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ESTABLISHING AND TERMINATING THE ATTORNEY-CLIENT RELATIONSHIP: PRACTICAL CONSIDERATIONS, TIPS, AND COMMON PITFALLS

INTRODUCTION
Rule 1.01 and Rules 1.06-1.09 of the Texas Disciplinary Rules of Professional Conduct mandate that a lawyer should never accept representation in a matter unless it can be performed competently, promptly, and without improper conflict of interests. Aside from these basic provisions, what else should an attorney consider before choosing to take-on a new case? What affirmative steps should be taken by both the lawyer and client when forming the attorney-client relationship? What actions might a lawyer unintentionally perform which could later be construed as implied representation? Finally, what considerations should be made when terminating the relationship? This paper highlights various key considerations related to these questions and will hopefully serve as a useful guide when it’s time to reevaluate your own intake forms, fee agreement, office procedures, and correspondence. We hope that you find this paper useful and will refer to it, alongside other resources, in making the most of your family law practice.

I. CONSIDERATIONS BEFORE ESTABLISHING THE ATTORNEY-CLIENT RELATIONSHIP

Prior to meeting with any potential client, it is imperative that you perform a conflict check to ensure that no other member of your firm has made prior contact with the individual in question or that person’s spouse / opposing party to the litigation. This step is absolutely critical, and is increasingly difficult as your firm grows to multiple office locations, or has multiple attorneys. Software is available to assist your firm in accomplishing this task, and should undoubtedly be utilized in firms with more than one physical office. Beware of spelling variations or possible human error when relying on software to aid you in this process. If and when a conflict does arise, send a follow-up letter to the potential client to inform them of the fact that a conflict exists. Make it abundantly clear that you cannot speak with the client further, or provide any legal advice due to this conflict. In addition, the nature of the conflict cannot be disclosed. If any funds were deposited in advance for an initial meeting which now cannot take place due to the conflict, refund them immediately along with the aforementioned correspondence.

Once you are confident that no conflicts exist with respect to the potential representation, you should gather as much information about the client’s case as possible in an initial client consultation. The purpose of this meeting is to accomplish the following: (1) ask your potential client to educate you about himself/herself; (2) learn which facts will be relevant to the case, (3) educate the client about the legal process in general – including alternative dispute measures, collaborative law, and court-ordered mediation; (4) ascertain whether or not you want to undertake the representation of this particular client; and (5) (ultimately) achieve a commitment from the client to hire you as counsel of record. Prior to committing to the initial client consultation, ensure that you have enough time to fully work-through these objectives. Often initial client consults run for well over an hour, while the client is only charged a flat one-hour fee for the session.

Additionally, the use of an “intake form” is extremely helpful before the client actually sits face-to-face with an attorney within the firm. Forms vary widely across firms, but all should solicit basic contact information, essential facts about the case in question, relevant healthcare information if children are involved, and the client’s preference for receiving confidential communications (i.e. scanned images sent via e-mail, paper copies sent via U.S. mail addressed to a post office box, etc.). Be sure to solicit phone numbers from your clients, asking the client to validate whether or not it is acceptable for members of our firm to use the number listed, leave a voicemail message if there is no response, or speak with a secretary in the case of an office number. Discovering the client’s preferences on communication early on indicates a respect for the client’s confidentiality, and will ultimately help you to establish trust during the representation.

Sometimes it is necessary to “meet” with a potential client over the phone for the first time, instead of in-person. Although in-person conferences should be had whenever possible, the occasional phone consult is inevitable. When it does occur, ensure that your staff has prepared you for the call by faxing or emailing the potential client your firm’s intake forms and/or questionnaires. If your firm has a website, these forms can be made accessible for immediate download via a hyperlink. Also ensure that all relevant conflict checks have been completed, and that the client has a plan to pay you for the initial consult. (One suggestion is to request payment in full for a phone consultation prior to its occurrence.)
II. YOU’RE HIRED - FORMING THE ATTORNEY-CLIENT RELATIONSHIP

