



Proposed Rules FAQ

This document answers questions about the proposed rule amendments. A summary of all of the rule proposals is available at texasbar.com/rulesvote. If you have a question that is not addressed here, please email it to rulesvote@texasbar.com.

Ballot Item E: Information About Legal Services (Lawyer Advertising and Solicitation)

Q: In general, how do the proposed advertising rules differ from the current advertising rules?

A: The proposal is intended to significantly simplify, modernize, and clarify the rules governing lawyer advertising, solicitation, and other communications about legal services. The proposed rules are intended to make compliance easier for lawyers, while continuing to focus on the prevention of false or misleading communications, as well as overreaching in solicitations. The proposal reduces Part VII of the Texas Disciplinary Rules of Professional Conduct from seven rules to six rules (numbered 7.01 through 7.06). Proposed Rule 7.01(a) maintains the central provision that “[a] lawyer shall not make or sponsor a false or misleading communication about the qualifications or services of a lawyer or law firm.”

Q: Does the proposal allow a lawyer to practice law under a trade name?

A: The proposal allows a lawyer to practice law under a trade name that is not false or misleading. This is a change from the current blanket prohibition on the use of trade names by lawyers in private practice. The proposed allowance for trade names that are not false or misleading is in line with the rules of the vast majority of other states. Further, the current prohibition on trade names is subject to constitutional challenge, given developments in First Amendment jurisprudence. (Under the proposal, an advertisement of legal services still must include the name of a lawyer who is responsible for its content.)

Q: Does the proposal define “advertisement” and “solicitation communication”?

A: Yes, the proposal adds definitions for these terms. This is significant, as certain provisions of the proposal, such as the filing requirements, only apply if the communication constitutes an “advertisement” or a “solicitation communication.” (However, other provisions, such as the prohibition on false or misleading communications about a lawyer’s qualifications or services, apply to a communication regardless of whether it meets one of these definitions.)

Q: How does the proposal address a lawyer advertising that he or she is a certified specialist?

A: The proposal continues to allow a lawyer to advertise that he or she is a certified specialist in a field of law only if such certification is awarded by the Texas Board of Legal Specialization (TBLS) or an organization accredited by TBLS.

Q: Does the proposal treat communications directed to certain professionals differently than the current rules?

A: The proposal provides new exemptions to the ban on in-person or live/interactive solicitation for communications directed to another lawyer or to a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters. Solicitation communications directed to these categories of professionals are also exempt from filing requirements and from the requirement to include an “ADVERTISEMENT” designation.

Q: Does the proposal expand the categories of communications exempt from filing requirements?

A: Yes. Proposed Rule 7.05 provides a list of the categories of communications that are expressly exempt from the filing requirements, which is an expansion from the current exemptions. Of particular note, Proposed Rule 7.05(a) exempts “any communication of a bona fide nonprofit legal aid organization that is used to educate members of the public about the law or to promote the availability of free or reduced-fee legal services,” and Proposed Rule 7.05(g) exempts “a communication in social media or other media, which does not expressly offer legal services, and that: (1) is primarily informational, educational, political, or artistic in nature, or made for entertainment purposes; or (2) consists primarily of the type of information commonly found on the professional resumes of lawyers.”

Ballot Item F: Reporting Professional Misconduct and Reciprocal Discipline for Federal Court or Federal Agency Discipline

Q: How does the proposal amend current self-reporting and reciprocal-discipline provisions?

A: Currently, Rule 8.03(f) of the Texas Disciplinary Rules of Professional Conduct requires “[a] lawyer who has been disciplined by the attorney-regulatory agency of another jurisdiction” to provide the chief disciplinary counsel with a copy of the order or judgment within 30 days. If the conduct constitutes professional misconduct in Texas, Part IX of the Texas Rules of Disciplinary Procedure sets out the procedures under which reciprocal discipline could be imposed in Texas.

To better protect the public, the proposal extends the current self-reporting and reciprocal-discipline provisions to expressly cover professional discipline by a federal court or federal agency. The proposal specifically states that, for purposes of these provisions, “‘discipline’ by a federal court or federal agency means a public reprimand, suspension, or disbarment; the term does not include a letter of ‘warning’ or ‘admonishment’ or a similar advisory by a federal court or federal agency.”

Q: Do the provisions apply to the failure to pay dues or fees, or to procedural disqualification?

A: No, the provisions do not apply to purely administrative matters, such as failure to pay dues or fees required to practice before a court or agency, or to procedural disqualification in a particular case.

Q: Under the proposal, will a lawyer automatically be disciplined in Texas based upon the reporting of discipline by a federal court or federal agency?

A: No. As with current provisions applicable to discipline imposed by the attorney-regulatory agency of another state or the District of Columbia, the self-reporting of discipline by a federal court or federal agency would not automatically result in discipline in Texas under the proposal. If the conduct constitutes professional misconduct in Texas, Part IX of the Texas Rules of Disciplinary Procedure (TRDP) sets out the procedures under which reciprocal discipline could be imposed in Texas. Rule 9.01, TRDP, provides that “[a] certified copy of the order or judgment is prima facie evidence of the matters contained therein, and a final adjudication in another jurisdiction that an attorney licensed to practice law in Texas has committed Professional Misconduct is conclusive for the purposes of a Disciplinary Action under this Part, subject to the defenses set forth in Rule 9.04 below.” Under Part IX, discipline would only take place upon a judgment from the Board of Disciplinary Appeals.