Committee on Disciplinary Rules and Referenda

Supplement for April 7, 2020, Meeting

- Memo Re: Proposed Amendment from CDRR Subcommittee on Proposed Changes to Rule 1.05, Texas Disciplinary Rules of Professional Conduct

- Additional Public Comments Received through April 5, 2020

To: Committee on Disciplinary Rules and Referenda (CDRR)

From: CDRR Subcommittee on Proposed Changes to Rule 1.05, Texas Disciplinary Rules of Professional Conduct (Timothy Belton, Amy Bresnen, Claude Ducloux)

Date: April 2, 2020

Re: Proposed Amendment

To meet the recommendations of the mental health community, the Subcommittee recommends the following amendment to the proposed changes to Rule 1.05, Texas Disciplinary Rules of Professional Conduct. (Proposed amendment in red.)

Proposed Rule
1.05. Confidentiality of Information

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(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~~ dying by suicide.

***

Memo

To: Texas Committee on Disciplinary Rules and Referenda

From: Zach Wolfe

Re: Public Comment on Proposed Changes to Texas Disciplinary Rules of Professional Conduct 7.01-7.06 (the "Advertising Rules")

Date: 3/31/20

A. Overview

- My focus is on application of the Advertising Rules to social media. I am a practicing Texas litigator who has taught CLE programs on this topic for ethics credit.

- The overhaul of the Advertising Rules is a welcome change. The old rules were unwieldy and difficult to apply to current reality, especially social media.

- A literal application of the current rules could mean that a lawyer has to file every social media post with the Advertising Review Committee.

- In addition, the current rules could be read to require all lawyers to file their LinkedIn profiles (and other "landing page" profiles). Hardly any Texas lawyer does this.

- The new rules offer some guidance by now defining "advertisement." The definition has three elements: (1) communication to the public, (2) offers or promotes legal services, and (3) substantially motivated by pecuniary gain.

- The new definition of "advertisement" is helpful, but could be improved.

- The Advertising Review Committee's current Interpretive Comment 17 provides helpful guidance that " b logs or status updates considered to be educational or informational in nature are not required to be filed with the Advertising Review Department."

- Consistent with Interpretive Comment 17, the new definition of "advertisement" should include a carve-out or safe harbor to confirm that educational communications are not "advertisements."

- The new Rule 7.05 expands the exemptions from the filing requirement to include "a communication on a professional social media website to the extent that it

contains only resume-type information." Again, this is an improvement, but it could be better.

- It is unclear whether the typical lawyer LinkedIn profile—which often includes endorsements and recommendations—would fall under this exemption. This should be clarified.

B. My Perspective

My perspective on the Advertising Rules and their application to social media is based on several things:

- I have been a practicing Texas litigator for over 20 years.

- My current practice focuses on representing both employers and employees in disputes involving non-competes, trade secrets, and other departing employee issue. There is no board certification for this practice area.

- I am a frequent user of social media for both professional networking and sharing educational content with other lawyers and the public.

- I publish a weekly blog, Five Minute Law (www.fiveminutelaw.com), which focuses on litigation-related topics for both lawyers and non-lawyers.

- I have written about the ethics of lawyer use of social media in Texas at my blog and have presented the topic several times at continuing legal education programs.

C. Problems with the Current Rules

The first problem is that the Texas advertising rules were written specifically to regulate plaintiff's personal injury lawyers, but they apply to everybody.

So, for example, we get a rule that says a communication about past results is false and misleading 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.

The problems are obvious. What if you weren't lead counsel? What if you're a defense lawyer who got a take-nothing verdict, so no amount was "actually received by the client"? What if you're a transactional lawyer and there was no litigation, settlement, or verdict at all?

Fortunately, the Advertising Review Committee of the State Bar recognized the problem and published Interpretive Comment 26. It says, essentially, comply with the parts of the rule that apply to your situation, and don't worry about the rest.

