Committee on Disciplinary Rules and Referenda
Proposed Rule Changes

Texas Disciplinary Rules of Professional Conduct
Proposed Rule 1.00. Terminology

Public Comments Received
Through June 3, 2021

From: [redacted]
To: cdrr
Subject: CDRR Comment: Why?
Date: Monday, May 10, 2021 10:28:54 AM

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

Contact

First Name	Rush
Last Name	Wells
Email	[redacted]
Member	Yes
Barcard	21158500

Feedback

Subject	Why?

Comments

Why not just attach the proposed langusge eithimn the email??

From: [redacted]
To: cdrr
Subject: CDRR Comment: Comment on Rule 1
Date: Monday, May 10, 2021 10:46:36 AM

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

Contact

First Name	Bruce
Last Name	Bain
Email	[redacted]
Member	Yes
Barcard	01546700

Feedback

Subject	Comment on Rule 1

Comments

D 3. Are you guy serious? You are absolutely creating a problem. Why do you feel compelled to change things all the time? Do you not have anything to do in real life?

From: Steve Waldman
To: cdrr
Subject: Proposed Rule 1.00 of the Texas Disciplinary Rules of Professional Conduct
Date: Monday, May 10, 2021 10:53:38 AM
Attachments: image005.png
image006.png

Regarding proposed Rule 1.00(d), which states as follows:

(d) "Client." A person is a client when:

(1) the person manifests to a lawyer the person's intent that the lawyer provide legal services for the person; and either

(i) the lawyer manifests to the person consent to do so; or

(ii) the lawyer fails to manifest lack of consent to do so, and the lawyer knows or reasonably should know that the person reasonably relies on the lawyer to provide the services; or

(2) a tribunal with power to do so appoints the lawyer to provide the services.

The use of the word "manifest," in (i) and (ii), being undefined, may permit an attorney-client relationship to be formed without any express communication by the attorney or the putative client. Further, the "reasonably" standard in (ii) may a person to become the "client" of a lawyer without any action or knowledge on the part of the lawyer, or any actual reliance by the person.

The rule would be more appropriately written as follows:

(d) "Client." A person is a client when:

(1) the person communicates to a lawyer the person's intent that the lawyer provide legal services for the person; and either

(i) the lawyer communicates to the person consent to do so; or

(ii) the lawyer fails to communicate lack of consent to do so, and the lawyer has actual knowledge that the person relies on the lawyer to provide the services; or

(2) a tribunal with power to do so appoints the lawyer to provide the services.

Respectfully,

Steve Waldman

Steve Waldman
Attorney at Law
[redacted]
P: (713) 830-7085 | F: (713) 973-1188 | vCard
8584 Katy Freeway Suite 100, Houston, TX 77024
Terry Bryant PLLC | https://www.terrybryant.com

NEW REFERRAL?

From: [redacted]
To: cdrr
Subject: CDRR Comment: Attorney-Client Relationship
Date: Monday, May 10, 2021 10:54:22 AM

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

Contact

First Name	Darren
Last Name	Anderson
Email	[redacted]
Member	Yes
Barcard	00792331

Feedback

Subject	Attorney-Client Relationship

Comments

An attorney client relationship being created by "mistake" is the most ludicrous thing I have ever heard. The myriad of situations that may inadvertently create an attorney-client relationship is never ending and very subjective. This simply creates a mine field particularly, for the firms and general solo practice attorneys. And is simply not necessary for the integrity of the profession!!!

