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TBJ

THE TEXAS BAR JOURNAL

VOTE

STATE BAR OF TEXAS PRESIDENT-ELECT CANDIDATES **SARA E. DYSART** AND **LAURA GIBSON** DISCUSS THE ISSUES

A YEAR LATER

HOW THE TEXAS LAW SCHOOLS, TYLA, AND TLAP ADAPTED TO THE PANDEMIC

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THE TEXAS BAR JOURNAL

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"IN THEIR OWN WORDS," FEBRUARY 2021, P. 142

I enjoyed reading in the February TBJ the discussion you moderated with your Texas law school dean colleagues. You elicited some powerful stories there! I was especially surprised to read Dean Baynes' statement that only 5% of the lawyers in the U.S. are African American in 2020. Obviously there's still work for educators and school districts to do to ensure that people in law and other critical professions much more closely mirror the diversity of our country.

MICHAEL DORSEY
Director, Curriculum
Houston Independent School District
Houston

"RIGHTING A HISTORIC WRONG," FEBRUARY 2021, P. 136

I just finished your article "Righting a Historic Wrong" in the February *Texas Bar Journal*. What a wonderful story! Thank you for sharing it.

We cannot right every wrong in every case. So we fight those battles we can win, and, in this case, the victory garnered by you, C.J. Wright, and others was all the sweeter for the bar and for history.

ANDY PORTER
Associate Judge, 323rd Judicial District
Fort Worth

"AN ADVOCATE FOR JUSTICE," FEBRUARY 2021, P. 132

I just wanted to compliment you on the excellent article on John N. Johnson. I hope you'll consider submitting an article on him to the *Handbook of Texas*. Recognition of his and so many others' work is long overdue. Thanks for shining some light.

QUENTIN McGOWN
Associate Judge, Tarrant County Probate Court No. 1
Fort Worth

Trey Apffel can be reached at 512-427-1500, trey.apffel@texasbar.com, or @ApffelT on Twitter.

Texas Generosity Shines THROUGH A DEEP FREEZE

WHEN DISASTER STRIKES, TEXANS ALWAYS PULL TOGETHER. There were individual and collective acts of kindness during and after the historic winter storm that plunged most of our state into frigid darkness. Athletes, politicians, and entertainers raised funds. Businesses offered shelter. Plumbers volunteered their services. Organizations washed laundry and distributed food. A Dallas law firm even helped drive nurses, doctors, and shelter workers to and from their jobs. The list of our blessings is long.

The State Bar of Texas and legal service organizations across the state convened to prepare for the long haul. Recovery from a disaster as immense as this winter storm will take months, and it will involve assisting Texans with insurance claims, federal benefit appeals, title curing, and many other legal needs.

The State Bar operates a disaster legal services hotline—**800-504-7030**—that connects low-income Texans, who need help with civil legal problems but are unsure of where to turn, with legal aid providers Texas RioGrande Legal Aid, Lone Star Legal Aid, or Legal Aid of NorthWest Texas. These organizations help Texans with basic civil legal needs like those mentioned above as well as debt collection matters, public benefits problems, unemployment appeals, landlord-tenant disputes, and many other matters.

These and other legal service organizations often need volunteer lawyers to take on cases that may seem small in scope but make a giant impact on the lives of those in need. Just before the storm, the bar's Legal Access Division launched a statewide online portal—**pbtx.joinpaladin.com**. This portal couldn't come at a better time. It allows legal service providers to post their needs and aids volunteer lawyers searching for the right opportunities to match their skills.

It is through these and other efforts that the State Bar of Texas upholds its purpose "to foster the role of the legal profession in serving the public" as set out in the State Bar Act.

To assist Texas lawyers, TexasBarCLE created a free webcast: *Dealing with Claims Arising from Freezes, Power Outages, & Broken Pipes,* which offers one hour of MCLE credit. You can find it in the free online courses section of **texasbarcle.com**.

And for lawyers struggling with the effects of any disaster, the State Bar's SOLACE program is available to help. The SOLACE program connects those in the Texas legal community who are experiencing hardship with those willing and able to help. If you need help or are able to offer it, please go to **texasbar.com/solace** to learn more.

We are acutely aware that the winter storm was truly a disaster within a disaster. Our state and nation continue to struggle from the effects of the COVID-19 pandemic. The pandemic has devastated families and businesses, and continues to exact a toll on our collective mental health.

The Texas Lawyers' Assistance Program's February webinar *How Lawyers Can Recover from Survival Mode* is available for viewing online at **texasbarcle.com**. The webinar provides one hour of free ethics MCLE credit.

As always TLAP's confidential services are available 24/7 to those who call or text **800-343-TLAP**. TLAP has a wealth of resources related to mental health, substance use, and general wellness concerns at **tlaphelps.org**.

We can't say it enough: In this difficult time, we implore you to take care of yourself and each other. Help someone if you can. Ask for help if you need it. Reach out if you aren't sure where to turn. There are brighter days ahead.

