

# Committee on Disciplinary Rules and Referenda Proposed Rule Changes (Subcommittee Revised Draft, April 178, 2019)

## VII. INFORMATION ABOUT LEGAL SERVICES

Proposed Rules (Clean Version Only), All Footnotes Will Be Deleted

### Rule 7.01 Communications Concerning a Lawyer's Services

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

~~(b) This Rule governs all communications about a lawyer's services, including, but not limited to, advertisements and solicitation communications. For purposes of Rules 7.01 to 7.07:~~

~~(1) An "advertisement" is a communication substantially motivated by pecuniary gain that is made by or on behalf of a lawyer to members of the public in general, which offers or promotes about the terms or availability of legal services, under circumstances where the lawyer neither knows nor reasonably should know that the recipients need legal services in particular matters.<sup>1</sup>~~

~~(2) A "solicitation communication" is a communication substantially motivated by pecuniary gain that is made by or on behalf of a lawyer to a specific person who has not sought the lawyer's advice or services, which that reasonably can be understood as offering to provide legal services that the lawyer knows or reasonably should know the person needs in a particular matter.<sup>2</sup>~~

~~(c) A lawyer may practice law under a non-misleading trade name, including a trade name that<sup>3</sup> A law firm name may includes the names of current members of the firm and of one or more deceased or~~

<sup>1</sup> The Public Comment or Robert Doggett (pp. 76-77) urged that the term "advertisement" be defined.

<sup>2</sup> See Annotated Model Rules of Professional Conduct § 7.3 (8<sup>th</sup> ed. 2015) ("A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.").

<sup>3</sup> This material has been moved to Proposed Rule 7.07.

retired members of the firm, or of a predecessor firm, if there has been a succession in the firm's identity. ~~A trade name may not imply a connection with a public or charitable legal services organization or a governmental entity, or utilize the name of a non-lawyer or a lawyer not associated with the firm.~~<sup>4</sup> The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm. A law firm with an offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

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

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

~~(f)~~ A ~~lawyer~~ may state or imply that the lawyer practices in a partnership or other business entity only when that is accurate the fact.

#### **Rule 7.02 ~~Advertisements~~ Communications Disseminated by Public Media**

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

(b) ~~A lawyer who advertises in the public media may communicate that the lawyer does or does not practice in particular fields of law, but 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:~~<sup>5</sup>

~~(1a) a~~ A lawyer who ~~advertises in public media may include a statement that the lawyer~~ has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization: in the area so advertised, ~~A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law~~ state with respect to each such area, "Board Certified, area of specialization -- Texas Board of Legal Specialization;"<sup>6</sup> and

~~(2b) 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 in a field of practice, may include a factually accurate, non-misleading statement of such membership or certification, but only if that organization has been accredited by the Texas Board of Legal Specialization as a bona fide organization that admits to

<sup>4</sup> This sentence has been moved to Proposed Rule 7.07.

<sup>5</sup> This introductory language ("A lawyer . . . except that") is quoted from Claude Ducloux's e-mail to the CDRR dated January 9, 2019.

<sup>6</sup> This is the language that currently appears in Texas Rule 7.04(b)(2)(i).

membership or grants certification only on the basis of published criteria which the Board has established as required for such certification.<sup>7</sup>

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

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

### **Rule 7.03 Solicitation for Pecuniary Gain and Other Prohibited Communication of Paid Professional Employment**

(a) The following definitions apply to this Rrule:

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

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

(2) A lawyer "solicits" employment by making a "solicitation communication," as that term is defined in Rule 7.01(b)(2).

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

(1) another lawyer;7

(2) a person who has a family, close personal, or prior business or professional relationship with the lawyer;7 or

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

(3) a person who has sought the lawyer's advice or employment.

(c) A lawyer in private practice<sup>8</sup> shall not send, deliver, or transmit, or knowingly permit or cause another person to send, deliver, or transmit, a advertisement or solicitation communication ~~written,~~

<sup>7</sup> This is a shorter version of the language that now appears in Texas Rule 7.04(b)(2)(ii), which was proposed by Carl Jordan. See E-mail from Carl Jordan to CDRR members, Jan. 10, 2019; see also E-mail from Claude Ducloux to Leo Figeroa, February 12, 2019.