From: [redacted]
To: cdrr
Subject: CDRR Comment: Comment on Rule 1.00
Date: Monday, May 10, 2021 11:31:13 AM

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

Contact

First Name	Stephen
Last Name	Niermann
Email	[redacted]
Member	Yes
Barcard	15027300

Feedback

Subject	Comment on Rule 1.00

Comments

I think the Rule is good, but we need to add something: There is a growing problem where a lawyer makes an "informal inquiry" for a "potential client" or "relative", in pending litigation. This problem crops up in scenarios, where the lawyer has not been retained and wants to minimize the cost of his involvement. When the next step is entry of default judgment, setting a hearing, or enforcement of unanswered discovery, the honest attorney does not know whether he is supposed to give notice directly to the pro se litigant or if he has a duty to notify the lawyer making to informal inquiry. This is not only confusing to me, but potentially to the judge, clerk and both clients. I think the rule should be amended to add: "No attorney shall make inquiry in pending litigation for another litigant unless and until the attorney has been hired. Any attorney making informal inquiry shall confirm in writing that the attorney has been hired by the litigant, as soon as practicable after being retained. Opposing counsel shall not be required to rely on any representations or instructions unless opposing counsel has received a notice of appearance.

From: [redacted]
To: cdrr
Subject: CDRR Comment: Disagree with the concept that an attorney client relationship can be created by mistake
Date: Monday, May 10, 2021 11:38:28 AM

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

Contact

First Name	mary
Last Name	taylor
Email	[redacted]
Member	Yes
Barcard	19713650

Feedback

Subject	Disagree with the concept that an attorney client relationship can be created by mistake

Comments

The attorney client relationship is based on a contract. If no meeting of the minds exists there is no contract. Let's not create another standard for lawyers and allow them to unwittingly become subject to liability as well as the ACP.

From: [redacted]
To: cdrr
Subject: CDRR Comment: Proposed Rule 1.00, TDRPC - Terminology
Date: Monday, May 10, 2021 12:01:57 PM

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

Contact

First Name	Julie
Last Name	Camacho
Email	[redacted]
Member	Yes
Barcard	24032904

Feedback

Subject	Proposed Rule 1.00, TDRPC - Terminology

Comments

1.00 (1)(d)(1)(ii) could be construed to create an attorney client relationship based on an email contact form. If a firm gets hundreds of contacts, and many appear to be spam, they cannot be expected to decline representation of every person that contacts them through their website Contact form. It also would be a problem in the event an email directed to a firm attorney goes to Spam and is never actually viewed by the attorney. It seems too broad.

From: [redacted]
To: cdrr
Subject: CDRR Comment: Proposed Rule 1.00 Terminology (subsection (d))
Date: Monday, May 10, 2021 4:14:53 PM

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

Contact

First Name	Andrew
Last Name	Bolton
Email	[redacted]
Member	Yes
Barcard	00785706

Feedback

Subject	Proposed Rule 1.00 Terminology (subsection (d))

Comments

A person should only become a client when that person "manifests to a lawyer the person's PRESENT intent to have the lawyer provide CURRENT legal services for the person; and either . . . ." ------ Can you not envision a situation wherein a lawyer is holding her drink at a dinner party and a friend says, "Jane, I believe that my neighbor has sued me, will you help me out on that?" and the lawyer replying "Joe, just let me know when he serves you with the petition?" I do not want THAT exchange to constitute the initiation of a lawyer-client relationship! This exchange is more of an "invitation to negotiate" such a relationship in the future. We should have CURRENT intent included here.

From: [redacted]
To: cdrr
Subject: CDRR Comment: Proposed Rule 1.00
Date: Tuesday, May 11, 2021 9:49:03 AM

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

Contact

First Name	Jani
Last Name	Maselli Wood
Email	[redacted]
Member	Yes
Barcard	00791195