Even aside from these specific flaws, the way the current rules define false or misleading communications by reference to specific instances is flawed. I've always thought it would make more sense to have one general rule, i.e. don't make false or misleading statements. The new proposed Rule 7.01(a) essentially does that. This is a definite improvement.

Another problem with the current rules is that, generally, a lawyer can't say "I specialize" or "I'm a specialist"—*even if it's true*—if the lawyer is not board certified in that practice area.

Of course, the reality is that *most* lawyers specialize in particular areas of law but are not board certified. And what do you do if you specialize in, for example, non-compete and trade secret litigation? There's no board certification for that.

The answer is that you just use a different word. Rather than say "specialize," you say that your practice "focuses" on a particular area of law.

Obviously, this puts form over substance. A limitation so easily avoided seems silly.

The new Rule 7.02 seems to fix this. It allows a lawyer to say the lawyer "practices in particular fields of law" and removes the prohibition on a non-certified lawyer saying the lawyer is a "specialist." It even appears that under the new rule a non-certified lawyer could say "specialize" or "specialist," provided that statement is not false or misleading.

That is what the rule should be. The only constituencies that might have a reason to oppose this are board-certified lawyers and the Texas Board of Legal Specialization.

So I applaud this and the other proposed improvements to the "false and misleading" rules. But that still leaves the problem of social media.

D. Problems Applying the Current Rules to Social Media

Obviously, the current advertising ethics rules were not written with social media in mind, and applying them to social media is difficult.

The fundamental problem is that lawyers do not usually think of their social media profiles or posts as advertising, but these communications could be considered advertising under a literal application of the current rules. That would mean for every profile or post, the lawyer would need to fill out an application, pay a fee, and file a copy with the Advertising Review Committee of the State Bar of Texas.

Take LinkedIn. It is by far the most popular platform for professional networking for lawyers. Almost every Texas lawyer has a LinkedIn profile.

The profile includes an "About" section that usually contains a self-promoting description of the lawyer's practice written by the lawyer, an "Experience" section showing the firms the lawyer has worked for, and an "Education" section with the lawyer's degrees. These sections are followed by the "Skills and Endorsements" section and the "Recommendations" section (more about those later).

In short, the point of the profile is to promote the lawyer's experience and qualifications as a lawyer. And in the vast majority of cases, the profile is set to be viewable by the public. So is it an "advertisement" that must be filed?

It sure sounds like advertising, and the Advertising Review Committee has said it is. Interpretive Comment 17(C) says: "Landing pages such as those on Facebook, Twitter, LinkedIn, etc. where the landing page is generally available to the public are advertisements."

It therefore appears that, generally, Texas lawyers must file their LinkedIn profiles.

Of course, hardly any lawyers do this. I have plenty of anecdotal evidence from raising this question at multiple CLE presentations. It appears that thousands of Texas lawyers are currently breaking the rules by not filing their LinkedIn profiles (arguably).

This is an untenable situation.

One possible solution is for a lawyer to limit the material in the LinkedIn profile to matters that are exempt from the filing requirement under current Rule 7.07(e). The exemption includes some basic resume-type information, including "the particular areas of law in which the lawyer or firm practices."

That helps, but it does not entirely solve the problem. Remember Endorsements and Recommendations. They expressly promote the qualifications and experience of the lawyer,

and they do not seem to fall under any existing exemption. So, even a lawyer who tries to limit her profile to material that falls under an exemption is still going to have a hard time achieving strict compliance.

And the problem is not limited to *profiles*. There is also the problem of social media *posts*.

E. The Problem with Social Media Posts

Let's take a typical LinkedIn post by a lawyer. The lawyer shares an article that recognizes the lawyer's firm as a top firm in a particular practice area, adding the comment "Congrats to my wonderful colleagues!" If the lawyer published this in a magazine, we would all agree it's an advertisement. But it is unlikely the lawyer will consider the social media post an advertisement, and even less likely the lawyer will file it with the Advertising Review Committee.

