

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 04-9220

APPROVAL OF REFERENDUM ON PROPOSED CHANGES IN THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

“Referral fees” — fees paid by one lawyer to another, not in the same firm, merely for referring or forwarding a case — have long been controversial. In response to substantial questions regarding the payment of referral fees in Texas, raised by the Supreme Court Task Force on Civil Litigation Improvements, chaired by Joseph D. Jamail of Houston,¹ the Supreme Court on October 9, 2003, proposed to amend the Texas Rules of Civil Procedure by adding Rule 8a effective January 1, 2004, and invited comments.²

The State Bar of Texas urged that the effective date of Rule 8a be postponed to allow further study of referral fees and advertising issues. The State Bar proposed to appoint a special task force with diverse representation that would conduct public hearings around the State and report to the State Bar Board of Directors by June 2004. The State Bar would then make recommendations to the Supreme Court in the fall of 2004. Based on the State Bar’s proposal, the Supreme Court suspended the effective date of Rule 8a, stating: “If this process satisfactorily addresses the issues that have been raised, proposed Rule 8a will be withdrawn.”³

¹ Order Creating the Supreme Court Task Force on Civil Litigation Improvements, Misc. Docket No. 01-9149 (Aug. 24, 2001). Members of the Task Force besides Mr. Jamail were Charles L. (Chip) Babcock of Dallas, Professor Elaine Carlson of Houston, Ricardo G. Cedillo of San Antonio, James E. Coleman of Dallas, Tommy Jacks of Austin, Dee Kelly of Fort Worth, Harry Reasoner of Houston, and Steve Susman of Houston.

² Order Adopting Amendments to the Texas Rules of Civil Procedure, Misc. Docket No. 03-9160 (Oct. 9, 2003).

³ Order Suspending Proposed Rule 8a of the Texas Rules of Civil Procedure, Misc. Docket No. 03-9207 (Dec. 23, 2003), at 30 (per curiam).

The State Bar has fulfilled its commitments to this process. The State Bar Board of Directors established the Referral Fee Task Force in January 2003. The Task Force, chaired by Richard C. Hile of Austin,⁴ conducted six public hearings and received numerous written comments. In its preliminary report, the Task Force concluded that Texas is the only jurisdiction whose attorney disciplinary rules expressly allow the payment of a fee merely for referring or forwarding a case and that almost all scholarly commentary, as well as the disciplinary rules of almost every other jurisdiction, condemn that practice. Accordingly, in its final report issued May 24, 2004, the Task Force proposed that Rule 1.04 of the Texas Disciplinary Rules of Professional Conduct be amended to eliminate the “pure forwarding fee” and to clarify the obligations a Texas lawyer must assume before dividing a fee with another lawyer not in the same firm. The Task Force also recommended changes to Part VII of those rules, relating to attorney advertising. The State Bar Board of Directors approved these recommendations in public meetings on June 23 and September 17, 2004, and requested this Court to submit them to a referendum of the membership of the bar. The Board also approved the use of electronically transmitted ballots for online voting in the referendum.

Having studied the State Bar’s recommendations, the Court has concluded that the amendments to the Texas Disciplinary Rules of Professional Conduct drafted and proposed by the State Bar should be submitted to a referendum of the membership of the bar using electronically transmitted ballots. The Court’s approval of this referendum is not a predetermination of any legal issues regarding the proposed rules.

The Court also concludes that if the proposed amendments are approved, the Court’s order adopting proposed Rule 8a of the Texas Rules of Civil Procedure should be withdrawn.

The Court continues to welcome written comment on the proposed amendments. Comments should be directed to Lisa Hobbs, Rules Attorney, P.O. Box 12248, Austin TX 78711, or may be emailed to her at Lisa.Hobbs@courts.state.tx.us.