Sincerely,

TREY APFFEL
Executive Director, State Bar of Texas
Editor-in-Chief, *Texas Bar Journal*

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LAYING DOWN THE LAW

Attorney Jay Rudinger metes out justice in the squared circle.

INTERVIEW BY **ADAM FADEREWSKI**

THE LONE STAR STATE HAS A WEALTH OF PROFESSIONAL WRESTLING HISTORY, including some of the biggest names to ever grace the World Wrestling Entertainment, or WWE, stage. Superstars such as the Von Erichs, Shawn Michaels, Stone Cold Steve Austin, and the Undertaker all proudly hail from Texas. Following in that tradition is College Station attorney Jay Rudinger, who at nearly 7 feet tall creates an intimidating presence in the ring and out of the ring as a bodyguard/enforcer and litigation partner at West, Webb, Albritton & Gentry in College Station. A lifelong wrestling fan, Rudinger didn't require much convincing to enter the ring when a client suggested it to him. Since that day he hasn't looked back. Ring the bell.

ABOVE: Drake Durden (Jay Rudinger) uses a Kendo stick on his opponent during a recent Lions Pride Sports bout. **LEFT:** Rudinger shoulders the Lions Pride Sports championship belt in the courtroom. PHOTOS COURTESY OF JAY RUDINGER

WHEN DID YOUR INTEREST IN PRO WRESTLING BEGIN? WHEN DID YOU DECIDE YOU WANTED TO STEP IN THE RING?
I have been a fan of wrestling since I was 6 or 7 years old. I didn't have cable growing up, so I had to give friends a VHS tape and they would record the World Championship Wrestling and World Wrestling Federation shows for me to watch later. Wrestling was reality TV before we had mainstream reality TV, and following the storylines and characters each week made it like watching any other sitcom or show.

As far as my own wrestling career, it was something I never planned. It didn't take a lot to get me in the ring, and it was so much fun, I never left.

DID YOU GO TO A WRESTLING SCHOOL OR WERE YOU TRAINED IN A DIFFERENT FASHION?
I train at the Lions Den Training Facility, which is the wrestling school for Lions Pride Sports. The coach and promoter, Houston Carson, was a professional wrestler in Texas before being forced to retire because of a heart condition. He decided to stay in the profession and launched Lions Pride Sports in 2017. In 2018, he opened the school to begin training wrestlers in the Brazos Valley. During the pandemic, he took the school to an entirely new level by acquiring a building exclusively for wrestling, with two rings and all sorts of other amenities like a weight room, a film watching room, and a promo room. His wife, Kenzie Carson, also makes ring gear and merchandise for the wrestlers that come through Lions Pride Sports.

WHAT IS YOUR GIMMICK? WOULD YOU CONSIDER YOURSELF A FACE [GOOD GUY] OR A HEEL [BAD GUY]?
My in-ring name is Drake Durden. I am about 7 feet tall in my wrestling boots, so my character is definitely a giant. Because of this, I would classify myself as a brawler much more than a technical wrestler. I began as a bodyguard for an established wrestler and we won the Lions Pride Sports Championship in early 2020. Ultimately we had a falling out, and I have begun working on my own in Lions Pride Sports shows.

I debuted in November 2019 as a heel by interfering in arguably the biggest match in the promotion's history as Houston Carson came out of retirement to wrestle with his cousin, Cade Carson. I interfered on behalf of Cade and helped him win. We remained a team, culminating in winning the Lions Pride Sports Championship on February 29, 2020. We retained the title for 190 days before losing it on September 5, 2020, to Nobe Bryant. After the title loss, Cade turned on me and I turned face. Since then, I have been working as a singles wrestler.

ARE THERE ANY WRESTLERS THAT INSPIRED YOUR CHARACTER OR THAT YOU MODEL YOUR IN-RING STYLE AFTER?
My in-ring style definitely mimics many big guys from the past and current wrestling scene. My look was built around Kevin Nash/Diesel. From the singlet top to long pants, I wanted to make people think of Nash when they saw Durden.

I have also adapted my character and wrestling style after Braun Strowman, of World Wrestling Entertainment, and Lance Archer, from All Elite Wrestling. After college and in law school, I would attend local wrestling shows in the Houston area and Archer would work many of these events. He is a Texas guy raised in Hearne, so he was someone who many people could relate to and see as one of their own. As another big guy—Archer is 6-foot-8—I always envisioned I would be similar to him in the ring.

WHAT ARE YOUR SIGNATURE MOVES AND/OR YOUR FINISHER?
As a big wrestler, the power moves have become my bread and butter. I usually rely on two big moves to end a match: either a chokeslam or a big boot. In addition, I try to use a variety of slams, splashes, and tosses during the match. Again, as we tell a story in the ring for the fans, I get to play the role of Goliath, even if I am a face. My job is to overpower my opponent, and that move set works well in telling the story to the audience.

