

Committee on Disciplinary Rules and Referenda Proposed Rule Changes

VII. INFORMATION ABOUT LEGAL SERVICES

The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the committee publishes the following proposed rules. The committee will accept comments concerning the proposed rules through March 1, 2019. Comments can be submitted at texasbar.com/CDRR. A public hearing on the proposed rules will be held on January 9, 2019 at 10:30 a.m. at the Texas Law Center.

Proposed Rules (Redline Version)

Rule 7.01 ~~Firm Names and Letterhead~~ Communications Concerning a Lawyer's Services

(a) ~~A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the names of a professional corporation, professional association, limited liability partnership, or professional limited liability company may contain "P.C.," "L.L.P.," "P.L.L.C.," or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. Nothing herein shall prohibit a married woman from practicing under her maiden name.~~ shall not make or sponsor a false or misleading communication about the qualifications or services of any lawyer or law firm. Information about legal services must be truthful and non-deceptive. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading. A statement is misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation, or if the statement is substantially likely to create unjustified expectations about the results the lawyer can achieve. This Rule governs all communications about a lawyer's services, including, but not limited to, advertisements and solicitation communications.

(b) ~~A firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located. A lawyer may practice law under a non-misleading trade name, including a trade name that includes the name of one or more deceased or retired members of the firm, or of a predecessor firm if there has been a succession in the firm's identity. A trade name may not imply a connection with a public or charitable legal services organization or a governmental entity, or utilize the name of a non-lawyer or a lawyer not associated with the firm. The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm. A law firm with offices in more than one jurisdiction may use the same~~

name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer occupying a judicial, legislative, or public executive or administrative position shall not be used in the name of a firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm. Any statement or disclaimer required by these rules shall be made in each language used in the communication. However, the mere statement that a language is spoken or understood does not by itself require a statement or disclaimer in that language.

(d) A lawyer shall not hold himself or herself out as being a partner, shareholder, or associate with one or more other lawyers unless they are in fact partners, shareholders, or associates. state or imply that the lawyer can achieve results by means that violate these Rules or other law.

(e) A lawyer shall not advertise in the public media or seek professional employment by any communication under a trade or fictitious name, except that a lawyer who practices under a firm name as authorized by paragraph (a) of this Rule may use that name in such advertisement or communication but only if that name is the firm name that appears on the lawyer's letterhead, business cards, office sign, fee contracts, and with the lawyer's signature on pleadings and other legal documents. Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

(f) A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.02(a).

Rule 7.02 Communications Concerning a Lawyer's Services Disseminated by Public Media

(a) A lawyer shall not make or sponsor a false or misleading communication about the qualifications or the services of any lawyer or firm. A communication is false or misleading if it: who advertises in public media shall publish or broadcast the name of at least one lawyer who is responsible for the content of the advertisement and disclose the lawyer's primary practice location.

(1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) contains any reference in a public media advertisement to past successes or results obtained unless

(i) the communicating lawyer or member of the law firm served as lead counsel in the matter giving rise to the recovery, or was primarily responsible for the settlement or verdict.

(ii) the amount involved was actually received by the client,

(iii) the reference is accompanied by adequate information regarding the nature of the case or matter, and the damages or injuries sustained by the client, and

(iv) if the gross amount received is stated, the attorney's fees and litigation expenses withheld from the amount are stated as well;

(3) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate these rules or other law;

- (4) compares the lawyer's services with other lawyers' services, unless the comparison can be substantiated by reference to verifiable, objective data;
- (5) states or implies that the lawyer is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official;
- (6) designates one or more specific areas of practice in an advertisement in the public media or in a solicitation communication unless the advertising or soliciting lawyer is competent to handle legal matters in each such area of practice; or
- (7) uses an actor or model to portray a client of the lawyer or law firm.

(b) ~~Rule 7.02(a)(6) does not require that a lawyer be certified.~~ A lawyer who advertises in public media may include a statement that the lawyer has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization. at the time of advertising in a specific area of practice, but such certification shall conclusively establish that such lawyer satisfies the requirements of Rule 7.02(a)(6) with respect to the area(s) of practice in which such lawyer is certified. A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(c) ~~A lawyer shall not advertise in the public media or state in a solicitation communication that the lawyer is a specialist except as permitted under Rule 7.04.~~ If an advertisement by a lawyer discloses willingness, or potential willingness, to render services on a contingent fee basis, the advertisement must state whether the client will be obligated to pay for other expenses, such as costs of litigation.

