Committee on Disciplinary Rules and Referenda

Agenda

Date and Time: 10:00 a.m., Wednesday, March 4, 2020
By Teleconference

1. Call to Order; Roll Call

2. Comments from the Chair

3. Approval of the Minutes of the Last Meeting (Pages 3 – 7)

4. Discussion and Possible Action: Proposed Rules 3.01 (Disciplinary Petition), 3.02 (Assignment of Judge), and 3.03 (Filing, Service and Venue), Texas Rules of Disciplinary Procedure (TRDP) – Relating to the Assignment of Judges and Related Procedures when a Respondent in a Disciplinary Complaint Elects to Proceed in District Court (Pages 8 – 26)

5. Discussion and Possible Action: Rule 1.05. Confidentiality of Information, Texas Disciplinary Rules of Professional Conduct (TDRPC) – Relating to the Commission for Lawyer Discipline Request to Initiate the Rule Proposal Process regarding the Disclosure of Confidential Information and Clients Contemplating Suicide (Pages 27 – 30)

6. Discussion and Possible Action: Rule 8.03(f), TDRPC, along with Rule 1.06 and/or Rule 9.01, TRDP – Relating to the Commission for Lawyer Discipline Request to Initiate the Rule Proposal Process regarding Reporting Professional Misconduct and Reciprocal Discipline for Federal Court or Federal Agency Discipline (Pages 28 – 31)


8. Discussion and Possible Action: Supreme Court of Texas Request for a Recommendation on a Comment to Part XIII. Cessation of Practice, TRDP – Relating to the Voluntary Appointment of Custodian Attorneys to Assist with the Cessation of Practice (Pages 32 – 37)

9. Discussion: Temporary Cessation of Practice and/or Temporary Management of Law Practice (Pages 32 – 37)

10. Discussion: Proposed Lawyer Advertising and Solicitation Rules – Part VII. Information about Legal Services, TDRPC (Pages 38 – 49)

11. Proposed Rule Timelines (Pages 50 – 54)
12. Agenda Items for Next Meetings

13. Adjourn

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MEETING OF THE COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

February 5, 2020
Texas Law Center, Room 102
Austin, Texas
And by Teleconference

MINUTES

Members Present: Chair M. Lewis Kinard; Timothy Belton; Amy Bresnen; Hon. Dennise Garcia; Rick Hagen; Dean Vincent Johnson; Karen Nicholson.

Members Not Present: Claude Ducloux; W. Carl Jordan.

State Bar of Texas Staff Present: Brad Johnson, Disciplinary Rules and Referenda Attorney; Cory Squires, Staff Liaison; Lowell Brown, Communications Division Director.

A. CALL TO ORDER; ROLL CALL

Mr. Kinard called the meeting to order at 10:03 a.m. Mr. Squires called the roll and a quorum was present.

B. APPROVAL OF THE MINUTES OF THE LAST MEETING

Mr. Kinard addressed the Committee on this agenda item. Ms. Bresnen made a motion that the Committee approve the minutes from the January 16, 2020, meeting. Mr. Hagen seconded the motion. The Committee voted in favor of the motion.

C. COMMENTS FROM THE CHAIR

Mr. Kinard provided an update on the State Bar Board of Directors January 24, 2020, meeting. Mr. Kinard explained that the Board voted to: 1) reject the Committee’s recommendation for proposed changes to Rule 1.01 (Competent and Diligent Representation), Texas Disciplinary Rules of Professional Conduct (TDRPC); 2) approve proposed Rule 6.05 (Conflict of Interest Exceptions for Nonprofit and Limited Pro Bono Legal Services), TDRPC; and 3) return the proposed changes to Part VII (Information about Legal Services), TDRPC, for further consideration, particularly regarding the issue of lawyer trade names. Mr. Kinard noted that a lawsuit was recently filed in the Western District of Texas regarding the current restriction in the TDRPC on the use of trade names by lawyers. Mr. Kinard explained that similar lawsuits regarding the use of trade names by lawyers are pending in other jurisdictions around the country. Mr. Kinard briefed the Committee on his presentation of the Committee annual report to the Board.

D. PROPOSED LAWYER ADVERTISING AND SOLICITATION RULES – PART VII. INFORMATION ABOUT LEGAL SERVICES, TDRPC

Mr. Kinard addressed the Committee regarding the statute governing the rule proposal process and its application when a rule is returned by the Board for further consideration by the Committee. Mr.
Kinard suggested the Committee may want to consider reinitiating the rule proposal process for the lawyer advertising and solicitation rules. The Committee discussed rule timelines and procedures. Mr. Kinard noted that he thinks the Bar is currently looking at early 2021 for a possible rules vote by membership. Ms. Bresnen addressed the Committee on reinitiating the proposal and addressed possible timelines. Mr. Kinard clarified that the lawsuit at issue was filed against the Chief Disciplinary Counsel and that the Committee is not a party to the litigation. Mr. Kinard noted that one option in the rule proposal process is to let other parts of the proposed rules address false and misleading communications rather than specifically addressing trade names. Dean Johnson asked Mr. Kinard about his understanding of the scope of the return of the proposal by the Board. Mr. Kinard responded that it was his understanding and interpretation of Board comments and the Discipline and Client-Attorney Assistance Subcommittee recommendation that the trade name issue was the only component of the rule proposal they had concerns with. Dean Johnson discussed options for addressing the trade name issue in the rule proposal. Dean Johnson described one option as deleting proposed Rule 7.07, which, as previously drafted, would have carried forward the prohibition on a lawyer in private practice using a trade name. Dean Johnson described another option as substituting a proposed rule specifically prohibiting a lawyer from practicing under a trade name that is false or misleading. Dean Johnson described a third option along the lines of the New Jersey rule on lawyer trade names. Dean Johnson noted that regardless of the approach taken, the previously recommended proposal included language generally prohibiting false or misleading communications. Ms. Bresnen expressed a preference for the first option described by Dean Johnson. Mr. Kinard noted proposed Rule 7.01(a)’s prohibition on false or misleading communication about the qualifications or services of a lawyer or law firm. Mr. Kinard also noted the possibility of separating the trade name issue into an independent proposal. The Committee further discussed pending litigation regarding trade names and different options for moving forward in the rule proposal process. Dean Johnson noted that he was beginning to favor the option of eliminating proposed Rule 7.07 from the proposal, leaving in place the general prohibitions on false and misleading statements to address the issue. Ms. Nicholson expressed her support for that approach. Mr. Hagen expressed that he would like to see public comments on the New Jersey model. Ms. Bresnen and Mr. Kinard discussed the next steps in the rule proposal process. Brad Johnson responded with comments. Ms. Bresnen made a motion to initiate the rule proposal process for Rules 7.01 through 7.07, TDRPC. Dean Johnson seconded the motion. The Committee further discussed the motion. Mr. Hagen expressed his preference for the New Jersey rule on trade names. The Committee voted in favor of the motion.

