

COMMITTEE ON DISCIPLINARY RULES AND REFERENDA PROPOSED RULE CHANGES

Rule 8.05. Jurisdiction

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 13, 2023. Comments can be submitted at texasbar.com/CDRR or by email to cdrr@texasbar.com. The committee will hold a public hearing on the proposed rule by teleconference on April 12, 2023, at 10 a.m. CDT. For teleconference participation information, please go to texasbar.com/cdrr/participate.

Proposed Rule (Redline Version)

Rule 8.05. Jurisdiction

(a) A lawyer is subject to the disciplinary authority of this state, if admitted to practice in this state or if specially admitted by a court of this state for a particular proceeding. In addition to being answerable for his or her conduct occurring in this state, any such lawyer also may be disciplined here for conduct occurring in another jurisdiction or resulting in lawyer discipline in another jurisdiction, if it is professional misconduct under Rule 8.04.

(b) A lawyer admitted to practice in this state is also subject to the disciplinary authority for:

(1) an advertisement in the public media that does not comply with these rules and that is broadcast or disseminated in another jurisdiction, even if the advertisement complies with the rules governing lawyer advertisements in that jurisdiction, if the broadcast or dissemination of the advertisement is intended to be received by prospective clients in this state and is intended to secure employment to be performed in this state; and

(2) a written solicitation communication that does not comply with these rules and that is mailed in another jurisdiction, even if the communication complies with the rules governing written solicitation communications by lawyers in that jurisdiction, if the communication is mailed to an addressee in this state or is intended to secure employment to be performed in this state.

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

Comment:

[1] This Rule describes those lawyers who are subject to the disciplinary authority of this state. It ~~includes~~ encompasses all lawyers licensed to practice here, as well as including lawyers admitted specially for a particular proceeding, as well as lawyers not admitted to practice in this state who provide or offer any legal services in this jurisdiction. This Rule is not intended to have any effect on the powers of a court to punish lawyers for contempt or for other breaches of applicable rules of practice or procedure.

~~[2] In modern practice lawyers licensed in Texas frequently act outside the territorial limits or judicial system of this state. In doing so, they remain subject to the governing authority of this state. If their activity in another jurisdiction is substantial and continuous, it may constitute the practice of law in that jurisdiction. See Rule 5.05. It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. A lawyer who is subject to the disciplinary authority of this jurisdiction under Rule 8.05 appoints an official to be designated by this court to receive service of process in this jurisdiction. The fact that the lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.~~

~~[3] If the rules of professional conduct of this state and that other jurisdiction differ, principles of conflict of laws may apply. Similar problems can arise when a lawyer is licensed to practice in more than one jurisdiction and these jurisdictions impose conflicting obligations. A related problem arises with respect to practice before a federal tribunal, where the general authority of the state to regulate the practice of law must be reconciled with such authority as federal tribunals may have to regulate practice before them. In such cases, this state will not impose discipline for conduct arising in connection with the practice of law in another jurisdiction or resulting in lawyer discipline in another jurisdiction unless that conduct constitutes professional misconduct under Rule 8.04. Lawyers licensed in Texas frequently act outside the territorial limits or judicial system of this state. In doing so, they remain subject to the governing authority of this state. If their activity in another jurisdiction is improper, it may constitute grounds for criminal prosecution or discipline in that jurisdiction based on unauthorized practice of law. See Rule 5.05.~~

~~[4] Normally, discipline will not be imposed in this state for conduct occurring solely in another jurisdiction or judicial system and authorized by the rules of professional conduct applicable thereto, even if that conduct would violate these Rules. This Rule is not intended to have any effect on the powers of a court to punish lawyers for contempt or for other breaches of applicable rules of practice or procedure.~~

Proposed Rule (Clean Version)

Rule 8.05. Jurisdiction

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

Comment:

[1] This Rule describes those lawyers who are subject to the disciplinary authority of this state. It encompasses all lawyers licensed to practice here, including lawyers admitted specially for a particular proceeding, as well as lawyers not admitted to practice in this state who provide or offer any legal services in this jurisdiction.

[2] It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of

this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. A lawyer who is subject to the disciplinary authority of this jurisdiction under Rule 8.05 appoints an official to be designated by this court to receive service of process in this jurisdiction. The fact that the lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.

[3] Lawyers licensed in Texas frequently act outside the territorial limits or judicial system of this state. In doing so, they remain subject to the governing authority of this state. If their activity in another jurisdiction is improper, it may constitute grounds for criminal prosecution or discipline in that jurisdiction based on unauthorized practice of law. See Rule 5.05.

[4] This Rule is not intended to have any effect on the powers of a court to punish lawyers for contempt or for other breaches of applicable rules of practice or procedure. **TBJ**