I suppose the Bar could take a hard line and strictly enforce the filing requirement. But the likely result would not be lawyers filing their LinkedIn profiles and posts as advertisements, but lawyers getting off LinkedIn. That would not benefit the profession or the public.

The problem is even greater on Twitter. A lawyer who is active on Twitter may share dozens of tweets, retweets, and responses to tweets in a day. But we don't want to make the evaluate each tweet to determine if it's an "advertisement," file a copy of each one that crosses the line into advertising, and pay multiple fees each day.

F. The "Educational or Informational" Solution

Interpretive Comment 17 offers a potential solution by drawing a line between "educational or informational" content and advertising: "Blogs or status updates considered to be educational or informational in nature are not required to be filed with the Advertising Review Department."

So, a lawyer who wants to post content on social media can avoid violating the filing rule by keeping the content "educational or informational" rather than self-promotional.

For example, a tweet that comments on a recent Texas Supreme Court decision would not be advertising, because it's educational or informational, but a tweet that says "my firm just won a huge case for our client X at the Texas Supreme Court" might be advertising.

It's not a perfect solution, but it helps.

G. The Proposed New Definition of "Advertisement"

The new Rule 7.01 improves on the situation by defining "advertisement." The proposed definition 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."

The last part of the definition is there to distinguish an advertisement from a "solicitation." I will focus on the first part.

The proposed definition has three elements:

(1) communication to the public
(2) offers or promotes legal services
(3) substantially motivated by pecuniary gain

One of these things is not like the other. Elements 1 and 2 are objective. Element 3 is subjective. In other words, you can evaluate elements 1 and 2 solely by looking at the communication on its face. Element 3, in contrast, requires looking into the mind of the lawyer who made the communication.

It would be preferable to make the definition entirely objective. The focus should be on the substance of the communication, not its motivation.

The problem with the subjective element, in a nutshell, is that there is almost always *some* pecuniary motivation to content a lawyer shares on social media. Even when a lawyer shares a post that is entirely educational, the lawyer is probably hoping that the post will help to generate interest from a potential client or referral source.

I'll use myself as an example. My last three blog posts covered application of force majeure clauses, drafting considerations for Texas non-competes, and a recent Texas Supreme Court case on whether an exchange of emails established an enforceable purchase agreement.

Each of these posts was primarily "educational" in its content, for both lawyers and members of the public. And at the risk of flattering myself, I would also say the content was *helpful* to understanding the topics.

Was my motivation purely educational? Of course not.

Yes, I enjoy educating people, but my blog posts are also part of an overall networking and business development strategy. Obviously, I am hoping that these posts will help generate referrals by other lawyers or inquiries by potential clients. You might call that a "pecuniary" motivation.

H. Applying the New Definition of "Advertisement"

So would my blog posts be "advertisements" under the new proposed definition?

Probably not. That's because my posts do not "offer or promote legal services," at least not expressly. Ignoring the advice of marketing experts, I never add a "call to action" to my posts, e.g. "if you need help with drafting a force majeure clause or a non-compete, please contact me." I avoid the call to action because it sounds too "salesy" for my taste, but also because I don't want to turn my educational blog post into an advertisement that I'm supposed to file.

Plus, I could make a case that the post was only *partly*, not "substantially," motivated by pecuniary gain.

The problem is the "probably." It would be better if the new definition would provide more certainty that an educational post is not an advertisement, following Interpretive Comment 17. The "motivated by pecuniary gain" element adds some uncertainty.

To mitigate this problem I propose the following modification:

> 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~~ and that 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. A communication, including an article, blog post, or social media post, that is primarily educational or informational and does not expressly promote the experience or qualifications of the lawyer or solicit potential clients is not a communication that "offers or promotes legal services."

This continues existing policy (under Interpretive Comment 17) but provides more certainty.

I. The New Exemption for Resume-Type Information

The new Rule 7.05 expands the list of things that are exempt from the filing requirement. It includes a new exemption for "resume-type information" on social media:

> (g) a communication on a professional social media website to the extent that it contains only resume-type information.

