



MY OPINION

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PRESIDENT, STATE BAR OF TEXAS

The Boy Who Kicked the Hornet's Nest

When I took office as president of the State Bar of Texas in June 2010, I joked that my predecessor, Roland Johnson, had left me with his unfinished business. Just a few months earlier, the Supreme Court of Texas had asked the State Bar Board of Directors to weigh in on proposed amendments to the Texas Disciplinary Rules of Professional Conduct. The Board commenced a series of public education hearings to solicit feedback on the proposals. Immediately, it was clear that efforts to revise the ethical rules under which we practice would incite strong opinions. After months of deliberation, the Board recommended approval of the proposed amendments and petitioned the Court to hold a referendum of all lawyers. It was time to put the issues to a vote of the entire State Bar membership.

Updating the Rules was never going to be easy. In fact, dozens of the most knowledgeable experts on attorney ethics in the state had spent the better part of a decade evaluating the current rules and considering ways to improve them. Change is difficult. Texas lawyers were accustomed to operating under the existing rules. Despite areas where reasonable people could agree that the rules needed to be revised, the prospect of wholesale changes to operating procedures and disciplinary standards seemed daunting.

Texas lawyers have just voted down the proposed amendments by significant margins. There is no need to sugarcoat it: They went down in flames. Rather than hang my head, I want to focus on the positives that have emerged from this process:

Engagement

More than 38,000 lawyers participated in the referendum, more members than have ever voted in a State Bar referendum. Irrespective of individual views, lawyers were engaged by the issues and participated meaningfully in trying to shape the future of our profession. State Bar members attended public education hearings, tuned in to webcasts, and asked hard questions. I have been heartened by the number of Texas lawyers who took time from their busy lives to read the proposed rules, reflect on them, and vote their conscience.

Transparency

Throughout the process, the State Bar Board of Directors was committed to making information readily available to members and the public. The State Bar website included links to drafts, testimony, and commentary. The Texas Bar Blog provided an open forum for lawyers and members of the public to post questions, comments, and concerns. Public education hearings were promoted in local media, then recorded and made available to anyone unable to attend. Members were encouraged to read the proposals, come to their own conclusions, and vote.

Education

Texas lawyers know more about our disciplinary rules now than we did when we started this process. By comparing the proposed rules with the existing rules, we were forced to reflect not just on the changes that adoption of the proposals would bring, but also the ethical obligations we practice under every day. Many

of us realized areas where we can adhere more closely to the rules and be more vigilant about protecting the rights of clients and the public.

We wanted members to study the issues and vote. They did. We respect the process, accept the outcome, and look to the Court for guidance on how to move forward. This is not the first referendum to fail. On other occasions, issues that were voted down were revisited later. We do not know what will happen. I think it is safe to say, however, that the proposed rules addressed several areas in our disciplinary rules that need updating and may get attention from the Court or Legislature. No matter the outcome, the State Bar will continue to keep members informed about issues affecting the profession.

I sincerely hope that each of us, irrespective of how we voted or the pleasure or displeasure we take from the results, will continue to treat our colleagues with civility, dignity, and respect and to represent our clients with the highest standards of ethics and professionalism. ✪

Lord won't you tell us tell us what does it mean,

Still at the end of every hard earned day people find some reason to believe.

— Bruce Springsteen
"Reason to Believe"