The foundational cornerstone of the attorney-client relationship is a signed fee contract. Attorney-client contracts are unique because there are ethical considerations overlaying the contractual relationship between the parties. Attorneys cannot override or otherwise obfuscate their ethical obligations by inserting language to the contrary in a fee contract with the client. The Texas Supreme Court has explicitly refused to allow attorneys to contract-away their ethical obligations. See generally, Hoover Slovacek L.L.P. v. Walton, 206 S.W.3d 557, 560 (Tex. 2006). “When interpreting and enforcing attorney-client fee agreements, it is not enough to simply say that that contract is a contract. There are ethical considerations overlaying the contractual relationship.” Id. at 560. Those ethical considerations are outlined well in the Texas Disciplinary Rules of Professional Conduct, which are attached to this paper for reference (pertinent sections only). Generally speaking, a fee contract must comport precisely with the Rules, provide an easy to read and understand description of the tasks to be performed and who will bear the costs. Many attorneys insert so-called “evergreen” clauses into their fee contracts to ensure that prepaid IOLTA accounts retain ongoing balances. These clauses, when set-forth with specificity, are enforceable and generally do comport with the mandates provided by the Rules.

In family law matters, one particular area that frequently arises is the need to provide – at least at some level – tax advice to your client. Many family law practitioners simply are not qualified to give such advice, nor do they carry the requisite malpractice coverage to insure against a lawsuit or grievance which may be filed based on providing bad information on coverage to insure against a lawsuit or grievance which may be filed based on providing bad information on this front. Accordingly, your office does not provide tax advice. Any information concerning federal income taxes given to Client is intended to constitute nothing more than starting point for discussions between Client and their CPA or other tax professional. Client AGREES AND RELEASES THE UNDERSIGNED FIRM FROM ANY LIABILITY ASSOCIATED WITH TAX-RELATED LANGUAGE (OR OMISSION OF SUCH LANGUAGE) CONTAINED IN ANY COURT ORDER OR DECREE AND AGREES TO REVIEW SUCH LANGUAGE WITH A CPA OR OTHER TAX PROFESSIONAL BEFORE APPROVING THE ENTRY OF SUCH DECREE OR ORDER.

A final consideration for fee contracts concerns the use of nonrefundable retainer provisions. Nonrefundable retainers must be distinguished from a seemingly similar, but altogether different provision which mandates the prepayment of legal services. “[A] true retainer ‘is not a payment for services. It is an advance fee to secure a lawyer’s services, and remunerate him for loss of the opportunity to accept other employment.’” Cluck v. Commission for Lawyer Discipline, 214 S.W.3d 736, 740 (Tex. App.—Austin, 2007, no pet.). A true retainer is earned when it is received, so it may be non-refundable. Id. at 740. On the other hand, prepayment for legal services is not earned until the services have been performed and thus, is refundable. Id. Courts will scrutinize the language of fee contracts carefully, considering various factors including whether the attorney's fees will be billed against the advance payment. Id. If the advance payment is found to be a prepayment for services, and not a true retainer, an attorney cannot make the prepayment non-refundable merely by designating in the contract that it is a non-refundable retainer. As a general rule, most all family law practitioners require prepayment for legal services and “bill against” that initial deposit, providing the client with a routine statement to indicate what dollar amount remains at various intervals during the representation. While this method is generally used, there may be cases which necessitate a true “retainer” per se. When these instances arise, it is imperative that you adjust your fee contract accordingly, and advise the client of the nature of the retainer deposit.

III. UNINTENTIONALLY BECOMING HIRED – WHAT THE LAW CAN TEACH US

Attorneys should know that a malpractice case could be lurking due to an implied or expected attorney-client relationship based on spoken or written communications between the lawyer and client. The same result can arise upon examining the lawyer’s conduct in the situation. To ascertain whether or not communications and/or conduct rise to this level, one must consider what could be reasonably interpreted or inferred from the content of the communications and conduct. Cf. Perez v. Kirk & Carrigan, 822 S.W.2d 261, 265-66 (Tex. App.— Corpus Christi 1991, writ denied) (“An agreement to form an attorney-client relationship may be implied from the conduct of the parties . . . the relationship does not depend upon the payment of a fee, but may exist as a result of rendering services gratuitously.”); Parker v. Carnahan, 772 S.W.2d 151, 157 (Tex. App.—Texarkana 1989, writ denied); (“An attorney-client relationship may be implied from the conduct of the parties.”).