<sup>8</sup> A Public Comment (p. 63) submitted by Randy Chapman suggested the addition of the phrase "In private practice."

~~audio, audiovisual, digital media, recorded telephone message, or other electronic communication~~ to a prospective client, if:

- (1) the communication involves coercion, duress, overreaching, intimidation, or undue influence;
- (2) the communication is designed to resemble a legal pleadings or other legal documents; or
- (3) the communication is not plainly marked or clearly designated an "ADVERTISEMENT" unless the target of the solicitation is:
  - (i) another lawyer;
  - (ii) a person who has a family, close personal, or prior business or professional relationship with the lawyer;<sup>7</sup> or
  - (iii) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters. -

(d) A lawyer substantially motivated by pecuniary gain shall not pay, give, or offer to pay or give, anything of value to a person not licensed to practice law for soliciting or referring prospective clients for ~~paid~~ professional employment, except nominal gifts given as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

(1) This Rule does not prohibit a lawyer from paying reasonable fees for advertising and public relations services or the usual charges of a lawyer referral service that meets the requirements of Occupations Code Title 5, Subtitle B, Chapter 952.

(2) A lawyer may refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:

- (i) the reciprocal referral agreement is not exclusive; and
- (ii) the clients are informed of the existence and nature of the agreement; and<sup>9</sup>
- (iii) the lawyer exercises independent professional judgment in making referrals.

(e) ~~Except as otherwise permitted, a~~ A lawyer substantially motivated by pecuniary gain, shall not, for the purpose of securing ~~professional~~ employment, pay, give, or advance, or offer to pay, give, or advance, anything of value to a prospective client, other than actual litigation expenses, ~~or~~ and other financial assistance ~~expressly~~ permitted by Rule 1.08(d) law, or ordinary social hospitality of nominal value.

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

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

<sup>9</sup> This material is based on ABA Model Rule 7.2(b)(4). It responds to a concern raised by Richard Hile in the Public Comment he submitted on March 12, 2019.

(a) ~~Except as exempt under Rule 7.05, a~~ lawyer shall file with the ~~staff of the~~ Advertising Review Committee, ~~of the~~ State Bar of Texas, no later than ten (10) days after the date of dissemination of an advertisement of legal services via public media, or ten (10) days after the date of a solicitation communication sent by any means, ~~including social media, for the purpose of obtaining paid professional employment:~~

- (1) a copy of the advertisement or solicitation communication (including packaging if applicable) in the form in which it appeared or will appear upon dissemination;
- (2) a completed lawyer advertising and solicitation communication application; and
- (3) payment to the State Bar of Texas of a fee ~~authorized set~~ by the Board of Directors.

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

(c) A lawyer who desires to secure pre-approval of an advertisement or solicitation communication may submit to the Advertising Review Committee, not less than thirty (30) days prior to the date of first dissemination, the material specified in paragraph (a), except that in the case of an advertisement or solicitation communication that has not yet been produced, the documentation will consist of a proposed text, production script, or other description, including details about the illustrations, actions, events, scenes, and background sounds that will be depicted, or a proposed text and description of the advertisement or solicitation communication. A finding of noncompliance by the Advertising Review Committee is not binding in a disciplinary proceeding or action, but a finding of compliance is binding in favor of the submitting lawyer as to all materials submitted for pre-approval if the lawyer fairly and accurately described the advertisement or solicitation communication that was later produced. A finding of compliance is admissible evidence if offered by a party.<sup>10</sup>

## Rule 7.05 Communications Exempt from Filing Requirements

(a) The ~~following communications are exempt from the~~ filing requirements of ~~Rule 7.04 these rules do not extend to any of the following materials, unless provided they~~ these materials fail to comply with Rules ~~7.01, and 7.02, and 7.03:~~

- (1) any communication that is not substantially motivated by pecuniary gain, including publications of a bona fide nonprofit legal aid organization that are used to educate members of the public about the law or to promote the availability of free or reduced-fee legal services;<sup>11</sup>
- (2) information and links posted on a law firm website, except the contents of the website homepage, unless that information is otherwise exempt from filing;
- (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 law firm, or a business card;
- (5) a professional newsletter in any media that it is sent, delivered, or transmitted only to:
  - (i) existing or former clients;
  - (ii) other lawyers or professionals;
  - (iii) members of a nonprofit organization which has requested that members receive the newsletter; or

<sup>10</sup> This is a shorter version of the language that now appears in Texas Rule 7.07(d).

