Committee on Disciplinary Rules and Referenda

Supplement for August 7, 2019, Meeting

- Additional public comments received on the proposed lawyer advertising rules (covering a period from August 1, 2019, through August 6, 2019)

From: [redacted]
To: cdrr
Subject: CDRR Comment: Proposed rule 7.03
Date: Sunday, August 4, 2019 4:38:50 PM

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Contact

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Member	Yes
Barcard	14100850

Feedback

Subject	Proposed rule 7.03

Comments

In January, I submitted a number of comments on proposed rules 7.03 through 7.05. Thank you for making changes in response that clarify that–for the most part–these rules apply only to genuine advertisements and solicitations. You did this largely through (correctly) redefining "solicitations" so that it no longer includes replies to a person who has sought the lawyer's advice or employment, and by changing 7.03(c) and 7.04 so that they apply only to advertisements and solicitations. I would like to ask the Committee to reconsider my comments on proposed rules 7.03(e) and (f). As I said in my earlier comments, proposed rule 7.03(e) would prohibit giving valuable free advice or information about the law to prospective clients. Examples of where this should be allowed include presentations to a group (or individual) on an aspect of the law, discussions with a prospective client who had first contacted the lawyer about some legal issue(s), or an article on a website. All of these and more are done often to get more legal work. A possible solution would be to insert after "anything of value": "except legal advice or information about the law." I still think that proposed rule 7.03(f) might negate all of rule 7.03. What does "authorized by law" mean? The law authorizes me to speak freely, and to do everything that proposed rule 7.03 prohibits, except the communication in proposed rule 7.03(c)(1). I think the meaning of "authorized by law" should be spelled out in the rule. Is it everything the law (outside of rule 7.03) allows? If so, it negates all of rule 7.03. The law (outside of rule 7.03) allows nearly everything prohibited by rule 7.03, even though it also allows rule 7.03. Is it only what the law requires (like the class action notice, the only example mentioned in proposed rule 7.03(f))? One new comment. Your new definitions of "advertisement" and "solicitation" follow what most people mean by those words, and they are mutually exclusive: nothing can be both. Proposed rule 7.03(c) applies only to solicitations, not to advertisements. So it would be better to require designating a solicitation communication "SOLICITATION" or even "SOLICITATION OR ADVERTISEMENT"–rather than "ADVERTISEMENT"–to avoid requiring lawyers to make a false statement which would itself violate the Rules. And prospective clients will know that the communication is clearly not an advertisement, so they could easily pass over and ignore "ADVERTISEMENT" as misplaced boilerplate and thus miss the intended point. I would be happy to discuss any of these issues further.

From: [redacted]
To: cdrr
Subject: CDRR Comment: Do NOT vote on the proposed rule changes while litigation is underway...unless you want more litigation and public exposure against you.
Date: Tuesday, August 6, 2019 4:07:07 PM

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Contact

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Feedback

Subject	Do NOT vote on the proposed rule changes while litigation is underway...unless you want more litigation and public exposure against you.

Comments

Considering how the Texas Bar appears on track to be substantially transformed (i.e. forcibly de-unified, such that disciplinary functions are finally separated from trade association ones), is it appropriate for the Bar's CDRR to nevertheless vote as soon as tomorrow on the pending rules changes? The following 3 cases seem relevant to how the CDRR's advertising rules proposal would (for example) make it easier for Bar allies (i.e. nonprofits) to compete against private sector lawyers even as nonprofits already have so many advantages including tax exemption, permissible trade name-usage, access to public funds and uncompensated governmental website publicity: McDonald v. Sorrels, (1:19-cv-00219) District Court, W.D. Texas, Janus v. State, County and Municipal Employees, 138 S.Ct. 2448 (June 27, 2018), and more recently Fleck v. Wetch, 868 F.3d 652 (8th Cir. 2017), vacated and remanded [in light of Janus], 2018 WL 6272044 (Dec. 3, 2018). Is the Texas Bar trying to push through a flurry of advertising rules changes primarily in order to redirect its bureaucratic resources and access to revenues to other (supposed) nonprofits which can cushion their transformation? Confidence in the rules-amending process would erode even further if the Bar's CDRR votes anytime soon on the proposed advertising rules changes. Janus v. AFSCME & Fleck v. Wetch are percolating, like it or not. Texas Bar members typically have over a 70% annual voter abstention rate despite internet voting-access so it's time for the Bar to stop pushing its luck, claiming to represent the legal profession which doesn't even want the Texas Bar around... Stop changing rules to suit your own selfish needs unless you want more litigation and exposure against you while existing litigation runs its course...