As indicated above, a contract or fee agreement does not need to be signed for the attorney-client relationship to nevertheless exist. Under Texas law,
“privity of contract” is not a defense for failure to prevent a misunderstanding of existence of lawyer being attorney for the claimed client. Accordingly, malpractice can attach when a non-client sues an attorney for negligently failing to advise the non-client that the attorney is not representing the individual. This malpractice case has real “teeth” when the circumstances are such that the non-client could reasonably believe that the attorney undertook the representation. In this scenario, a duty to the non-client does exist. See, e.g., Cantu v. Butron, 921 S.W.2d 344, 351 (Tex. App.—Corpus Christi 1996, writ denied); Byrd v. Woodruff, 891 S.W.2d 689, 700 (Tex. App.—Dallas 1994, writ denied); Kotzur v. Kelly, 791 S.W.2d 254, 257-58 (Tex. App.—Corpus Christi 1990, no writ); and Parker v. Carnahan, 772 S.W.2d 151, 157 (Tex. App.—Texarkana 1989, writ denied); (“[A]n attorney may be held negligent when he fails to advise a party that he is not representing them on a case when the circumstances lead the party to believe that the attorney is representing them.”).

Attorneys can also be subjected to negligent misrepresentation claims, which are an entirely different (but related) animal. Generally, a person who is not in privity with an attorney cannot sue for the attorney’s negligence. Cf., McCamish, Martin, Brown, & Loeffler v. F.E. Appling Interests, 991 S.W.2d 787, 792 (Tex. 1999). But there is a duty that runs to non-clients, and thus, an attorney may be subject to a negligent misrepresentation claim even if there is no legal malpractice claim. Therefore, because of the duty that runs to non-clients, it is possible for a non-client to have a claim for negligent misrepresentation against an attorney even if he or she may lack standing to sue otherwise for the attorney’s negligent acts in or out of court. Id. The Texas Supreme Court limits the duty to non-clients to situations in which the attorney is aware of the non-client and intends for the non-client to rely on the information provided. Id. at 794 (cause of action is available only when information is transferred by an attorney to a known party for a known purpose).

The lesson here is simple, but significant: be extremely careful with what you say and later do with potential clients. If you consult with a potential client who does not retain you, the consultation may nevertheless result in an attorney-client relationship and ongoing duty to protect client confidence. Accordingly, make it a habit to send a post-consultation letter to the individual advising them of the fact that no attorney-client relationship exists. The same type of letter can be used in cases where you choose not to undertake the representation.

IV. TERMINATING THE ATTORNEY-CLIENT RELATIONSHIP

Typically, representation ceases once an attorney’s work on a matter is complete, and a final Court Order is entered by the Judge. Once this is done, and the applicable appellate window has expired with no activity, you should consider sending your client a final letter concluding the representation. Our office often encloses these letters with the last billing statement. The letter needs to include language to communicate the message, “This concludes our firm’s representation in your case. Any future matters regarding a modification to this cause will require that you execute a new fee contract and deposit additional funds with our office.”

The representation can terminate in a number of other ways, including lawyer withdrawal, client-initiated termination, or mandatory withdrawal as set-forth under the Texas Disciplinary Rules of Professional Conduct. Regarding this, it should be noted that your fee contract inform the client, at a minimum of the following related considerations: (1) The circumstances under which the client may terminate employment; (2) What the rights and obligations of both the client and the attorney are when employment is terminated by the client; (3) Establish circumstances under which the attorney may terminate employment by withdrawal (TDRCP Rule 1.15); and (4) Set-forth rights and obligations of the attorney and the client when the attorney withdraws on his or her own motion. For more information on this topic, refer to the Rules enclosed behind this article, as well as the ABA Model Rules on Ethics and Professionalism.

