

**Committee on Disciplinary Rules and Referenda  
Proposed Rule Changes**

**Texas Disciplinary Rules of Professional Conduct  
Part VII. Information about Legal Services  
(Lawyer Advertising and Solicitation Rules)**

**Public Comments Received  
Through April 13, 2020**

**From:** [REDACTED]  
**To:** [cdrr](#)  
**Subject:** CDRR Comment: Excessive Advertising  
**Date:** Monday, March 2, 2020 10:33:27 AM

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

### Contact

<b>First Name</b>	Fatima
<b>Last Name</b>	Badreddine
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	24111249

### Feedback

<b>Subject</b>	Excessive Advertising
----------------	-----------------------

### Comments

I transferred to Texas within the past year from Arizona. I believe that these rules are moving in the right direction and are much needed in Texas. The amount of attorney advertising out here is excessive. The attorney referrals to so-called pain management providers is also uncalled for, excessive, and in my opinion, a conflict of interest. However, I think the rule on advertising verdict amounts should preclude advertising these amounts because there is no way to advertise in a manner that is not misleading to the public. How can a single advertisement explain that a verdict was reached due to the egregious factual circumstances specific to that case that are not likely to apply to the client's case? For instance, the Thomas J. Henry firm often advertises verdicts worth millions for cases that (to my knowledge) involved DWI and/or death. I'm not against advertising, but it should not be misleading and reasonable expectations must be set.

**From:** [REDACTED]  
**To:** [CDRR](#)  
**Subject:** CDRR Comment: Proposed rule changes: Lawyer Advertising  
**Date:** Monday, March 2, 2020 11:26:00 AM

<b>* State Bar of Texas External Message *</b> - Use Caution Before Responding or Opening Links/Attachments	
<b>Contact</b>	
<b>First Name</b>	Dawn
<b>Last Name</b>	Meade
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	13879750

<b>Feedback</b>	
<b>Subject</b>	Proposed rule changes: Lawyer Advertising
<b>Comments</b>	
<p>           I have a comment on Rule 7.06. Prohibited Employment. Specifically, Rule 7.06(c) should be stricken or altered. As a 28 year litigator, I understand the need to draft the rules to punish "laundered" cases: Those referred to an "innocent" attorney by less scrupulous attorneys who chase business and attain it illegally so it may be "referred" to others for a part of the fee. Nevertheless, this Rule places an unacceptably high burden on attorneys to whom cases are referred, and puts them in the position of, after rendering services for their client, being punished and forced to sacrifice all of the time and work because of the origin of the case. I don't believe for one second that, unless the referring attorney is a known scoundrel, most attorneys would have any way to know that a referral found its origins in rules violations, especially violations that occurred by a person other than the lawyer. Whenever a client is referred to me, I always inquire about how they found me. I do securities fraud and frankly, more than half of them can't articulate who even sent them my way. Many times they have made an initial inquiry only to be sent from firm to firm until they find someone who knows that I "do that kind of law." If they were originally sent on that journey to find "me" by a lawyer who impermissibly solicited them, I could be a year into representation before something triggers a memory and the client tells me off the cuff that, "I saw John Doe's commercial last night. I forgot that guy called me last year and sent me to X, who sent me to you." That scenario, which likely plays out often, is akin to an "innocent purchaser" situation and no attorney who has worked hard to represent someone should be punished by a strict liability, "catch-all rule." I suggest, at the very least, some alteration like what I set out below: (c) A lawyer who has not violated paragraph (a) or (b) in accepting employment in a matter ("reporting attorney"), but who subsequently discovers that the referring attorney violated paragraph (a) or (b) shall: (1) immediately report the violation to the State Bar _____; (2) within 30 days of the report made pursuant to (c)(1), submit to the _____ a written explanation of how the case came to be referred to the reporting attorney; and (3) respond within 30 days of receiving any further inquiry made by _____, regarding the report made by the reporting attorney pursuant to (c)(1). (d) If, after investigation of the issue, _____ informs the reporting attorney that _____ determined the reporting attorney should have known that s/he accepted employment in a matter where a lawyer violated paragraph (a) or (b), then the reporting attorney shall not continue employment in connection with the matter unless nothing of value is given thereafter in return for that employment.         </p>	

**From:** [JR Smith](#)  
**To:** [cdrr](#)  
**Subject:** RE: Seeking Comments on Proposed Rule Changes: Lawyer Advertising & Cessation of Practice  
**Date:** Monday, March 2, 2020 12:57:03 PM

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

I do not think lawyers should be allowed to advertise

J. R. Smith

j

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**From:** State Bar of Texas - CDRR [mailto:cdrr@texasbar.com]  
**Sent:** Monday, March 02, 2020 9:35 AM  
**To:** [REDACTED]  
**Subject:** Seeking Comments on Proposed Rule Changes: Lawyer Advertising & Cessation of Practice

State Bar of Texas



# Proposed Rule Changes

**Public Comments Sought**

## Lawyer Advertising and Solicitation Rules

The Committee on Disciplinary Rules and Referenda has published [proposed changes to Part VII \(Information about Legal Services\), Texas Disciplinary Rules of Professional Conduct](#), in the March issue of the *Texas Bar Journal* and the February 28 issue of the *Texas Register*. The published proposal includes revisions to the previously recommended rule changes. For a summary and background of the latest revisions, and to view the proposed rule changes, please click [here](#).

The Committee will accept comments concerning the proposed rule changes through April 10, 2020. Comments on the proposed rule changes can be submitted [here](#).

A public hearing on the proposed rule changes will be held at 10:30 a.m. on April 7, 2020, at the Texas Law Center in Austin.

## Voluntary Appointment of Custodian Attorney for Cessation of Practice

The Committee has also published [proposed Rule 13.04 \(Voluntary Appointment of Custodian Attorney for Cessation of Practice\), Texas Rules of Disciplinary Procedure](#), in the March issue of the *Texas Bar Journal* and the February 28 issue of the *Texas Register*.