DO YOU GET THE CHANCE TO CUT ANY IN-RING PROMOS?
In-ring promos are one of the favorite things I get to do. As a litigator, I was trained to be able to think on my feet and tell a story, and an in-ring promo is exactly that. I think the hardest thing I have found is trying to stay within the time limits given to me by the promoter!

Before, during, and after the match, we know as wrestlers that we are there to entertain. We do it through our moves in the ring, telling a story as we go through a match, and keeping the crowd members' attention every step of the way. But one thing I love about independent wrestling as opposed to the television shows people watch is the chance to interact with the people attending the event. You get fans who are there to cheer the bad guy and heckle the good guy. You have fans who are going to heckle the bad guys. But in every instance, you have a chance to interact and make the show more enjoyable for everyone else. Much like a stand-up comedian who interacts with crowd members, we get to do the same.

WHAT IS YOUR ULTIMATE GOAL AS A PRO WRESTLER?
This question yields an ever-changing answer for me. Wrestling will always be more of a hobby than a profession, but it is something I take very seriously. The wrestling business doesn't have the best reputation, and I do not want to tarnish it through my lack of preparedness, lack of skill, or lack of effort. That said, I don't plan on leaving soon. I train as many evenings as I can, and I continue to work hard to be as good in the squared circle as I am in a courtroom, but I have responsibilities at West, Webb, Allbritton & Gentry and with my wife and two boys that take precedence over my wrestling career.

I have met some fantastic people, made some lifelong friends, and gotten to entertain thousands of people. I hope that, even when I cannot physically get in the ring and wrestle, I can be involved in some form or fashion with a microphone in my hand.

One of the best things that wrestling has done for me is let me show my 7-year-old and 9-year-old that you can do anything you want. Before this all started, I distinctly recall one of my sons saying that he didn't think he could be a professional wrestler because "not just anyone can become a wrestler." For me, standing in the ring and winking at them before a match, which I always do, has shown them that you can if you put your mind to it and go after it. Frankly, if that is all that comes from this endeavor, the bumps, bruises, and blood will have all been worth it. **TBJ**

To watch Rudinger compete in the ring as Durden, go to lionsprideproductions.com.

Larry McDougal can be reached by email at larry.mcdougal@texasbar.com.

Order Paves Way for REOPENING OF TEXAS COURTS

AS I WRITE THIS COLUMN, Gov. Greg Abbott's executive order reopening Texas from many of the pandemic-related restrictions is about to take effect. Effective March 10, the governor removed operating limits for businesses, with some leeway given to county judges to take protective measures in areas where hospitalization rates surpass 15% for seven straight days. The governor also rescinded the executive order requiring face coverings, while still encouraging their use to prevent the spread of the coronavirus when social distancing isn't possible.

What does this mean for Texas courts?

Several days after the governor's announcement, the Texas Supreme Court issued its 36th emergency order of the pandemic with a number of changes to the prior COVID-19 protocols. The order removed requirements that all but certain proceedings be remote, although the court encourages remote trials and hearings. Under the order, local presiding judges have authority to require masks for participants and impose physical distances for in-person proceedings.

Other provisions of the Supreme Court order include:

- Courts of appeals may conduct in-person proceedings if the chief justice of each court adopts minimum standard health protocols for court participants and the public that will be employed in the courtroom and in public areas of the court building.

- All other courts may also conduct in-person proceedings—including both jury and non-jury proceedings—if the local administrative district judge or presiding judge of a municipal court, as applicable, adopts in consultation with the judges in the county or municipal court buildings minimum standard health protocols for court proceedings and the public attending court proceedings. Those measures should be employed in all courtrooms and throughout all public areas of the court buildings, including masking, social distancing, or both.

- In criminal cases where confinement in jail or prison is a potential punishment, remote jury proceedings must not be conducted without appropriate waivers and consent obtained on the record from the defendant and prosecutor.

- Courts must establish communication protocols to ensure that no court participants have tested positive for COVID-19 within the previous 10 days, have had symptoms of COVID-19 within the previous 10 days, or have had recent known exposure to COVID-19 within the previous 14 days. Jury summonses will inquire about any such symptoms or exposure.

I encourage you to read the entire court order on page 312 of this issue. Questions about the court's emergency order may be addressed to coronavirus@txcourts.gov.

The State Bar will continue to keep you updated on the changes affecting the legal profession. For the latest information and to access all of the Supreme Court's current emergency orders, along with court guidance from the Office of Court Administration, updates on State Bar operations, and free lawyer resources and webinars, go to texasbar.com/coronavirus.