V. CONCLUSION & APPENDICES

The initial contact you have with clients is arguably one of the most significant aspects of practicing family law. Studies show that clients formulate an opinion as to whether or not to retain you within the first five minutes of conversation during an initial consultation. Before opting to undertake a new client’s case, carefully consider your own workload, personal health, and other extraneous obligations in your life. At the end of the day, the real reward of being a successful family law practitioner comes in knowing that you have truly helped an individual or family through one of the most difficult times in their lives. Doing so is no easy task. There are countless tears, emotional highs and lows, and sheer confusion for most of our clients. After all, many of them have never been through a divorce or custody battle, and hopefully will never have to repeat the process. Take time to ensure that the counsel you are providing balances these concerns. And duly consider your own procedures, forms, business rules, and ethics in light of
the suggestions provided in this paper at all steps along the way during representation. Doing so will help you make the most of your practice! (For reference purposes, attached behind this paper is the Texas Lawyer’s Creed and pertinent excerpts from the Texas Disciplinary Rules of Professional Conduct.)
The Texas Lawyer’s Creed–A Mandate for Professionalism

I am a lawyer. I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this creed for no other reason than it is right.

I. OUR LEGAL SYSTEM

A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism.

1. I am passionately proud of my profession. Therefore, "My word is my bond."

2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.

3. I commit myself to an adequate and effective pro bono program.

4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.

5. I will always be conscious of my duty to the judicial system.

II. LAWYER TO CLIENT

A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest.

1. I will advise my client of the contents of this Creed when undertaking representation.

2. I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible.

3. I will be loyal and committed to my client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.

4. I will advise my client that civility and courtesy are expected and are not a sign of weakness.

5. I will advise my client of proper and expected behavior.

6. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct.
7. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party.

8. I will advise my client that we will not pursue tactics which are intended primarily for delay.

9. I will advise my client that we will not pursue any course of action which is without merit.

10. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel.

11. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.

III. LAWYER TO LAWYER

A lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings. Ill feelings between clients shall not influence a lawyer's conduct, attitude, or demeanor toward opposing counsel. A lawyer shall not engage in unprofessional conduct in retaliation against other unprofessional conduct.

1. I will be courteous, civil, and prompt in oral and written communications.

2. I will not quarrel over matters of form or style, but I will concentrate on matters of substance.

3. I will identify for other counsel or parties all changes I have made in documents submitted for review.

4. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties.

5. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when hearings, depositions, meetings, conferences or closings are cancelled.

6. I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected.

7. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond.

8. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses.
9. I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me.

10. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel.

11. I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.

12. I will promptly submit orders to the Court. I will deliver copies to opposing counsel before or contemporaneously with submission to the Court. I will promptly approve the form of orders which accurately reflect the substance of the rulings of the Court.

13. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence.

14. I will not arbitrarily schedule a deposition, court appearance, or hearing until a good faith effort has been made to schedule it by agreement.

15. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.

16. I will refrain from excessive and abusive discovery.

17. I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.

18. I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable.

19. I will not seek sanctions or disqualification unless it is necessary for protection of my client's lawful objectives or is fully justified by the circumstances.

IV. LAWYER AND JUDGE

Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession.

1. I will always recognize that the position of judge is the symbol of both the judicial system and administration of justice. I will refrain from conduct that degrades this symbol.
2. I will conduct myself in Court in a professional manner and demonstrate my respect for the Court and the law.

3. I will treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility.

4. I will be punctual.

5. I will not engage in any conduct which offends the dignity and decorum of proceedings.

6. I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage.

7. I will respect the rulings of the Court.

8. I will give the issues in controversy deliberate, impartial and studied analysis and consideration.

9. I will be considerate of the time constraints and pressures imposed upon the Court, Court staff and counsel in efforts to administer justice and resolve disputes.
Attachment – *Texas Disciplinary Rules of Professional Conduct*

**Texas Disciplinary Rules of Professional Conduct**

Rule 1.02. Scope and Objectives of Representation

(c) A lawyer shall not assist or counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent. A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel and represent a client in connection with the making of a good faith effort to determine the validity, scope, meaning or application of the law.