The Committee will accept comments concerning the proposed rule through April 10, 2020. Comments on the proposed rule can be submitted [here](#).

A public hearing on the proposed rule will be held at 10:30 a.m. on April 7, 2020, at the Texas Law Center in Austin.

## 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](http://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

[Unsubscribe](#)



**From:** [REDACTED]  
**To:** [cdrr](#)  
**Subject:** CDRR Comment: Support elimination of attorney trade name prohibition  
**Date:** Monday, March 2, 2020 1:03:06 PM

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

**Contact**

<b>First Name</b>	Christopher
<b>Last Name</b>	Gagne
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	24060906

**Feedback**

<b>Subject</b>	Support elimination of attorney trade name prohibition
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**Comments**

I whole heartedly agree with and support the proposed changes to the attorney advertising rules that would eliminate the prohibition against using a law firm trade name. It is long overdue to move Texas into conformity with other jurisdictions that permit the use of trade names for law firms. Please pass the proposed rule change as soon as possible. Sincerely, Chris Gagne

**From:** [REDACTED]  
**To:** [CDRR](#)  
**Subject:** CDRR Comment: Proposed change to 7.01 (e)  
**Date:** Monday, March 2, 2020 2:55:31 PM

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<b>* State Bar of Texas External Message *</b> - Use Caution Before Responding or Opening Links/Attachments	
<b>Contact</b>	
<b>First Name</b>	Camden
<b>Last Name</b>	Chancellor
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	24082800

<b>Feedback</b>	
<b>Subject</b>	Proposed change to 7.01 (e)
<b>Comments</b>	
<p>This proposed rule absolutely shall not be implemented. A licensed lawyer in the state of texas can, and will, at all times, be able to propose the use of force, or deadly force, when the same force is not a violation of Texas Law. As an attorney at law, I have had situations where my clients had civil proof of right of possession and ownership over surface premises or personal property... and Texas law allows for the use of force to prevent harm to one's self, or to those under one's protection. A lawyer can and will use force if the lawyer so decides, and the consequences of the use of force are not violations of criminal law. A lawyer may use deadly force to protect another. A lawyer may use DEADLY FORCE to defend against the taking of certain property. An intent to use force in advance is acceptable if people are warned as concerns trespassing or violation of Texas castle doctrine. You shall not pass this proposed change.</p>	

**From:** [REDACTED]  
**To:** [cdrr](#)  
**Subject:** CDRR Comment: Trade Names  
**Date:** Monday, March 2, 2020 3:01:01 PM

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

### Contact

<b>First Name</b>	Michael
<b>Last Name</b>	Sanders
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	24007981

### Feedback

<b>Subject</b>	Trade Names
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### Comments

Do not allow the use of trade names. It cheapens the profession. They are almost always misleading. One firm in the state has been using a trade name for years and continues to do so. The firm's name implies a level of intelligence that the attorneys at the firm do not have. The use of trade names will cause unending fights between lawyers over trademarks and trade names. There are plenty of ways for the public to find out which lawyers practice in which areas. We do not need the people choosing lawyers based upon who came up with the best trade name. As I understand it, part of the justification for this change is that the majority of other states allow trade names. My response: So What? The majority of other states do things that we do not do in Texas. I do not want the way we do things in Texas in general, and the practice of law in particular, to be governed by standards enacted just because the majority of other states use that standard.

**From:** [REDACTED]  
**To:** [cdrr](#)  
**Subject:** CDRR Comment: As regards 701(e)  
**Date:** Monday, March 2, 2020 8:27:09 PM

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

**Contact**

<b>First Name</b>	Camden
<b>Last Name</b>	Chancellor
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	24082800

**Feedback**

<b>Subject</b>	As regards 701(e)
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**Comments**

This also carries a potential restraint of trade against lawyers offering security services. The proposed rule is vague enough to incorporate anti-competitive activities which are allowed to licensed attorneys. I'm not aware of Prohibition's against attorneys offering other services. Therefore the proposed rule limits the ability of licensed attorneys to give presentations concerning the use of force and/or to offer services in connection with personal protection services.

**From:** [REDACTED]  
**To:** [cdrr](#)  
**Subject:** CDRR Comment: Proposed Changes to Part VII  
**Date:** Tuesday, March 3, 2020 2:44:01 PM

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

**Contact**

<b>First Name</b>	Ruben
<b>Last Name</b>	Robles
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	17118400

**Feedback**

**Subject** Proposed Changes to Part VII

**Comments**

From the proposed changes I infer that someone believes that lawyers are being too dignified in their advertising; they are bringing too much honor to our profession; the public needs less protection from deceitful, aggressive and downright embarrassing lawyer ads. I'd like to meet that person and I'd like to have that person watch some daytime and late night TV with me. These proposed changes can only bring more disparagement of our profession. But I guess that's the goal. Maybe after 35 years of practice it's time for me to retire while I retain a modicum of dignity. Thanks.

**From:** [REDACTED]  
**To:** [cdrr](#)  
**Subject:** CDRR Comment: 7.01 (e) proposed  
**Date:** Tuesday, March 3, 2020 3:34:12 PM

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<b>* State Bar of Texas External Message *</b> - Use Caution Before Responding or Opening Links/Attachments	
<b>Contact</b>	
<b>First Name</b>	Camden
<b>Last Name</b>	Chancellor
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	24082800

<b>Feedback</b>	
<b>Subject</b>	7.01 (e) proposed
<b>Comments</b>	
The State of Texas has a penal code exception that a woman is not prosecuted for violence against her unborn child. The State Bar of Texas professional conduct rules do not contain any such exception. Therefore this new provision would apply to lawyers who advertise reproductive rights relating to abortion. These lawyers are therefore encouraging results based on violence against unborn children, and the state bar did not incorporate an appropriate exception.	