In addition, any person may submit a brief on whether any of the amendments to Part VII are inconsistent with the free speech guarantees of the state and federal constitutions. A brief should contain this docket number and the caption: In re Petition of the State Bar of Texas for Order of

⁴ Members of the Task Force besides Mr. Hile were JoAl Cannon-Sheridan of Jacksonville, Alistair Dawson of Houston, Prof. Linda Eads of Dallas, Hon. David Evans of Fort Worth, Ygnacio Garza of Brownsville, John Hagan of Dallas, Hartley Hampton of Houston, Hugh Rice Kelly of Houston, Steven Laird of Fort Worth, Ron Lewis of Houston, Steve McConnico of Austin, Stephen Maxwell of Fort Worth, Lonny Morrison of Wichita Falls, Richard Pena of Austin, Prof. Robert Schuwerk of Houston, Hon. Kent Sullivan of Houston, and Hector Zavaleta of El Paso. Ex-officio members were State Bar President Betsy Whitaker, Chair of the Board Kim Askew, President-elect Kelly Frels, and Immediate Past President Guy Harrison.

Referendum. A brief must identify all persons on whose behalf it is submitted and disclose the source of any fee paid for the brief. A brief should not exceed 35 pages and should conform to the requirements of Rule 9.4 of the Texas Rules of Appellate Procedure, to the extent applicable. An original and eleven copies of a brief should be submitted to the Clerk of the Court, along with one copy in an electronic format on a standard optical or compact disk. The preferred electronic format is Adobe PDF, but WordPerfect and Microsoft Word are acceptable. Briefs must be received before 3:00 p.m., November 15, 2004. Responsive briefs must be received before 3:00 p.m., November 29, 2004. All briefs received will be posted on the Court's website as soon as practical.

IT IS THEREFORE ORDERED that:

1. The State Bar of Texas shall conduct a referendum of its members on the amendments it has proposed to the Texas Disciplinary Rules of Professional Conduct, which are attached to this Order.

2. The referendum shall be conducted as follows:

a. Electronic online voting on the State Bar website shall begin on November 5, 2004, at 12:01 a.m., and end on November 14, 2004, at 11:59 p.m.

b. On November 20, 2004, a written ballot shall be sent to each eligible member of the State Bar of Texas who did not vote electronically.

c. No ballot received by the State Bar after 5:00 p.m., December 20, 2004, shall be counted.

d. The ballot shall be substantially in the form attached.

2. The Clerk is directed to:

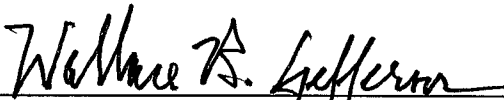
a. file a copy of this Order with the Secretary of State;

b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

c. send a copy of this Order to each member of the Legislature; and

d. submit a copy of the Order for publication in the *Texas Register*.

SIGNED AND ENTERED this 1st day of October, 2004.



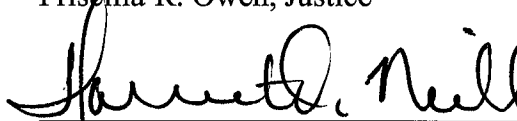
Wallace B. Jefferson, Chief Justice



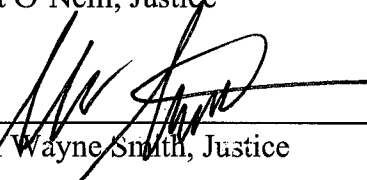
Nathan L. Hecht, Justice



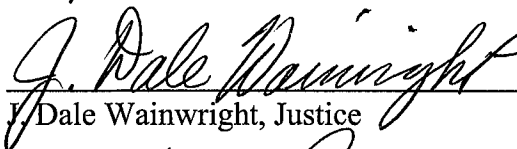
Priscilla R. Owen, Justice



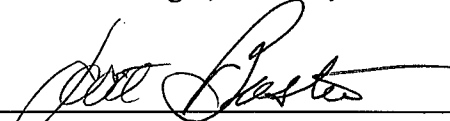
Harriet O'Neill, Justice



Steven Wayne Smith, Justice



Dale Wainwright, Justice



Scott Brister, Justice

FORM OF BALLOT

**State Bar of Texas
Rules Referendum 2004 Ballot**

- A. Division of Fees:** Do you favor the proposed amendment, of Part I of the Texas Disciplinary Rules of Professional Conduct regarding division of fees, as published in the November 2004 issue of the Texas Bar Journal?