(d) ~~Any statement or disclaimer required by these rules shall be made in each language used in the advertisement or solicitation communication with respect to which such required statement or disclaimer relates; provided however, the mere statement that a particular language is spoken or understood shall not alone result in the need for a statement or disclaimer in that language.~~ A lawyer who advertises in public media a specific fee or range of fees for a particular service shall conform to the advertised fee or range of fees for the period during which the advertisement is reasonably expected to be in circulation or otherwise expected to be effective in attracting clients, unless the advertisement specifies a shorter period. However, a lawyer is not bound to conform to the advertised fee or range of fees for a period of more than one year after the date of publication, unless the lawyer has expressly promised to do so.

Rule 7.03 ~~Prohibited Solicitations and Payments~~ Solicitation of Paid Professional Employment

(a) ~~A lawyer shall not by in-person contact, or by regulated telephone or other electronic contact as defined in paragraph (f) seek professional employment concerning a matter arising out of a particular occurrence or event, or series of occurrences or events, from a prospective client or nonclient who has not sought the lawyer's advice regarding employment or with whom the lawyer has no family or past or present attorney-client relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. Notwithstanding the provisions of this paragraph, a lawyer for a qualified nonprofit organization may communicate with the organization's members for the purpose of educating the members to understand the law, to recognize legal problems, to make intelligent selection of counsel, or to use legal services. In those situations where in-person or telephone or other electronic contact is permitted by this paragraph, a lawyer shall not have such a contact with a prospective client if:~~

- (1) ~~the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment;~~
- (2) ~~the communication contains information prohibited by Rule 7.02(a); or~~
- (3) ~~the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.~~

(a) The following definitions apply to this rule:

(1) "Regulated telephone, social media, or other electronic contact" means any telephone, social media, or electronic communication initiated by a lawyer, or by any person acting on behalf of a lawyer, that involves communication in a live or electronically interactive manner.

(2) "Solicitation" or "solicit" denotes a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.

~~(b) A lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting prospective clients for, or referring clients or prospective clients to, any lawyer or firm, except that a lawyer may pay reasonable fees for advertising and public relations services rendered in accordance with this Rule and may pay the usual charges of a lawyer referral service that meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.~~

(b) A lawyer shall not, for pecuniary gain, solicit through in-person contact, or through regulated telephone, social media, or electronic communication, professional employment from a non-client who has not sought the lawyer's advice or employment, unless the target of the solicitation is:

(1) a lawyer,

(2) a person who has a family, close personal, or prior business or professional relationship with the lawyer, or

(3) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.

~~(c) A lawyer, in order to solicit professional employment, shall not pay, give, advance, or offer to pay, give, or advance anything of value, other than actual litigation expenses and other financial assistance as permitted by Rule 1.08(d), to a prospective client or any other person; provided however, this provision does not prohibit the payment of legitimate referral fees as permitted by Rule 1.04(f) or by paragraph (b) of this Rule. shall not send, deliver, or transmit, or knowingly permit or cause another person to send, deliver, or transmit, a written, audio, audiovisual, digital media, recorded telephone message, or other electronic communication to a prospective client, if:~~

~~(1) the communication involves coercion, duress, overreaching, intimidation, or undue influence;~~

~~(2) the communication is designed to resemble legal pleadings or other legal documents; or~~

~~(3) the communication is not plainly marked or clearly designated an "ADVERTISEMENT", unless the target of the solicitation is:~~

~~(i) a lawyer~~

~~(ii) a person who has a family, close personal, or prior business or professional relationship with the lawyer, or~~

~~(iii) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.~~

~~(d) A lawyer shall not enter into an agreement for, charge for, or collect a fee for professional employment obtained in violation of Rule 7.03(a), (b), or (c). 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 paid 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. 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 Occupations Code Title 5, Subtitle B, Chapter 952.

(e) Except as otherwise permitted, A a lawyer shall not participate with or accept referrals from a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952. for the purpose of securing professional employment, pay, give, or advance, or offer to pay, give, or advance, anything of value to a prospective client, other than actual litigation expenses or financial assistance expressly permitted by law.

(f) As used in paragraph (a), "regulated telephone or other electronic contact" means any electronic communication initiated by a lawyer or by any person acting on behalf of a lawyer or law firm that will result in the person contacted communicating in a live, interactive manner with any other person by telephone or other electronic means. For purposes of this Rule a website for a lawyer or law firm is not considered a communication initiated by or on behalf of that lawyer or firm.

(f) This Rule does not prohibit communications authorized by law, such as notice to members of a class in class action litigation.

Rule 7.04 Advertisements in the Public Media Filing Requirements for Public Advertisements and Written, Recorded, Electronic, or Other Digital Solicitations

(a) A lawyer shall not advertise in the public media by stating that the lawyer is a specialist, except as permitted under Rule 7.04(b) or as follows:

(1) A lawyer admitted to practice before the United States Patent Office may use the designation "Patents," "Patent Attorney," or "Patent Lawyer," or any combination of those terms. A lawyer engaged in the trademark practice may use the designation "Trademark," "Trademark Attorney," or "Trademark Lawyer," or any combination of those terms. A lawyer engaged in patent and trademark practice may hold himself or herself out as specializing in "Intellectual Property Law," "Patent, Trademark, Copyright Law and Unfair Competition," or any of those terms.