Supreme Court of Texas

P.O. Box 12248

Austin, Texas 78711

Date: February 28, 2020

**Subject:** Suggestions and comments Texas Disciplinary Rules of Professional Conduct

**Attn:** Blake A. Hawthorne, Clerk of the Court, Texas

I was troubled by the areas of concerns with the professional responsibility of law firms. I'm expressing my concerns and I want to voice my opinions, regarding the community health assistance call WELLNESS of individuals (attorney and their administrative assistance). A liberate work life is needed in all sectors of society and keeping and holding the communities accountable for their service in honesty and structural integrity. Cognitive health is a part of this. The following below is informational and hopefully assistable in having the knowledge and experience in handling cases.

**Information about legal service** plays a vital part of the first basic legal research in knowing what to look for and how to start. Let me give you a short version.

**7.1 thru 7.4** starts the process of **communication** and provides the public with a basic understanding on how to research looking for your attorney that deals with your problem of concerns, and this is your goal. If there is a problem in this area, for example, if one of the staff of the law firm has a cognitive mental considering, we may have a problem with understanding. Harmful information makes our community sad/sick and having a concern for citizens, even in our workplace. So, please don't let us have a disaster in our basic research legal search and knowing the federal, state and administrative legal system and how it can assist us (the citizens).

Thank you for your time and understanding of these matters,



Cassandra Benton, if you wish to contact me, feel free: Cell [REDACTED]

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IN SUPREME COURT  
OF TEXAS

MAR 04 2020

BLAKE HAWTHORNE, Clerk  
IN SUPREME COURT  
OF TEXAS

**From:** [REDACTED]  
**To:** [cdrr](#)  
**Subject:** CDOR Comment: State Bar Rules - Changes to Part VII (information about Legal Services)  
**Date:** Thursday, March 5, 2020 9:27:48 AM

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<b>* State Bar of Texas External Message *</b> - Use Caution Before Responding or Opening Links/Attachments	
<b>Contact</b>	
<b>First Name</b>	Steve
<b>Last Name</b>	Waldman
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	20679550

<b>Feedback</b>	
<b>Subject</b>	State Bar Rules - Changes to Part VII (information about Legal Services)
<b>Comments</b>	
<p>I support the changes. The extensive use of domain names, and inroads by national and international law firms and legal services corporations, have reformatted the practice of law. We can operate on the same principles as banks and other financial institutions. There is nothing misleading about a trade name per se. And a law firm name that incorporates the names of lawyers from other states or countries is a trade name.</p>	

**From:** [James Adams](#)  
**To:** [cdrr](#)  
**Cc:** [James Wester](#)  
**Subject:** My objections to Proposed Rules  
**Date:** Saturday, March 7, 2020 10:19:01 AM

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

Please consider my objections herein.

J. Collier Adams, Jr.  
SBN 00863400

----- Forwarded Message -----

**From:** James Adams <[REDACTED]>  
**To:** James Wester <james.wester@texasbar.com>  
**Sent:** Saturday, March 7, 2020, 10:05:16 AM CST  
**Subject:** An interesting article showed up in the Wall Street Journal [edited somewhat]

Mr. Wester,

1. The editorial board of the Wall Street Journal points out that the USSCT "*Janus* decision held that government union positions in collective bargaining are inherently political because they implicate matters of public interest."

I see at page 182 of the March 2020 issue of the Texas Bar Journal the proposed Rule 7.05 (a) where nonprofits are given preferential treatment by the Bar.

The current trend of vilifying people and activities that actually make money that can be taxed to pay off the national debt seems to me to be very self-destructive. Given that some nonprofits are far richer, and I submit greedier, than many for profit activities, there is no justification for giving nonprofits a political advantage about "educat[ing] members of the public about the law."

Enviro groups routinely misrepresent, in my view, the early and important case of *Martin v. Waddell* wherein enviro NGO's and their lawyers claim that the *Martin* case stands for the preposterous proposition that States own all natural resources in the state absolutely. But the case deals only with the Duke of York's wrongful sale of Common Right of Piscary off the sea shores of New Jersey to a private firm.

In addition, I've seen claims that a Public Trust Theory of natural resources somehow exists in isolation from the fiduciary duty of the Trustee State toward the true Beneficiaries being the citizens, not animals and habitat. American private property cannot be held in common after the issuance of the land patent in perpetuity; and statutes of limitation cannot make the resulting involuntary servitude of Feudal Law legal, and the US Constitution's Contracts Clause cannot be rendered meaningless by state or federal enactments. In addition, elevating animals and habitat over human rights and dignity smacks of some sort of psychological sociopathy.

I also heard Ken Kramer (a representative of the Sierra Club) tell a conference of law students many of whom were in the administrative law section that ancient land rights to groundwater are a legal fiction. The Sierra Club itself is a greater legal fiction than our ancient and essential rights that predate even the US Constitution.

My point in relating this is to say that just because an organization is a bona fide nonprofit does not justify political favoritism seen in the proposed rule.

(If you wish, I could go on in greater detail how a certain administrative law lawyer erroneously claimed that, because oil and gas rights come from regulation [not land law!], that land rights to groundwater likewise come from administrative regulation.)

2. Given that so many students are now being taught to be as delicate as snowflakes, I object to Proposed Rule 7.03 (c) use of the words "overreaching" and "undue influence" because they are too vague.

In addition, some consideration needs to be given to the direction from which "coercion, duress" and intimidation" are to come from. In other words, is the complainer who has to feel coercion or does the offending lawyer need to be intending coercion. Is reasonable coercion in a billing statement enough to trigger a violation? What about consequences of failing to comply with an intent to sue letter? Is that coercion, too?

3. Texas' state bar going ipso facto to the UBE is inherently political because there are a lot of political issues in other states that are a waste of time to test students over, especially so when the basic fundamentals of the law are not being taught.