YES **NO**

- B. Information of Legal Services:** Do you favor the proposed amendment, of Part VII of the Texas Disciplinary Rules of Professional Conduct regarding information about legal services, as published in the November 2004 issue of the Texas Bar Journal?

YES **NO**

**PROPOSED AMENDMENTS TO PART I
TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT**

Rule 1.04 Fees

[No changes in (a)-(e).]

(f) A division or ~~agreement~~ arrangement for division of a fee between lawyers who are not in the same firm ~~shall not may~~ be made ~~unless~~ only if:

(1) the division is:

(i) in proportion to the professional services performed by each lawyer;

~~(ii) made with a forwarding lawyer; or~~

(iii) ~~made, by written agreement with the client, with a between lawyers~~ who assumes joint responsibility for the representation; and

(2) ~~the client is advised of, and does not object to, the participation of all the lawyers involved~~ consents in writing to the terms of the arrangement prior to the time of the association or referral proposed, including

~~(i) the identity of all lawyers or law firms who will participate in the fee-sharing arrangement, and~~

~~(ii) whether fees will be divided based on the proportion of services performed or by lawyers agreeing to assume joint responsibility for the representation, and~~

~~(iii) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be made; and~~

(3) the aggregate fee does not violate paragraph (a).

(g) Every agreement that allows a lawyer or law firm to associate other counsel in the representation of a person, or to refer the person to other counsel for such representation, and that

results in such an association with or referral to a different law firm or a lawyer in such a different firm, shall be confirmed by an arrangement conforming to paragraph (f). Consent by a client or a prospective client without knowledge of the information specified in subparagraph (f)(2) does not constitute a confirmation within the meaning of this rule. No attorney shall collect or seek to collect fees or expenses in connection with any such agreement that is not confirmed in that way, except for:

(1) the reasonable value of legal services provided to that person; and

(2) the reasonable and necessary expenses actually incurred on behalf of that person.

(gh) Paragraph (f) of this Rule does not prohibit apply to payment to a former partner or associate pursuant to a separation or retirement agreement, or to a lawyer referral program certified by the State Bar of Texas in accordance with the Texas Lawyer Referral Service Quality Act, Tex. Occ. Code 952.001 et seq., or any amendments or recodifications thereof.

Comments:

[No changes in comments 1-9.]

Division of Fees

10. A division of fees is ~~a sharing of a single billing to a client between covering the fee of two or more lawyers who are not in the same firm. A division of fees facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring or associating lawyer initially retained by the client and a trial specialist. Because the association of additional counsel normally will result in a further disclosure of client confidences and have a financial impact on a client, advance disclosure of the existence of that proposed association and client consent generally are required. Where those consequences will not arise, however, disclosure is not mandated by this Rule. For example, if a lawyer hires a second lawyer for consultation and advice on a specialized aspect of a matter and that consultation will not necessitate the disclosure of confidential information and the hiring lawyer both absorbs the entire cost of the second lawyer's fees and assumes all responsibility for the advice ultimately given the client, a division of fees within the meaning of this Rule is not involved. See also Comment 3 to Rule 5.04., but it applies in all cases in which two or more lawyers are representing a single client in the same matter, and without regard to whether litigation is involved. Paragraph (f) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes joint responsibility for the representation.~~

11. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (d) of this Rule.

1+2. Paragraph (f) permits lawyers to divide a fee on one of three bases. The first is in proportion to the professional services performed by each. The second continues the Texas practice of permitting a division of fees with a forwarding attorney. The third permits fees to be divided with a lawyer who, by written agreement with the client, assumes joint responsibility for the representation. The second and the third methods permit the fees to be divided in any mutually agreeable proportion. If the third method is used, a lawyer may satisfy his or her obligations of "joint responsibility" for the representation either by being an attorney of record in the matter or by discharging the responsibilities imposed on a "supervised lawyer" under these rules. See Rule 5.02. Paragraph (f) does not require disclosure to the client of the share that each lawyer is to receive. A division of a fee based on the proportion of services rendered by two or more lawyers contemplates that each lawyer is performing substantial legal services on behalf of the client with respect to the matter. In particular, it requires that each lawyer who participates in the fee have performed services beyond those involved in initially seeking to acquire and being engaged by the client. There must be a reasonable correlation between the amount or value of services rendered and responsibility assumed, and the share of the fee to be received. However, if each participating lawyer performs substantial legal services on behalf of the client, the agreed division should control even though the division is not directly proportional to actual work performed. If a division of fee is to be based on the proportion of services rendered, the arrangement may provide that the allocation not be made until the end of the representation. When the allocation is deferred until the end of the representation, the terms of the arrangement must include the basis by which the division will be made.