(2) A lawyer may permit his or her name to be listed in lawyer referral service offices that meet the requirements of Occupational Code Title 5, Subtitle B, Chapter 952, according to the areas of law in which the lawyer will accept referrals.

(3) A lawyer available to practice in a particular area of law or legal service may distribute to other lawyers and publish in legal directories and legal newspapers (whether written or electronic) a listing or an announcement of such availability. The listing shall not contain a false or misleading representation of special competence or experience, but may contain the kind of information that traditionally has been included in such publications.

(b) A lawyer who advertises in the public media:

(1) shall publish or broadcast the name of at least one lawyer who is responsible for the content of such advertisement; and

(2) shall not include a statement that the lawyer has been certified or designated by an organization as possessing special competence or a statement that the lawyer is a member of an organization the name of which implies that its members possess special competence, except that:

(i) a lawyer who has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised, may state with respect to each such area, "Board Certified, area of specialization — Texas Board of Legal Specialization;" and

(ii) a lawyer who is a member of an organization the name of which implies that its members possess special competence, or who has been certified or designated by an organization as possessing special competence, may include a factually accurate statement of such membership or may include a factually accurate statement, "Certified area of specialization name of certifying organization," but such statements may be made only if that organization has been accredited by the Texas Board of Legal Specialization as a bona fide organization that admits to membership or grants certification only on the basis of objective, exacting, publicly available standards (including high standards of individual character, conduct, and reputation) that are reasonably relevant to the special training or special competence that is implied and that are in excess of the level of training and competence generally required for admission to the Bar; and

(3) shall, in the case of infomercial or comparable presentation, state that the presentation is an advertisement;

(i) both verbally and in writing at its outset, after any commercial interruption, and at its conclusion; and

(ii) in writing during any portion of the presentation that explains how to contact a lawyer or law firm.

(c) Separate and apart from any other statements, the statements referred to in paragraph (b) shall be displayed conspicuously, and in language easily understood by an ordinary consumer.

(d) Subject to the requirements of Rules 7.02 and 7.03 and of paragraphs (a), (b), and (c) of this Rule, a lawyer may, either directly or through a public relations or advertising representative, advertise services in the public media, such as (but not limited to) a telephone directory, legal directory, newspaper or other periodical, outdoor display, radio, television, the Internet, or electronic, or digital media.

(e) All advertisements in the public media for a lawyer or firm must be reviewed and approved in writing by the lawyer or a lawyer in the firm.

(f) A copy or recording of each advertisement in the public media and relevant approval referred to in paragraph (e), and a record of when and where the advertisement was used, shall be kept by the lawyer or firm for four years after its last dissemination.

(g) In advertisements in the public media, any person who portrays a lawyer whose services or whose firm's services are being advertised, or who narrates an advertisement as if he or she were such a lawyer, shall be one or more of the lawyers whose services are being advertised.

(h) If an advertisement in the public media by a lawyer or firm discloses the willingness or potential willingness of the lawyer or firm to render services on a contingent fee basis, the advertisement must state whether the client will be obligated to pay all or any portion of the court costs and, if a client may be liable for other expenses, this fact must be disclosed. If specific percentage fees or fee ranges of

contingent fee work are disclosed in such advertisement, it must also disclose whether the percentage is computed before or after expenses are deducted from the recovery.

(i) A lawyer who advertises in the public media a specific fee or range of fees for a particular service shall conform to the advertised fee or range of fees for the period during which the advertisement is reasonably expected to be in circulation or otherwise expected to be effective in attracting clients, unless the advertisement specifies a shorter period; but in no instance is the lawyer bound to conform to the advertised fee or range of fees for a period of more than one year after the date of publication.

(j) A lawyer or firm who advertises in the public media must disclose the geographic location, by city or town, of the lawyer's or firm's principal office. A lawyer or firm shall not advertise the existence of any office other than the principal office unless:

(1) that other office is staffed by a lawyer at least three days a week; or

(2) the advertisement states:

(i) the days and times during which a lawyer will be present at that office, or

(ii) that meetings with lawyers will be by appointment only.

(k) A lawyer may not, directly or indirectly, pay all or a part of the cost of an advertisement in the public media for a lawyer not in the same firm unless such advertisement discloses the name and address of the financing lawyer, the relationship between the advertising lawyer and the financing lawyer, and whether the advertising lawyer is likely to refer cases received through the advertisement to the financing lawyer.