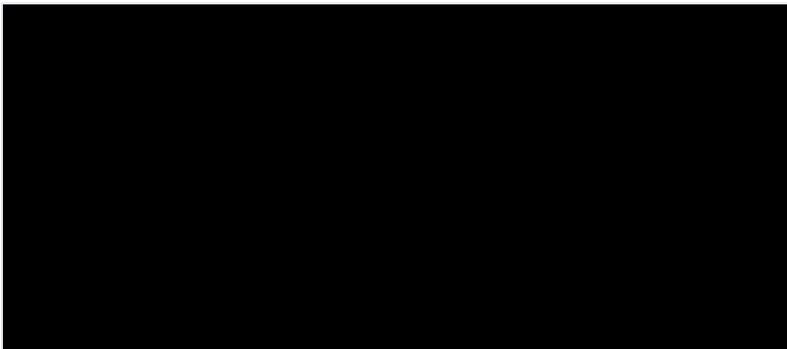
An administrator in an obscure position (pursuant to conversations to which the members of the bar are not privy) should not determine the qualifications of those who practice next to us. Otherwise, as one commentator sagely notes, we are seeing signs that lawyer qualifications are a waste of time.

All the best.

Thank you for your service.

J. Collier Adams Jr  
SBN 00863400

[Opinion | Free Speech for Lawyers](#)





The Editorial Board

The Supreme Court may soon hear challenges to bar-association dues.

<https://www.wsj.com/articles/free-speech-for-lawyersfree-speech-for-lawyers-11583451282>

**From:** [Gary E. Smith](#)  
**To:** [cdrr](#)  
**Subject:** Re: Proposed Rule Changes: Public Hearing Update & Reminder to Submit Comments  
**Date:** Tuesday, March 17, 2020 10:19:21 AM

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

Please stop changing rules.

Gary E. Smith, esq.



On Mar 17, 2020, at 10:12 AM, State Bar of Texas - CDRR <[cdrr@texasbar.com](mailto:cdrr@texasbar.com)> wrote:



# Proposed Rule Changes

## Public Hearing Update & Public Comments Sought

### Lawyer Advertising and Solicitation Rules

### Voluntary Appointment of Custodian Attorney for Cessation of Practice

The Committee on Disciplinary Rules and Referenda recently published [proposed changes to Part VII \(Information about Legal Services\), Texas Disciplinary Rules of Professional Conduct](#), in the *Texas Bar Journal* and the *Texas Register*. The Committee also recently published [proposed Rule 13.04 \(Voluntary Appointment of Custodian Attorney for Cessation of Practice\), Texas Rules of Disciplinary Procedure](#).

The Committee will continue to accept comments concerning the proposed rule changes through April 10, 2020. Comments on the proposed rule changes can be submitted [here](#).

The Committee will hold public hearings on the proposed rule changes at 10:30 a.m. on April 7, 2020. **UPDATE: As a safety precaution related to the coronavirus, the Committee will hold the public hearings by teleconference only. Members of the public who wish to participate must call in toll-free using the following information:**

**Telephone Number: 866-398-2885**

**Pass Code: 2020407**

If you plan to participate in either public hearing, it is requested that you email [CDRR@texasbar.com](mailto: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](http://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

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**From:** [Lewis Kinard](#)  
**To:** [Brad Johnson](#)  
**Cc:** [Cory Squires](#)  
**Subject:** FW: Proposed Rule Changes: Public Hearing Update & Reminder to Submit Comments  
**Date:** Tuesday, March 17, 2020 1:48:06 PM  
**Attachments:** [image003.png](#)

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

Please use the email below as an additional comment.



**Lewis Kinard**  
Executive Vice President, General Counsel &  
Assistant Corporate Secretary  
**American Heart Association**  
7272 Greenville Ave., Dallas TX 75231  
O 214.706.1246

*"KEEP CALM – AND WASH YOUR HANDS!"*

Executive Assistant: [REDACTED] 214.706.1175

The AHA takes personal privacy seriously. Read more at: [www.Heart.org/Privacy](http://www.Heart.org/Privacy).

**From:** Jonathan Vickery <[REDACTED]>  
**Sent:** Tuesday, March 17, 2020 10:36 AM  
**To:** Lewis Kinard <[REDACTED]>  
**Subject:** FW: Proposed Rule Changes: Public Hearing Update & Reminder to Submit Comments

\*\*\* **CAUTION:** This email originated from outside of the **American Heart Association**. Do **not** click links or open attachments unless you recognize the sender and know the content is safe. \*\*\*

Hi Lewis

I have a quick question. Is there any definition of "Reduced fee" or "bona fide Legal Aid organization", I raise this question in regards to the proposed rule changes and specifically 7.05 (a).

**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;

What prevents private attorneys who take advantage of a non profit status to attract low to moderate prospective clients with so called reduced fees and call themselves legal services organizations yet receive no funding for free legal services to low income individuals.

**Jonathan W. Vickery**  
**Associate Director & Director of Grants**  
**Attorney at law**  
P.O. Box 12886  
Austin, Texas 78711  
512.320.0099, ext. 110  
[www.teajf.org](http://www.teajf.org)



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**From:** State Bar of Texas - CDRR <[cdr@texasbar.com](mailto:cdr@texasbar.com)>

**Sent:** Tuesday, March 17, 2020 10:12 AM

**To:** Jonathan Vickery <[REDACTED]>

**Subject:** Proposed Rule Changes: Public Hearing Update & Reminder to Submit Comments

State Bar of Texas



# Proposed Rule Changes

## Public Hearing Update & Public Comments Sought

### Lawyer Advertising and Solicitation Rules

### Voluntary Appointment of Custodian Attorney for Cessation of Practice

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**2020. UPDATE: As a safety precaution related to the coronavirus, the Committee will hold the public hearings by teleconference only. Members of the public who wish to participate must call in toll-free using the following information:**

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**Pass Code: 2020407**

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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

[Unsubscribe](#)



**From:** [REDACTED]  
**To:** [cdrr](#)  
**Subject:** CDRR Comment: Upcoming rule changes  
**Date:** Tuesday, March 17, 2020 12:16:38 PM

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

**Contact**

<b>First Name</b>	David
<b>Last Name</b>	Lacy
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	11807500

**Feedback**

**Subject** Upcoming rule changes

**Comments**

I don't think it looks good to be making rule changes when the whole populace of the bar is distracted with pandemic. Can't these changes to the rules wait until everyone can give them their full attention?