Feedback

Subject	Proposed Rule 1.00

Comments

I have some concern over the new definition of "client." Specifically ,this new definition of client: (ii) the lawyer fails to manifest lack of consent to do so, and the lawyer knows or reasonably should know that the person reasonably relies on the lawyer to provide the services. I worked as a public defender for many years. I started out as a lawyer for Inmate Legal Services. And as an appellate attorney for most of my 27 years or so - I get lots of correspondence form inmates. Anytime there is a published case where I have won, the letters come by the dozens. And the refrain is sadly, "My case is just like the case you won. Will you file something for me?" I try to respond to all letters letting people know that I cannot represent them. But frequently, that message is ignored or misunderstood and I get repeated letters. This new definition of client - especially with the comment - "the lawyer must fail to manifest lack of consent to do so. Third, the lawyer must know, or reasonably should know, that the person reasonably relies on the lawyer to provide legal services" is especially problematic. What is the time frame for telling someone who has written me a letter that I do not represent them? Am I required to search them out because of a transfer within TDCJ? What are my duties when they tell me to call a family member about my representation? (This happens regularly). I try to respond to all mail from people including those I do not represent. But now it appears my duty becomes more urgent for nonclients because of this definition. Thank you for considering my comment.

From: James Adams
To: cdrr
Subject: Comment re: stupid proposed Texas DR Rule 1.00 Terminology
Date: Tuesday, May 11, 2021 1:35:26 PM

DISCUSSION RE: (d) "Client." A person is a client when: (1) the person manifests to a lawyer the person's intent that the lawyer provide legal services for the person; and either (i) the lawyer manifests to the person consent to do so; or (ii) the lawyer **fails to manifest lack of consent to do so**, and the **lawyer knows or reasonably should know** that the person reasonably relies on the lawyer to provide the services; o

https://www.texasbar.com/Content/NavigationMenu/CDRR/Documents1/TDRPC_Terminology_Publication.pdf

When I was county attorney for some 34 years, people would show up at court claiming to have a lawyer and wondering where the lawyer was.

I would ask if the person paid the lawyer any money and if the answer was No, then I told them that they most likely had no lawyer, but to be safe, would call and the lawyer's secretary would usually confirm that the lawyer did not represent the person. No money, No lawyer. A simple rule everyone can understand and go by.

The old rule prevented hundreds of DR violation complaints over the decades and gave lawyers some breathing room. It also provided a bright line rule everyone could rely on without extra paperwork that had to be preserved for every person the lawyer ever talked to.

People usually don't have much exposure to lawyers and have to learn how it all works.

I had a guy show up once who claimed that he had the money ready for a real estate purchase. So when it came down to the closing date, he showed up with a mass-mailed form solicitation letter stating that he was pre-approved for a $30,000 loan. Do I have to tell you that he did not have the money as he thought?

Many decades ago, a story that was repeated as true, but I cannot verify it, which involved a man who was charged with murder. His defense was that he killed the man on advise of counsel.

Apparently, he found a lawyer at a bar who is reported to have said something to the effect that, If any SOB did that, I would kill him.

When examined in the trial, the lawyer did some fast talking, and the person was convicted of murder.

If this rule goes through, as I figure it will since state agencies tend to view themselves as accountable to no one, lawyers will go through a rough learning curve of this unjust rule.

The citizens will not be served very well when this rule makes talking to a lawyer will get even harder to do.

How can anyone know that they need a lawyer if lawyers require money up front just to talk? Why are you trying to increase the paperwork lawyers will have to keep up with? Is the disciplinary counsel sitting around with not enough to do and thought this might be a good way to occupy some time, maybe even get a bigger portion of the budget?

Lawyers can't pay bills with good looks, and getting called up on a DR violation like this one will simply makes practicing law more expensive and riskier.

As to the *clients* who seek out free advice from lawyers in barrooms, should they have a reasonable expectation of getting more value than they pay for?

Likewise, the definitions of informed consent and confirmed in writing should be rejected.