Rule 1.03. Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.05. Confidentiality of Information

(a) “Confidential information” includes both “privileged information” and “unprivileged client information.” “Privileged information” refers to the information of a client protected by the lawyer-client privilege of Rule 503 of the Texas Rules of Evidence or of Rule 503 of the Texas Rules of Criminal Evidence or by the principles of attorney-client privilege governed by Rule 501 of the Federal Rules of Evidence for United States Courts and Magistrates. “Unprivileged client information” means all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client.

(b) Except as permitted by paragraphs (c) and (d), or as required by paragraphs (e) and (f), a lawyer shall not knowingly:

1. Reveal confidential information of a client or a former client to:
   (i) a person that the client has instructed is not to receive the information; or
   (ii) anyone else, other than the client, the client’s representatives, or the members, associates, or employees of the lawyer’s law firm.

2. Use confidential information of a client to the disadvantage of the client unless the client consents after consultation.

3. Use confidential information of a former client to the disadvantage of the former client after the representation is concluded unless the former client consents after consultation or the confidential information has become generally known.

4. Use privileged information of a client for the advantage of the lawyer or of a third person, unless the clients consents after consultation.
A lawyer may reveal confidential information:

(c) When the lawyer has been expressly authorized to do so in order to carry out the representation.

(2) When the client consents after consultation.

(3) To the client, the client's representatives, or the members, associates, and employees of the lawyer's firm, except when otherwise instructed by the client.

(4) When the lawyer has reason to believe it is necessary to do so in order to comply with a court order, a Texas Disciplinary Rules of Professional Conduct, or other law.

(5) To the extent reasonably necessary to enforce a claim or establish a defense on behalf of the lawyer in a controversy between the lawyer and the client.

(6) To establish a defense to a criminal charge, civil claim or disciplinary complaint against the lawyer of the lawyer's associates based upon conduct involving the client of the representation of the client.

(7) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from committing a criminal or fraudulent act.

(8) To the extent revelation reasonably appears necessary to rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services had been used.

(d) A lawyer also may reveal unprivileged client information:

(1) When impliedly authorized to do so in order to carry out the representation.

(2) When the lawyer has reason to believe it is necessary to do so in order to:

(i) carry out the representation effectively;

(ii) defend the lawyer or the lawyer's employees or associates against a claim of wrongful conduct;

(iii) respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(iv) prove the services rendered to a client, or the reasonable value thereof, or both, in an action against another person or organization responsible for the payment of the fee for services rendered to the client.

(e) When a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in death or substantial bodily harm to a person, the lawyer shall reveal confidential information to the extent revelation reasonably appears necessary to prevent the client from committing the criminal or fraudulent act.
(f) A lawyer shall reveal confidential when required to do so by Rule 3.03(a)(2), 3.03(b), or by Rule 4.01(b).

Rule 1.06. Conflict of Interest: General Rule

(a) A lawyer shall not represent opposing parties to the same litigation.

(b) In other situations and except to the extent permitted by paragraph (c), a lawyer shall not represent a person if the representation of that person:

(1) involves a substantially related matter in which that person's interests are materially and directly adverse to the interests of another client of the lawyer or the lawyer's firm; or

(2) reasonably appears to be or become adversely limited by the lawyer's or law firm's responsibilities to another client or to a third person or by the lawyer's or law firm's own interests.

(c) A lawyer may represent a client in the circumstances described in (b) if:

(1) the lawyer reasonably believes the representation of each client will not be materially affected; and

(2) each affected or potentially affected client consents to such representation after full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved in any.

(d) A lawyer who has represented multiple parties in a matter shall not hereafter represent any of such parties in a dispute among the parties arising out of the matter, unless prior consent is obtained from all such parties to the dispute.

(e) If a lawyer has accepted representation in violation of this Rule, or if multiple representation properly accepted becomes improper under this Rule, the lawyer shall promptly withdraw from one or more representations to the extent necessary for any remaining representation not to be in violation of these Rules.

(f) If a lawyer would be prohibited by this Rule from engaging in particular conduct, no other lawyer while a member or associated with that lawyer's firm may engage in that conduct.

