

# **Committee on Disciplinary Rules and Referenda**

## **June 6, 2019, Meeting Supplement**

- Additional Public Comment Received on Proposed Lawyer Advertising Rules

**From:** [REDACTED]  
**To:** [cdrr](#)  
**Subject:** CDRR Comment: Proposed Disciplinary Rules on Advertising  
**Date:** Tuesday, June 4, 2019 2:54:38 PM

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**Feedback**

**Subject** Proposed Disciplinary Rules on Advertising

**Comments**

I realize that you are attempting to deal better with the constitutional rules laid out in Supreme Court cases like NAACP v. Button and In re Primus, but I question when and where you qualify some of the rules as applying only to lawyers "substantially motivated by pecuniary gain." First, the term is not defined. It should be, and include the language found in 7.05(a). Perhaps examples of what would and would not constitute being "substantially motivated" by money. See Tex. Ethics Op. 519 ('97) and Ala. Ethics Op. 03-1 ('03). Second, it excludes aggressive/misleading solicitations of clients by lawyers for the benefit of the lawyer's friend or relative. The soliciting lawyer would not be motivated by pecuniary gain to him- or herself. (Deceit is covered by 8.04.) Third, the qualification is wrongfully applied in some situations. For example, 7.01's ban on false and misleading communications/solicitations about a lawyer's services/qualifications do not apply to lawyers not motivated by financial gain. This means, literally, legal services offices and other non-profit legal services orgs CAN use false or mislead communications and solicitations. ?? Remove it from here. Likewise, under 7.03(c), lawyers not substantially motivated by pecuniary gain are allowed to send a prospective client a communication involving coercion, duress, overreaching, intimidation or undue influence, and the other conduct otherwise prohibited in that rule. ?? Remove it from here. Yet, this qualifier is missing from 7.03(b). The NAACP, for example, should be allowed to do what is prohibited there. The qualifier, if it is ultimately retained, should be added here.