LARRY McDOUGAL
President, 2020-2021

STATE BAR of TEXAS

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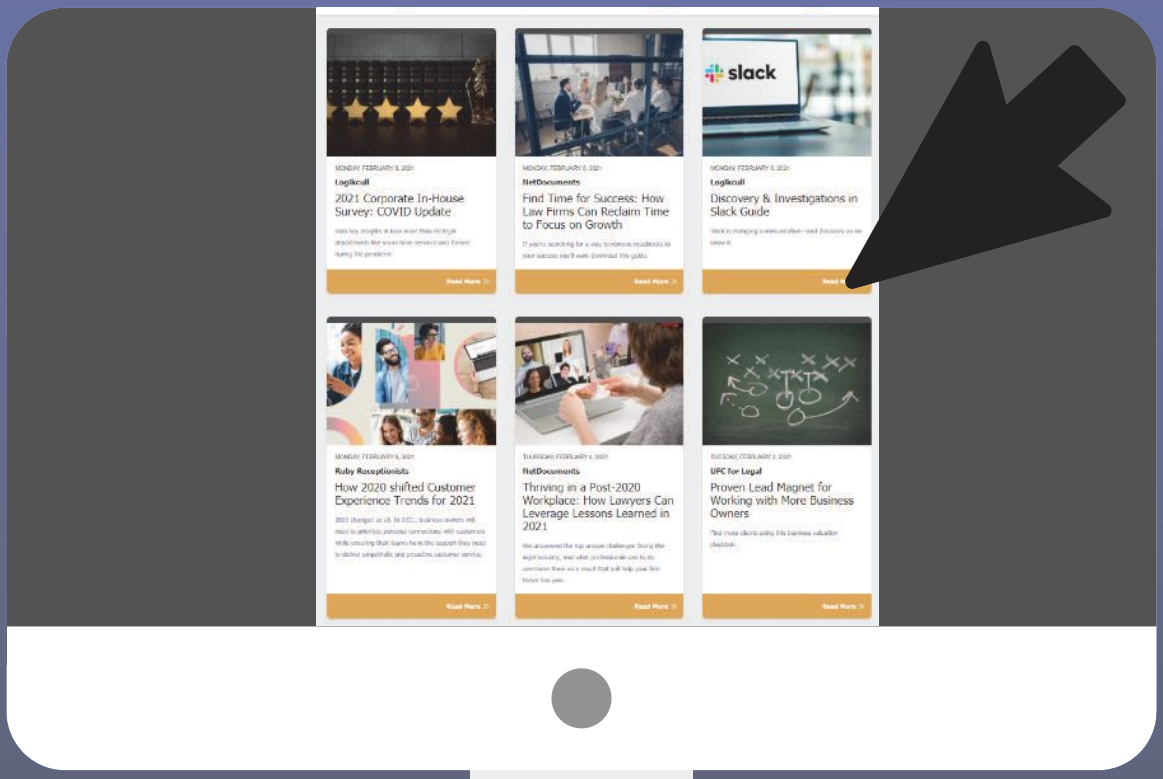

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CYBERSTALKING LEGISLATION CANNOT STIFLE FREE SPEECH.

WRITTEN BY **PIERRE GROSDIDIER**

CYBERSTALKING STATUTES SEEK TO PREVENT AND SANCTION ONLINE MISCHIEF. These statutes must strike a balance between stifling criminal conduct and respecting free speech. Recently, in *United States v. Cook,* the U.S. District Court for the Northern District of Mississippi held that the federal cyberstalking statute was unconstitutional as applied because it failed the First Amendment's strict scrutiny test.[1] The decision is noteworthy because in *United States v. Conlan,* the U.S. Court of Appeals for the 5th Circuit rejected a constitutional vagueness challenge to the prior (2006) version of the statute.[2]

The state of Mississippi unsuccessfully prosecuted Christopher Cook on drug charges. Cook voiced his grievances against authorities in a series of scornful Facebook posts, which formed the basis of federal internet harassment charges under 18 United States Code § 2261A(2), the federal cyberstalking statute. Cook demeaned prosecutors, judges, and public defenders, and ominously warned "you are finished. Because I'm coming and hell is coming with me. And I'm not just quoting a movie." In another post, Cook decried an allegedly thoroughly corrupt indictment scheme and professed that "[n]ow for me it's war" and "God willing I'm going to take them out."[3]

The First Amendment protects speech, even if unpalatable or outrageous, and especially when it touches on public affairs. One of the narrow exceptions to this free speech rule is "true threats."[4] In the 5th Circuit, a true threat is one that "in its context would have a reasonable tendency to create apprehension that its originator will act according to its tenor." True threats must have "immediacy, or clarity of purpose," and the threat recipient must "reasonably fear[] it would be carried out."[5]

Comparing Cook's conduct to that of other defendants, the court concluded that his posts were not true threats because they lacked specificity. Nowhere did Cook specifically threaten to kill or physically harm anyone, as other defendants have. The threat to "take them out," in the context of other language in the posts, could be construed as a wish to remove Cook's nemeses from office. As such, Cook's posts were more a manifesto of grievances than true threats.[6]

The court also held that Cook's posts were protected by the First Amendment because they discussed matters of public concern, given their targets. It compared Cook's posts to some of President Donald J. Trump's tweets and concluded that both "are cut from the same cloth," and to prosecute one and not the other would smack of "selective enforcement."[7]