This is a welcome improvement. It potentially solves the problem with LinkedIn profiles—and other social media profiles—discussed above. Lawyers should be free to post resume-like information about their experience and qualifications on their social media profiles without worrying about whether they are required to file the profiles as advertisements.

The problem with the proposed exemption is that the term "resume-type information" is vague. In particular, it is not clear whether resume-type information includes endorsements

and recommendations, and therefore it is not clear whether the exemption solves the LinkedIn profile problem.

To address this issue with more certainty, I propose the following revision:

> (g) a communication on a professional social media website to the extent that it contains only resume-type information; "resume-type information" includes third-party endorsements and recommendations and other information about experience and qualifications customarily provided on social media profiles, provided the information is not false or misleading under Rule 7.01;

Again, lawyers are *already sharing this information*. We need a rule that accommodates this reality. A situation where thousands of lawyers are potentially violating the rules by not filing their profiles does not increase public confidence in the legal profession.

H. Conclusion: Lawyer Use of Social Media Should be Encouraged

The assumption that implicitly underlies my comments is that the rules should *encourage* lawyers to engage with other lawyers and the public on social media. There is a real benefit to both lawyers and non-lawyers when lawyers freely share information on social media. Any rule that would have a chilling effect on lawyer engagement on social media should be avoided.

Granted, there is a danger to the public from unscrupulous lawyers using social media, just like there was a potential danger when we allowed lawyers to write articles in magazines, place ads in the yellow pages, record TV and radio commercials, and put up billboards. But the general prohibition on false or misleading communications can do most of the work. Protecting the public does not require antiquated and byzantine rules that were never intended for social media.

I hope my comments are helpful to the Committee's admirable effort to update and streamline the Texas advertising rules for the social media era.

Disclaimer

These are solely my personal opinions, not the opinions of my firm or clients.

From: [redacted]
To: cdrr
Subject: CDRR Comment: Proposed Advertising Rule Changes
Date: Friday, April 3, 2020 1:04:24 PM

**** State Bar of Texas* External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	John
Last Name	Kirtley
Email	[redacted]
Member	Yes
Barcard	11534050

Feedback

Subject	Proposed Advertising Rule Changes

Comments

Here are my concerns. Rule 7.03. Solicitation and Other Prohibited Communications Prohibited Solicitations and Payments (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. My Concern: Many lawyer websites have a "live chat" feature that pops up as soon as one enters the website. The person HAS the option of declining, but the chat is "initiated" by the lawyer's webpage. Will this rule eliminate that feature? Rule 703 (cont'd) (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. Question - Does this rule potentially prohibit lawyers, as many do extensively in mass torts, from paying for "leads?" Rule 7.04. Filing Requirements for Advertisements and Solicitation Communications Advertisements in the Public Media (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. Question - Is this not considered a "prior restraint" on free speech? What is considered a "reasonable" fee? Thanks, John John T. Kirtley, III Ferrer, Poirot & Wansbrough 2603 Oak Lawn Ave., Suite 300 Dallas, Texas 75219 214-521-4412 American Board of Trial Advocates Board Certified – Personal Injury Trial Law Texas Board of Legal Specialization Board Certified – Civil Trial Law National Board of Trial Advocacy Licensed in TX, AR, CO, D.C., GA, IL, MA, MN, MO, NC, NY, PA, WI and WV http://www.lawyerworks.com "Speak up for those who cannot speak for

themselves, for the rights of all who are destitute." Proverbs 31:8.

From: [redacted]
To: cdrr
Subject: CDRR Comment: Proposed Change in Rule 1.05
Date: Wednesday, April 1, 2020 10:14:33 AM

**** State Bar of Texas* External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Searcy
Last Name	Simpson
Email	[redacted]
Member	Yes
Barcard	18408800

Feedback

Subject	Proposed Change in Rule 1.05

Comments

The proposed change is excellent with one necessary change needed. For a number of years the word “committing” is no longer used. The phrase which needs to be used is “dying by suicide.” I am on the board of directors for the American Association of Suicidology or I would not have been in the know about this important distinction. See https://suicidology.org/ I am pleased to see this change. I frequently speak to lawyers across the country about preventing suicide. The subject of “confidentiality” was always in the mix. For Texas, at least, the problem will be fixed. (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.