Yours truly,

J. Collier Adams, Jr.
SBN 00863400
Morton, Texas

From: [redacted]
To: cdrr
Subject: CDRR Comment: Proposed changes to rule 1 definitions
Date: Tuesday, May 11, 2021 5:53:57 PM

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

Contact

First Name	Dennis
Last Name	Kan
Email	[redacted]
Member	Yes
Barcard	24092609

Feedback

Subject	Proposed changes to rule 1 definitions

Comments

The definition of client as proposed is absurd. No other fiduciary duty in society is formed unilaterally. The language "layer knew or reasonably should have know," is a useless standard. The burden this places on attorneys to gather additional information about prospective clients or individuals requesting representation is onerous. Consent to an attorney client relation is not truly consent if it can be forced upon an attorney. There is no other situation in society where lack of assent is construed as consent. Imagine if we used the proposed standard for attorney client relation in the dating context. That would never be acceptable. It should not be in the legal context. Lack of explicit rejection cannot be construed as consent. This sets an absurd precedent and should not be permitted. It exists in no other situation. Reject this proposal.

From:	Paul Koning
To:	cdrr
Cc:	Paul Koning
Subject:	Comments regarding proposed Rule 1.00(d) - Terminology -- "Client"
Date:	Monday, May 17, 2021 1:48:47 PM
Attachments:	Comments re Terminology.pdf

Attached please find a letter commenting on the proposed addition of a definition of the term "Client." Please do not hesitate to contact me with any questions. Thanks

Paul Koning

Paul Koning
Koning Rubarts LLP
1700 Pacific Ave., Suite 4500
Dallas, Texas 75201
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Paul M. Koning
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[redacted]

May 17, 2021

Committee on Disciplinary Rules and Referenda
M. Lewis Kinard, Chair

Re: Comments regarding proposed amendment to Texas Disciplinary Rules of Professional Conduct (Rule 1.00(d): Terminology - "Client")

Dear Mr. Kinard and Committee Members:

I write to comment on the proposed amendment of the Terminology section of the Texas Disciplinary Rules of Professional Conduct (the "Rules"), specifically the proposed addition of a definition for "Client." The proposed definition would appear as newly numbered Rule 1.00(d):

> (d) "Client." A person is a client when:
>
> > (1) the person manifests to a lawyer the person's intent that the lawyer provide legal services for the person; and either
> >
> > > (i) the lawyer manifests to the person consent to do so; or
> > >
> > > (ii) the lawyer fails to manifest lack of consent to do so, and the lawyer knows or reasonably should know that the person reasonably relies on the lawyer to provide the services; or
> >
> > (2) a tribunal with power to do so appoints the lawyer to provide the services.

I urge the Committee to delete the definition of "Client" from the proposed amendment. No other jurisdiction has adopted such a definition. And there are many good reasons not to do so. The formation, scope and continued existence of the lawyer-client relationship is far too nuanced to be reduced to a simple shorthand definition. Moreover, the proposed definition is not a complete statement of relevant Texas law and is, therefore, confusing and potentially misleading. Above all, there is simply no need to add a definition of "Client" to the Rules.

Defining "Client" is unnecessary and threatens to supplant the common law of Texas.

Neither the ABA Model Rules nor the disciplinary rules of any other United States jurisdiction contain a substantive definition of "Client."[1] It is my understanding that the drafters of the original Texas Rules (1990) debated whether to include such a definition—but intentionally decided not to do so. *See* R. Schuwerk, L. Hardwick, 48 Tex. Prac., Tex. Lawyer & Jud. Ethics § 5:6 (2021 ed.). The fact that no other jurisdiction has adopted a substantive definition of "Client" is telling. It can only be read as an acknowledgment that the formation of the lawyer-client relationship is a highly fact-intensive question that is not suitable for "one size fits all" treatment in a definition section of the disciplinary rules.

It appears that the Committee adopted the proposed definition from Section 14 of the RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS. The Restatement is an excellent resource, but it is only an aspirational attempt to summarize the majority law in the United States. More importantly, it does not purport to be a summary of Texas law. Although Section 14 has been cited by intermediate Texas courts, it has not been adopted by the Texas Supreme Court. Simply put, it is not Texas law.