The Committee discussed possible language for publication. Mr. Squires responded with comments. Judge Garcia made a motion to publish proposed Rules 7.01 through 7.06 from the previous proposal, which would include deletion of previously proposed Rule 7.07. The Committee discussed the motion. Brad Johnson responded with comments. Judge Garcia discussed the concept of a possible separate proposal regarding trade names. Mr. Kinard and Brad Johnson responded with comments. The Committee further discussed the motion. Mr. Kinard clarified that elimination of proposed Rule 7.07 from the proposal, as drafted, would mean repeal of the trade name prohibition if adopted. Brad Johnson responded with comments. Mr. Hagen expressed interest in seeing how the New Jersey defendant responds in pending litigation related to trade names. Ms. Bresnen and Mr. Kinard responded with comments. The Committee further discussed the motion and the next steps in the rule proposal process. Ms. Nicholson asked questions pertaining to the rule proposal timeline. Brad Johnson and Ms. Bresnen responded with comments. Dean Johnson called the question. Mr. Kinard restated the motion to publish proposed Rules 7.01 through 7.06 as
replacements for current Rules 7.01 through 7.07, TDRPC. The Committee voted in favor of the motion (with one member voting against the motion).

E. PROPOSED RULES 3.01 (DISCIPLINARY PETITION), 3.02 (ASSIGNMENT OF JUDGE), AND 3.03 (FILING, SERVICE AND VENUE), TEXAS RULES OF DISCIPLINARY PROCEDURE (TRDP) – RELATING TO THE ASSIGNMENT OF JUDGES AND RELATED PROCEDURES WHEN A RESPONDENT IN A DISCIPLINARY COMPLAINT ELECTS TO PROCEED IN DISTRICT COURT

Mr. Kinard addressed the Committee on this agenda item. Mr. Kinard discussed public comments received on the proposed changes to Rules 3.01, 3.02, and 3.03, TRDP, including recent suggestions submitted by Presiding Judge David Evans. Brad Johnson responded with comments. Ms. Bresnen made a motion to table the item until the Committee’s next meeting. Ms. Nicholson seconded the motion. The Committee voted in favor of the motion. The Committee will take the item up again at its March 4, 2020, meeting.

F. PROPOSED RULE 13.04. VOLUNTARY APPOINTMENT OF CUSTODIAN ATTORNEY FOR CESSATION OF PRACTICE, TRDP

Mr. Kinard addressed the Committee on this agenda item. Mr. Kinard discussed a proposed amendment to proposed Rule 13.04, TRDP. The proposed amendment would replace the word “assumption” with “cessation” in paragraph (B) of the version previously approved for publication by the Committee. Ms. Nicholson made a motion to approve the proposed amendment. Dean Johnson seconded the motion. The Committee voted in favor of the motion. Brad Johnson noted that the proposed Rule would be published in the March 2020 issue of the Texas Bar Journal.

G. PROPOSED LAWYER ADVERTISING AND SOLICITATION RULES – PART VII. INFORMATION ABOUT LEGAL SERVICES, TDRPC

The Committee returned to the subject of the proposed advertising and solicitation rules. The proposal will be published in the March 2020 issue of the Texas Bar Journal and in the Texas Register. The Committee will accept public comments through April 10, 2020, and will hold a public hearing at its April 7, 2020, quarterly meeting. The published proposal will include an explanation of the revision from the previously recommended version.

Dean Johnson left the meeting.

H. SUPREME COURT OF TEXAS REQUEST FOR A RECOMMENDATION ON A COMMENT TO PART XIII. CESSATION OF PRACTICE, TRDP – RELATING TO THE VOLUNTARY APPOINTMENT OF CUSTODIAN ATTORNEYS TO ASSIST WITH THE CESSATION OF PRACTICE

Mr. Kinard addressed the Committee on this agenda item. Ms. Bresnen and Mr. Belton responded with comments. Mr. Kinard addressed the item further and Brad Johnson responded with comments. No action was taken on this item and it will be carried forward to the March 4, 2020, meeting agenda.
I. SUBCOMMITTEE REPORT REGARDING TEMPORARY CESSATION OF PRACTICE AND/OR TEMPORARY MANAGEMENT OF LAW PRACTICE

Mr. Kinard addressed the Committee on this agenda item. Mr. Belton responded with comments. Mr. Belton noted that there are currently continuing legal education (CLE) courses related to this topic and to the subject of the next agenda item. No action was taken on this item and it will be carried forward to the March 4, 2020, meeting agenda.

J. RULE 1.05. CONFIDENTIALITY OF INFORMATION, TDRPC – RELATING TO THE DISCLOSURE OF CONFIDENTIAL INFORMATION WITH REGARD TO CLIENTS CONTEMPLATING SUICIDE

Mr. Kinard addressed the Committee on this agenda item. Ms. Bresnen addressed the Committee regarding feedback she received on the subject. Ms. Bresnen discussed possible options regarding the proposal. Mr. Kinard and Brad Johnson responded with comments. Mr. Kinard suggested the subcommittee on this subject have a proposal for consideration at the next meeting. No action was taken on this item and it will be carried forward to the March 4, 2020, meeting agenda.

K. COMMISSION FOR LAWYER DISCIPLINE REQUEST TO INITIATE THE RULE PROPOSAL PROCESS FOR RULE 8.03(F), TDRPC, ALONG WITH RULE 1.06 AND/OR RULE 9.01, TRDP – RELATING TO REPORTING PROFESSIONAL MISCONDUCT AND RECIPROCAL DISCIPLINE FOR FEDERAL COURT OR FEDERAL AGENCY DISCIPLINE

Mr. Kinard addressed the Committee on this agenda item. Mr. Kinard noted that Mr. Ducloux was working on this request and had discussed the subject with Chief Disciplinary Counsel Seana Willing. Mr. Kinard explained that this meeting was the deadline to take action to initiate the rule proposal process in response to the request from the Commission for Lawyer Discipline. Brad Johnson responded with comments. Mr. Kinard briefed the Committee on the subject of the request and related considerations. Ms. Nicholson made a motion to initiate the rule proposal process for the rules at issue. Brad Johnson addressed the Committee on the rule proposal process. Ms. Bresnen seconded the motion. Ms. Bresnen and Mr. Kinard further discussed the subject. The Committee voted in favor of the motion.

L. RULE 3.06. MAINTAINING INTEGRITY OF JURY SYSTEM, TDRPC – ADDRESSING POST-TRIAL COMMUNICATIONS WITH JURORS

Mr. Kinard addressed the Committee on this agenda item. Brad Johnson and Mr. Belton responded with comments. Mr. Hagen addressed the Committee on the subject. Mr. Hagen explained that he solicited and received feedback on the subject. Mr. Hagen explained that he is of the opinion that there is no need to add a comment on this subject and that it can be tabled. No action was taken on this item. Mr. Kinard explained the item will not be carried forward unless someone sees the need to bring it up again. Mr. Hagen expressed his agreement.