Rule 1.07. Conflict of Interest: Intermediary

(a) A lawyer shall not act as intermediary between clients unless:

(1) the lawyer consults with each client concerning the implications of the common representation, including the advantages and risks involved, and the effect on the attorney-client privileges, and obtains each client's written consent to the common representation;

(2) the lawyer reasonably believes that the matter can be resolved without the necessity of contested litigation on terms compatible with the clients' best interests, that each client will be able to make adequately informed decisions in the matter and that there
is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful; and

(3) the lawyer reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients.

(b) While acting as intermediary, the lawyer shall consult with each client concerning the decision to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.

(c) A lawyer shall withdraw as intermediary if any of the clients so requests, or if any of the conditions stated in paragraph (a) is no longer satisfied. Upon withdrawal, the lawyer shall not continue to represent any of the clients in the matter that was the subject of the intermediation.

(d) Within the meaning of this Rule, a lawyer acts as intermediary if the lawyer represents two or more parties with potentially conflicting interests.

(e) If a lawyer would be prohibited by this Rule from engaging in particular conduct, no other lawyer while a member of or associated with that lawyer’s firm may engage in that conduct.

Rule 1.09. Conflict of Interest: Former Client

(a) Without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client:

(1) in which such other person questions the validity of the lawyer’s services or work product for the former client; or

(2) if the representation in reasonable probability will involve a violation of Rule 1.05.

(3) if it is the same or a substantially related matter.

(b) Except to the extent authorized by Rule 1.10, when lawyers are or have become members of or associated with a firm, none of them shall knowingly represent a client if an one of them practicing alone would be prohibited from doing so by paragraph (a).

(c) When the association of a lawyer with a firm has terminated, the lawyers who were then associated with that lawyer shall not knowingly represent a client if the lawyer whose association with that firm has terminated would be prohibited from doing so by paragraph (a)(1) or if the representation in reasonable probability will involve a violation of Rule 1.05.


Rule 1.12. Organization as a Client

(a) A lawyer employed or retained by an organization represents the entity. While the lawyer in the ordinary course of working relationships may report to, and accept direction from, an entity’s duly authorized constituents, in the situations described in paragraph (b) the lawyer shall proceed as reasonably necessary in the best interest of the organization without involving unreasonable risks of disrupting the organization and of revealing information relating to the representation to persons outside the organization.
(b) A lawyer representing an organization must take reasonable remedial actions whenever the lawyer learns or knows that:

(1) an officer, employee, or other person associated with the organization has committed or intends to commit a violation of a legal obligation to the organization or a violation of law which reasonably might be imputed to the organization;

(2) the violation is likely to result in substantial injury to the organization; and

(3) the violation is related to a matter within the scope of the lawyer’s representation of the organization.

(c) Except where prior disclosure to persons outside the organization is required by law or other Rules, a lawyer shall first attempt to resolve a violation by taking measures within the organization. In determining the internal procedures, actions or measures that are reasonably necessary in order to comply with paragraphs (a) and (b), a lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer’s representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Such procedures, actions and measures may include, but are not limited to, the following:

(1) asking reconsideration of the matter;

(2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and

(3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

(d) Upon a lawyer’s resignation or termination of the relationship in compliance with Rule 1.15, a lawyer is excused from further proceeding as required by paragraphs (a), (b) and (c), and any further obligations of the lawyer are determined by Rule 1.05.

(e) In dealing with an organization’s directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization’s interests are adverse to those of the constituents with whom the lawyer is dealing or when explanation appears reasonably necessary to avoid misunderstanding on their part.

Rule 3.08. Lawyer as Witness

(a) A lawyer shall not accept or continue employment as an advocate before a tribunal in a contemplated or pending adjudicatory proceeding if the lawyer knows or believes that the lawyer is or may be a witness necessary to establish an essential fact on behalf of the lawyer’s client, unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony will relate solely to a matter of formality and there is no reason to
believe that substantial evidence will be offered in opposition to the testimony;

(3) the testimony relates to the nature and value of legal services rendered in the case;

(4) the lawyer is a party to the action and is appearing pro se; or

(5) the lawyer has promptly notified opposing counsel that the lawyer expects to testify in the matter and disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer shall not continue as an advocate in a pending adjudicatory proceeding if the lawyer believes that the lawyer will be compelled to furnish testimony that will be substantially adverse to the lawyer’s client, unless the client consents after full disclosure.