There is, on the other hand, ample Texas case law that defines the formation of a lawyer-client relationship. In general, a lawyer-client relationship may be based on express or implied contract, "[b]ut whether the agreement is express or implied, there must be evidence both parties intended to create an attorney-client relationship—one party's subjective belief is insufficient to raise a question of fact to defeat summary judgment." *Belliveau v. Barco, Inc.*, 987 F.3d 122, 133 (5th Cir. 2021). If the existence of a lawyer-client relationship is disputed, the question can be resolved only by objective evidence of what the parties said and did. *Kiger v. Balestri*, 376 S.W.3d 287, 291 (Tex. App.—Dallas 2012, pet. denied).

Whether a person is a client of lawyer is often a disputed and dispositive question of fact in professional liability cases. If the intent of the proposed definition is to incorporate a common law definition of the attorney-client relationship into the Rules, I would respectfully suggest that the proposed definition varies in important ways from the accepted standards in Texas. If, on the other hand, the committee's purpose is to create a new standard, the definition is bound to lead to confusion. Although the disciplinary rules state that they are not to be used as standards in civil litigation, they are frequently cited for exactly that purpose. Including a definition of "Client" in

[1] Alaska is the only jurisdiction that includes a definition of "Client" in its disciplinary rules. Alaska takes a very different approach. Alaska Rule 9.1(b) provides that "Client" "denotes a person, a public officer or agency, or a corporation, association, organization, or other entity, either public or private, who receives professional legal services from a lawyer."

the Rules that differs from existing common law jurisprudence will lead to uncertainty and unpredictable results.

A lawyer's limited duty to disclaim representation should not be conflated with the existence of an attorney-client relationship.

The proposed definition is particularly troubling because it conflates the formation of a lawyer-client relationship—a question of contract—with the duty to disclaim representation of non-clients in some circumstances—a question of negligence. "The general rule is that in absence of evidence that the attorney knew that the parties had assumed that he was representing them in a matter, the attorney had no affirmative duty to inform the person that he was not their attorney." *Parker v. Carnahan*, 772 S.W.2d 151, 157 (Tex. App.—Texarkana 1989, writ denied). "On the other hand, an attorney can be held negligent where he fails to advise a party that he is not representing them on a case where the circumstances lead the party to believe that the attorney is representing him." *Id*. When the facts require a disclaimer of representation, a failure to disclaim does not necessarily create a lawyer-contract relationship, with concomitant fiduciary responsibilities. It merely creates potential tort liability for injury suffered by the non-client's reasonable reliance on the belief that the lawyer was providing representation. *See id.* ("While we believe that the evidence negates the showing of an attorney-client relationship between the attorneys and Martha Parker, we find there is a fact issue on whether the attorneys were negligent in failing to advise Martha Parker that they were not representing her interests."); *see also Bergthold v. Winstead Sechrest & Minick, P.C.*, 2-07-325-CV, 2009 WL 226026, at *5 (Tex. App.—Fort Worth Jan. 29, 2009, no pet.) ("*Even in the absence of an attorney-client relationship*, an attorney may be liable for negligently failing to advise a party that he is not representing the party") (emphasis added).

By including the concept of the duty to disclaim in the definition of "Client", the proposed definition ignores this very important distinction and suggests that a failure to honor the duty to disclaim necessarily creates a lawyer-client relationship, which relationship would include other obligations such as a fiduciary duty. This is not Texas law.

The definition would create confusion for entities and their constituents. The Restatement itself recognizes that determining the existence of an attorney/client relationship is often very difficult when a lawyer represents a small entity with "extensive common ownership and management," such as a limited partnership. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 14 cmt. f. Factors to consider in determining whether an entity lawyer also represents an individual partner include:

> whether the lawyer affirmatively assumed the duty of individual representation, whether the partner had independent representation, whether the lawyer

> previously represented the partner on a personal basis, and whether the evidence demonstrates the partner's reliance on or expectations of the lawyer's separate representation.