From: [redacted]
To: cdrr
Subject: CDRR Comment: Comment on Rule Changes (Rules 1.06, 8.03, & 9.01)
Date: Wednesday, April 1, 2020 9:28:31 AM

**** State Bar of Texas* External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Shea
Last Name	Palavan
Email	[redacted]
Member	Yes
Barcard	24083616

Feedback

Subject	Comment on Rule Changes (Rules 1.06, 8.03, & 9.01)

Comments

Just an efficiency idea: Since it appears the changes to this are just the inclusion of federal courts/agencies under "jurisdiction," wouldn't it be less cumbersome to just add an overall definition in the Rules for "jurisdiction" that states it indicates the term includes a federal court or federal agency. Similarly, could just add an overall definition in the Rules for "discipline" which includes the added language.

From: [redacted]
To: cdrr
Subject: CDRR Comment: Comments to Proposed Changes to TDRPC Rules 8.03 and 9.01
Date: Wednesday, April 1, 2020 10:26:23 AM

**** State Bar of Texas* External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Jessica
Last Name	Lewis
Email	[redacted]
Member	Yes
Barcard	24060956

Feedback

Subject	Comments to Proposed Changes to TDRPC Rules 8.03 and 9.01

Comments

The proposed changes to Rules 8.03 and 9.01 are broad and ambiguous in their plain language meaning and, therefore, inappropriate and overreaching. For example, "any action affecting the lawyer's ability to practice before that court . . ." could be read to include virtually anything. If the focus is to require reporting of actions taken to "limit" a lawyer's ability to practice before a federal court due to some misconduct, then it should be stated in that way, such as "any action limiting the lawyer's ability to practice before that court due to that lawyer's misconduct . . ." Further, the inclusion of "any public reprimand" is equally broad and concerning, as under that plain language, a lawyer who was "publicly reprimanded" by a federal judge for an inconveniently late filing, for example, would have to notify the disciplinary counsel of that rebuke. I don't think the following sentence of clarification truly addresses this ambiguity as to a public reprimand, as it focuses on written warnings/admonishments. For the purpose of reporting, I think it makes sense to limit it to issues significant enough to warrant some formal written reprimand. We as attorneys who deal with statutory language frequently know the importance of clear language and the need for a clear expectation to be set when disciplinary measures are involved. While language often doesn't provide us the ability to communicate with sufficient precision to survive all challenges, the language pointed out here falls far short of the more basic standards of providing adequate notice and setting reasonably clear expectations for the bar. Further, it leaves too much room for interpretation and discretion by those enforcing the rules. Thanks for your time and efforts in this work. Feel free to reach out, if needed. Jessica Lewis

From: [redacted]
To: cdrr
Subject: CDRR Comment: Proposed changes to Rule 8.03
Date: Wednesday, April 1, 2020 2:03:09 PM

**** State Bar of Texas* External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Richard
Last Name	Schafer
Email	[redacted]
Member	Yes
Barcard	24007988

Feedback

Subject	Proposed changes to Rule 8.03

Comments

I recommend clarifying the rule to make clear that "any action affecting the lawyer's ability to practice before that court or agency" does not include a order disqualifying the attorney in a particular case.

From: [redacted]
To: cdrr
Subject: CDRR Comment: Proposed changes 8.03, 1.06 and 9.01
Date: Wednesday, April 1, 2020 5:31:43 PM

**** State Bar of Texas* External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	James
Last Name	Roberts
Email	[redacted]
Member	Yes
Barcard	17008500

Feedback

Subject	Proposed changes 8.03, 1.06 and 9.01

Comments

I would suggest that adding "final and not subject to appeal" to the references to "order or judgment." I think the reasons should be obvious.