Finally, the court held that criminalizing Cook's posts would impermissibly restrict free speech. As unsavory as they were to their intended targets, they could only be suppressed if doing so was "necessary to serve a compelling state interest."[8] In this case, Cook's First Amendment rights outweighed the sensibilities of his targets, who only needed to look away to avoid any discomfort.[9]

The court dismissively brushed off the government's reliance on *Conlan* to rebut Cook's facial constitutional challenge of Section 2261A(2)(B). The court's conclusion that Section 2261A(2)(B) was unconstitutional as applied to Cook was enough to dispose of the case, and it dismissed his indictment.[10] **TBJ**

NOTES

1. *United States v. Cook,* 472 F. Supp. 3d 326, 340 (N.D. Miss. 2020).
2. *United States v. Conlan,* 786 F.3d 380, 386 (5th Cir. 2015) (affirming conviction for, inter alia, sending victim threatening electronic correspondence); *but see, United States v. Cassidy,* 814 F. Supp. 2d 574 (D. Md. 2011) (holding 2006 version of Section 2261A(2)(A) unconstitutional as applied to objectionable internet speech for failing to satisfy strict and intermediate scrutiny tests).
3. *Cook,* 472 F. Supp. 3d at 328–30.
4. The others are obscenity, defamation, fraud, incitement, and speech integral to criminal conduct, none of which apply here. *Id.* at 332.
5. *Id.* at 333 (citing 5th Circuit cases).
6. *Id.* at 335.
7. *Id.* at 336–37.
8. *Id.* at 339 (referring to the strict scrutiny test applicable to content-based restrictions on free speech).
9. *Id.* at 339–40 (invoking *United States v. Playboy Entm't Group, Inc.,* 529 U.S. 803, 813 (2000) (persons can protect their own sensibilities simply by averting their eyes)).
10. *Id.* at 340. The government filed an appeal (Case No. 20-60738 in the U.S. Court of Appeals for the 5th Circuit).

PIERRE GROSDIDIER is an attorney in Houston. He belongs to the first group of attorneys certified in construction law by the Texas Board of Legal Specialization in 2017. Grosdidier's practice also includes data privacy and unauthorized computer access issues and litigation. Prior to practicing law, he worked in the process control industry. Grosdidier holds a Ph.D. from Caltech and a J.D. from the University of Texas. He is a member of the State Bar of Texas, an AAA Panelist, a registered P.E. in Texas (inactive), a member of the Texas Bar Foundation, a fellow of the American Bar Foundation, and the State Bar of Texas Computer & Technology Section treasurer for 2020-2021.

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Adam T. SCHRAMEK

HOMETOWN: PASADENA **POSITION:** PARTNER IN NORTON ROSE FULBRIGHT IN AUSTIN **BOARD MEMBER:** DISTRICT 9, PLACE 2 SINCE 2019

INTERVIEW BY **ERIC QUITUGUA**
PHOTO BY **MATTHEW LEMKE**

WHEN I WAS IN LAW SCHOOL, I COMPETED IN A VOIR DIRE TOURNAMENT WHERE I TOLD THE PANEL A LITTLE BIT ABOUT MY BACKGROUND. AT THE END OF A PRACTICE SESSION, THE JUDGE TOLD ME THAT THIS WAS NOT THEATER AND I SHOULD NOT MAKE UP THINGS LIKE "MY DAD WAS A PIPEFITTER," "MY MOM WORKED THE NIGHT SHIFT AT A FACTORY," OR "I GREW UP IN AN INDUSTRIAL PART OF SOUTHEAST HOUSTON."
I had to laugh because that's exactly who I am. It was watching Judge Joseph Wapner on *The People's Court* after school, waiting for my mom to get up, that I decided I liked the courtroom and could argue each side's case much better than they were doing. So I knew early on that a career in law was likely.

THIS YEAR MARKS MY 20TH ANNIVERSARY WITH MY FIRM, NORTON ROSE FULBRIGHT.
I was hired right out of law school and have been there ever since, which is becoming less and less common these days. I started out in Houston doing energy litigation, but switched to general commercial litigation when I transferred to the Austin office because my wife, then a judge advocate general, was stationed at Fort Hood. Over the years I have focused on class-action work as well as complex business disputes.

WE ARE ALL HAVING "ZOOM FATIGUE" AND THE PANDEMIC CONTINUES TO HAVE A SIGNIFICANT IMPACT ON OUR PROFESSION, INCLUDING LAWYER HEALTH AND WELFARE.
I know it's something the Texas Lawyers' Assistance Program is really focused on. Essentially overnight, we had to change the way we practice law. The next challenge is going to be figuring out what the post-pandemic world looks like. I think the State Bar of Texas has an important role to play in helping lawyers define and thrive in what will become the new normal.