(l) If an advertising lawyer knows or should know at the time of an advertisement in the public media that a case or matter will likely be referred to another lawyer or firm, a statement of such fact shall be conspicuously included in such advertisement.

(m) No motto, slogan or jingle that is false or misleading may be used in any advertisement in the public media.

(n) A lawyer shall not include in any advertisement in the public media the lawyer's association with a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.

(o) A lawyer may not advertise in the public media as part of an advertising cooperative or venture of two or more lawyers not in the same firm unless each such advertisement:

(1) states that the advertisement is paid for by the cooperating lawyers;

(2) names each of the cooperating lawyers;

(3) sets forth conspicuously the special competency requirements required by Rule 7.04(b) of lawyers who advertise in the public media;

(4) does not state or imply that the lawyers participating in the advertising cooperative or venture possess professional superiority, are able to perform services in a superior manner, or possess special competence in any area of law advertised, except that the advertisement may contain the information permitted by Rule 7.04(b)(2); and

(5) does not otherwise violate the Texas Disciplinary Rules of Professional Conduct.

(p) Each lawyer who advertises in the public media as part of an advertising cooperative or venture shall be individually responsible for:

(1) ensuring that each advertisement does not violate this Rule; and

(2) complying with the filing requirements of Rule 7.07.

(q) If these rules require that specific qualifications, disclaimers or disclosures of information accompany communications concerning a lawyer's services, the required qualifications, disclaimers or disclosures must be presented in the same manner as the communication and with equal prominence.

(r) A lawyer who advertises on the Internet must display the statements and disclosures required by Rule 7.04.

(a) A lawyer shall file with the staff of the Advertising Review Committee of the State Bar of Texas, no later than the date of dissemination of an advertisement of legal services via public media, or the date of a solicitation communication sent by any means, including social media, for the purpose of obtaining professional employment:

- (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 set by the Board of Directors.

(b) If requested by the staff of the Advertising Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in any advertisement or written, recorded, electronic, or digital solicitation communication.

Rule 7.05 Prohibited Written, Electronic, Or Digital Solicitations Communications Exempt from Filing Requirements

(a) A lawyer shall not send, deliver, or transmit or knowingly permit or knowingly cause another person to send, deliver, or transmit a written, audio, audio-visual, digital media, recorded telephone message, or other electronic communication to a prospective client for the purpose of obtaining professional employment on behalf of any lawyer or law firm if:

- (1) the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment;
- (2) the communication contains information prohibited by Rule 7.02 or fails to satisfy each of the requirements of Rule 7.04(a) through (c), and (g) through (q) that would be applicable to the communication if it were an advertisement in the public media; or
- (3) the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(b) Except as provided in paragraph (f) of this Rule, a written, electronic, or digital solicitation communication to prospective clients for the purpose of obtaining professional employment:

- (1) shall, in the case of a non-electronically transmitted written communication, be plainly marked "ADVERTISEMENT" on its first page, and on the face of the envelope or other packaging used to transmit the communication. If the written communication is in the form of a self-mailing brochure or pamphlet, the word "ADVERTISEMENT" shall be:
 - (i) in a color that contrasts sharply with the background color; and
 - (ii) in a size of at least 3/8" vertically or three times the vertical height of the letters used in the body of such communication, whichever is larger
- (2) shall, in the case of an electronic mail message, be plainly marked "ADVERTISEMENT" in the subject portion of the electronic mail and at the beginning of the message's text;
- (3) shall not be made to resemble legal pleadings or other legal documents;

(4) shall not reveal on the envelope or other packaging or electronic mail subject line used to transmit the communication, or on the outside of a self-mailing brochure or pamphlet, the nature of the legal problem of the prospective client or non-client; and
(5) shall disclose how the lawyer obtained the information prompting the communication to solicit professional employment if such contact was prompted by a specific occurrence involving the recipient of the communication, or a family member of such person(s).

(c) Except as provided in paragraph (f) of this Rule, an audio, audio-visual, digital media, recorded telephone message, or other electronic communication sent to prospective clients for the purpose of obtaining professional employment:

(1) shall, in the case of any such communication delivered to the recipient by non-electronic means, plainly and conspicuously state in writing on the outside of any envelope or other packaging used to transmit the communication, that it is an "ADVERTISEMENT."

(2) shall not reveal on any such envelope or other packaging the nature of the legal problem of the prospective client or non-client;

(3) shall disclose, either in the communication itself or in accompanying transmittal message, how the lawyer obtained the information prompting such audio, audio-visual, digital media, recorded telephone message, or other electronic communication to solicit professional employment, if such contact was prompted by a specific occurrence involving the recipient of the communication or a family member of such person(s);

(4) shall, in the case of a recorded audio presentation or a recorded telephone message, plainly state that it is an advertisement prior to any other words being spoken and again at the presentation's or message's conclusion; and

(5) shall, in the case of an audio-visual or digital media presentation, plainly state that the presentation is an advertisement;

(i) both verbally and in writing at the outset of the presentation and again at its conclusion; and

(ii) in writing during any portion of the presentation that explains how to contact a lawyer or law firm.