(c) Without the client’s informed consent, a lawyer may not act as advocate in an adjudicatory proceeding in which another lawyer in the lawyer’s firm is prohibited by paragraphs (a) or (b) from serving as advocate. If the lawyer to be called as a witness could not also serve as an advocate under this Rule, that lawyer shall not take an active role before the tribunal in the presentation of the matter.


Rule 7.01. Firm Names and Letterhead

(a) A lawyer in private practice shall not practice under a trade name, a name that is misleading as 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.,” “P.A.,” “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 of one or more deceased or retired members of the firm or of a predecessor firm in continuing line of succession. Nothing herein shall prohibit a married woman from practicing under her maiden name.

(b) 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) 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 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 advertise in the public media or seek professional employment by written communication under a trade or fictitious name, except that a lawyer who practices under a trade name as authorized by paragraph (a) of this Rule may use that name in such advertisement or such written 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 shall not use a firm name, letterhead, or other professional designation that violates Rule 7.02(a).

Rule 7.02. Communications Concerning a Lawyer's Services

(a) A lawyer shall not make 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) 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;

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

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

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

(b) Rule 7.02(a)(5) 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)(5) with respect to the area(s) of practice in which such lawyer is certified.

(c) A lawyer shall not advertise in the public media that the lawyer is a specialist except as permitted under Rule 7.04.

(d) Any statement or disclaimer required by these rules shall be made in each language used in the advertisement or writing 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. Prohibited Solicitation & Payments

(a) A lawyer shall not by in-person or telephone contact 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 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 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 article 320d, Revised Statutes.

(c) 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 paragraph (b) of this Rule.

(d) 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 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 Article 320d, Revised Statutes.


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


(2) A lawyer may permit his or her name to be listed in lawyer referral service offices that meet the requirements of Article 320d, Revised Statutes, 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 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 or information that traditionally has been included in such publications.

(b) 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.

(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 state with respect to each area advertised in which the lawyer has not been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization, “Not Certified by the Texas Board of Legal Specialization.” However, if an area of law so advertised has not been designated as an area in which a lawyer may be awarded a certificate of Special Competence by the Texas Board of Legal Specialization, the lawyer may also state, “No designation has been made by the Texas Board of Legal Specialization for a certificate of Special Competence in this area.”

(c) Separate and apart from any other statements, the statements referred to in paragraph (b) shall be displayed conspicuously with no abbreviations, changes, or additions in the quoted language set forth in paragraph (b) so as to be easily seen or understood by an ordinary consumer.

(d) Subject to the requirements of Rule 7.02 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, or television.

(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 utilizing video or comparable visual or comparable visual images, 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. In advertisements utilizing audio recordings, any person who narrates an advertisement as if he or she were a lawyer 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) (Editor’s note: This rule was found to be unconstitutional as applied to one plaintiff in Texas Against Censorship, Inc. et al v. State Bar of Texas, et al, U.S. District Court, Eastern District of Texas. The State Bar Board of Directors has approved the petitioning, of the Supreme Court of Texas asking that the rule be modified. The Supreme Court of Texas asking that the rule be modified. The Supreme Court will consider the following revision to the rule:

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. the other office is staffed by a lawyer at least three days a week; or

2. the advertisement states:

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

   (b) 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 article 320d, Revised Statutes.

(o) A lawyer may not advertise in the public media as part of an advertising cooperative 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 lawyer;
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.

Rule 7.05. Prohibited Written Solicitations

(a) A lawyer shall not send or deliver, or knowingly permit or cause another person to send or deliver on the lawyer’s behalf, a written communications to a prospective client for the purposes of obtaining professional employment 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 (h) through (o) that would be applicable to the communication contains false, fraudulent, misleading, deceptive, or unfair
statement or claim.

