

**A Resolution Concerning the Advertising Review Committee Report**

**Whereas** The Advertising Review Committee is a standing committee of the State Bar of Texas,

**Whereas** The purpose of the committee is to concern itself with attorney advertising issues and attorney compliance with the Lawyer Advertising Rules, Part VII of the Texas Disciplinary Rules of Professional Conduct, and review all public media advertising and written solicitation communications submitted for review as required by 7.07 of the Rules,

**Whereas** The Advertising Review Committee issued a report to the State Bar Board of Directors (Board of Directors) at its April 27, 2018 meeting with proposed amendments to the Texas Disciplinary Rules of Professional Conduct pertaining to lawyer advertising,

**Whereas** Chapter 81, Subchapter E-1 of the State Bar Act establishes a Committee on Disciplinary Rules and Referenda and specifies the disciplinary rule proposal process,

**Whereas** Section 81.0875 (c) of the State Bar Act states that a request to initiate the process for proposing a disciplinary rule may be made by a resolution of the Board of Directors,

**Be It Therefore Resolved** that the State Bar of Texas Board of Directors approves the submission of the Advertising Review Committee report to the Committee on Disciplinary Rules and Referenda and requests initiation of the rule proposal process on the lawyer advertising rules.

**Resolution Adopted** this 20<sup>th</sup> day of June 2018 by the State Bar Board of Directors in Houston, Texas.

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Tom Vick, President  
State Bar of Texas

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Joe Longley, President-elect  
State Bar of Texas

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Rehan Alimohammad, Chair of the Board  
State Bar of Texas

witnessed by

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Trey Apffel, Executive Director  
State Bar of Texas

## **Executive Summary of the Advertising Review Committee's Report to President Tom Vick**

This report is in response to President Vick's letter to Stephen Tatum, Chair, Advertising Review Committee (ARC). In President Vick's letter, he charged that the ARC review make a comprehensive review of the regulatory process, and any rule revisions. In the ARC's analysis, the committee used the current and proposed revisions to the ABA Model Rules, The Virginia Bar Association's revised Rules on Attorney Advertising, the current rules on attorney advertising in the states of New York and Florida, and the current Part VII, TDRPC. The results of the ARC's analysis provides both administrative changes to the review process, and a complete revision of the rules.

### **The administrative changes:**

- **Revised correspondences sent out by staff.**  
The tone and language of these letters were "softened" to a more customer service approach. In keeping within the parameters set forth in the rules, the time frame to submit changes, or at least notify staff that changes are being developed was increased from 10 days to 15 days.
- **Reviews of websites.**  
While an entire website needs to be compliant, only the homepage or initial access page, or the page that contains the navigational instruments for the website, will be filed and reviewed for compliance.
- **Statement of Principal Office City location on a website.**  
Statement of office location can be just on the "contact us" page of a website instead of on the home page.
- **Review of Texas Board of Legal Specialization Certification.**  
At the first mention of Board Certification, full disclosure language needs to be use (Board Certified in \_\_\_\_\_ law by the Texas Board of Legal Specialization. Afterwards, the entire phrase does not need to be utilized every time board certification is mentioned.
- **New Software.**  
The Information Technology Department of the Bar is currently working with a third party vendor in developing the specifications for new software for the Advertising Review Department. This software will create a "portal" that make the submission and review process faster and timelier.

### **Proposed Rule Revisions:**

- **Streamline the rules from 7 parts down to 5.**  
Combined salient portions of the current rules while eliminating the explanatory portions of rules. Combined current portions of the rules regarding advertising and solicitation communications into one encompassing rule.
- **Specifically included the term "social media" in the rules regarding solicitation communications.**  
While the current rules specify both electronic and digital solicitation communications, that do in theory cover the use of social media, the revised rules integrate into the actual rule the language "social media" into the broad spectrum of the rules.
- **The use of trade names, with specific limitations.**  
Specific limitations on trade names would be that the firm cannot mislead by having a name of a firm that sounds like a governmental agency or offering discount of pro bono services.