(d) All written, audio, audio-visual, digital media, recorded telephone message, or other electronic communications made to a prospective client for the purpose of obtaining professional employment of a lawyer or law firm must be reviewed and either signed by or approved in writing by the lawyer or a lawyer in the firm.

(e) A copy of each written, audio, audio-visual, digital media, recorded telephone message, or other electronic solicitation communication, the relevant approval thereof, and a record of the date of each such communication; the name, address, telephone number, or electronic address to which each such communication was sent; and the means by which each such communication was sent shall be kept by the lawyer or firm for four years after its dissemination.

(f) The provisions of paragraphs (b) and (c) of this Rule do not apply to a written, audio, audiovisual, digital media, recorded telephone message, or other form, of electronic solicitation communication:

(1) directed to a family member or a person with whom the lawyer had or has an attorney-client relationship;

- ~~(2) that is not motivated by or concerned with a particular past occurrence or event or a particular series of past occurrences or events, and also is not motivated by or concerned with the prospective client's specific existing legal problem of which the lawyer is aware;~~
- ~~(3) if the lawyer's use of the communication to secure professional employment was not significantly motivated by a desire for, or by the possibility of obtaining, pecuniary gain; or~~
- ~~(4) that is requested by the prospective client.~~

(a) The filing requirements of these rules do not extend to any of the following materials, provided those materials comply with Rule 7.01:

- (1) an advertisement in public media that contains only part or all of the following information,
 - (i) the name of the lawyer or firm and lawyers associated with the firm, with office addresses, electronic addresses, telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession such as "attorney," "lawyer," "law office," or "firm";
 - (ii) the particular areas of law in which the lawyer or firm practices or concentrates or to which it limits its practice;
 - (iii) the date of admission of the lawyer or lawyers to the State Bar of Texas, to particular federal courts, and to the bars of other jurisdictions;
 - (iv) the educational background of the lawyer or lawyers;
 - (v) technical and professional licenses granted by this state and other recognized licensing authorities;
 - (vi) foreign language abilities;
 - (vii) particular areas of law in which one or more lawyers are certified by the Texas Board of Legal Specialization;
 - (viii) identification of prepaid or group legal service plans in which the lawyer participates;
 - (ix) the acceptance or nonacceptance of credit cards;
 - (x) any fee for initial consultation and fee schedule;
 - (xi) in the case of a website, links to other websites;
 - (xii) sponsorship by the lawyer or firm of a charitable, civic, or community program or event, or sponsorship of a public service announcement;
 - (xiii) any disclosure or statement required by these rules; and
 - (xiv) any other information specified from time to time in orders promulgated by the Supreme Court of Texas;
- (2) an advertisement in public media that:
 - (i) identifies one or more lawyers or a firm as a contributor to a specified charity or as a sponsor of a specified charitable, community, or public interest program, activity, or event; and
 - (ii) contains no information about the lawyers or firm other than names of the lawyers or firm or both, location of the law offices, and the fact of the sponsorship or contribution;
- (3) a listing or entry in a regularly published law list;
- (4) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or firm, or a tombstone professional card;
- (5) in the case of communications sent, delivered, or transmitted to, rather than accessed by, intended recipients, a newsletter, whether written, digital, or electronic, provided that it is sent, delivered, or transmitted mailed only to:
 - (i) existing or former clients;

(ii) other lawyers or professionals; or
(iii) members of a nonprofit organization that meets the following conditions: the primary purposes of the organization do not include the rendition of legal services; the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization; the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and the person for whom the legal services are rendered, and not the organization, is recognized as the client of the lawyer who is recommended, furnished, or paid by the organization.

Rule 7.06 Prohibited Employment

(a) A lawyer shall not accept or continue employment in a matter when that employment was procured by conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9), engaged in by that lawyer personally or by any other person whom the lawyer ordered, encouraged, or knowingly permitted to engage in such conduct.

(b) A lawyer shall not accept or continue employment in a matter when the lawyer knows or reasonably should know that employment was procured by conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9), engaged in by any other person or entity that is a shareholder, partner, or member of, an associate in, or of counsel to that lawyer's firm; or by any other person whom any of the foregoing persons or entities ordered, encouraged, or knowingly permitted to engage in such conduct.

(c) A lawyer who has not violated paragraph (a) or (b) in accepting employment in a matter shall not continue employment in that matter once the lawyer knows or reasonably should know that the person procuring the lawyer's employment in the matter engaged in, or ordered, encouraged, or knowingly permitted another to engage in, conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9) in connection with the matter unless nothing of value is given thereafter in return for that employment.