13. Joint responsibility for the representation entails ethical and perhaps financial responsibility for the representation. The ethical responsibility assumed requires that a referring or associating lawyer make reasonable efforts to assure adequacy of representation and to provide adequate client communication. Adequacy of representation requires that the referring or associating lawyer conduct a reasonable investigation of the client's legal matter and refer the matter to a lawyer whom the referring or associating lawyer reasonably believes is competent to handle it. See Rule 1.01. Adequate attorney-client communication requires that a referring or associating lawyer monitor the matter throughout the representation and ensure that the client is informed of those matters that come to that lawyer's attention and that a reasonable lawyer would believe the client should be aware. See Rule 1.03. Attending all depositions and hearings, or requiring that copies of all pleadings and correspondence be provided a referring or associating lawyer, is not necessary in order to meet the monitoring requirement proposed by this rule. These types of activities may increase the transactional costs, which ultimately the client will bear, and unless some benefit will be derived by the client, they should be avoided. The monitoring requirement is only that the

referring lawyer be reasonably informed of the matter, respond to client questions, and assist the handling lawyer when necessary. Any referral or association of other counsel should be made based solely on the client's best interest.

14. In the aggregate, the minimum activities that must be undertaken by referring or associating lawyers pursuant to an arrangement for a division of fees are substantially greater than those assumed by a lawyer who forwarded a matter to other counsel, undertook no ongoing obligations with respect to it, and yet received a portion of the handling lawyer's fee once the matter was concluded, as was permitted under the prior version of this rule. Whether such activities, or any additional activities that a lawyer might agree to undertake, suffice to make one lawyer participating in such an arrangement responsible for the professional misconduct of another lawyer who is participating in it and, if so, to what extent, are intended to be resolved by Texas Civil Practice and Remedies Code, ch. 33, or other applicable law.

15. A client must consent in writing to the terms of the arrangement prior to the time of the association or referral proposed. For this consent to be effective, the client must have been advised of at least the key features of that arrangement. Those essential terms, which are specified in subparagraph (f)(2), are 1) the identity of all lawyers or law firms who will participate in the fee-sharing agreement, 2) whether fees will be divided based on the proportion of services performed or by lawyers agreeing to assume joint responsibility for the representation, and 3) the share of the fee that each lawyer or law firm will receive or the basis on which the division will be made if the division is based on proportion of service performed. Consent by a client or prospective client to the referral to or association of other counsel, made prior to any actual such referral or association but without knowledge of the information specified in subparagraph (f)(2), does not constitute sufficient client confirmation within the meaning of this rule. The referring or associating lawyer or any other lawyer who employs another lawyer to assist in the representation has the primary duty to ensure full disclosure and compliance with this rule.

16. Paragraph (g) facilitates the enforcement of the requirements of paragraph (f). It does so by providing that agreements that authorize an attorney either to refer a person's case to another lawyer, or to associate other counsel in the handling of a client's case, and that actually result in such a referral or association with counsel in a different law firm from the one entering into the agreement, must be confirmed by an arrangement between the person and the lawyers involved that conforms to paragraph (f). As noted there, that arrangement must be presented to and agreed to by the person before the referral or association between the lawyers involved occurs. See subparagraph (f)(2). Because paragraph (g) refers to the party whose matter is involved as a "person" rather than as a "client," it is not possible to evade its requirements by having a referring lawyer not formally enter into an attorney-client relationship with the person involved before referring that person's

matter to other counsel. Paragraph (g) does provide, however, for recovery in quantum meruit in instances where its requirements are not met. See subparagraphs (g)(1) and (g)(2).