**From:** [REDACTED]  
**To:** [cdrr](#)  
**Subject:** CDRR Comment: Rule 7.01 proposed changes  
**Date:** Tuesday, March 17, 2020 2:35:26 PM

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<b>* State Bar of Texas External Message *</b> - Use Caution Before Responding or Opening Links/Attachments	
<b>Contact</b>	
<b>First Name</b>	Andrew
<b>Last Name</b>	Cates
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	24059549

<b>Feedback</b>	
<b>Subject</b>	Rule 7.01 proposed changes
<b>Comments</b>	
I support the ability of firms to operate under trade names as long as it is clear to consumers that the entity is a law firm and that the services provided are legal in nature. I do not believe that it misleads consumers, and I do not believe that it minimizes the professionalism of the legal industry.	

**From:** [REDACTED]  
**To:** [cdrr](#)  
**Subject:** CDRR Comment: Rule 7.01  
**Date:** Thursday, March 19, 2020 10:54:23 AM

---

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

**Contact**

<b>First Name</b>	David
<b>Last Name</b>	Sprott
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	24046895

**Feedback**

<b>Subject</b>	Rule 7.01
----------------	-----------

**Comments**

In 7.01(a) I would recommend removing the word "nondeceptive" from the second sentence. In my opinion the word is unnecessary in conjunction with the other language in the paragraph that prohibits "false and misleading" statements. Also, I am now confused about what firm names we can use. The prohibition on trade names has been removed, but the use of the names of attorneys in the firm named appears to be optional with the use of "may" in 7.01(c).

**From:** [REDACTED]  
**To:** [cdrr](#)  
**Subject:** CDOR Comment: Lawyer Advertising and Solicitation Rules  
**Date:** Friday, March 20, 2020 6:35:01 PM

---

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

**Contact**

<b>First Name</b>	Stephen
<b>Last Name</b>	Putonti
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	24011461

**Feedback**

<b>Subject</b>	Lawyer Advertising and Solicitation Rules
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**Comments**

I like the proposed changes and support them wholeheartedly

## 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

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### 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](http://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:** [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 hearing?

Kenneth M. Horwitz  
Glast, Phillips & Murray, P.C.  
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(972) 419-8383 (phone)  
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**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](https://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](mailto: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](https://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

[Unsubscribe](#)



**From:** [REDACTED]  
**To:** [CDRR](#)  
**Subject:** CDRR Comment: Proposed Rules Regarding "Competency Attorneys" and Similiar Proposals  
**Date:** Wednesday, April 1, 2020 1:09:14 PM

<b>* State Bar of Texas External Message *</b> - Use Caution Before Responding or Opening Links/Attachments	
<b>Contact</b>	
<b>First Name</b>	Richard
<b>Last Name</b>	Edgell
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	6420900

<b>Feedback</b>	
<b>Subject</b>	Proposed Rules Regarding "Competency Attorneys" and Similiar Proposals
<b>Comments</b>	
<p>1. Better Law already exists. 2. The Law has been Improved and "tweaked" 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</p>	

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..

**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**

<b>First Name</b>	John
<b>Last Name</b>	Kirtley
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	11534050

**Feedback**

<b>Subject</b>	Proposed Advertising Rule Changes
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**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 changes re: use of Trade Names  
**Date:** Monday, April 6, 2020 2:28:24 PM

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

### Contact

<b>First Name</b>	Jason
<b>Last Name</b>	Moore
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	24053373

### Feedback

<b>Subject</b>	Proposed changes re: use of Trade Names
----------------	---

### Comments

I support changing the Texas Disciplinary Rules of Professional Conduct to eliminate the blanket ban on the use of Trade Names. I have no comment regarding the other proposed changes, not as to the specific changes implemented to remove the blanket ban on Trade Names. The blanket ban on Trade Names is a significant limitation on at least one subset of Texas law firms, namely those firms who practice in Intellectual Property law. Texas is home to many boutique firms whose practice primarily or exclusive in the area of patent preparation and prosecution before the U.S. Patent and Trademark Office. This a practice at a federal level and generally clients are drawn from the entire U.S. and even abroad. Prohibiting Texas firms from indicating, in their firm name, that they practice patent law or intellectual property makes it much harder for potential clients to find these firms, especially when other states have not such prohibition.



April 13, 2020

Via Electronic Mail: [CDRR@texasbar.com](mailto:CDRR@texasbar.com)

Committee on Disciplinary Rules and Referenda  
1414 Colorado Street  
Austin, Texas 78701

**Re: Comment to Proposed Changes to Part VII. Information about Legal Services (Lawyer Advertising and Solicitation Rules)**

Dear Committee on Disciplinary Rules and Referenda,

I have spent my entire ten-year legal career representing victims of legal malpractice and lawyer misconduct. Over the years, I have assisted victims of barratry with bringing civil claims against the attorneys (and others) who illegally solicited them. The Committee's proposed changes to Rule 7.03 will effectively abolish the civil barratry statute, and promote barratry, not deter it.

"The ordinary meaning of barratry is vexatious incitement to litigation, especially by soliciting potential legal clients." *Neese v. Lyon*, 479 S.W.3d 368, 376 (Tex. App.—Dallas 2015, no pet.) (citing BLACK'S LAW DICTIONARY (10th ed. 2014)). "It has long been a crime in Texas." *Id.*; see also TEX. PEN. CODE § 38.12. "The purpose of the barratry statute is to protect vulnerable and unknowing individuals from overreaching or improper behavior on the part of lawyers." *Enochs v. Brown*, 872 S.W.2d 312, 318 (Tex. App.—Austin 1994, no writ), disapproved on other grounds, *Roberts v. Williamson*, 111 S.W.3d 113 (Tex. 2003).