Rule 7.07 Filing Requirements for Public Advertisements and Written, Recorded, Electronic, or Other Digital Solicitations

~~(a) Except as provided in paragraphs (c) and (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas, no later than the mailing or sending by any means, including electronic, of a written, audio, audio-visual, digital or other electronic solicitation communication:~~

- ~~(1) a copy of the written, audio, audio-visual, digital, or other electronic solicitation communication being sent or to be sent to one or more prospective clients for the purpose of obtaining professional employment, together with a representative sample of the envelopes or other packaging in which the communications are enclosed;~~
- ~~(2) a completed lawyer advertising and solicitation communication application form; and~~
- ~~(3) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such solicitations.~~

(b) Except as provided in paragraph (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas, no later than the first dissemination of an advertisement in the public media, a copy of each of the lawyer's advertisements in the public media. The filing shall include:

- (1) a copy of the advertisement in the form in which it appears or will appear upon dissemination, such as a videotape, audiotape, DVD, CD, a print copy, or a photograph of outdoor advertising;
- (2) a production script of the advertisement setting forth all words used and describing in detail the actions, events, scenes, and background sounds used in such advertisement together with a listing of the names and addresses of persons portrayed or heard to speak, if the advertisement is in or will be in a form in which the advertised message is not fully revealed by a print copy or photograph;
- (3) a statement of when and where the advertisement has been, is, or will be used;
- (4) a completed lawyer advertising and solicitation communication application form; and
- (5) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such advertisements.

(c) Except as provided in paragraph (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas no later than its first posting on the internet or other comparable network of computers information concerning the lawyer's or lawyer's firm's website. As used in this Rule, a "website" means a single or multiple page file, posted on a computer server, which describes a lawyer or law firm's practice or qualifications, to which public access is provided through publication of a uniform resource locator (URL). The filing shall include:

- (1) the intended initial access page of a website;
- (2) a completed lawyer advertising and solicitation communication application form; and
- (3) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be set for the sole purpose of defraying the expense of enforcing the rules related to such websites;

(d) A lawyer who desires to secure an advance advisory opinion, referred to as a request for pre-approval, concerning compliance of a contemplated solicitation communication or advertisement may submit to the Advertising Review Committee, not less than thirty (30) days prior to the date of first dissemination, the material specified in paragraph (a) or (b), or the intended initial access page submitted pursuant to paragraph (c), including the application form and required fee; provided however, it shall not be necessary to submit a videotape or DVD if the videotape or DVD has not then been prepared and the production script submitted reflects in detail and accurately the actions, events, scenes, and background sounds that will be depicted or contained on such videotapes or DVDs, when prepared, as well as the narrative transcript of the verbal and printed portions of such advertisement. If a lawyer submits an advertisement or solicitation communication for pre-approval, a finding of noncompliance by the Advertising Review Committee is not binding in a disciplinary proceeding or disciplinary action but a finding of compliance is binding in favor of the submitting lawyer as to all materials actually submitted for pre-approval if the representations, statements, materials, facts and written assurances received in connection therewith are true and are not misleading. The finding of compliance constitutes admissible evidence if offered by a party.

(e) The filing requirements of paragraphs (a), (b), and (c) do not extend to any of the following materials, provided those materials comply with Rule 7.02(a) through (c) and, where applicable, Rule 7.04(a) through (c):

(1) an advertisement in the public media that contains only part or all of the following information:

- (i) the name of the lawyer or firm and lawyers associated with the firm, with office addresses, electronic addresses, telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession such as "attorney", "lawyer", "law office", or "firm;"
- (ii) the particular areas of law in which the lawyer or firm specializes or possesses special competence;
- (iii) the particular areas of law in which the lawyer or firm practices or concentrates or to which it limits its practice;
- (iv) the date of admission of the lawyer or lawyers to the State Bar of Texas, to particular federal courts, and to the bars of other jurisdictions;
- (v) technical and professional licenses granted by this state and other recognized licensing authorities;
- (vi) foreign language ability;
- (vii) fields of law in which one or more lawyers are certified or designated, provided the statement of this information is in compliance with Rule 7.02(a) through (c);
- (viii) identification of prepaid or group legal service plans in which the lawyer participates;
- (ix) the acceptance or nonacceptance of credit cards;
- (x) any fee for initial consultation and fee schedule;
- (xi) other publicly available information concerning legal issues, not prepared or paid for by the firm or any of its lawyers, such as news articles, legal articles, editorial opinions, or other legal developments or events, such as proposed or enacted rules, regulations, or legislation;
- (xii) in the case of a website, links to other websites;
- (xiii) that the lawyer or firm is a sponsor of a charitable, civic, or community program or event, or is a sponsor of a public service announcement;
- (xiv) any disclosure or statement required by these rules; and
- (xv) any other information specified from time to time in orders promulgated by the Supreme Court of Texas;

