise their hand, you can do so by pressing star nine. But I- I don't see any, Lewis.

Lewis Kinard:

Okay. And yes, as Mr. Schwartz reminded us, public comments are accepted through April 10th on this- this draft. Uh, thank you again to everyone who submitted comments. I encourage the public and the Bar membership to keep submitting feedback. A vote to whether to recommend the proposed ad rules as well as any amendments will have to take place at our next meeting on May 6th. That's the last meeting before the June 9th deadline, and I guess before we move on, is there anything that the subcommittee would like to say, do, add, or, um, talk about, uh, in this public hearing part on the- on these rules?

Lewis Kinard:

All right, with that, we have concluded the, uh, public hearing on the changes to Part VII.