Because Texas barratry restrictions had been rarely enforced, the Legislature passed SB 1716 that amended Texas Government Code § 82.065 and added § 82.0651, which provides remedies for victims who are subjected to barratrous conduct. Under the current version of § 82.0651, a client may bring an action to void a contract procured as a result of conduct violating Section 38.12(a) or (b) of the Texas Penal Code or Rule 7.03 of the Texas Disciplinary Rules of Professional Conduct and recover statutory damages, penalties, and attorney's fees. See TEX. GOV. CODE § 82.0651(a). The statute also permits a person who was solicited by conduct that violates these same rules and statutes but who did not enter into a contract to file a civil action against any person who committed barratry. *Id.* at § 82.0651(b). The stated purpose of § 82.0651 is "to protect those in need of legal services against unethical, unlawful solicitation and to provide efficient and economical procedures to secure that protection." *Id.* at § 82.0651(e).

The proposed changes to Rule 7.03 will make disciplinary proceedings relating to barratry nearly impossible, and virtually abolish civil barratry claims under § 82.0651.

The proposed amendment to Rule 7.03(a)(2) defines “solicits” as a “solicitation communication” and therefore requires a showing that the communication was “substantially motivated by pecuniary gain,” but how is that ever demonstrated? A lawyer accused of barratry could easily argue that the “primary” motivation was to aid the client, and not to obtain a pecuniary gain. This is the position taken by nearly every one of the attorneys I have sued for barratry. For instance, our law firm represented four separate families who had been improperly solicited to hire a San Antonio attorney.<sup>1</sup> The attorney’s father owned a company called “Group of Legal Specialties” that was used to solicit clients. That company provided funeral homes with a brochure on how to bait the clients into requesting legal services under the promise that their funeral expenses would be paid for.<sup>2</sup> After the attorney was sued, he argued that his father’s company “had nothing to do with his firm” and was simply to “to help Mexican nationals get funeral expenses paid in traumatic death cases.”<sup>3</sup> This amendment would create a loophole in Rule 7.03 that would allow any attorney accused of barratry to state he was not “substantially motivated by pecuniary gain,” but by the desire to help the client with their claims.

The amendment to Rule 7.03(b) would also promote barratry, not deter it. Generally, any in-person contact initiated for the purpose of soliciting employment is prohibited by Chapter 38.12 of the Penal Code, unless the conduct is authorized by the Texas Disciplinary Rules of Professional Conduct. *See* TEX. PEN. CODE §§ 38.12(a)(2), (c). Yet, the proposed change to Rule 7.03(b) permits in-person contact if the “target” of the solicitation is “a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.” Thus, under the amendment, it would no longer be unethical or a crime to solicit a client through in-person contact so long as the lawyer “knows” the person to be an “experienced user” – whatever that means – of business-related legal services. But the purpose of the barratry statute is to protect “vulnerable and unknowing” individuals against unlawful in-person solicitation, no matter the type of legal services that they need. *See Enochs*, 872 S.W.2d at 318. A person with a business-related claim is just as vulnerable as one with a personal injury claim, and they deserve the same protection. Not to mention that permitting in-person solicitation of potential clients with business-related claims will promote the vexatious incitement of unmeritorious litigation.

To demonstrate, allow me to share with the Committee a real-life situation that our firm encountered. Our law firm represented more than 300 individuals who were improperly solicited in-person by Houston-area attorneys to file claims against BP after the Deepwater Horizon oil spill. These clients owned small businesses along the Gulf Coast and were solicited in-person at their businesses by “marketers” hired by the attorneys. The lower level “marketers” were paid \$250 per client that they signed up. These “marketers” literally went door-to-door looking for clients, and even followed the potential clients home if the clients were spotted driving a company vehicle that indicated there may be a viable economic business claim that the lawyers could pursue. The potential clients were marketing materials that were never approved by the State Bar, and were

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<sup>1</sup> <https://www.expressnews.com/business/local/article/San-Antonio-lawyer-Cesar-Ornelas-II-facing-14902879.php>

<sup>2</sup> A copy of that brochure is attached to this letter in Tab 1.

<sup>3</sup> <https://www.abqjournal.com/1352333/law-firm-accused-of-ambulance-chasing-2.html>

pressured to hire the attorneys based on false or misleading statements by the “marketers.” The lawyers accumulated thousands of clients through this improper solicitation and bombarded BP with these claims. Eventually, the lawyers withdrew when the main “marketer” was indicted, and it was determined that many of the individuals solicited to file economic claims actually had no economic damages from the oil spill. Still, this scenario demonstrates that in-person solicitation of potential clients with business-related claims will promote the vexatious incitement of litigation, and even individuals with business-related claims are deserving of protection.

The proposed amendment to Rules 7.03(e) and (f) will also promote barratry, not deter it.

The amendment to Rule 7.03(e) provides that a lawyer may pay, offer to pay, or give something of value to a nonlawyer who is soliciting employment “nominal gifts” if “given as an expression of appreciation” and that are “neither intended nor reasonably expected to be a form of compensation for recommending a lawyer’s services.” But what exactly is a nominal gift? The proposed amendment is vague, and would allow a loophole to any barratry prosecution, disciplinary proceeding, or civil barratry claim. This amendment will give any lawyer guilty of barratry an easy way to escape those charges because it will allow the attorney to argue that any payment to the “marketer” was of “nominal” value or was done as an “expression of appreciation” and was never intended as compensation for the solicitation of legal services. The amendment places an unreasonably high burden on the grievance committee, the prosecutor, or any attorney who is pursuing a barratry claim.

Similarly, the proposed amendment to Rule 7.03(f) would allow an attorney to “secure employment” by paying, giving, or offering to pay or give, “ordinary social hospitality of nominal value.” Again, what is nominal value? What is social hospitality? This amendment would create another loophole for attorneys guilty of barratry as it would allow them to argue that the payments to the potential clients of \$1,000 were “nominal” expressions of “social hospitality” and not payments to induce the client to secure the lawyer’s employment. Victims of barratry are often those in dire financial situations, so they are vulnerable to predatory tactics. The hiring of an attorney should not be based on which one will offer the most “social hospitality” and should be done at the client’s free will, not by coercion in a time of distress. Again, the barratry statutes are there to prevent lawyers and others from engaging in predatory tactics to secure employment on vulnerable and unknowing individuals. *Enochs*, 872 S.W.2d at 318. The amendment would promote these predatory tactics, not deter them.