(2) an advertisement in the public media that:

- (i) identifies one or more lawyers or a firm as a contributor to a specified charity or as a sponsor of a specified charitable, community, or public interest program, activity, or event; and
- (ii) contains no information about the lawyers or firm other than names of the lawyers or firm or both, location of the law offices, and the fact of the sponsorship or contribution;

(3) a listing or entry in a regularly published law list;

(4) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or firm, or a tombstone professional card;

(5) in the case of communications sent, delivered, or transmitted to, rather than accessed by, intended recipients, a newsletter, whether written, digital, or electronic, provided that it is sent, delivered, or transmitted only to:

- (i) existing or former clients;
- (ii) other lawyers or professionals; or
- (iii) members of a nonprofit organization that meets the following conditions: the primary purposes of the organization do not include the rendition of legal services; the

~~recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization; the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and the person for whom the legal services are rendered, and not the organization, is recognized as the client of the lawyer who is recommended, furnished, or paid by the organization;~~

~~(6) a solicitation communication that is not motivated by or concerned with a particular past occurrence or event or a particular series of past occurrences or events, and also is not motivated by or concerned with the prospective client's specific existing legal problem of which the lawyer is aware;~~

~~(7) a solicitation communication if the lawyer's use of the communication to secure professional employment was not significantly motivated by a desire for, or by the possibility of obtaining, pecuniary gain; or~~

~~(8) a solicitation communication that is requested by the prospective client.~~

~~(f) if requested by the Advertising Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in any advertisement in the public media or solicitation communication by which the lawyer seeks paid professional employment.~~

Proposed Rules (Clean Version)

Rule 7.01 Communications Concerning a Lawyer's Services

(a) A lawyer shall not make or sponsor a false or misleading communication about the qualifications or services of any lawyer or law firm. Information about legal services must be truthful and non-deceptive. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading. A statement is misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation, or if the statement is substantially likely to create unjustified expectations about the results the lawyer can achieve. This Rule governs all communications about a lawyer's services, including, but not limited to, advertisements and solicitation communications.

(b) A lawyer may practice law under a non-misleading trade name, including a trade name that includes the name of one or more deceased or retired members of the firm, or of a predecessor firm if there has been a succession in the firm's identity. A trade name may not imply a connection with a public or charitable legal services organization or a governmental entity, or utilize the name of a non-lawyer or a lawyer not associated with the firm. The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm. A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) Any statement or disclaimer required by these rules shall be made in each language used in the communication. However, the mere statement that a language is spoken or understood does not by itself require a statement or disclaimer in that language.

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

(e) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

Rule 7.02 Communications Disseminated by Public Media

(a) A lawyer who advertises in public media shall publish or broadcast the name of at least one lawyer who is responsible for the content of the advertisement and disclose the lawyer's primary practice location.

(b) A lawyer who advertises in public media may include a statement that the lawyer has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization. A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(c) If an advertisement by a lawyer discloses willingness, or potential willingness, to render services on a contingent fee basis, the advertisement must state whether the client will be obligated to pay for other expenses, such as costs of litigation.

(d) A lawyer who advertises in public media a specific fee or range of fees for a particular service shall conform to the advertised fee or range of fees for the period during which the advertisement is reasonably expected to be in circulation or otherwise expected to be effective in attracting clients, unless the advertisement specifies a shorter period. However, a lawyer is not bound to conform to the advertised fee or range of fees for a period of more than one year after the date of publication, unless the lawyer has expressly promised to do so.

Rule 7.03 Solicitation of Paid Professional Employment

(a) The following definitions apply to this rule:

(1) "Regulated telephone, social media, or other electronic contact" means any telephone, social media, or electronic communication initiated by a lawyer, or by any person acting on behalf of a lawyer, that involves communication in a live or electronically interactive manner.

(2) "Solicitation" or "solicit" denotes a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.

(b) A lawyer shall not, for pecuniary gain, solicit through in-person contact, or through regulated telephone, social media, or electronic communication, professional employment from a non-client who has not sought the lawyer's advice or employment, unless the target of the solicitation is:

(1) a lawyer,

(2) a person who has a family, close personal, or prior business or professional

- relationship with the lawyer, or
- (3) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.