MY STATE BAR WORK IS AN EXTENSION OF MY LOCAL BAR WORK. I WANT TO HELP MAKE THINGS BETTER.
But on a more personal level, the lawyers I admire are the ones who gave back to the profession through meaningful bar service. One of those leaders was my former partner, Terry Tottenham, whose Texas Lawyers for Texas Veterans program, which was based on an initiative founded by the Houston Bar Association, provided a model for bar associations across the country to increase pro bono legal services for our nation's veterans. Many local bars, including the Austin Bar Association, continue that important work even during the pandemic. As U.S. chair of my firm's pro bono program and spouse of a veteran, that program meant a lot to me.

I AM PROUD OF THE WORK THE STATE BAR IS DOING WITH RESPECT TO DIVERSITY AND EQUITY ISSUES.
As chair of the Policy Manual Committee and a member of the Justice in Leadership Workgroup, I know how hard my colleagues and I are working to try and improve our internal policies and processes as well as our diversity and equity initiatives and offerings.

ONE THING WE CAN DO IS MAKE THE BOARD'S IN-PERSON MEETINGS (WHEN THEY RETURN) MORE INVITING AND COLLABORATIVE.
While Zoom has its drawbacks, it makes it very easy for every member of a large board to easily participate. With greater collaboration comes more input and better decisions. We need to continue to work on ways to make the legal profession more closely mirror our state's population. As more and more people are unable to afford lawyers, there are more pro se litigants or people simply giving up their legal rights. The justice gap is real and we need to find a solution.

WHILE ATTORNEYS CAN CERTAINLY CONTACT THEIR ELECTED DIRECTORS, MOST ATTORNEYS DO NOT KNOW THAT WE START EVERY BOARD MEETING WITH A PUBLIC COMMENTS SECTION.
Any member of the public, including members of the bar, is given three minutes to address the board. Generally, few people sign up to speak. I would be thrilled if more attorneys took this opportunity to speak directly with us about issues they're seeing in their practice. **TBJ**

Lawyer Wellness, BY THE NUMBERS

HOW MUCH DO YOU KNOW ABOUT ATTORNEY WELLNESS? Here's a short quiz to test your knowledge. All information is provided courtesy of the Texas Lawyers' Assistance Program.

1. According to a recent law review article, which occupation has the highest rate of depression in the United States?
   A. Lawyers
   B. Paralegals
   C. Physicians
   D. Social workers

2. According to the same article, what is the rate of depression among attorneys relative to the general population?
   A. 1.7 times higher
   B. 2.9 times higher
   C. 3.6 times higher
   D. 4.3 times higher

3. According to a 2016 American Bar Association study, what percentage of attorneys suffer from problematic drinking, defined as "hazardous, harmful, and potentially alcohol-dependent drinking"?
   A. 18%
   B. 21%
   C. 26%
   D. 29%

4. In the same study, what percentage suffered from depression?
   A. 15%
   B. 19%
   C. 24%
   D. 28%

5. What percentage suffered from clinical anxiety?
   A. 19%
   B. 22%
   C. 25%
   D. 28%

6. What percentage of attorneys believed that they had suffered from depression in the past?
   A. 24%
   B. 38%
   C. 46%
   D. 57%

7. What percentage of attorneys reported concerns about anxiety?
   A. 24%
   B. 35%
   C. 46%
   D. 61%

8. In a 2015 study of nearly 4,000 law students, what percentage of law students reported that they thought they needed help for emotional or mental health problems in the past year?
   A. 21%
   B. 34%
   C. 42%
   D. 51%

9. In the same study, what percentage of law students reported binge drinking in the previous two weeks?
   A. 14%
   B. 26%
   C. 35%
   D. 43%

True or false? A lawyer having knowledge that a second lawyer (1) is impaired by alcohol, drugs, or mental illness and (2) has committed a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the second lawyer's honesty, trustworthiness, or fitness **must report that lawyer to:**

10. the Texas Lawyers' Assistance Program (TLAP).

11. the Office of Chief Disciplinary Counsel (CDC).

12. *either* TLAP or CDC, but not both.

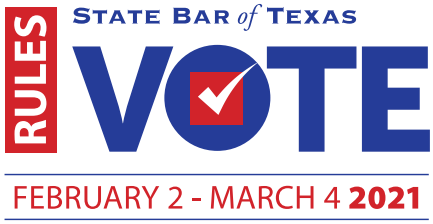
ABOUT THE CENTER

The Texas Center for Legal Ethics was created by three former chief justices of the Supreme Court of Texas to educate lawyers about ethics and professionalism. Lawyers can access the Texas Disciplinary Rules of Professional Conduct, the Texas Lawyer's Creed, and a variety of other online ethics resources by computer or smart device at legalethicstexas.com.

DISCLAIMER

The information contained in Ethics Question of the Month is intended to illustrate an ethics issue of general interest in the Texas legal community; it is not intended to provide ethics advice that applies regardless of particular facts. For specific legal ethics advice, readers are urged to consult the Texas Disciplinary Rules of Professional Conduct (including the official comments) and other authorities and/or a qualified legal ethics adviser.