# STATE BAR OF TEXAS



## ADVERTISING REVIEW COMMITTEE

The Advertising Review Committee and Department were created not only to assist in protecting the public from deceptive advertisements and solicitation communications, but also with the added effect to keep these types of potential rule violations from overwhelming the disciplinary counsel's office. In addition, the advertising review department and committee also provides attorneys an independent avenue to have their advertisements and solicitation communications reviewed prior to any potential discipline.

It is through the 1994 State Bar referendum that Texas attorneys considered amending the Disciplinary Rules to include Part VII (the ad rules). 88.46% of the ballots cast voted in favor of Part VII. Thus, in 1995, the Supreme Court of Texas made Part VII TDRPC effective as of October of that year, and the Advertising Review Committee and department was created. The only substantive change to Part VII came as part of the 2004 Bar Referendum and it was codified by the Texas Supreme Court in 2005.

Soon after Part VII, TDRPC became effective, the rules were put under constitutional scrutiny in the US District Court, Eastern District Texas case: Texans Against Censorship, Inc. v. State Bar of Texas, James A McCormack and the District 1A Grievance Committee of the State Bar of Texas (888 F. Supp 1328). The Court not only held the rules to be constitutional, but also upheld the filing and filing fee. The rules and filing procedure survived judicial scrutiny in the First District Appellate case: Joe Alfred Izen Jr., v. Commission for Lawyer Discipline, (322 S.W.3d 308).

Attorneys can submit their advertisements and solicitation communications to the State Bar either prior to dissemination, or concurrent with disseminating the information about their legal services. After filing the advertisement or solicitation communication, if the staff determines that a possible violation occurred, written correspondences from the staff are sent to the lawyer. Included in the written correspondence is the rule that was possibly violated, and instructions on the procedure to either remedy the violation, or permanently stop the advertisement or solicitation communication. Also, a strongly worded caution provides that the attorney could be sent in front of their local grievance panel. Attorney submissions can either be approved, disapproved or sent to Chief Disciplinary Counsel. In the past 5 years, Advertising Review reviewed on average 3495 submissions per year, and over 86% of that number were approved.

With Part VII, TDRPC having not seen a substantive change in over a decade, President Vick charged Stephen Tatum, Chair of the Advertising Review Committee (ARC) to recommend

not only a rules revision, but to review the existing regulatory process utilized in order to streamline its effectiveness. As a guide, the ARC was to review the recent revisions to the Virginia Bar Association's revised rules on Attorney Advertising, the revisions being made to the ABA Model Rules regarding Attorney Advertising. The ARC reviewed all aspects of the review process, and was able to formulate specific procedures that can be implemented based upon the authority of the ARC.

- **Revised correspondences sent out by staff.**

The correspondences sent out by staff regarding submissions that could violate the rules have not been substantively changed since the inception of the program. Specific letters relating to possible violations of the rules for both pre-approvals and for concurrent submissions were too strongly worded, structured in a way that did not present the recipient much time to respond with changes, presented no appellate process, and referenced local grievance panel, when it should be Chief Disciplinary Counsel. All of these issues have been addressed in the revised letters. The tone and language of these letters were "softened" to a more customer service approach. In keeping within the parameters set forth in the rules, the time frame to submit changes, or at least notify staff that changes are being developed was increased from 10 days to 15 days. In addition, the previous letters indicated that resubmissions needed to be mailed, the revised letters state that changes can be sent electronically as well as mailed. Specific mention of a direct appeal to the ARC has been included in the "request for changes" letters. If an attorney does not respond to the "request for changes" letters, then the Last Chance Notice is sent to the submitting lawyer.

- **Reviews of websites.**

As websites have become more mainstream, and they can contain numerous pages of information. Reviewing lengthy websites has slowed both staff and submitting attorney's response times. In accordance with the rules, the entire website needs to be compliant, only the homepage or initial access page, or the page that contains the navigational instruments for the website, will be filed and reviewed for compliance. This change in policy is possible under R.7.04(b)(1): which requires that the website must publish or broadcast the name of at least one lawyer who is *responsible for the content* of such advertisement.