MacFarlane v. Nelson, 03-04-00488-CV, 2005 WL 2240949, at *4 (Tex. App.—Austin Sept. 15, 2005, pet. denied). A simplified definition thus threatens to expand the disciplinary exposure of lawyers for entities, including in-house lawyers, who are often accused of personally representing the individual constituents with whom they communicate.

The proposed definition of "Client" is not limited to a particular matter. Another flaw in the proposed definition is that it does not confine the existence of the lawyer-client relationship to the specific matter that is the subject of the parties' agreement. The proposed definition refers to the status of "Client" as a generic or broad concept when that is not necessarily the case. A lawyer's duties, including the lawyer's fiduciary duties, extend only to the scope of the particular matter that is the subject of the parties' agreement. *Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 159 (Tex. 2004) ("a lawyer's fiduciary duties to a client, although extremely important, 'extend[ ] only to dealings within the scope of the underlying relationship of the parties.'"). Similarly, a lawyer-client relationship generally terminates upon the completion of the purpose of the employment, absent agreement to the contrary. *Stephenson v. LeBoeuf*, 16 S.W.3d 829, 836 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). The definition does not address these important limitations on the scope of the lawyer-client relationship, risking confusion as to the scope and extent of a person's status as "Client."

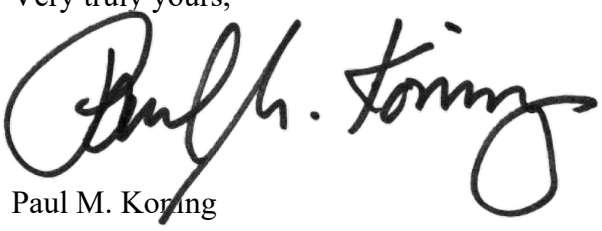
If it ain't broke . . .

Texas is not required to follow the rest of the United States. But there is no reason why Texas should want to become an outlier on *this* issue. I have handled many grievances brought by alleged non-clients, and in no case has the complainant or respondent been hampered in asserting a claim or response because of the absence of a definition of "Client" in the Rules. To the extent a lawyer contests the existence of an attorney-client relationship, it is easy enough to state the relevant facts and cite applicable law. There is no need to insert an entirely new definition with unfamiliar terminology and concepts, particularly one that is not completely aligned with well-established Texas law.

In short, there is no good reason to add this definition and many reasons not to do so. Above all, adopting this definition will not bring the Rules in line with national standards. It will do just the opposite. I respectfully encourage the Committee to withdraw the definition of "Client" from proposed Rule 1.00.

Thank you for considering these comments. I am available to discuss further at your convenience.

Very truly yours,



Paul M. Koning

The foregoing comments represent my personal views and not the views of Koning Rubarts, LLP, or the Professional Ethics Committee.

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From: [redacted]
To: cdrr
Subject: CDRR Comment: Comment regarding proposed amendment to Rule 1.00(d): "Client"
Date: Monday, May 17, 2021 3:54:05 PM

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

Contact

First Name	Kelli
Last Name	Hinson
Email	[redacted]
Member	Yes
Barcard	00793956

Feedback

Subject	Comment regarding proposed amendment to Rule 1.00(d): "Client"

Comments

Dear Committee Members -- I urge the Committee not to include the proposed definition of "Client" in the Terminology section of the Texas Disciplinary Rules of Professional Conduct. This definition is not consistent with Texas law and would constitute a marked departure from prior Texas precedent. Most concerning, the proposed definition conflates the negligence-based duty from Parker v. Carnahan, 772 S.W.2d 151, 157 (Tex. App.--Texarkana 1989, writ denied), with the actual creation of an attorney-client relationship. Such a result is contrary to Texas law holding that, in order to create an attorney-client relationship, there must be evidence that both parties intended to create such a relationship. See, e.g., Belliveau v. Barco, Inc., 987 F.3d 122, 133 (5th Cir. 2021). There is ample case law in Texas regarding the creation of attorney-client relationships and what it means to be a "client" under Texas law. The proposed definition is unnecessary and, because it would put the disciplinary rules at odds with current Texas law, it would create unnecessary confusion as to the applicable standard for civil liability. Thank you for your consideration. Kelli Hinson