M. AGENDA ITEMS FOR NEXT MEETINGS

Mr. Kinard asked whether Committee members had any additional items to take up. No additional
items were suggested.

N. PROPOSED RULE TIMELINES

Mr. Kinard asked whether there were any additional rule timelines that needed to be discussed. Brad Johnson responded that all of the relevant timelines have been covered. Brad Johnson noted that there are two public hearings scheduled for the Committee’s April 7, 2020, meeting. One hearing will be on proposed Rule 13.04 (Voluntary Appointment of Custodian Attorney for Cessation of Practice), TRDP, and the other will be on Part VII (Information about Legal Services), TDRPC (the lawyer advertising and solicitation rules). Mr. Kinard noted that the Committee’s next monthly meeting is scheduled for March 4, 2020.

O. ADJOURNMENT

Mr. Belton made a motion to adjourn. Ms. Nicholson seconded the motion. The Committee voted in favor of the motion. The meeting adjourned at 11:38 a.m.
Proposed Rules (Redline Version)

3.01. Disciplinary Petition: If the Respondent timely elects to have
the Complaint heard by a district court, with or without a jury, in
accordance with Rule 2.15, the Chief Disciplinary Counsel shall, not
more than sixty days after receipt of Respondent’s election to proceed
in district court, notify the Supreme Court of Texas
Presiding Judge
of the administrative judicial region covering the county of appropriate
venue
of the Respondent’s election by transmitting a copy of the
Disciplinary Petition in the name of the Commission to the Clerk
of the Supreme Court of Texas
Presiding Judge
. The petition must contain:

A. Notice that the action is brought by the Commission for
Lawyer Discipline, a committee of the State Bar.

B. The name of the Respondent and the fact that he or she is
an attorney licensed to practice law in the State of Texas.

C. A request for assignment of an active district judge from
within the administrative judicial region whose district does
not include the county of appropriate venue to preside in
the case.

D. Allegations necessary to establish proper venue.

E. A description of the acts and conduct that gave rise to the
alleged Professional Misconduct in detail sufficient to give
fair notice to Respondent of the claims made, which factual
allegations may be grouped in one or more counts based
upon one or more Complaints.

F. A listing of the specific rules of the Texas Disciplinary Rules
of Professional Conduct allegedly violated by the acts or
conduct, or other grounds for seeking Sanctions.

G. A demand for judgment that the Respondent be disciplined
as warranted by the facts and for any other appropriate
relief.

H. Any other matter that is required or may be permitted by
law or by these rules.

3.02. Assignment of Judge:

A. Assignment Generally: Upon receipt of a Disciplinary Petition,
the Clerk of the Supreme Court of Texas shall promptly
bring the Petition to the attention of the Supreme Court.
The Supreme Court
Presiding Judge
shall promptly appoint
assign
an active district judge who does not reside in the
Administrative Judicial District in which the Respondent
resides
from within the administrative judicial region
whose district does not include the county of appropriate
venue
to preside in the case. The Presiding Judge
and the
Clerk of the Supreme Court
shall transmit a copy of the
Supreme Court’s appointing
Presiding Judge’s assignment
order to the Chief Disciplinary Counsel. Should the judge
so appointed
assigned
be unable to fulfill the appointment
assignment
, he or she shall immediately notify the Clerk of
the Supreme Court
Presiding Judge
, and the Supreme
Court
Presiding Judge
shall appoint
assign
a replacement
judge pursuant to the same geographic limitations.
The
judge appointed
assigned
under this Rule
shall be subject
to objection,
recusal or disqualification as provided by law
the Texas Rules of Civil Procedure and the laws of this
state.
The objection,
motion seeking recusal or motion to
disqualify must be filed by either party not later than sixty
days from the date the Respondent is served with the
Supreme Court’s order appointing the judge within the
time provided by Rule 18a,
Rules of Civil Procedure.
In the event of
objection,
recusal or disqualification,
Supreme Court Presiding Judge shall appoint a replacement judge, within thirty days, who shall be subject to the same geographic limitations. If an active district judge assigned to a disciplinary case becomes a retired, senior, or former judge, he or she may be assigned by the Presiding Judge to continue to preside in the case, provided the judge has been placed on a visiting judge list, and the geographic limitations for the original assignment no longer apply to the judge. If the Presiding Judge decides not to assign the retired, senior, or former judge to continue to preside in the case, the Presiding Judge shall assign an active district judge subject to the geographic limitations for the original assignment. A visiting judge may only be assigned if he or she was originally assigned to preside in the case while an active judge. Any judge assigned under this Rule is not subject to objection under Chapter 74, Government Code.

B. Transfer of Case: If the county of alleged venue is successfully challenged, the case shall be transferred to the county of proper venue. If the case is transferred to a county in the assigned judge's district, the judge must recuse himself or herself, unless the parties waive the recusal on the record. In the event of recusal, the Presiding Judge of the administrative judicial region shall assign a replacement judge from within the administrative judicial region whose district does not include the county of appropriate venue. If the case is transferred to a county outside the administrative judicial region of the Presiding Judge who made the assignment, the Presiding Judge of the administrative judicial region where the case is transferred shall oversee assignment for the case and the previously assigned judge shall continue to preside in the case unless he or she makes a good cause objection to continued assignment, in which case the Presiding Judge shall assign a replacement judge from within the administrative judicial region whose district does not include the county of appropriate venue.

3.03. Filing, Service and Venue: After the trial judge has been appointed, the Chief Disciplinary Counsel shall promptly file the Disciplinary Petition and a copy of the Supreme Court’s appointing Order Presiding Judge’s assignment order with the district clerk of the county of alleged venue. The Respondent shall then be served as in civil cases generally with a copy of the Disciplinary Petition and a copy of the Supreme Court’s appointing Order Presiding Judge’s assignment order. In a Disciplinary Action, venue shall be in the county of Respondent’s principal place of practice; or if the Respondent does not maintain a place of practice within the State of Texas, in the county of Respondent’s residence; or if the Respondent maintains neither a residence nor a place of practice within the State of Texas, then in the county where the alleged Professional Misconduct occurred, in whole or in part. In all other instances, venue is in Travis County, Texas.

Proposed Rules (Clean Version)

3.01. Disciplinary Petition: If the Respondent timely elects to have the Complaint heard by a district court, with or without a jury, in accordance with Rule 2.15, the Chief Disciplinary Counsel shall, not more than sixty days after receipt of Respondent’s election to proceed in district court, notify the Presiding Judge of the administrative judicial region covering the county of appropriate venue of the Respondent’s election by transmitting a copy of the Disciplinary Petition in the name of the Commission to the Presiding Judge. The petition must contain:

A. Notice that the action is brought by the Commission for Lawyer Discipline, a committee of the State Bar.

B. The name of the Respondent and the fact that he or she is an attorney licensed to practice law in the State of Texas.

C. A request for assignment of an active district judge from within the administrative judicial region whose district does not include the county of appropriate venue to preside in the case.