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

(1) shall conform to the provisions of Rule 7.04(a) through (c);

(2) shall be plainly marked “ADVERTISEMENT” on the first page of the written communication, and the face of the envelope also shall be plainly marked “ADVERTISEMENT.” 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 a least 3/8" vertically or three times the vertical height of the letters used in the body of such communication, whichever is larger.

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

(4) (Editor’s Note: This rule was found unconstitutional in Texans Against Censorship, Inc., et al v. State Bar of Texas, et al, U.S. District Court, Eastern District of Texas. The Supreme Court of Texas will consider deletion of the rule which currently reads:

shall not contain a statement or implication that the written communication has received any kind of authorization or approval from the State Bar of Texas or from the Law Advertisement and Solicitation Review Committee);

(5) (Editor’s Note: This rule was found unconstitutional in Texans Against Censorship, Inc., et al v. State Bar of Texas, et al, U.S. District Court, Eastern District of Texas. The Supreme Court of Texas will consider deletion of the rule which currently reads:

shall not in any manner, such as by registered mail, that requires personal delivery to a particular individual).

(6) shall not reveal on the envelope used for the communication or on the outside self-mailing brochure or pamphlet, the nature of the legal problem of the prospective client or nonclient; and

(7) shall disclose how the lawyer obtained the information prompting such written 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) All written communications to a prospective client for the purpose of obtaining professional employment must be reviewed and either signed by or approved in writing by the lawyer of a lawyer in the firm.

(d) A copy of each written solicitation communication, the relevant approval thereof, and a record of the date of each such communication; the name and 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.

(e) The provisions of paragraph (b) of this Rule do not apply to a written 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 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 lawyer shall not accept or continue employment when the lawyer knows or reasonably should know that the person who seeks the lawyer’s services does so as a result of conduct prohibited by these rules.

Rule 7.07. Filing Requirements for Public Advertisements and Written Solicitations

(a) Except as provided in paragraph (d) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas, either before or concurrently with the mailing or sending of a written solicitation communication:

(1) a copy of the written 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 in which the communications are enclosed; and

(2) 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 (d) of this Rule, a lawyer’s shall file with the Advertisement and Solicitation Review Committee of the State Bar of Texas, either before or concurrently with the first dissemination of an advertisement in the public media, a copy of each of the lawyers advertisements in the public media. The filing shall include:

(1) a copy of the advertisement in the form in which it appears or is or will be disseminated, such as a videotape, an audiotape, a print copy, or a photograph of outdoor advertising;

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

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

(4) 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) A lawyer who desires to secure an advance advisory opinion concerning compliance of a
contemplated written 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) of this Rule, including the required fee; provided
however, it shall not be necessary to submit a videotape if the videotape 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, when
prepared, as well as the narrative transcript of the verbal and printed portions of such
advertisement. An advisory opinion of the Advertising Review Committee of noncompliance is
not binding in favor of the submitting lawyer if the representations, statements, materials, facts and
written assurances received in connection therewith are true and are not misleading. The finding
constitutes admissible evidence if offered by a party.

(d) The filing requirements of paragraphs (a) and (b) do not extend to any of the following
materials:

(1) an advertisement in the public media that contains only part or all of the following
information, provided the information is not false or misleading:

(i) the name of the lawyer or firm and lawyers associated with the firm, with
office 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 fields of law in which the lawyer or firm advertises specialization and
the statements required by Rule 7.04(a) through (c);

(iii) 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;

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

(v) foreign language ability;

(vi) 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);

(vii) identification of prepaid or group legal service plans in which the lawyer
participates;
(viii) the acceptance or nonacceptance of credit cards;
(ix) any fee for initial consultation and fee schedule;
(x) 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;
(xi) any disclosure or statement required by these rules; and
(xii) 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 name 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) a newsletter mailed only to:

(i) existing or former clients;

(ii) other lawyers or professionals; and

(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 written 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 written 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 written solicitation communication that is requested by the prospective client.

(e) 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 and/or written solicitation.