ANSWER: Correct responses: 1(A), 2(C), 3(B), 4(D), 5(A), 6(C), 7(D), 8(C), 9(D), 10(false), 11(false), 12(true). Under Rule 8.03, an attorney in the situation posed by questions 10-12 *must* report the conduct to *either* TLAP or the CDC, but is not required to report it to both. For further information about attorney wellness, the studies cited, and how TLAP can help, go to legalethicstexas.com/ethics-question-of-the-month.



Results of the State Bar of Texas Rules Vote 2021

MARCH 4, 2021 TOTAL RESULTS

For detailed information on the proposals, go to texasbar.com/rulesvote.

A. Scope and Objectives of Representation; Clients with Diminished Capacity

	Total Votes	Percent
Yes	17,587	89.74%
No	2,011	10.26%

B. Confidentiality of Information – Exception to Permit Disclosure to Secure Legal Ethics Advice

	Total Votes	Percent
Yes	18,598	94.34%
No	1,116	5.66%

C. Confidentiality of Information – Exception to Permit Disclosure to Prevent Client Death by Suicide

	Total Votes	Percent
Yes	18,041	91.55%
No	1,666	8.45%

D. Conflict of Interest Exceptions for Nonprofit and Limited Pro Bono Legal Services

	Total Votes	Percent
Yes	17,573	89.58%
No	2,045	10.42%

E. Information About Legal Services (Lawyer Advertising and Solicitation)

	Total Votes	Percent
Yes	15,452	78.93%
No	4,125	21.07%

F. Reporting Professional Misconduct and Reciprocal Discipline for Federal Court or Federal Agency Discipline

	Total Votes	Percent
Yes	16,274	83.65%
No	3,180	16.35%

G. Assignment of Judges in Disciplinary Complaints and Related Provisions

	Total Votes	Percent
Yes	16,756	86.36%
No	2,646	13.64%

H. Voluntary Appointment of Custodian Attorney for Cessation of Practice

	Total Votes	Percent
Yes	18,447	93.90%
No	1,198	6.10%

Classic seminars.

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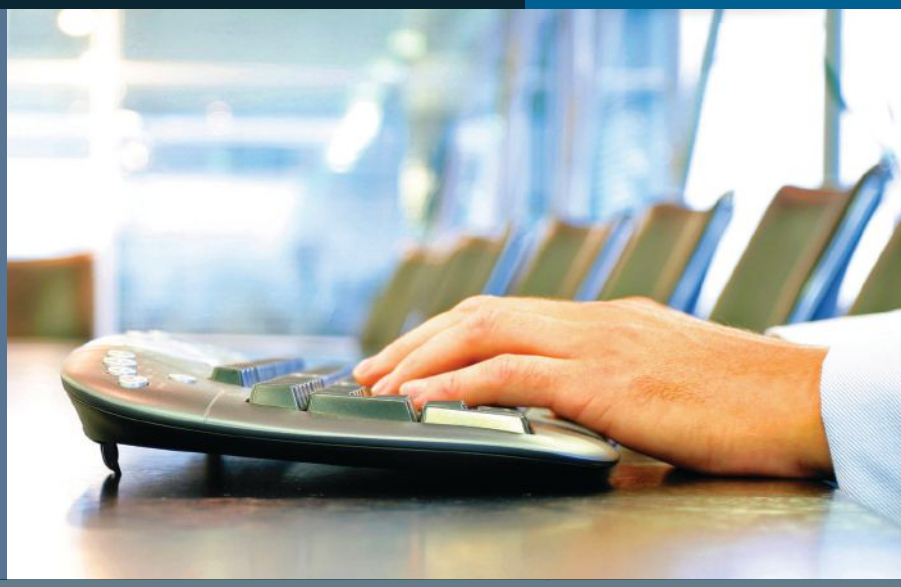
In a new virtual format.



April Webcasts

For now, TexasBarCLE programs have transitioned to a virtual format to continue the timely delivery of high-quality CLE. Full-day and multi-day webcasts have a new interactive chat feature for registrants and participating speakers. Course materials are at your fingertips as PDFs, or hard copies are still available for most courses. If you are unable to attend live, the recording is available within a day or two for you to watch on-demand at your leisure.

We miss seeing you in person, but the huge amount of positive feedback in recent months has been incredible. TexasBarCLE and our wonderful volunteers will continue to work hard to bring you the latest updates for the legal profession.