D. Allegations necessary to establish proper venue.

E. A description of the acts and conduct that gave rise to the alleged Professional Misconduct in detail sufficient to give fair notice to Respondent of the claims made, which factual allegations may be grouped in one or more counts based upon one or more Complaints.

F. A listing of the specific rules of the Texas Disciplinary Rules of Professional Conduct allegedly violated by the acts or conduct, or other grounds for seeking Sanctions.

G. A demand for judgment that the Respondent be disciplined as warranted by the facts and for any other appropriate relief.

H. Any other matter that is required or may be permitted by law or by these rules.

3.02. Assignment of Judge:

A. Assignment Generally: Upon receipt of a Disciplinary Petition, the Presiding Judge shall assign an active district judge from within the administrative judicial region whose district does not include the county of appropriate venue to preside in the case. The Presiding Judge shall transmit a copy of the Presiding Judge’s assignment order to the Chief Disciplinary Counsel. Should the judge so assigned be unable to fulfill the assignment, he or she shall immediately notify the Presiding Judge and the Presiding Judge shall assign a replacement judge pursuant to the same geographic limitations. A judge assigned under this Rule shall be subject to recusal or disqualification as provided by the Texas Rules of Civil Procedure and the laws of this state. The motion seeking recusal or motion to disqualify must be filed by either party within the time provided by Rule 18a, Texas Rules of
Civil Procedure. In the event of recusal or disqualification, the Presiding Judge shall assign a replacement judge, who shall be subject to the same geographic limitations. If an active district judge assigned to a disciplinary case becomes a retired, senior, or former judge, he or she may be assigned by the Presiding Judge to continue to preside in the case, provided the judge has been placed on a visiting judge list, and the geographic limitations for the original assignment no longer apply to the judge. If the Presiding Judge decides not to assign the retired, senior, or former judge to continue to preside in the case, the Presiding Judge shall assign an active district judge subject to the geographic limitations for the original assignment. A visiting judge may only be assigned if he or she was originally assigned to preside in the case while an active judge. Any judge assigned under this Rule is not subject to objection under Chapter 74, Government Code.

B. Transfer of Case: If the county of alleged venue is successfully challenged, the case shall be transferred to the county of proper venue. If the case is transferred to a county in the assigned judge’s district, the judge must recuse himself or herself, unless the parties waive the recusal on the record. In the event of recusal, the Presiding Judge of the administrative judicial region shall assign a replacement judge from within the administrative judicial region whose district does not include the county of appropriate venue. If the case is transferred to a county outside the administrative judicial region of the Presiding Judge who made the assignment, the Presiding Judge of the administrative judicial region where the case is transferred shall oversee assignment for the case and the previously assigned judge shall continue to preside in the case unless he or she makes a good cause objection to continued assignment, in which case the Presiding Judge shall assign a replacement judge from within the administrative judicial region whose district does not include the county of appropriate venue.

3.03. Filing, Service and Venue: After the trial judge has been assigned, the Chief Disciplinary Counsel shall promptly file the Disciplinary Petition and a copy of the Presiding Judge’s assignment order with the district clerk of the county of alleged venue. The Respondent shall then be served as in civil cases generally with a copy of the Disciplinary Petition and a copy of the Presiding Judge’s assignment order. In a Disciplinary Action, venue shall be in the county of Respondent’s principal place of practice; or if the Respondent does not maintain a place of practice within the State of Texas, in the county of Respondent’s residence; or if the Respondent maintains neither a residence nor a place of practice within the State of Texas, then in the county where the alleged Professional Misconduct occurred, in whole or in part. In all other instances, venue is in Travis County, Texas.
Committee on Disciplinary Rules and Referenda
Proposed Rule Changes

Texas Rules of Disciplinary Procedure

Rule 3.01. Disciplinary Petition
Rule 3.02. Assignment of Judge
Rule 3.03. Filing, Service and Venue

Public Comments Received
Through January 31, 2020
CURRENT WORDING: shall promptly assign an active district judge from within the administrative judicial region whose district does not include the county of appropriate venue to preside in the case. Suggested rewrite: shall promptly assign an active district judge to preside in the case. The assigned district judge may not serve in the judicial district which includes the county of appropriate venue, but must serve in a judicial district is within the administrative judicial region.
I am opposed to the change. As a trial judge I had to go to other counties to try these cases and did not find it burdensome. I think it's a good idea for the trial judge to have very little knowledge of the attorney. If the trial judge is within the same judicial district, the judge will most likely have knowledge of the attorney. Before we change something due to "undue burden", I suggest that you survey the judges who have actually done these appointments to see the extent of the burden.
**Feedback**

**Subject** Comments on Proposed Changes to Rules 3.01 to 3.03, TRDP

**Comments**
The proposed changes appear to be appropriate and fair to all parties.
Is there a jurisdictional problem for an active district judge who is appointed to hear a disciplinary case outside of his elected jurisdictional district, since "proper venue" for the disciplinary case must lie in another territorial district outside his own?
I fully support these rules. Currently, there are so many unknowns an accused lawyer must navigate when dealing with a grievance. By appointing a District Court Judge, hopefully this will bring more structure and proper guidance to an already stressful situation.
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<td>First Name</td>
<td>Rogelio Garza</td>
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<td>Last Name</td>
<td>Rios, Jr.</td>
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<td>Service on Respondent shall be by personal service. Not e-file Not certified mail</td>
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Having the local administrative judge appoint a judge to hear a grievance is a truly terrible idea. The administrative judge is almost always going to know the accused lawyer, and the pressure, both overt and subconscious, to appoint a judge who would rule favorably for that lawyer would be tremendous. For example, I have a grievance pending against a lawyer here, and the administrative judge swore this lawyer in when he assumed public office. The judge is an honorable person, but again the pressure on him, even subconscious, would be very strong. If the judge appointed is from within this administrative region, it's again likely he or she will know the accused lawyer and be subject to the same pressure. This is a really bad proposed change.
* State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments

**Contact**

First Name | Rich
---|---
Last Name | Robins
Email | [Redacted]
Member | Yes
Barcard | 00789589

**Feedback**

**Subject** | Rule change proposals for 3.01, 3.02 and 3.03
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**Comments**

Regarding the proposed changes to the following rules, I submit the following commentary: 3.01, the judge for a disciplinary matter should remain selected by the democratically elected Supreme Court of Texas instead of by the less visible & seemingly less politically accountable local administrative judicial region. We live in a democracy, after all. If it's not broken, why fix it? 3.01c) Having the assigned judge be from the same judicial region... albeit from a county in a different district of that region, could still make region-based oppressiveness (a form of “hometowning”) possible. It is better to maintain the checks & balances of having someone available to serve as a disciplinary judge from a different region of the state, altogether. Otherwise, for example, who would want to risk suing a polluting refinery if the disciplinary judge would definitely be from that same region to which that refinery donates heavily for political benefit? Texans would suffer from such overly-concentrated power. 3.02 a) Why not remain in unison with the state of Texas’ legal protections such as those of Ch. 74 of the Govt. Code? Changing things up and shedding such protections could lead to unforeseen surprises. We don't need unforeseen surprises in our disciplinary system. 3.03: Filing, Service & Venue: Notice of venue for a disciplinary matter should remain generated by the democratically elected Supreme Court of Texas instead of by the seemingly less visible and less politically accountable local administrative judicial region. We live in a democracy, after all. If it's not broken, why fix it? Submitted, Rich Robins, Esq. TexasBarSunset.com
Committee on Disciplinary Rules and Referenda Proposed Rule Changes