<sup>11</sup> This new provision addresses issues raised in the Public Comments by Karen Miller (p. 41) and Robert Doggett (p. 77).

- (iv) persons who have asked to receive the newsletter;
- (6) a solicitation communication directed by a lawyer to:
- (i) another lawyer;
  - (ii) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or
  - (iii) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters;
- (7) a communication on a professional social media website containing only resume-type information;<sup>12</sup>
- (8) an advertisement in public media that:
- (i) identifies a lawyer or a firm as a contributor to a charity or as a sponsor of a 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, contact information, and the fact of the contribution or sponsorship or contribution;
- (9) communications an advertisement in public media that contains only part or all of the following types of information:
- (i) the name of the lawyer or law firm and any lawyer in the law and lawyers associated with the firm, with office addresses, electronic addresses, social media names and addresses,<sup>13</sup> 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 lawyers in the or firm practice, or concentrate, specialize, or intend to to which it limits its practice;
  - (iii) the date of admission of a the lawyer in the law firm or lawyers to the State Bar of Texas, or to the bar of any court or particular federal courts, and to the bars of other jurisdictions;
  - (iv) the educational background of the lawyer or lawyers;
  - (v) technical and professional licenses granted by this state and other recognized licensing authorities;
  - (vi) foreign language abilities;
  - (vii) particular areas of law in which a one or more lawyers in the law firm is are certified by the Texas Board of Legal Specialization;
  - (viii) identification of prepaid or group legal service plans in which the lawyer participates;
  - (ix) the acceptance or nonacceptance of credit cards;
  - (x) any fees charged for an initial consultation and routine legal services fee schedule;
  - (xi) in the case of a website, links to other websites;
  - (xii) identification of a lawyer or a law firm as a contributor or sponsor of a charitable, community, or public interest program, activity, sponsorship by the lawyer or firm of a charitable, civic, or community program or event, or sponsorship of a public service announcement;
  - (xiii) any disclosure or statement required by these rules; and

<sup>12</sup> See Public Comment of Daniel Price (p. 172) (discussing LinkedIn).

<sup>13</sup> In the Public Comments (p. 60), Patrick Chukelu asked whether advertisements listing “the lawyer’s name in social media” are exempt from filing requirement. The footnoted change in the text responds to that question by indicating that such information is exempt from filing requirements.

~~(xiiiv)~~ any other information specified ~~from time to time~~ in orders promulgated by the Supreme Court of Texas;

~~(2) an advertisement in public media that:~~

~~(i) identifies one or more lawyers or a firm as a contributor to a specified charity or as a sponsor of a specified charitable, community, or public interest program, activity, or event; and~~

~~(ii) contains no information about the lawyers or firm other than names of the lawyers or firm or both, location of the law offices, and the fact of the sponsorship or contribution;~~

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

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

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

~~(i) existing or former clients;~~

~~(ii) other lawyers or professionals; or~~

~~(iii) members of a 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.~~

~~(8) a communication on a professional social media website containing only resume-type information.~~

## 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 7.04, ~~5~~, 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 7.04, ~~5~~, 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 7.04~~5~~, 8.04(a)(2), or 8.04(a)(9) in connection with the matter unless nothing of value is given thereafter in return for that employment.

**Rule 7.07 Trade Names ~~(VERSION B)~~ [APPROVED BY THE SUBCOMMITTEE]**

A lawyer in private practice shall not practice under a trade name.