Since the rules hold the submitting attorney accountable for any violations, the onerous of compliance rests with the submitting lawyer. If a website is found not in compliance, staff will notify the submitting lawyer of the potential violation and the proper correspondence will be sent.

- **Statement of Principal Office City location on a website.**

R. 7.04(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 firms principal office. The ARC's Interpretive Comment 17 on websites, takes the rule further by stating the principal office

city location must be indicated on the home page, or initial access page of a website. While this may have been prudent with the advent of webpages, most consumers would now know to look at the lawyer's or firm's contact page in order to determine where the office is located. In addition, with potential clients being able to access their lawyer via electronic means, and be able to supply their lawyer with pertinent information via cloud resources, the office location, in some instances is not relevant.

- **Review of Texas Board of Legal Specialization Certification.**

R.7.04(b)(2)(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." While there are numerous references to the prohibitions of stating an attorney is a specialist or specializes in an area of law, in reviewing all the parts of Part VII that mention TBLS certification, or a lawyer indicating they have a specialization in an area a law, the rules do not indicate that shall or must state the entire phrase: Board Certified, [area of specialization] — Texas Board of Legal Specialization. While previous interpretations of the rules have been that every time a lawyer indicated such a Board Certification, the entire statement needed to be stated, the rules do not seem to require such a restrictive standard. The creation of the very effective TBLS Certification logo that lawyers can download from TBLS and include in their advertisements and solicitation communications, having lawyers include the entire certification phrase every time board certification is mentioned seems to be redundant. As long as the complete certification disclaimer is utilized on the onset of mentioning or alluding to board certification, the entire phrase does not need to be utilized every time board certification is mentioned.

- **New Software.**

The Information Technology Department of the Bar is currently working with a third party vendor in developing the specifications for new software for the Advertising Review Department. The creation of an advertising review portal will allow attorneys to submit and pay for their application online. Attorneys will be able to submit requested changes through the portal, and receive notices of approval/disapproval, plus automated updates as the review process. These changes will allow staff to effectively communicate with submitting lawyers and increase turnaround times of files.

It should be noted that through modifications to how the principal office city location and Board Certification is reviewed will significantly reduce the "technical" type violations and improve not only speed of approvals and customer service while in keeping compliance with the rules.

The ARC also initiated the process of revising Part VII, TDRPC. In taking President Vick's directive into account, the committee looked to streamline the rules, while encompassing all electronic avenues to disseminate information about one's legal services (Attachment A).

Highlights of the revised rules include:

- **Streamline the rules from seven parts down to 5.**

In reviewing Part VII, TDRPC, there appears to be a significant amount of explanatory information written in the rules. This was most likely due to the fact that the rules have not been overhauled since the inception of Part VII, and therefore the “how to” part of the rules were needed as guidelines for compliance. Information regarding dissemination of a specialization of a particular practice by the Texas Board of Legal Specialization is covered specifically in R. 7.02, 7.04, 7.07 and referenced in R.7.05. In the revised rules, advertising as a specialist in a particular area of law designated by the Texas Board of Legal Specialization is only mentioned broadly in R. 7.02, and it is optional. Since the revised rules do not come with authoritative comments, it would be within the authoritative comments that specificities as to patent and trademark lawyers, and to organizations accredited by the Texas Board of Legal Specialization would be outlined. The revised rules combined current rules R.7.04 and R.7.05, extracting the salient portions of those two rules and synthesizing them into one revised R.7.02.

- **Specifically included the term “social media” in the rules regarding solicitation communications.**

While the current rules specify both electronic and digital solicitation communications, that do in theory cover the use of social media, the revised rules integrate into the actual rule the language “social media” into the broad spectrum of attorney communications outlined in R. 7.01. Again, since the revised rules do not come with authoritative comments, it is surmised that social media applications and explanatory, descriptive information will be outlined in the authoritative comments.