Barratry is still a problem in Texas, and its victims are real. My client Lacy Reese is one of these victims, and she testified to her experience in her deposition, a portion of which I would like to share with the Committee. Ms. Reese lost her husband to a tragic vehicle accident and was immediately solicited to hire attorney Houston attorney Michael Pohl while she was at her husband’s funeral, just days after the accident. Ms. Reese gave this response when asked why she was bringing her civil barratry lawsuit:

You know, I would like for this to stop and that people don't have to go through this. That when their husband died that they don't come to their funeral and leave a card at the door to tell me that he has got two lawyers

that can represent me when I am in my time of need. I am here so that nobody else has to they broke the law. They broke the law. They deceived me by going through Helping Hands [the runner's company]. And that is not right. That is not a right conduct for a lawyer.

You trust them, you trust everything that they say and everything that they do. And to find out that they came to my house, knowing that they were breaking a law, and put me in the middle of that. And then having me sign all of this stuff, knowing that my mind's messed up because my husband got his skull crashed on the side of the road in Texas.

And you know what's so sad is, how the hell did they know? What did they do? They sat there and watched the news and everything until somebody came up and said, Hey, this man died. You need to get down there to Arkansas and get this woman to sign all of these sheets.

...  
You know, when this stuff happens, they will -- they can help you with the funeral costs, what he told me, with costs with the vehicle being in Texas and that kind of stuff. And that that was what they were there for, is to help people, and then to help you find a person to represent you for a lawsuit.

It was difficult enough for Ms. Reese to prove her barratry claims under the barratry statutes as they are. The proposed amendments would give unscrupulous lawyers like those who solicited Ms. Reese another out and would make it difficult, if not impossible, for victims like Ms. Reese to prove their claims. The amendments will deter attorneys like me from pursuing the claims, so the entire purpose of the enactment of the civil barratry statute will be thwarted. In short, by approving the amendments, the Committee is promoting barratry, not deterring it.

If the Committee has any questions or would like any additional information from me, please do not hesitate to contact me at [REDACTED].

Sincerely,

THE KASSAB LAW FIRM

David Eric Kassab

**Committee on Disciplinary Rules and Referenda  
Proposed Rule Changes**

**Texas Rules of Disciplinary Procedure  
Rule 13.04. Voluntary Appointment of Custodian Attorney  
For Cessation of Practice**

**Public Comments Received  
Through April 10, 2020**

**From:** [REDACTED]  
**To:** [cdrr](#)  
**Subject:** CDOR Comment: Custodian Attorney for Cessation of Practice  
**Date:** Monday, March 2, 2020 9:49:23 AM

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

**Contact**

<b>First Name</b>	Steven
<b>Last Name</b>	Hayes
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	09280100

**Feedback**

<b>Subject</b>	Custodian Attorney for Cessation of Practice
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**Comments**

I did not read the entire proposed rule carefully. But I thank the Committee for its work on this, and other, issues. In the last sentence of the penultimate paragraph of the proposed rule, it says "no person . . . may incur any liability" from serving as a custodian attorney. Did you intend to say "no person . . . will incur any liability"? The latter gives protection to the attorney, the former disallows the attorney to take on liability. I think. Yours, Steve

**From:** [REDACTED]  
**To:** [cdrr](#)  
**Subject:** CDRR Comment: Proposed Rule Change: Designation of atty for lawpractice cessation  
**Date:** Monday, March 2, 2020 11:48:48 AM

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

**Contact**

<b>First Name</b>	Dawn
<b>Last Name</b>	Meade
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	13879750

**Feedback**

**Subject** | Proposed Rule Change: Designation of atty for lawpractice cessation

**Comments**

This is a good rule. When I started my solo practice, my malpractice carrier required that I do this and I thought then that we probably ought to require same among our members who have solo offices.

**From:** [Gary E. Smith](#)  
**To:** [cdrr](#)  
**Subject:** Re: Proposed Rule Changes: Public Hearing Update & Reminder to Submit Comments  
**Date:** Tuesday, March 17, 2020 10:19:21 AM

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

Please stop changing rules.

Gary E. Smith, esq.



On Mar 17, 2020, at 10:12 AM, State Bar of Texas - CDRR <[cdrr@texasbar.com](mailto:cdrr@texasbar.com)> wrote:



# Proposed Rule Changes

## Public Hearing Update & Public Comments Sought

### Lawyer Advertising and Solicitation Rules

### Voluntary Appointment of Custodian Attorney for Cessation of Practice

The Committee on Disciplinary Rules and Referenda recently published [proposed changes to Part VII \(Information about Legal Services\), Texas Disciplinary Rules of Professional Conduct](#), in the *Texas Bar Journal* and the *Texas Register*. The Committee also recently published [proposed Rule 13.04 \(Voluntary Appointment of Custodian Attorney for Cessation of Practice\), Texas Rules of Disciplinary Procedure](#).

The Committee will continue to accept comments concerning the proposed rule changes through April 10, 2020. Comments on the proposed rule changes can be submitted [here](#).

The Committee will hold public hearings on the proposed rule changes at 10:30 a.m. on April 7, 2020. **UPDATE: As a safety precaution related to the coronavirus, the Committee will hold the public hearings by teleconference only. Members of the public who wish to participate must call in toll-free using the following information:**

**Telephone Number: 866-398-2885**

**Pass Code: 2020407**

If you plan to participate in either public hearing, it is requested that you email [CDRR@texasbar.com](mailto: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](http://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

[Unsubscribe](#)



**From:** [REDACTED]  
**To:** [cdrr](#)  
**Subject:** CDRR Comment: Proposed Rule 13.04  
**Date:** Tuesday, March 17, 2020 11:38:05 AM

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

**Contact**

<b>First Name</b>	Richard
<b>Last Name</b>	Talbert
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	19617550

**Feedback**

<b>Subject</b>	Proposed Rule 13.04
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**Comments**

..., may include any one or more of the following duties assumed: The custodian attorney shall observe the assumed limited scope attorney-client relationship and privilege of confidentiality as if...  
.....no person acting as custodian attorney with limited scope under this rule shall incur any liability by reason of the actions taken within the limited scope pursuant to this Rule. The privileges and limitations of liability contained herein shall not apply to any legal representation taken over or assumed beyond the limited scope by the custodian attorney.