Texas Rules of Disciplinary Procedure

Rule 3.01. Disciplinary Petition
Rule 3.02. Assignment of Judge
Rule 3.03. Filing, Service and Venue

Proposed Rules (Redline Version)

3.01. **Disciplinary Petition:** If the Respondent timely elects to have the Complaint heard by a district court, with or without a jury, in accordance with Rule 2.15, the Chief Disciplinary Counsel shall, not more than sixty days after receipt of Respondent's election to proceed in district court, notify the Supreme Court of Texas Presiding Judge of the administrative judicial region covering the county of appropriate venue of the Respondent's election by transmitting a copy of the Disciplinary Petition in the name of the Commission to the Clerk of the Supreme Court of Texas Presiding Judge. The petition must contain:

- **A.** Notice that the action is brought by the Commission for Lawyer Discipline, a committee of the State Bar.

- **B.** The name of the Respondent and the fact that he or she is an attorney licensed to practice law in the State of Texas.

- **C.** A request for assignment of an active district judge from within the administrative judicial region whose district does not include the county of appropriate venue to preside in the case.

- **C.D.** Allegations necessary to establish proper venue.

- **D.E.** A description of the acts and conduct that gave rise to the alleged Professional Misconduct in detail sufficient to give fair notice to Respondent of the claims made, which factual allegations may be grouped in one or more counts based upon one or more Complaints.

- **E.F.** A listing of the specific rules of the Texas Disciplinary Rules of Professional Conduct allegedly violated by the acts or conduct, or other grounds for seeking Sanctions.

- **F.G.** A demand for judgment that the Respondent be disciplined as warranted by the facts and for any other appropriate relief.
GH. Any other matter that is required or may be permitted by law or by these rules.

3.02. Assignment of Judge:

A. Assignment Generally: Upon receipt of a Disciplinary Petition, the Clerk of the Supreme Court of Texas shall promptly bring the Petition to the attention of the Supreme Court. The Supreme Court Presiding Judge shall promptly appoint an active district judge who does not reside in the Administrative Judicial District in which the Respondent resides from within the administrative judicial region whose district does not include the county of appropriate venue to preside in the case. An assignment of a judge from another region shall be under Chapter 74, Government Code. The Presiding Judge and the Clerk of the Supreme Court shall transmit a copy of the Supreme Court's assigning Presiding Judge's assignment order to the Chief Disciplinary Counsel. Should the judge so appointed be unable to fulfill the assignment, he or she shall immediately notify the Clerk of the Supreme Court Presiding Judge, and the Supreme Court Presiding Judge shall appoint a replacement judge pursuant to the same geographic limitations whose district does not include the county of appropriate venue. The judge appointed under this Rule shall be subject to objection, recusal or disqualification as provided by law the Texas Rules of Civil Procedure and the laws of this state. The objection, motion seeking recusal or motion to disqualify must be filed by either party not later than sixty days from the date the Respondent is served with the Supreme Court's order appointing the judge within the time provided by Rule 18a, Texas Rules of Civil Procedure. In the event of objection, recusal or disqualification, the Supreme Court Presiding Judge shall appoint a replacement judge within thirty days who shall be subject to the same geographic limitations whose district does not include the county of appropriate venue. If an active district judge assigned to a disciplinary case becomes a retired, senior, or former judge, he or she may be assigned by the Presiding Judge to continue to preside in the case, provided the judge has been placed on a visiting judge list, and the geographic limitations for the original assignment no longer apply to the judge. If the Presiding Judge decides not to assign the retired, senior, or former judge to continue to preside in the case, the Presiding Judge shall assign an active district judge subject to the geographic limitations for the original assignment whose district does not include the county of appropriate venue. A visiting judge may only be assigned if he or she was originally assigned to preside in the case while an active judge. Any judge assigned under this Rule is not subject to objection under Chapter 74, Government Code.

B. Transfer of Case: If the county of alleged venue is successfully challenged, the case shall be transferred to the county of proper venue. If the case is transferred to a county in the assigned judge’s district, the judge must recuse himself or herself, unless the parties waive the recusal on the record. In the event of recusal,
the Presiding Judge of the administrative judicial region shall assign a replacement judge from within the administrative judicial region whose district does not include the county of appropriate venue. If the case is transferred to a county outside the administrative judicial region of the Presiding Judge who made the assignment, the Presiding Judge of the administrative judicial region where the case is transferred shall oversee assignment for the case and the previously assigned judge shall continue to preside in the case unless he or she makes a good cause objection to continued assignment, in which case the Presiding Judge shall assign a replacement judge from within the administrative judicial region whose district does not include the county of appropriate venue.

3.03. **Filing, Service and Venue:** After the trial judge has been appointed, the Chief Disciplinary Counsel shall promptly file the Disciplinary Petition and a copy of the Supreme Court's appointing Order Presiding Judge’s assignment order with the district clerk of the county of alleged venue. The Respondent shall then be served as in civil cases generally with a copy of the Disciplinary Petition and a copy of the Supreme Court's appointing Order Presiding Judge’s assignment order. In a Disciplinary Action, venue shall be in the county of Respondent's principal place of practice; or if the Respondent does not maintain a place of practice within the State of Texas, in the county of Respondent's residence; or if the Respondent maintains neither a residence nor a place of practice within the State of Texas, then in the county where the alleged Professional Misconduct occurred, in whole or in part. In all other instances, venue is in Travis County, Texas.
LEWIS KINARD: Public hearing and discussion. We’re now opening up with proposed Rule 3.01, 3.02, and 3.03 of the Texas Rules of Disciplinary Procedure. And this is [inaudible] relating to the assignment of judges and related procedures when a respondent in a disciplinary complaint elects to proceed in district court. So members of the Committee it’s on page 3 to 15 of your packet. And do we have anybody here to speak on that? Nobody is here.

CORY SQUIRES: And Lewis, just for formality’s sake, and we’re only on audio recording. Do you want to do the roll call?

: [crosstalk]

LEWIS KINARD: Yes, well we will when we start the meeting.

: [crosstalk]

CORY SQUIRES: Correct. Gotcha.

CLAUDE DUCLOUX: This [inaudible] I will make a comment. This is Claude Ducloux for the record. This originated with a request that we look at this rule. It requires the Supreme Court to assign a judge from another administrative district. We rec-, we asked for recommendations from Seana Willing in Chief Disciplinary Counsel’s Office. They sent over a, some proposed ideas on this and their preferred one, and this is the, the result of long...