From: Ken Horwitz
To: cdrr
Subject: RE: New Proposed Rule Changes Published and Public Hearing Update
Date: Wednesday, April 1, 2020 9:21:56 AM

*** *State Bar of Texas* External Message *** - Use Caution Before Responding or Opening Links/Attachments

The country is shut down and you are holding a public hearig?

Kenneth M. Horwitz
Glast, Phillips & Murray, P.C.
14801 Quorum Drive, Suite 500
Dallas, Texas 75254
(972) 419-8383 (phone)
(469) 206-5031 (fax)

From: State Bar of Texas - CDRR [mailto:cdrr@texasbar.com]
Sent: Wednesday, April 01, 2020 9:08 AM
To: Ken Horwitz
Subject: New Proposed Rule Changes Published and Public Hearing Update

State Bar of Texas

Proposed Rule Changes

New Proposed Rule Changes Published
April 7, 2020, Public Hearing Update

New Proposed Rule Changes Published for Public Comment

The Committee on Disciplinary Rules and Referenda has published proposed changes to Rule 1.05.

Texas Disciplinary Rules of Professional Conduct, in the April issue of the *Texas Bar Journal* and the March 27 issue of the *Texas Register*. The proposed rule changes relate to the disclosure of confidential information with regard to a client contemplating suicide.

The Committee has also published proposed changes to Rule 8.03, Texas Disciplinary Rules of Professional Conduct, and Rules 1.06 and 9.01, Texas Rules of Disciplinary Procedure, in the April issue of the *Texas Bar Journal* and the March 27 issue of the *Texas Register*. The proposed rule changes relate to the reporting of professional misconduct and reciprocal discipline for federal court or federal agency discipline.

The Committee will accept comments concerning the above-referenced proposed rule changes through June 20, 2020. Comments on the proposed rule changes can be submitted here.

Public hearings on the above-referenced proposed rule changes will be held at 10:30 a.m. on June 18, 2020. (Any updates to the public hearings will be posted at texasbar.com/cdrr/participate.)

April 7, 2020, Public Hearing Update

Lawyer Advertising and Solicitation Rules
Voluntary Appointment of Custodian Attorney for Cessation of Practice

The Committee on Disciplinary Rules and Referenda will hold a public hearing on proposed changes to Part VII, Texas Disciplinary Rules of Professional Conduct, and proposed Rule 13.04, Texas Rules of Disciplinary Procedure, at 10:30 a.m. on April 7, 2020. The Committee will continue to accept comments on these proposed rule changes through April 10, 2020. Comments can be submitted here.

UPDATE: As a safety precaution related to the coronavirus, the Committee will hold the April 7 public hearings by teleconference only. The updated participation information is as follows and replaces the previous number provided:

Join from PC, Mac, iOS or Android Device:
Meeting URL: https://texasbar.zoom.us/j/265275523
Meeting ID: 265 275 523
Telephone Audio or Audio-Only:
888-788-0099 (Toll Free)
Meeting ID: 265 275 523
(Bridge will open at 10:00 a.m. Meeting will begin at 10:30 a.m.)

If you plan to participate in either public hearing on April 7, it is requested that you email CDRR@texasbar.com in advance of the hearing with your name and the public hearing item you wish to speak on so the Committee can group speakers by topic during the hearings. To allow enough time for all who wish to be heard during the hearings, the Committee may limit initial comments from each speaker to three minutes, and extend that time if the Committee needs further discussion with the speaker.

Additional Information

The Committee is responsible for overseeing the initial process for proposing a change or addition to the disciplinary rules (Gov't Code § 81.0873). For more information, go to texasbar.com/cdrr.

To subscribe to email updates, including notices of public hearings and published rules for comment, click here.