**Rule 7.07 Trade Names (VERSION B) [REJECTED BY THE SUBCOMMITTEE]**

(a) A lawyer in private practice shall not practice law under a trade name that:

(1) is false or misleading;

(2) contains the name of a nonlawyer or a lawyer who was never a member of the firm;<sup>14</sup>

(3) implies a connection with a public or charitable legal services organization, a law school, a bar-sponsored clinical program, or a governmental entity;<sup>15</sup> or

(4) contains the words "legal aid" or "clinic," or similar language which implies that the law firm offers low cost legal services, unless that fact is demonstrably true.<sup>16</sup>

<sup>14</sup> A Public Comment from Linda Evanwood (p. 45) explains why "never a member" is preferable to "not associated with."

<sup>15</sup> The references to law schools and bar-sponsored clinical programs were suggested by the Public Comment (p. 63) submitted by Randy Chapman.

<sup>16</sup> I had thought of adding another provision to Rule 7.07 stating: "(b) The use of a trade name shall be accompanied by the name of the lawyer who is responsible for the management of the law firm." This language that can be found in the New Jersey rule. See *In re Committee on Attorney Advertising*, 213 N.J. 171, 184 (2013). In the Public Comments (p. 78), Robert Reagan argued:

I am in favor of most of the changes, but I oppose allowing lawyers to use trade names. I have represented clients who were abused by many different businesses who, in part, the client did not know who they were doing business as. Requiring a consumer, whether of legal services or otherwise, to have to search the country and state records to see who is using an assumed name puts too great a burden on an unsophisticated person. I believe that trade names, when used by lawyers are too easily misleading, both as to who will actually be providing the legal services and their qualifications.

However, I have concluded that such a provision in Rule 7.07(b) is unnecessary. Proposed Rule 7.02(a) already provides that "(a) A lawyer who advertises in public media shall publish or broadcast the name of at least one lawyer who is responsible for the content of the advertisement and identify the lawyer's primary practice location."

# Committee on Disciplinary Rules and Referenda Proposed Rule Changes (Subcommittee Revised Draft, April 17, 2019)

## VII. INFORMATION ABOUT LEGAL SERVICES

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### **Rule 7.01 Communications Concerning a Lawyer's Services**

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

(b) This Rule governs all communications about a lawyer's services, including advertisements and solicitation communications. For purposes of Rules 7.01 to 7.07:

(1) An "advertisement" is a communication substantially motivated by pecuniary gain that is made by or on behalf of a lawyer to members of the public in general, which offers or promotes legal services under circumstances where the lawyer neither knows nor reasonably should know that the recipients need legal services in particular matters.<sup>1</sup>

(2) A "solicitation communication" is a communication substantially motivated by pecuniary gain that is made by or on behalf of a lawyer to a specific person who has not sought the lawyer's advice or services, which reasonably can be understood as offering to provide legal services that the lawyer knows or reasonably should know the person needs in a particular matter.<sup>2</sup>

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<sup>1</sup> The Public Comment or Robert Doggett (pp. 76-77) urged that the term "advertisement" be defined.

<sup>2</sup> See Annotated Model Rules of Professional Conduct § 7.3 (8<sup>th</sup> ed. 2015) ("A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.").

(c)<sup>3</sup> A law firm name may include the names of current members of the firm and of deceased or retired members of the firm, or of a predecessor firm, if there has been a succession in the firm identity. <sup>4</sup>The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm. A law firm with an office in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(d) A statement or disclaimer required by these rules shall be made in each language used in the communication. A statement that a language is spoken or understood does not require a statement or disclaimer in that language.

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

(f) A lawyer may state or imply that the lawyer practices in a partnership or other business entity only when that is accurate.

#### **Rule 7.02 Advertisements Disseminated by Public Media**

(a) An advertisement of legal services in public media shall publish the name of a lawyer who is responsible for the content of the advertisement and identify the lawyer's primary practice location.