: [laughter]

CLAUDE DUCLOUX: ...Well not that long, but a really good process for coming up with this. We asked for comments from the public and overall they were overwhelmingly positive. There were a couple of people that said, well, it’s an administrative [inaudible] one recent comment said one district is very close to it, like the very next county, although it’s in a different district, could the judge have authority to go ahead and cross over to the next administrative district to appoint a nearby judge, so that judge would not be in the same administrative district. I don’t have a problem with that. If Ms. Willing has a comment on that, but I think as, as drafted it’s worthy of sending.
LEWIS KINARD: Very good, thank you. So, and comments can be submitted through the end of this month. The feedback from the Bar and the public is vital to our work. And I really encourage comments, thoughts. You never know whether someone has considered the point you want to make or think should be made and we read them all. So please continue to submit comments. Again, the comment period will [inaudible] on assignment of judges in disciplinary proceedings. That time period closes at the end of this month. The one published in the Bar Journal. [inaudible] We get all these comments in. We’ll take this up in February, our February conference call meeting to decide whether to send everything to the [inaudible] at that time or take further action based on those comments and any additional input we get and then send it in March. To get this out the door pretty soon. Okay, well that wraps up the lengthy public hearing...

: [laughter]

LEWIS KINARD: ...And [inaudible] now ready to call the roll and convene our quarterly meeting.

[End of Public Hearing]
June 3, 2019

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

Re: Request to initiate rule-making & to draft comment language

Dear Lewis:

Pursuant to Section 81.0875(c) of the Government Code, the Supreme Court requests that the Committee on Disciplinary Rules and Referenda initiate the rule-proposal process on Rule 3.02, Texas Rules of Disciplinary Procedure.

When a respondent in a disciplinary proceeding elects to proceed in district court, Rule 3.02 requires the Court to appoint “an active district judge who does not reside in the Administrative Judicial District in which the Respondent resides” to preside over the case. Rule 3.03 sets the venue for a disciplinary trial in district court in “the county of Respondent’s principal place of practice,” “the county of Respondent’s residence,” “the county where the alleged Professional Misconduct occurred,” or Travis County.

As a result, an assigned judge may be required to travel a substantial distance to preside over a disciplinary proceeding. This is burdensome and impedes the efficient resolution of cases. The Court asks the Committee to consider whether requiring the appointed judge to reside in a different county than the respondent or whether recusal or disqualification alone would satisfy the purpose of the rule.

In addition, the Court asks the Committee to study and make recommendations on a comment to Rule 3.06, Texas Disciplinary Rules of Professional Conduct, to address lawyer-access to juror social media activity.
In 2014, the American Bar Association Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 466, which addresses three categories of lawyer-review of a juror’s electronic social media (ESM) presence:

1. passive lawyer review of a juror’s website or ESM that is available without making an access request, so that the juror is unaware that a website or ESM has been reviewed;

2. active lawyer review where the lawyer requests access to the juror’s ESM; and

3. passive lawyer review where the juror becomes aware through a website or ESM feature of the identity of the viewer.

The standing committee concluded that category 2 violates ABA Model Rule 3.5(b)’s prohibition of lawyer communications with a juror or potential juror—the equivalent to TDRPC 3.06(b)—but that categories 1 and 3 do not.

The Court solicited the recommendations of the Supreme Court Advisory Committee, which considered the matter on December 1–2, 2017 and September 28, 2018. The committee disagreed with the ABA position in part and drafted comment language for the Court’s consideration. Transcripts of and materials for those meetings are available on the Texas Judicial Branch website at https://www.txcourts.gov/scac/meetings/2011-2020/.

The Court asks your Committee for its independent recommendations. The Committee should consider the positions of the ABA standing committee, the Supreme Court Advisory Committee, and other states. The Committee should draft comment language reflecting its recommendations for the Court’s consideration.

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

Sincerely,

Nathan L. Hecht
Chief Justice
Subcommittee Recommendation

Proposed Changes to Rule 1.05
Texas Disciplinary Rules of Professional Conduct

(Related to the Commission for Lawyer Discipline Request to Initiate the Rule Proposal Process)

Subcommittee: Timothy Belton, Amy Bresnen, Claude Ducloux

1.05. Confidentiality of Information

(c) A lawyer may reveal confidential information:

(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, or from committing suicide.
Dear Mr. Lewis Kinard,

Pursuant to Sec. 87.0875(c)(3) of the Texas Government Code, the Commission for Lawyer Discipline (CFLD) respectfully requests that the Committee on Disciplinary Rules and Referenda (CDRR) initiate the rule proposal process and consider certain amendments to (1) Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct (TDRPC); and (2) TDRPC Rule 8.03(f), along with Rule 1.06 and/or Rule 9.01 of the Texas Rules of Disciplinary Procedure (TRDP).

I. TDRPC Rule 1.05 and the Suicidal Client

Suicide and threats of suicide are not unusual in legal matters - particularly in emotionally charged, high-conflict cases involving divorce, child custody, and domestic violence. According to calls to the Office of the Chief Disciplinary Counsel (CDC) ethics helpline, lawyers involved in these types of cases frequently encounter clients who are contemplating suicide, causing the lawyer to wrestle with his/her moral obligation to try to stop the client from committing the act and his/her ethical obligations to maintain client confidentiality under Rule 1.05. Although Rule 1.05 includes exceptions permitting and/or requiring the disclosure of confidential information to prevent a client from committing a criminal or fraudulent act under certain circumstances, under Texas law, suicide is neither a crime nor a fraudulent act. Therefore, under Rule 1.05 as it is currently drafted, an attorney risks violating Rule 1.05 by disclosing confidential information he/she believes is necessary to prevent a client from committing suicide.

Many lawyers who have encountered this situation have told CDC ethics attorneys that they would be willing to risk discipline in order to attempt to prevent a client from committing suicide. Others have indicated that revealing a client’s confidential information in an effort to prevent the client from committing suicide would not be worth the risk. All agree that bringing clarity and certainty to the rule would be helpful.

Additionally, although some may argue that a client threatening suicide may be likely to utilize criminally prohibited methods to carry out such an act (thereby potentially authorizing disclosure), a lawyer's ability to act should not turn on this fact-specific and unsettled analysis, particularly in a situation in which time may be of the essence.
Rule 1.05(c)(7) governs the permissive disclosure of confidential information to prevent a criminal or fraudulent act by a client, while Rule 1.05(e) governs mandatory disclosure of information necessary to prevent a criminal or fraudulent act by a client. The following suggested amendments to Rule 1.05 would address the current gap regarding a client contemplating suicide.

1.05(c) A lawyer may reveal confidential information:

…

(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, or any other act that is likely to result in death or substantial bodily harm to a person, including the client, regardless of whether it constitutes a criminal act.