From: [redacted]
To: cdrr
Subject: CDRR Comment: Proposed Change to Rules- definition of "Client"
Date: Monday, May 17, 2021 5:56:32 PM

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

Contact

First Name	Steven
Last Name	Harr
Email	[redacted]
Member	Yes
Barcard	09035600

Feedback

Subject	Proposed Change to Rules- definition of "Client"

Comments

I write to comment on the proposed rule change of including a definition of "client". I oppose including the definition in its entirety. First, no other jurisdiction has adopted such a definition. There must be reasons even beyond the comments you will receive. Certainly the fact that 50 other state / DC bars have not adopted such a definition is compelling. Second, it's a land mine. You are creating a malpractice risk by by putting the burden on lawyers to "manifest" a lack of consent. That language is wildly open to interpretation. Finally, the establishment of the attorney client relationship is far to nuanced to be boiled down to a simple statement such as this. Please delete this amendment. If you don't all the other good work you have done will be lost as we will have to vote against the changes due to this problem. Thank you

From: [redacted]
To: cdrr
Subject: CDRR Comment: Comments on proposed amendments to Rule 100(d)
Date: Tuesday, May 18, 2021 8:37:52 AM

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

Contact

First Name	Sim
Last Name	Israeloff
Email	[redacted]
Member	Yes
Barcard	10435380

Feedback

Subject	Comments on proposed amendments to Rule 100(d)

Comments

I am board certified in civil trial law and have over 38 years' experience in commercial litigation and attorney malpractice. I also serve as the Firm Counsel to my law firm. I write to express disapproval of the proposed amendment to the definition of "Client" from the proposed amendments. I have wrestled with this issue in practice and with my firm and do not believe this definition captures the often fact-intensive inquiry into when an attorney-client relationship has been created. The proposed rule would potentially trap attorneys into an attorney-client relationship because they "failed to manifest a lack of consent." An attorney - client relationship should not ordinarily be created by the LACK of objection by the attorney, there is no involuntary servitude as to attorneys. This rule would allow would-be clients to FORCE an attorney to be their lawyer unless the attorney remembers this rule and manifests a lack of consent. This has it backwards, and risks trapping attorneys in "gotcha" situations without their actual consent. Case law touches on this subject, and numerous cases define when the lawyer is deemed to be an attorney for a particular putative client. The proposed rule is overly simplistic and puts a burden on attorneys to negate that they have been hired just because someone has told them they intend that the lawyer represent them. Among other examples, inmates who regularly write attorneys asking for their help and expressing unilateral, unsolicited, and unwanted expectations as to attorneys who they have never met, could use this new rule to trap attorneys into representing them. I urge that the new rule NOT be adopted. Thank you.

From: [redacted]
To: cdrr
Subject: CDRR Comment: Proposed Rule 1.00, TDRPC - Terminology
Date: Tuesday, May 18, 2021 1:23:42 PM

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

Contact

First Name	James
Last Name	Graham
Email	[redacted]
Member	Yes
Barcard	24102973

Feedback

Subject	Proposed Rule 1.00, TDRPC - Terminology

Comments

The rule changes as proposed appear to open up numerous avenues by which an attorney could be grieved or otherwise roped into a representation as a result of providing an answer to a seemingly innocuous question by any person. Wouldn't this put lawyers in the position of having to choose between engaging in a casual conversation or asking anyone they speak with on a potentially legal subject to provide contact information so the attorney can affirmatively assert in writing that the act of answering a question did not create any attorney-client relationship and the person is not a client? This language appears to be potentially lethal to lawyers who would potentially be subject to claims that they represent people they had no intention of representing. Further, it could open up a way for unscrupulous persons to make claims against lawyers for failure to provide representation, when the lawyer had no idea someone the lawyer spoke with in passing would claim the conversation established an attorney-client relationship.