- **The use of trade names, with specific limitations.**

In what could be possibly viewed as the biggest departure from the current rules, the revised rules allow trade names to be utilized as firm names, with very specific prohibitions outlined in the rule. Only the states of New York, Ohio and Texas have the absolute prohibition on trade names, while most states allow for trade names or follow the ABA Model Rule R.7.05. With the merging and acquisitions of firms, not only on a state, regional or nation marketplace, but now Texas firms have become part of global law firms, it stands to reason that the absolute prohibition on trade names is not only antiquated, it is ripe for a challenge. In keeping with President Vick’s charge that the ARC look to revise rules with an eye on public protection, the revised trade name rules prohibits trade names to sound like they are either an agent or agency of a branch of government (US Immigration Center), or appear as if the law firm offers discount legal services (Employment Law Clinic).

This report is submitted on behalf of the Advertising Review Committee whose members include: Stephen Tatum, (Chair), Al Harrison, (Vice Chair), Matthew Blair, Sylvia Ann Cardona, Becky Baskin Ferguson, Alexis Wade Foster, Mike Fuljenz, Jason Honeycutt,

Advertising Review Committee Report continued

Aurora Martinez Jones, Charles Noteboom, Pat Rafferty, Bennie Elliot Ray, Courtney Stamper.

Special recognition needs to go to the ARC's Board Liaisons: Wendy Burgower and Fidel Rodriguez for the time and talent they have brought to the ARC. These Board Liaisons were the right people at the right time and these changes to policy, procedures and the rules would not be as far reaching as they are without them.

Respectfully submitted,

Stephen Tatum, Chair

ATTACHMENT A  
PROPOSED REVISIONS TO  
PART VII  
TEXAS DISCIPLINARY RULES PROFESSIONAL  
CONDUCT



# TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

## VII. INFORMATION ABOUT LEGAL SERVICES

### **Rule 7.01** ~~(B) 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.," "P.A.," "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.~~

~~———— (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.~~

~~(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.~~

~~(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.~~

~~———— (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.~~

~~———— (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~~

(a) (a) A lawyer shall not make or sponsor a false or misleading communication about the qualifications or the services of any lawyer or firm. This Rule governs all communications about a lawyer's services, including advertisements and solicitation communications. Whatever means are used to disseminate information about a lawyer's services, statements, including trade names must be truthful and non-deceptive.

(b) A lawyer in private practice may practice under a trade name, including in its name of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession

1. provided the trade name does not imply a connection with a public or charitable legal services organization, or governmental agency or entity; or
  2. utilizes the name of a non-lawyer, or a lawyer not associated with the firm.
- (c) 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.
- (d) Shall not create or imply 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.

~~—A communication is false or misleading if it:~~

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

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

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

~~(ii) the amount involved was actually received by the client;~~

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

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

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

~~(4) compares the lawyer's services with other lawyers' services, unless the comparison can be substantiated by reference to verifiable, objective data;~~

~~(5) states or implies that the lawyer is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official;~~

~~(6) designates one or more specific areas of practice in an advertisement in the public media or in a solicitation communication unless the advertising or soliciting lawyer is competent to handle legal matters in each such area of practice; or~~

~~(7) uses an actor or model to portray a client of the lawyer or law firm.~~

~~(b) Rule 7.02(a)(6) does not require that a lawyer be certified by the Texas Board of Legal Specialization at the time of advertising in a specific area of practice, but such certification shall conclusively establish that such lawyer satisfies the requirements of Rule 7.02(a)(6) with respect to the area(s) of practice in which such lawyer is certified.~~

~~(c) A lawyer shall not advertise in the public media or state in a solicitation communication that the lawyer is a specialist except as permitted under Rule 7.04.~~

~~(d) 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.~~

**Rule 7.032 Advertisements and Solicitation Communications Disseminated in the Public Prohibited Solicitations & Payments**

(a) ~~(a)~~ 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 the lawyers primary practice location; (2) may include a statement that the lawyer has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization.