…

1.05(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, including the client, the lawyer shall reveal confidential information to the extent revelation reasonably appears necessary to prevent the client from committing the criminal or fraudulent act.

II. Reciprocal Discipline for Federal Court or Federal Agency Discipline.

Currently, the CDC does not have express authority to issue reciprocal discipline against an attorney who has been sanctioned, suspended, or disbarred from practicing in federal court, including a bankruptcy or immigration court. Under TDRP Rule 1.06(CC)(2), reciprocal discipline may be pursued for attorney misconduct that results in discipline issued in another state or in the District of Columbia. Though federal judges and federal agencies, such as the Executive Office for Immigration Review (EOIR), do not sanction attorneys with great frequency, attorneys licensed in Texas should not be able to avoid reporting federal court discipline to the CDC under TDRPC Rule 8.03(f), nor should they be able to avoid reciprocal discipline in Texas, when such discipline is warranted to protect the public.

TDRPC Rule 8.03(f) reads as follows:

A lawyer who has been disciplined by the attorney-regulatory agency of another jurisdiction must notify the chief disciplinary counsel within 30 days of the date of the order or judgment. The notice must include a copy of the order or judgment.
Addressing this gap could be accomplished in several ways: (1) amend TDRP Rule 9.01 to include the following language - “…an attorney licensed to practice law in Texas has been disciplined in another jurisdiction, by a federal court, or by a federal agency…”; (2) amend TDRP Rule 1.06(CC)(2) to include the following language – “Attorney conduct that occurs in another state, a federal court, before a federal agency, or in the District of Columbia…” ; (3) amend TDRPC Rule 8.03(f) to add the following language – “…the attorney-regulatory agency of another jurisdiction, including a federal court or federal agency, …”; or (4) add a separate definition under TDRP Rule 1.06 for “other jurisdiction” that would include federal courts and federal agencies. This change would enable the CDC to rely on orders or judgments of discipline issued by federal courts and agencies to more effectively address attorney misconduct without having to separately prove the underlying allegations and without the risk that the statute of limitations bars a new action for the underlying misconduct.

On behalf of the Commission and the Chief Disciplinary Counsel, we thank you in advance for your consideration of these proposed changes.

Please contact us if you need additional information or have any questions or concerns.

Respectfully yours,

Noelle Reed, Chair
Commission for Lawyer Discipline
TDRPC Rule 8.03(f)

A lawyer who has been disciplined by the attorney-regulatory agency of another jurisdiction, or by a federal court or federal agency, must notify the chief disciplinary counsel within 30 days of the date of the order or judgment. The notice must include a copy of the order or judgment. For purposes of this paragraph, “discipline” by a federal court or federal agency includes any action affecting the lawyer’s ability to practice before that court or agency or any public reprimand; the term does not include a letter of “warning” or “admonishment” or a similar advisory by a federal court or federal agency.

TRDP Rule 1.06(CC)

“Professional Misconduct” includes:

***

2. Attorney conduct that occurs in another state or in the District of Columbia jurisdiction, including before any federal court or federal agency, and results in the disciplining of an attorney in that other jurisdiction, if the conduct is Professional Misconduct under the Texas Disciplinary Rules of Professional Conduct.

***

TRDP Rule 9.01

Orders From Other Jurisdictions: Upon receipt of information indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction, including by any federal court or federal agency, the Chief Disciplinary Counsel shall diligently seek to obtain a certified copy of the order or judgment of discipline from the other jurisdiction, and file it with the Board of Disciplinary Appeals along with a petition requesting that the attorney be disciplined in Texas. A certified copy of the order or judgment is prima facie evidence of the matters contained therein, and a final adjudication in another jurisdiction that an attorney licensed to practice law in Texas has committed Professional Misconduct is conclusive for the purposes of a Disciplinary Action under this Part, subject to the defenses set forth in Rule 9.04 below. For purposes of this Part, “discipline” by a federal court or federal agency includes any action affecting the lawyer’s ability to practice before that court or agency or any public reprimand; the term does not include a letter of “warning” or “admonishment” or a similar advisory by a federal court or federal agency.
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.
13.01. **Notice of Attorney's Cessation of Practice:** When an attorney licensed to practice law in Texas dies, resigns, becomes inactive, is disbarred, or is suspended, leaving an active client matter for which no other attorney licensed to practice in Texas, with the consent of the client, has agreed to assume responsibility, written notice of such cessation of practice shall be mailed to those clients, opposing counsel, courts, agencies with which the attorney has matters pending, malpractice insurers, and any other person or entity having reason to be informed of the cessation of practice. If the attorney has died, the notice may be given by the personal representative of the estate of the attorney or by any person having lawful custody of the files and records of the attorney, including those persons who have been employed by the deceased attorney. In all other cases, notice shall be given by the attorney, a person authorized by the attorney, a person having lawful custody of the files of the attorney, or by Chief Disciplinary Counsel. If the client has consented to the assumption of responsibility for the matter by another attorney licensed to practice law in Texas, then the above notification requirements are not necessary and no further action is required.

13.02. **Assumption of Jurisdiction:** A client of the attorney, Chief Disciplinary Counsel, or any other interested person may petition a district court in the county of the attorney's residence to assume jurisdiction over the attorney's law practice. If the attorney has died, such petition may be filed in a statutory probate court. The petition must be verified and must state the facts necessary to show cause to believe that notice of cessation is required under this part. It must state the following:

   A. That an attorney licensed to practice law in Texas has died, disappeared, resigned, become inactive, been disbarred or suspended, or become physically, mentally or emotionally disabled and cannot provide legal services necessary to protect the interests of clients.

   B. That cause exists to believe that court supervision is necessary because the attorney has left client matters for which no other attorney licensed to practice law in Texas has, with the consent of the client, agreed to assume responsibility.

   C. That there is cause to believe that the interests of one or more clients of the attorney or one or more interested persons or entities will be prejudiced if these proceedings are not maintained.

13.03. **Hearing and Order on Application to Assume Jurisdiction:** The court shall set the petition for hearing and may issue an order to show cause, directing the attorney or his or her personal representative, or if none exists, the person having custody of the attorney's files, to show cause why the court should not assume jurisdiction of the attorney's law practice. If the court finds that one or more of the events stated in Rule 13.02 has occurred and that the supervision of the court is required, the court shall assume jurisdiction and appoint one or more
attorneys licensed to practice law in Texas to take such action as set out in the written order of the court including, but not limited to, one or more of the following:

A. Examine the client matters, including files and records of the 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 attorney of the assumption 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 shall observe the attorney-client relationship and privilege as if the custodians were the attorney of the client and may make only such disclosures as are necessary to carry out the purposes of this part. Except for intentional misconduct or gross negligence, no person acting under this part may incur any liability by reason of the institution or maintenance of a proceeding under this Part XIII. No bond or other security is required.