(c) A lawyer shall not send, deliver, or transmit, or knowingly permit or cause another person to send, deliver, or transmit, a written, audio, audiovisual, digital media, recorded telephone message, or other electronic communication to a prospective client, if:

- (1) the communication involves coercion, duress, overreaching, intimidation, or undue influence;
- (2) the communication is designed to resemble legal pleadings or other legal documents; or
- (3) the communication is not plainly marked or clearly designated an "ADVERTISEMENT" unless the target of the solicitation is:
 - (i) a lawyer
 - (ii) a person who has a family, close personal, or prior business or professional relationship with the lawyer, or
 - (iii) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.

(d) 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 paid 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. 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 Occupations Code Title 5, Subtitle B, Chapter 952.

(e) Except as otherwise permitted, a lawyer shall not, for the purpose of securing professional employment, pay, give, or advance, or offer to pay, give, or advance, anything of value to a prospective client, other than actual litigation expenses or financial assistance expressly permitted by law.

(f) This Rule does not prohibit communications authorized by law, such as notice to members of a class in class action litigation.

Rule 7.04 Filing Requirements for Public Advertisements and Written, Recorded, Electronic, or Other Digital Solicitations

(a) A lawyer shall file with the staff of the Advertising Review Committee of the State Bar of Texas, no later than the date of dissemination of an advertisement of legal services via public media, or the date of a solicitation communication sent by any means, including social media, for the purpose of obtaining professional employment:

- (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 set by the Board of Directors.

(b) If requested by the staff of the Advertising Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in any advertisement or written, recorded, electronic, or digital solicitation communication.

Rule 7.05 Communications Exempt from Filing Requirements

(a) The filing requirements of these rules do not extend to any of the following materials, provided those materials comply with Rule 7.01:

- (1) an advertisement in public media that contains only part or all of the following information,
 - (i) the name of the lawyer or firm and lawyers associated with the firm, with office addresses, electronic addresses, telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession such as “attorney,” “lawyer,” “law office,” or “firm”;
 - (ii) the particular areas of law in which the lawyer or firm practices or concentrates or to which it limits its practice;
 - (iii) the date of admission of the lawyer or lawyers to the State Bar of Texas, to particular federal courts, and to the bars of other jurisdictions;
 - (iv) the educational background of the lawyer or lawyers;
 - (v) technical and professional licenses granted by this state and other recognized licensing authorities;
 - (vi) foreign language abilities;
 - (vii) particular areas of law in which one or more lawyers are certified by the Texas Board of Legal Specialization;
 - (viii) identification of prepaid or group legal service plans in which the lawyer participates;
 - (ix) the acceptance or nonacceptance of credit cards;
 - (x) any fee for initial consultation and fee schedule;
 - (xi) in the case of a website, links to other websites;
 - (xii) sponsorship by the lawyer or firm of a charitable, civic, or community program or event, or sponsorship of a public service announcement;
 - (xiii) any disclosure or statement required by these rules; and
 - (xiv) any other information specified from time to time in orders promulgated by the Supreme Court of Texas;
- (2) an advertisement in public media that:
 - (i) identifies one or more lawyers or a firm as a contributor to a specified charity or as a sponsor of a specified charitable, community, or public interest program, activity, or event; and
 - (ii) contains no information about the lawyers or firm other than names of the lawyers or firm or both, location of the law offices, and the fact of the sponsorship or contribution;
- (3) a listing or entry in a regularly published law list;
- (4) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or firm, or a tombstone professional card;
- (5) in the case of communications sent, delivered, or transmitted to, rather than accessed by, intended recipients, a newsletter, whether written, digital, or electronic, provided that it is sent, delivered, or transmitted mailed only to:
 - (i) existing or former clients;
 - (ii) other lawyers or professionals; or
 - (iii) members of a nonprofit organization that meets the following conditions: the primary purposes of the organization do not include the rendition of legal services; the

recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization; the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and the person for whom the legal services are rendered, and not the organization, is recognized as the client of the lawyer who is recommended, furnished, or paid by the organization.

Rule 7.06 Prohibited Employment

(a) A lawyer shall not accept or continue employment in a matter when that employment was procured by conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9), engaged in by that lawyer personally or by any other person whom the lawyer ordered, encouraged, or knowingly permitted to engage in such conduct.

(b) A lawyer shall not accept or continue employment in a matter when the lawyer knows or reasonably should know that employment was procured by conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9), engaged in by any other person or entity that is a shareholder, partner, or member of, an associate in, or of counsel to that lawyer's firm; or by any other person whom any of the foregoing persons or entities ordered, encouraged, or knowingly permitted to engage in such conduct.

(c) A lawyer who has not violated paragraph (a) or (b) in accepting employment in a matter shall not continue employment in that matter once the lawyer knows or reasonably should know that the person procuring the lawyer's employment in the matter engaged in, or ordered, encouraged, or knowingly permitted another to engage in, conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9) in connection with the matter unless nothing of value is given thereafter in return for that employment.

[7.07 DELETED]