(b) A lawyer who advertises in the public media may communicate that the lawyer does or does not practice in particular fields of law, but 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:<sup>5</sup>

(1) 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;"<sup>6</sup> and

(2) 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 in a field of practice, may include a factually accurate, non-misleading statement of such membership or certification, but only if that organization has been accredited by the Texas Board of Legal Specialization as a bona fide organization that admits to

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membership or grants certification only on the basis of published criteria which the Board has established as required for such certification.<sup>7</sup>

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

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

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(a) The following definitions apply to this Rule:

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

(2) A lawyer “solicits” employment by making a “solicitation communication,” as that term is defined in Rule 7.01(b)(2).

(b) A lawyer shall not solicit through in-person contact, or through regulated telephone, social media, or other electronic contact, professional employment from a non-client, unless the target of the solicitation is:

- (1) another lawyer;
- (2) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or
- (3) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.

(c) A lawyer in private practice<sup>8</sup> shall not send, deliver, or transmit, or knowingly permit or cause another person to send, deliver, or transmit, an advertisement or solicitation communication to a prospective client, if:

- (1) the communication involves coercion, duress, overreaching, intimidation, or undue influence;
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- (ii) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or
- (iii) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.

(d) A lawyer substantially motivated by pecuniary gain shall not pay, give, or offer to pay or give, anything of value to a person not licensed to practice law for soliciting or referring prospective clients for professional employment, except nominal gifts given as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

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

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- (2) a completed lawyer advertising and solicitation communication application; and
- (3) payment to the State Bar of Texas of a fee authorized by the Board of Directors.

(b) If requested by the Advertising Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in an advertisement or solicitation communication.

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<sup>9</sup> This material is based on ABA Model Rule 7.2(b)(4). It responds to a concern raised by Richard Hile in the Public Comment he submitted on March 12, 2019.

(c) A lawyer who desires to secure pre-approval of an advertisement or solicitation communication may submit to the Advertising Review Committee, not less than thirty (30) days prior to the date of first dissemination, the material specified in paragraph (a), except that in the case of an advertisement or solicitation communication that has not yet been produced, the documentation will consist of a proposed text, production script, or other description, including details about the illustrations, actions, events, scenes, and background sounds that will be depicted. A finding of noncompliance by the Advertising Review Committee is not binding in a disciplinary proceeding or action, but a finding of compliance is binding in favor of the submitting lawyer as to all materials submitted for pre-approval if the lawyer fairly and accurately described the advertisement or solicitation communication that was later produced. A finding of compliance is admissible evidence if offered by a party.<sup>10</sup>

### **Rule 7.05 Communications Exempt from Filing Requirements**

(a) The following communications are exempt from the filing requirements of Rule 7.04 unless they fail to comply with Rules 7.01, 7.02, and 7.03:

- (1) any communication that is not substantially motivated by pecuniary gain, including publications of a bona fide nonprofit legal aid organization that are used to educate members of the public about the law or to promote the availability of free or reduced-fee legal services;<sup>11</sup>
- (2) information and links posted on a law firm website, except the contents of the website homepage, unless that information is otherwise exempt from filing;
- (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 law firm, or a business card;
- (5) a professional newsletter in any media that it is sent, delivered, or transmitted only to:
  - (i) existing or former clients;
  - (ii) other lawyers or professionals;
  - (iii) members of a nonprofit organization which has requested that members receive the newsletter; or
  - (iv) persons who have asked to receive the newsletter;
- (6) a solicitation communication directed by a lawyer to:
  - (i) another lawyer;
  - (ii) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or
  - (iii) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters;
- (7) a communication on a professional social media website containing only resume-type information;<sup>12</sup>
- (8) an advertisement in public media that:
  - (i) identifies a lawyer or a firm as a contributor or sponsor of a charitable, community, or public interest program, activity, or event; and

<sup>10</sup> This is a shorter version of the language that now appears in Texas Rule 7.07(d).

<sup>11</sup> This new provision addresses issues raised in the Public Comments by Karen Miller (p. 41) and Robert Doggett (p. 77).

<sup>12</sup> See Public Comment of Daniel Price (p. 172) (discussing LinkedIn).