Comment: Chapter 456, Estates Code, authorizes the personal representative of a deceased attorney to designate an attorney—including him- or herself, if the personal representative is an attorney—to disburse and close the deceased attorney’s trust or escrow accounts for client funds. See TEX. EST. CODE § 456.002. Before appointing an attorney to wind up a deceased attorney’s practice under this rule, the court should determine whether the deceased attorney’s personal representative has designated an attorney under Chapter 456 to close the deceased attorney’s trust and escrow accounts.
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,

Nathan L. Hecht
Chief Justice
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
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 701 to 706, which are identical to the proposal submitted to the Board, with the exception that previously proposed Rule 707 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 701 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 701 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 omitted 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 701 to 706:

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.

3. 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.

4. 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.

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

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

7. If a lawyer who advertises the amount of a verdict secured on
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 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.
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 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 706 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 701. 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. 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 “PC,” “LLP,” “PLLC,” or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use 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 of the 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 of 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 702(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
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).

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 non-client 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 108(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 104(d) 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.

(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:


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) An advertisement in the public media by a lawyer or firm disclosing 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;

(ii) the advertisement states:

(1) 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 552.

(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, overreach ing, 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;

(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 706. 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 701 through 703, 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 701 through 703, 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 701 through 703, 8.04(a)(2), or 8.04(a)(9) in any other
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 (a) 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 for the sole purpose of defraying the expense of enforcing the rules related to such website.

(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 of 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, teletypewriter 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.
Below is the timeline for proposed changes to Rules 3.01, 3.02, and 3.03 of the Texas Rules of Disciplinary Procedure, relating to the assignment of judges when a respondent in a disciplinary complaint elects to proceed in district court.

INITIATED – July 23, 2019

PUBLICATION – A proposed rule is withdrawn if it is not published in (1) the Texas Register and (2) the Texas Bar Journal within six months of initiation of the rule proposal process.

- Texas Register – November 29, 2019 (Complete)
- Texas Bar Journal – December 2019 (Complete)

NOTE: Publications will include details on dates and participation methods for the comment period and the public hearing(s).

COMMENT PERIOD – The Committee shall give interested parties at least 30 days from the date a proposed rule is published to submit comments on the rule to the Committee.

The Committee will accept public comments through January 31, 2020.

PUBLIC HEARING – The Committee held a public hearing on January 16, 2020, at the Texas Law Center.

FINAL VOTE BY COMMITTEE – The Committee shall vote on whether to recommend a proposed rule to the Board of Directors not later than the 60th day after the final day of the comment period. This vote must be held at a meeting open to the public and with notice to the public.

The deadline to vote is March 31, 2020. Therefore, the Committee must vote at its March 4, 2020, meeting.
COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

Texas Rules of Disciplinary Procedure

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

Below is the timeline 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.

INITIATED – January 16, 2020

PUBLICATION – A proposed rule is withdrawn if it is not published in (1) the Texas Register and (2) the Texas Bar Journal within six months of initiation of the rule proposal process.

• Texas Register – Scheduled for February 28, 2020, issue
• Texas Bar Journal – Scheduled for March 2020 issue

NOTE: Publications will include details on dates and participation methods for the comment period and the public hearing.

COMMENT PERIOD – The Committee shall give interested parties at least 30 days from the date a proposed rule is published to submit comments on the rule to the Committee.

The Committee will accept public comments through April 10, 2020.

PUBLIC HEARING – The Committee will hold a public hearing at 10:30 a.m. on April 7, 2020, at the Texas Law Center.

FINAL VOTE BY COMMITTEE – The Committee shall vote on whether to recommend a proposed rule to the Board of Directors not later than the 60th day after the final day of the comment period. This vote must be held at a meeting open to the public and with notice to the public.

The deadline to vote is June 9, 2020. Therefore, the Committee must vote at its May 6, 2020, meeting.
Below is the timeline for proposed changes to Part VII (Information about Legal Services) of the Texas Disciplinary Rules of Professional Conduct (TDRPC), relating to lawyer advertising and solicitation communications.

Note: The Committee previously published proposed changes to Part VII, TDRPC, in the Texas Bar Journal, in the Texas Register, and on the State Bar of Texas website. After receiving numerous 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. At its February 5, 2020, meeting, the Committee voted to reinitiate the rule proposal process and to publish a revised version of the proposed changes to Part VII, TDRPC.

INITIATED – February 5, 2020

PUBLICATION – A proposed rule is withdrawn if it is not published in (1) the Texas Register and (2) the Texas Bar Journal within six months of initiation of the rule proposal process.

- Texas Bar Journal – March 2020 (Scheduled)
- Texas Register – February 28, 2020 (Scheduled)

NOTE: Publications will include details on dates and participation methods for the comment period and the public hearing.

COMMENT PERIOD – The Committee shall give interested parties at least 30 days from the date a proposed rule is published to submit comments on the rule to the Committee.

The Committee will accept public comments through April 10, 2020.

PUBLIC HEARING – The Committee will hold a public hearing at 10:30 a.m. on April 7, 2020, at the Texas Law Center.

FINAL VOTE BY COMMITTEE – The Committee shall vote on whether to recommend a proposed rule to the Board of Directors not later than the 60th day after the final day of the comment period. This vote must be held at a meeting open to the public and with notice to the public.

The deadline to vote is June 9, 2020. Therefore, the Committee must vote at its May 6, 2020, meeting.
Below is the timeline for the Commission for Lawyer Discipline request to initiate the rule proposal process for Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct, relating to the disclosure of confidential information and clients contemplating suicide.

INITIATED – January 16, 2020

PUBLICATION – A proposed rule is withdrawn if it is not published in (1) the Texas Register and (2) the Texas Bar Journal within six months of initiation of the rule proposal process.

NOTE: Publications will include details on dates and participation methods for the comment period and the public hearing(s).

COMMENT PERIOD – The Committee shall give interested parties at least 30 days from the date a proposed rule is published to submit comments on the rule to the Committee.

PUBLIC HEARING – TBD

FINAL VOTE BY COMMITTEE – The Committee shall vote on whether to recommend a proposed rule to the Board of Directors not later than the 60th day after the final day of the comment period. This vote must be held at a meeting open to the public and with notice to the public.
Below is the timeline for the Commission for Lawyer Discipline request to initiate the rule proposal process relating to reciprocal discipline for federal court or federal agency discipline and reporting professional misconduct.

**INITIATED – February 5, 2020**

**PUBLICATION** – A proposed rule is withdrawn if it is not published in (1) the Texas Register and (2) the Texas Bar Journal within six months of initiation of the rule proposal process.

*NOTE: Publications will include details on dates and participation methods for the comment period and the public hearing(s).*

**COMMENT PERIOD** – The Committee shall give interested parties at least 30 days from the date a proposed rule is published to submit comments on the rule to the Committee.

**PUBLIC HEARING** – TBD

**FINAL VOTE BY COMMITTEE** – The Committee shall vote on whether to recommend a proposed rule to the Board of Directors not later than the 60th day after the final day of the comment period. This vote must be held at a meeting open to the public and with notice to the public.