Sincerely,
Committee on Disciplinary Rules and Referenda

Committee on Disciplinary Rules and Referenda

State Bar of Texas | 1414 Colorado | Austin, Texas 78701 | 800.204.2222

From: [redacted]
To: cdrr
Subject: CDRR Comment: Proposed Rules Regarding "Compentency Attorneys" and Similiar Proposals
Date: Wednesday, April 1, 2020 1:09:14 PM

**** State Bar of Texas* External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Richard
Last Name	Edgell
Email	[redacted]
Member	Yes
Barcard	6420900

Feedback

Subject	Proposed Rules Regarding "Compentency Attorneys" and Similiar Proposals

Comments

1. Better Law already exists. 2. The Law has been Improved and "tweeked" for centuries. 3. The Law already provides a very high standard of "utmost good faith and fair dealing" under equitable and trust law to protect attorneys and everyone else. 4. The Texas Supreme Court is elected. 5. It is the Supreme Court for the Constitution, Laws, Statutes, and other laws of the State of the State of Texas, not the State Bar of Texas, which is or should be the attorneys who having fulfilled the requirements of the law and having been approved by the State Board of Law Examiners are entitled to license as an Attorney and Counselor at Law and having taken the oath provided by law are authorized to practice as Attorney and Counselor at Law in all the Courts of the State of Texas, and the Clerk of the Supreme Court of the Texas may affix the Seal of the Supreme Court of the Supreme Court, at Austin, or apparently has done so, for example, "this 5th day of November AD 1982" for Richard Baxter Edgell. 6. The State Bar of Texas is not an administrative agency. 7. The Texas Legislature cannot delegate judicial power it does not have to the State Bar of Texas or any other person or thing, because the Texas Constitution uses principles such as separation of powers and checks and balances between legislative, executive, and judicial branches and this is consistent with Federal law including the Constitution, Laws, and Statues of the United States. 8. Prior to entry into the Union or union with the Union, the Republic of Texas provided higher standards than the Constitution, Laws, and Statutes of the United States, including the "Rule" and "Open Courts." There is a Baylor Law School Law Review article which you can find which discusses this in detail. 9 Texas insisted, and the United States agreed, that Texas could have higher standards than the United States in the Texas judicial system. 10. The "Open courts" were not vigilante groups or the so-called "Klan." People have lied or been misinformed about this. 11. Concluding, rely on existing law, including trust law, which includes the utmost good faith and fair dealing standard, to avoid losing the work of all Texas ethnic groups who suffered, fought, and died to maintain high standards including Texas trust law and the utmost good faith and fair dealing standard in 1. previously stated. I strongly recommend that the proposed rules not be adopted because they are unconstitutional; violative of statutory law; arbitrary and capricious; not supported by substantial evidence as to their necessity or quality; not supported by subject matter jurisdiction, or notice jurisdiction because no one's life, liberty,. or property are safe while the Legislature, a governmental entity purporting to be like the Legislature, or other such entity, are in session (and the judicial power is different from the legislative power, and because of this we have the Open Courts of the State of Texas which are always to be in session), and further with regard to Texas jurisdiction generally, there are legal limits on any particular group of persons or people to change the laws of the State of Texas, especially those that have provided a higher standard than the Federal standard since the time of the Republic of Texas and before the Republic of the State of Texas; and for the other reasons stated in Government Code 2002 (which may have been amended; but which may be found and researched, unless perhaps you, for example, forge books, alter books, fail to return books, or engage in other such activity; in which case, the Open Records Act may provide you copies of certain records, subject to exceptions and restrictions for such things as privacy, health, and safety, if you provide

reasonable payment, for example for copying costs; and the Texas Open Records Act is similar to Federal Congressional legislation and meets Federal standards, most likely), I waive none of my rights. Respectfully submitted, Richard B. Edgell, Attorney at Law, SBOT 06420900 today when I checked by computer. I do not give my current address or residence in Mexico, to protect myself and others, including responsible police and judiciary, and I can do that, under Texas law, in Rio Rancho, this 1st day of April, AD 2002 Regardless of whom I am or hwe I identify myself, the arguments are still the same and can be judged on their merits..