- (ii) contains no information about the lawyers or firm other than names of the lawyers or firm or both, location of the law offices, contact information, and the fact of the contribution or sponsorship;
- (9) communications that contain only the following types of information:
  - (i) the name of the law firm and any lawyer in the law firm, office addresses, electronic addresses, social media names and addresses,<sup>13</sup> 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 areas of law in which lawyers in the firm practice, concentrate, specialize, or intend to practice;
  - (iii) the admission of a lawyer in the law firm to the State Bar of Texas or the bar of any court or jurisdiction;
  - (iv) the educational background of the lawyer;
  - (v) technical and professional licenses granted by this state and other recognized licensing authorities;
  - (vi) foreign language abilities;
  - (vii) areas of law in which a lawyer in the law firm is certified by the Texas Board of Legal Specialization;
  - (viii) identification of prepaid or group legal service plans in which the lawyer participates;
  - (ix) the acceptance or nonacceptance of credit cards;
  - (x) fees charged for an initial consultation or routine legal services;
  - (xi) identification of a lawyer or a law firm as a contributor or sponsor of a charitable, community, or public interest program, activity or event;
  - (xii) any disclosure or statement required by these rules; and
  - (xiii) any other information specified in orders promulgated by the Supreme Court of Texas.

### **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 Rules 7.01 through 7.04, 8.04(a)(2), or 8.04(a)(9), engaged in by that lawyer personally or by another 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 Rules 7.01 through 7.04, 8.04(a)(2), or 8.04(a)(9), engaged in by another 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 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

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<sup>13</sup> In the Public Comments (p. 60), Patrick Chukelu asked whether advertisements listing “the lawyer's name in social media” are exempt from filing requirement. The footnoted change in the text responds to that question by indicating that such information is exempt from filing requirements.

procuring the lawyer's employment in the matter engaged in, or ordered, encouraged, or knowingly permitted another to engage in, conduct prohibited by Rules 7.01 through 7.04, 8.04(a)(2), or 8.04(a)(9) in connection with the matter unless nothing of value is given thereafter in return for that employment.

**Rule 7.07 Trade Names [APPROVED BY THE SUBCOMMITTEE]**

A lawyer in private practice shall not practice under a trade name.

**Rule 7.07 Trade Names (VERSION B) [REJECTED BY THE SUBCOMMITTEE]**

(a) A lawyer in private practice shall not practice law under a trade name that:

- (1) is false or misleading;
- (2) contains the name of a nonlawyer or a lawyer who was never a member of the firm;<sup>14</sup>
- (3) implies a connection with a public or charitable legal services organization, a law school, a bar-sponsored clinical program, or a governmental entity;<sup>15</sup> or
- (4) contains the words "legal aid" or "clinic," or similar language which implies that the law firm offers low cost legal services, unless that fact is demonstrably true.<sup>16</sup>

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<sup>14</sup> A Public Comment from Linda Evanwood (p. 45) explains why "never a member" is preferable to "not associated with."

<sup>15</sup> The references to law schools and bar-sponsored clinical programs were suggested by the Public Comment (p. 63) submitted by Randy Chapman.

<sup>16</sup> I had thought of adding another provision to Rule 7.07 stating: "(b) The use of a trade name shall be accompanied by the name of the lawyer who is responsible for the management of the law firm." This language that can be found in the New Jersey rule. See *In re Committee on Attorney Advertising*, 213 N.J. 171, 184 (2013). In the Public Comments (p. 78), Robert Reagan argued:

I am in favor of most of the changes, but I oppose allowing lawyers to use trade names. I have represented clients who were abused by many different businesses who, in part, the client did not know who they were doing business as. Requiring a consumer, whether of legal services or otherwise, to have to search the country and state records to see who is using an assumed name puts too great a burden on an unsophisticated person. I believe that trade names, when used by lawyers are too easily misleading, both as to who will actually be providing the legal services and their qualifications.

However, I have concluded that such a provision in Rule 7.07(b) is unnecessary. Proposed Rule 7.02(a) already provides that "(a) A lawyer who advertises in public media shall publish or broadcast the name of at least one lawyer who is responsible for the content of the advertisement and identify the lawyer's primary practice location."