17. What should be done with any otherwise agreed-to fee that is forfeited in whole or in part due to a lawyer's failure to comply with paragraph (g) is not resolved by these rules.

18. Subparagraph (f)(3) requires that the aggregate fee charged to clients in connection with a given matter by all of the lawyers involved meet the standards of paragraph (a) — that is, not be unconscionable.

Fee Disputes and Determinations

129. If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by a bar association, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, or when a class or a person is entitled to recover a reasonable attorney's fee as part of the measure of damages. All involved lawyers should comply with any prescribed procedures.

PROPOSED AMENDMENTS TO PART VII TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

[N.B.: Comments in Article VII are not revised or omitted except as noted under Rule 7.02.]

Rule 7.01 Firm Names and Letterhead

(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.," "~~PA,~~" "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 ~~written~~any communication under a trade or fictitious name, except that a lawyer who practices under a ~~trade~~firm name as authorized by paragraph (a) of this Rule may use that name in such advertisement or ~~such written~~ 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).

Comment:

[No change.]

Rule 7.02 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. 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;

(23) 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;

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

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

(56) designates one or more specific areas of practice in an advertisement in the public media or in a ~~written~~ 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)(56) 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)(56) 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 ~~writing~~ 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.

Comment:

1. The Rules within Part VII are intended to regulate communications made for the purpose of obtaining professional employment. They are not intended to affect other forms of speech by lawyers, such as political advertisements or political commentary, except insofar as a lawyer's effort to obtain employment is linked to a matter of current public debate.

2. This Rule governs all communications about a lawyer's services, including advertisements regulated by Rule 7.04 and solicitation communications regulated by Rules 7.03 and 7.05. Whatever means are used to make known a lawyer's services, statements about them should must be truthful and nondeceptive.

3. Sub-paragraph (a)(1) recognizes that statements can be misleading both by what they contain and what they leave out. Statements that are false or misleading for either reason are prohibited. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also 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.

4. The prohibitions in sSub-paragraphs (a)(2) of and (3) recognize that statements that may create an "unjustified expectations" and in sub-paragraph (a)(3) of comparisons of lawyers' services unless those comparisons "can be substantiated by reference to verifiable objective data" are each designated to prevent lawyers from misleading members of the public as they seek legal services. For example, an advertisement that truthfully reports that a lawyer obtained a jury verdict of a certain amount on behalf of a client would nonetheless be misleading if it were to turn out that the verdict was overturned on appeal or later compromised for a substantially reduced amount, and the advertisement did not disclose such facts as well. Even an advertisement that fully and accurately reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Those provisions unique circumstances would ordinarily preclude advertisements in the public media and written solicitation communications that discuss the results obtained on behalf of a client, such as the amount of a damage award, the lawyer's record in obtaining favorable settlements or verdicts, as well as those that contain client endorsements. Unless accompanied by appropriate, prominent qualifications and disclaimers, that information can

~~readily mislead prospective clients into believing that similar results can be obtained for them without reference to their specific factual and legal circumstances.~~

5. Sub-paragraph (a)(4) recognizes that comparisons of lawyers' services may also be misleading unless those comparisons "can be substantiated by reference to verifiable objective data." Similarly, an unsubstantiated comparison of a lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. Similarly, statements comparing a lawyer's services with those of another where the comparisons are not susceptible of precise measurement or verification, such as "we are the toughest lawyers in town", "we will get money for you when other lawyers can't", or "we are the best law firm in Texas if you want a large recovery" can deceive or mislead prospective clients.

6. The inclusion of a disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client, but it will not necessarily do so. Unless any such qualifications and disclaimers are both sufficient and displayed with equal prominence to the information to which they pertain, that information can still readily mislead prospective clients into believing that similar results can be obtained for them without reference to their specific factual and legal circumstances. Consequently, in order not to be false, misleading, or deceptive, other of these Rules require that appropriate disclaimers or qualifying language must be presented in the same manner as the communication and with equal prominence. See Rules 7.04 (q) and 7.05(a) (2).