From: [redacted]
To: cdrr
Subject: CDRR Comment: Proposed Rule 1.00(d)(1)(ii)
Date: Thursday, May 27, 2021 10:26:42 AM

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

Contact

First Name	Bryan
Last Name	Vezey
Email	[redacted]
Member	Yes
Barcard	00788583

Feedback

Subject	Proposed Rule 1.00(d)(1)(ii)

Comments

Please consider an exception to this paragraph, or a clarifying statement in the official comments, to the effect that a lawyer need not manifest lack of consent when the purported client has only communicated to the lawyer with unilateral e-mails and the lawyer has not responded at all. I get one-line e-mails all the time saying "Do you do breach of contract?" or something like that, 99.9% of which are simply spam. If they get past my spam filter, I add them to my junk sender list and I never see anything from them again. Strangers should not be able to impose response obligations on lawyers by a method overwhelmingly used by spam bots and hackers. As I finish typing this, I see that I have to click a box below to show that I'm not a robot, so my point should not be controversial.

From: John Wheat Gibson, Sr.
To: cdrr
Subject: Proposed terminology
Date: Thursday, May 27, 2021 4:36:35 PM

Dear Committee:

With all due respect, I don't see how the proposed rule 11.00 improves our understanding of anything. "Adjudicatory Official" denotes a person who serves on a Tribunal. What is the definition of a "Tribunal," and why the capital "t?"
"Belief or Believes" denotes that the person involved actually supposed the fact in question to be true," How is "supposed" a clarification of "believed?"
Etc. Petitio principii. Case law may define subjective terms usefully, but more subjective terms cannot.
Respectfully submitted,

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From: Bryan Neil Linch
To: cdrr
Subject: Comment on Proposed Rule 1.00, TDRPC
Date: Friday, May 28, 2021 3:33:25 PM
Attachments: image001.png
image003.png

My comment relates to the second prong of the proposed definition of "Client" – specifically 1.00(d)(2) "a tribunal with power to do so appoints the lawyer to provide the services."

Discussion of potential problem:

This ***seems*** like a fairly straight-forward and bright-line rule; however, in practice there are complications. Some Courts are quite efficient at informing the appointed attorney about the appointment; however, some are not. I have been appointed in cases but not informed of the appointment until many weeks (even over a month) has gone by. During that period of time, I might be considered an attorney with a client under the proposed rule without knowing it. Not only could things occur during that time period that would put me in a conflict, but I may already have been in a conflict at the time of appointment and not yet had the ability to present the conflict of interest to the Court and ask for the appointment to be rescinded.

As an example, I may have been contacted by a potential heir and discussed matters with the heir such that the attorney-client privilege applied, then appointed by the Court to represent unknown heirs. Upon notification of the appointment, I would immediately inform the Court of the conflict of interest and request the Order be rescinded. Under the proposed rule, I would be deemed to have represented the "client" for whom I was appointed; therefore, I would have violated several Rules.

Sticking with the same type of case, another possibility is that I am appointed by Court Order to represent unknown heirs, but do not yet know it. Then, I am contacted by a potential heir. I may engage in communications with the potential heir to explore engagement (which are protected by attorney-client privilege regardless whether I am ultimately engaged) and only determine after the fact that I had previously been appointed.

Also, it is possible that I represented another party to the action – a fact the appointing Court has no reason to know. Whether that representation would or would not arise to a conflict should be up to the appointed attorney.

Potential solution:

A possible solution for this situation would be for the court appointment to trigger an attorney-client relationship only upon Notice to the attorney followed by a reasonable period to research potential conflicts and respond.

Thank you,
Bryan

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