(b) A lawyer shall not send, deliver, or transmit, or knowingly permit or knowingly 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 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, contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(2) the communication contains information prohibited by Rule 7.01.

(3) the communication is to resemble legal pleadings or other legal documents

(4) the solicitation communication shall, regardless of the media utilized, be plainly marked "ADVERTISEMENT" unless the recipient:

\_\_\_\_\_ (a) is a lawyer,

\_\_\_\_\_ (b) has a familial, personal or prior professional relationship with the lawyer.

\_\_\_\_\_ (c) has or had an attorney client relationship.

(c) If an advertisement or solicitation communication by a lawyer or firm discloses the willingness or potential willingness of the lawyer or firm to render services on a contingent fee basis, it must state the client will be obligated to pay for other expenses.

(d) 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.

(e) 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;

(f) Neither Rule 7.01 nor Rule 7.02 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

~~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.~~

~~(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.~~

~~(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.~~

~~(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).~~

~~(e) 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.~~

~~(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.~~

#### **Rule 7.04 Advertisements in the Public Media**

~~(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.~~

#### **Rule 7.05 Prohibited Written, Electronic, Or Digital Solicitations**

~~(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, audiovisual, 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, audiovisual, 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.~~

### **Rule 7.03 Employment and Fees**

(a) A lawyer shall not seek in person, professional employment concerning a matter arising out of a particular occurrence or event, or series of occurrences or events, from a non-client who has not sought the lawyer's advice or employment.

(b) A lawyer shall not by regulated telephone, social media or other electronic contact as defined by this rule, seek professional employment concerning a matter arising out of a particular occurrence or event, or series of occurrences or events, from a prospective client or non-client who has not sought the lawyer's advice regarding employment.

(1) "regulated telephone, social media or other electronic contact" means any social media or 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(s) contacted communicating in a live, or electronic interactive manner. 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.

(c) 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.

(d) Except as otherwise permitted, A lawyer, for the specific purpose of soliciting for professional employment, shall not pay, give, advance, or offer to pay, give, or advance anything of value as an inducement to the client, other than actual litigation expenses and other financial assistance as permitted, to a prospective client. This does not prohibit a lawyer from paying reasonable fees for advertising and public relations services rendered in accordance with this Rule and shall pay the usual charges of a lawyer referral service that meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.

(e) A lawyer shall not accept or continue employment in a matter when that employment was procured by conduct prohibited by any of the Rules.

(f) 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 the Rules.

(g) 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 – d).

### **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 7.074 Filing Requirements for Public Advertisements and Written, Recorded, Electronic, or Other Digital Solicitations**

(a) A lawyer shall file with the State Bar staff of the Advertising Review Committee of the State Bar of Texas no later than the dissemination of an advertisement via any media used to disseminate information for the purpose of obtaining professional employment, or 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 appears or will appear upon dissemination;

(2) a completed lawyer advertising and solicitation communication application;  
and

(3) payable to the State Bar of Texas a fee set by the Board of Directors.

(4) a copy of the advertisement or solicitation communication in the form in which it appears or will appear upon dissemination;

(b) If requested by the staff or 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 and/or written solicitation communication by which the lawyer seeks paid professional employment.

~~(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; 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 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 Lawyer 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.~~

## **Rule 7.05 Exempt Communications**

(e) 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 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 practices or

(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 ability;

(vii) particular areas of law in which one or more lawyers are certified or approved 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) 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;

(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 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 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.