7. On the other hand, a simple statement of a lawyer's own qualifications devoid of comparisons to other lawyers does not pose the same risk of being misleading and does not fall within this Rule so does not violate sub-paragraph (a)(4). See Rule 7.04. Similarly, a lawyer making a referral to another lawyer may, or course, express a good faith subjective opinion regarding that other lawyer.

38. Thus, this Rule does not prohibit communication of information concerning a lawyer's name or firm name, address and telephone numbers; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; names of references and with their consent, names of clients regularly represented; and other truthful information that might invite the attention of those seeking legal assistance. When a communication permitted by Rule 7.02 is made in the public media, the lawyer should consult Rule 7.04 for further guidance and restrictions. When a communication permitted by Rule 7.02 is made by a lawyer through a written solicitation, the lawyer should consult Rules 7.03 and 7.05 for further guidance and restrictions.

9. Sub-paragraph (a)(5) prohibits a lawyer from stating or implying that the lawyer has an ability to influence a tribunal, legislative body, or other public official through improper conduct or upon irrelevant grounds. Such conduct brings the profession into disrepute, even though the improper or irrelevant activities referred to are never carried out, and so are prohibited without regard to the lawyer's actual intent to engage in such activities.

Communication of Fields of Practice

410. Paragraphs (a)(56), (b) and (c) of Rule 7.02 regulate communications concerning a lawyer's fields of practice and should be construed together with Rule 7.04 or 7.05, as applicable. If a lawyer in a public media advertisement or in a written solicitation designates one or more specific areas of practice, that designation is at least an implicit representation that the lawyer is qualified in the areas designated. Accordingly, Rule 7.02(a)(56) prohibits the designation of a field of practice unless the communicating lawyer is in fact competent in the area.

511. Typically, one would expect competency to be measured by special education, training, or experience in the particular area of law designated. Because certification by the Texas Board of Legal Specialization involves special education, training, and experience, certification by the Texas Board of Legal Specialization conclusively establishes that a lawyer meets the requirements of Rule 7.02(a)(56) in any area in which the Board has certified the lawyer. However, competency may be established by means other than certification by the Texas Board of Legal Specialization. See Rule 7.04(b).

612. Lawyers who wish to advertise in the public media that they specialize should refer to Rule 7.04(a), (b) and (c). Lawyers who wish to assert a specialty in a written solicitation should refer to Rule 7.05(a)(4) and (b)(1).

Actor Portrayal Of Clients

13. Sub-paragraph (a)(7) further protects prospective clients from false, misleading, or deceptive advertisements and solicitations by prohibiting the use of actors to portray clients of a lawyer or law firm. Other rules prohibit the use of actors to portray lawyers in the advertising or soliciting lawyer's firm. See Rules 7.04(g), 7.05(a). The truthfulness of such portrayals is extremely difficult to monitor, and almost inevitably they involve actors whose apparent physical and mental attributes differ in a number of material respects from those of the actual clients portrayed.

Communication in a Second Language

714. The ability of lawyers to communicate in a second language can facilitate the delivery and receipt of legal services. Accordingly, it is in the best interest of the public that potential clients be made aware of a lawyer's language ability. A lawyer may state an ability to communicate in a second language without any further elaboration. However, if a lawyer chooses to communicate with potential clients in a second language, all statements or disclaimers required by the Texas Disciplinary Rules of Professional Conduct must also be made in that language. See paragraph (d). Communicating some information in one language while communicating the rest in another is potentially misleading if the recipient understands only one of the languages.

Rule 7.03 Prohibited Solicitations and Payments

(a) 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 Article 320d, Revised Statutes 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 ~~Article 320d, Revised Statutes~~ 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.

Comment:

[No change.]