**From:** [REDACTED]  
**To:** [cdrr](#)  
**Subject:** CDRR Comment: Upcoming rule changes  
**Date:** Tuesday, March 17, 2020 12:16:38 PM

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

**Contact**

<b>First Name</b>	David
<b>Last Name</b>	Lacy
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	11807500

**Feedback**

**Subject** Upcoming rule changes

**Comments**

I don't think it looks good to be making rule changes when the whole populace of the bar is distracted with pandemic. Can't these changes to the rules wait until everyone can give them their full attention?

**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 hearing?

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

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**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](https://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.)**

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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

[Unsubscribe](#)



**From:** [REDACTED]  
**To:** [CDRR](#)  
**Subject:** CDRR Comment: Proposed Rules Regarding "Competency Attorneys" and Similiar Proposals  
**Date:** Wednesday, April 1, 2020 1:09:14 PM

<b>* State Bar of Texas External Message *</b> - Use Caution Before Responding or Opening Links/Attachments	
<b>Contact</b>	
<b>First Name</b>	Richard
<b>Last Name</b>	Edgell
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	6420900

<b>Feedback</b>	
<b>Subject</b>	Proposed Rules Regarding "Competency Attorneys" and Similiar Proposals
<b>Comments</b>	
<p>1. Better Law already exists. 2. The Law has been Improved and "tweaked" 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</p>	

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..

**Committee on Disciplinary Rules and Referenda  
Proposed Rule Changes**

**Texas Disciplinary Rules of Professional Conduct  
Rule 1.05. Confidentiality of Information  
(Confidentiality and Clients Contemplating Suicide)**

**Public Comments Received  
Through April 29, 2020**

**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 hearing?

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

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**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



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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

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

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<b>* State Bar of Texas External Message *</b> - Use Caution Before Responding or Opening Links/Attachments	
<b>Contact</b>	
<b>First Name</b>	Searcy
<b>Last Name</b>	Simpson
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	18408800

<b>Feedback</b>	
<b>Subject</b>	Proposed Change in Rule 1.05
<b>Comments</b>	
<p>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 <a href="https://suicidology.org/">https://suicidology.org/</a> 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.</p>	

**From:** [REDACTED]  
**To:** [CDRR](#)  
**Subject:** CDRR Comment: Proposed Rules Regarding "Competency Attorneys" and Similiar Proposals  
**Date:** Wednesday, April 1, 2020 1:09:14 PM

<b>* State Bar of Texas External Message *</b> - Use Caution Before Responding or Opening Links/Attachments	
<b>Contact</b>	
<b>First Name</b>	Richard
<b>Last Name</b>	Edgell
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	6420900

<b>Feedback</b>	
<b>Subject</b>	Proposed Rules Regarding "Competency Attorneys" and Similiar Proposals
<b>Comments</b>	
<p>1. Better Law already exists. 2. The Law has been Improved and "tweaked" 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</p>	

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..

**From:** [REDACTED]  
**To:** [cdrr](#)  
**Subject:** CDRR Comment: Proposed Change to Rules Regarding Suicide  
**Date:** Tuesday, April 7, 2020 4:09:49 PM

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

**Contact**

<b>First Name</b>	Kee
<b>Last Name</b>	Ables
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	24009854

**Feedback**

<b>Subject</b>	Proposed Change to Rules Regarding Suicide
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**Comments**

I agree to the proposed change.

**Committee on Disciplinary Rules and Referenda  
Proposed Rule Changes**

**Texas Disciplinary Rules of Professional Conduct  
Rule 8.03. Reporting Professional Misconduct**

**Texas Rules of Disciplinary Procedure  
Rule 1.06. Definitions  
Rule 9.01. Orders From Other Jurisdictions**

**Public Comments Received  
Through April 29, 2020**

**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

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

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

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**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](https://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](mailto: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](https://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

[Unsubscribe](#)



**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

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**Contact**

<b>First Name</b>	Shea
<b>Last Name</b>	Palavan
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	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

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<b>* State Bar of Texas External Message *</b> - Use Caution Before Responding or Opening Links/Attachments	
<b>Contact</b>	
<b>First Name</b>	Jessica
<b>Last Name</b>	Lewis
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	24060956

<b>Feedback</b>	
<b>Subject</b>	Comments to Proposed Changes to TDRPC Rules 8.03 and 9.01
<b>Comments</b>	
<p>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</p>	

**From:** [REDACTED]  
**To:** [CDRR](#)  
**Subject:** CDRR Comment: Proposed Rules Regarding "Competency Attorneys" and Similiar Proposals  
**Date:** Wednesday, April 1, 2020 1:09:14 PM

<b>* State Bar of Texas External Message *</b> - Use Caution Before Responding or Opening Links/Attachments	
<b>Contact</b>	
<b>First Name</b>	Richard
<b>Last Name</b>	Edgell
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	6420900

<b>Feedback</b>	
<b>Subject</b>	Proposed Rules Regarding "Competency Attorneys" and Similiar Proposals
<b>Comments</b>	
<p>1. Better Law already exists. 2. The Law has been Improved and "tweaked" 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 Statutes 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</p>	

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..

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

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**Contact**

<b>First Name</b>	Richard
<b>Last Name</b>	Schafer
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	24007988

**Feedback**

<b>Subject</b>	Proposed changes to Rule 8.03
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**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

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

**Contact**

<b>First Name</b>	James
<b>Last Name</b>	Roberts
<b>Email</b>	[REDACTED]
<b>Member</b>	Yes
<b>Barcard</b>	17008500

**Feedback**

<b>Subject</b>	Proposed changes 8.03, 1.06 and 9.01
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**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.