~~(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 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;~~

~~(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 and/or written solicitation communication by which the lawyer seeks paid professional employment.~~

# **TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT**

## **Proposed Amendments to Part VII – Clean Version**

### **VII. INFORMATION ABOUT LEGAL SERVICES**

#### **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 the services of any lawyer or firm. This Rule governs all communications about a lawyer's services, including advertisements and solicitation communications. Whatever means are used to disseminate information about a lawyer's services, statements, including trade names must be truthful and non-deceptive.
- (b) A lawyer in private practice may practice under a trade name, including in its name of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession
  - 1. provided the trade name does not imply a connection with a public or charitable legal services organization, or governmental agency or entity; or
  - 2. utilizes the name of a non-lawyer, or a lawyer not associated with the firm.
- (c) 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.
- (d) Shall not create or imply 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.

#### **Rule 7.02 Advertisements and Solicitation Communications Disseminated in the Public**

- (a) 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 the lawyers primary practice location; (2) may include a statement that the lawyer has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization.
- (b) A lawyer shall not send, deliver, or transmit, or knowingly permit or knowingly 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 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, contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.
  - (2) the communication contains information prohibited by Rule 7.01.
  - (3) the communication is to resemble legal pleadings or other legal documents
  - (4) the solicitation communication shall, regardless of the media utilized, be plainly marked "ADVERTISEMENT" unless the recipient:

## Advertising Review Committee Report continued

- (a) is a lawyer,
- (b) has a familial, personal or prior professional relationship with the lawyer,
- (c) has or had an attorney client relationship,
- (c) If an advertisement or solicitation communication by a lawyer or firm discloses the willingness or potential willingness of the lawyer or firm to render services on a contingent fee basis, it must state the client will be obligated to pay for other expenses.
- (d) 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.
- (e) 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;
- (f) Neither Rule 7.01 nor Rule 7.02 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

### **Rule 7.03 Employment and Fees**

- (a) A lawyer shall not seek in person, professional employment concerning a matter arising out of a particular occurrence or event, or series of occurrences or events, from a non-client who has not sought the lawyer's advice or employment.
- (b) A lawyer shall not by regulated telephone, social media or other electronic contact as defined by this rule, seek professional employment concerning a matter arising out of a particular occurrence or event, or series of occurrences or events, from a prospective client or non-client who has not sought the lawyer's advice regarding employment.
  - (1) "regulated telephone, social media or other electronic contact" means any social media or 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(s) contacted communicating in a live, or electronic interactive manner. 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.
- (c) 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.
- (d) Except as otherwise permitted, A lawyer, for the specific purpose of soliciting for professional employment, shall not pay, give, advance, or offer to pay, give, or advance anything of value as an inducement to the client, other than actual litigation expenses and other financial assistance as permitted, to a prospective client. This does not prohibit a lawyer from paying reasonable fees for advertising and public relations services rendered in accordance with this Rule and shall pay the usual charges of a lawyer referral service that meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.
- (e) A lawyer shall not accept or continue employment in a matter when that employment was procured by conduct prohibited by any of the Rules.
- (f) 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 the Rules.

- (g) 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 – d).

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

- (a) A lawyer shall file with the State Bar staff of the Advertising Review Committee of the State Bar of Texas no later than the dissemination of an advertisement via any media used to disseminate information for the purpose of obtaining professional employment, or 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 appears or will appear upon dissemination;
  - (2) a completed lawyer advertising and solicitation communication application; and
  - (3) payable to the State Bar of Texas a fee set by the Board of Directors.
  - (4) a copy of the advertisement or solicitation communication in the form in which it appears or will appear upon dissemination;
- (b) If requested by the staff or 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 and/or written solicitation communication by which the lawyer seeks paid professional employment.

**Rule 7.05 Exempt Communications**

(e) 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 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 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 ability;
  - (vii) particular areas of law in which one or more lawyers are certified or approved by the Texas Board of Legal Specialization
  - (viii) identification of prepaid or group legal service plans in which the lawyer participates;

Advertising Review Committee Report continued

- (ix) the acceptance or non-acceptance of credit cards;
  - (x) any fee for initial consultation and fee schedule;
  - (xi) in the case of a website, links to other websites;
  - (xii) 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;
  - (xii) any disclosure or statement required by these rules; and
  - (xiii) 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 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.