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 ~~Article 320d, Revised Statutes~~ 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 state with respect to each area advertised in which the lawyer has not been awarded a Certificate of Special Competence by the Texas Board of Legal~~

Specialization, “Not Certified by the Texas Board of Legal Specialization,” however, if an area of law so advertised has not been designated as an area in which a lawyer may be awarded a Certificate of Special Competence by the Texas Board of Legal Specialization, the lawyer may also state, “No designation has been made by the Texas Board of Legal Specialization for a Certificate of Special Competence in this area.” 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 ~~with no abbreviations, changes, or additions in the quoted language set forth in paragraph (b) so as to be easily seen or~~ 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, ~~or 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 utilizing video or comparable visual images 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. In advertisements utilizing audio recordings, any person who narrates an advertisement as if he or she were a lawyer whose services or whose firm’s services are being advertised, 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 Article 320d, Revised Statutes 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.

Comment:

[No change.]

Rule 7.05 Prohibited Written, Electronic, Or Digital Solicitations

(a) A lawyer shall not send, ~~or deliver,~~ or transmit, or knowingly permit or knowingly cause another person to send, or deliver, or transmit on the lawyers behalf, a written, audio, audio-visual, 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 ~~(hg)~~ through ~~(og)~~ 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 ~~(ef)~~ of this Rule, a written, electronic, or digital solicitation communication to prospective clients for the purpose of obtaining professional employment:

(1) ~~shall conform to the provisions of Rule 7.04(a) through (c);~~

~~(2) shall, in the case of a non-electronically transmitted written communication,~~ be plainly marked "ADVERTISEMENT" on the its first page, of the written communication and on the face of the envelope also shall be plainly marked "ADVERTISEMENT," however, 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;

(64) shall not reveal on the envelope or other packaging or electronic mail subject line used for 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

(75) shall disclose how the lawyer obtained the information prompting such written 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, audio-visual, 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.

(cd) 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.

(ce) 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, and 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.

(cf) 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.

Comment:

[No change.]

Rule 7.06 Prohibited Employment

(a) A lawyer shall not accept or continue employment in a matter when the lawyer knows or reasonably should know that the person who seeks the lawyer's services does so as a result of conduct prohibited by these rules 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.

Comment:

[No change.]

Rule 7.07 Filing Requirements for Public Advertisements and Written, Recorded, Electronic, or Other Digital Solicitations

(a) Except as provided in paragraphs ~~(d)~~ (c) and (e) of this Rule, a lawyer shall file with the ~~Lawyer Advertisement and Solicitation~~ Advertising Review Committee of the State Bar of Texas, ~~either before or concurrently with~~ 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; ~~and~~

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

(23) 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 ~~(d)~~ of this Rule, a lawyer shall file with the ~~Lawyer Advertisement and Solicitation Advertising~~ Review Committee of the State Bar of Texas, ~~either before or concurrently with~~ no later than the first dissemination of an advertisement in the public media, a copy of each of ~~that 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 is or will be disseminated~~ 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; ~~and~~

(4) a completed lawyer advertising and solicitation communication application form; and

(45) 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 set for the sole purpose of defraying the expense of enforcing the rules related to such websites.

(ed) A lawyer who desires to secure an advance advisory opinion, referred to as a request for pre-approval, concerning compliance of a contemplated written solicitation communication or advertisement may submit to the ~~Lawyer Advertisement and Solicitation~~ Advertising Review Committee, not less than thirty (30) days prior to the date of first dissemination, the material specified in paragraph (a) or (b) of this Rule 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. An advisory opinion of the ~~Lawyer Advertisement and Solicitation Review~~ Committee ~~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.

~~(d)~~ The filing requirements of paragraphs (a), ~~and (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; ~~provided the information is not false or misleading:~~

(i) the name of ~~a~~ 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 ~~fields~~ particular areas of law in which the lawyer or firm advertises ~~specialization and the statements required by Rule 7.04(a) through (c)~~ 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;

(~~iiiv~~) 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~~) 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;

(~~viiiix~~) the acceptance or nonacceptance of credit cards;

(~~ix~~) 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 mailed sent, delivered, or transmitted mailed only to:

(i) existing or former clients;

(ii) other lawyers or professionals; and 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 ~~written~~ 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 ~~written~~ 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 ~~written~~ solicitation communication that is requested by the prospective client.

(~~ef~~) If requested by the ~~Lawyer Advertisement and Solicitation~~ 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.

Comment:

[No change.]