Handling Your First (or Next) Tax Case
REPLAY Apr 1 MCLE Credit: 6.5 hrs (includes 1.25 hrs ethics)

12th Annual Essentials of Business Law: Foundations and Emerging Issues
REPLAY Apr 7-8 MCLE Credit: 12.5 hrs (includes 2.25 hrs ethics)

34th Annual Advanced Evidence and Discovery Course
LIVE Apr 8-9 MCLE Credit: 13.25 hrs (includes 2 hrs ethics)

Brief Recent History of the Legal Profession
LIVE Apr 13 MCLE Credit: 1 hr (includes 1 hr ethics)

Texas Supreme Court: History & Current Practice
LIVE Apr 14 MCLE Credit: 7.25 hrs (includes 2.75 hrs ethics)

Handling Your First (or Next) Asylum Case
LIVE Apr 15 MCLE Credit: 6.75 hrs (includes .75 hr ethics)

32nd Annual Advanced Real Estate Drafting Course
REPLAY Apr 15-16 MCLE Credit: 12 hrs (includes 2 hrs ethics)

Handling Your First (or Next) Trust
LIVE Apr 16 MCLE Credit: 7 hrs (includes 1 hr ethics)

27th Annual Advanced Medical Torts Course
REPLAY Apr 20-21 MCLE Credit: 11.75 hrs (includes 3 hrs ethics)

37th Annual Texas Forum for Paralegals and Attorneys: Strengthening the Attorney-Client Relationship
REPLAY Apr 21 MCLE Credit: 6 hrs (includes 2.5 hrs ethics)

27th Annual Advanced Estate Planning Strategies Course
LIVE Apr 22-23 MCLE Credit: 13 hrs (includes 3 hrs ethics)

Handling Your First (or Next) Civil Rights Case
REPLAY Apr 22 MCLE Credit: 7 hrs (includes 2 hrs ethics)

Top 10 Tips to Get the Best Mediation Results
LIVE Apr 27 MCLE Credit: 2 hrs

Marriage Dissolution 101
LIVE Apr 28 MCLE Credit: 4.25 hrs (includes 1.25 hrs ethics)

43rd Annual Marriage Dissolution Institute
LIVE Apr 29-30 MCLE Credit: 13.5 hrs (includes 4.75 hrs ethics)

For group viewings of a webcast, contact Firm & Group Sales Manager Laura Angle at 512-263-2802 or laura.angle@texasbar.com.

STATE BAR of TEXAS ELECTIONS 2021 APRIL 1-30

2021-2022 State Bar President-elect Candidates

The State Bar of Texas Board of Directors approved the nominations of Sara E. Dysart, of San Antonio, and Laura Gibson, of Houston, as president-elect candidates at its meeting on September 25, 2020. Texas lawyers will vote for the president-elect and district directors from April 1 to April 30. The winner will serve as president-elect from June 2021 to June 2022 and as president from June 2022 to June 2023. For more information, go to texasbar.com/elections.

Sara E. Dysart

San Antonio

Sara E. Dysart, a solo practitioner in San Antonio, is certified in commercial real estate law by the Texas Board of Legal Specialization. She earned her J.D. from St. Mary's University School of Law in 1981.

Dysart served on the State Bar Board of Directors from 2012 to 2015 and was co-chair of the State Bar Annual Meeting Committee in 2015. She has served on the St. Mary's University School of Law Board of Visitors since 2016 and has been its chair since 2018. Dysart served on the San Antonio Bar Association Board of Directors from 2010 to 2012, has been a member of the Texas Bar College Board of Directors since 2019, and has been a member of the American College of Real Estate Lawyers since 2011.

She has won numerous awards, including a State Bar Presidents' Award in 2016; a State Bar Presidential Citation in 2015; the San Antonio Bar Foundation Peacemaker Award in 2014; the San Antonio Bar Association President's Award in 2007, 2012, and 2015; the Association of Corporate Counsel South Texas Chapter 2017 C. Lee Cusenbary Ethical Life Award; and the Texas Bar Foundation 2020 Terry Lee Grantham Memorial Award.

Laura Gibson

Houston

Laura Gibson is a Houston-based partner in Dentons and head of the Texas Employment & Labor Group. She earned her J.D. from the University of Houston Law Center in December 1984 and joined Locke Lord in 1985. She made partner in the firm in 1992. In 1993, she co-founded a four-lawyer firm where she practiced until 2016 when she joined Dentons. Gibson has been certified in labor and employment law by the Texas Board of Legal Specialization since 2001 and currently serves as a member of the board of directors of Goodwill Industries of Houston. She is a proud graduate of Texas A&M University.

Gibson was 2018-2019 chair of the State Bar Board of Directors. She served as District 4 director from 2016 to 2019 and served on the Executive Committee and Nominations and Elections Subcommittee. She is a past co-chair of the Texas Minority Counsel Program Steering Committee.

Gibson served as 2011-2012 president of the Association of Women Attorneys and founded the Premier Women in Law Luncheon. She served as 2015-2016 president of the Houston Bar Association. In 2013, Gibson received the Trailblazer Outside Counsel of the Year Award from the Texas Minority Counsel Program for her commitment to diversity.

VOTE IN THE STATE BAR ELECTIONS

April 1–30, 2021

The elections for State Bar of Texas and Texas Young Lawyers Association presidents-elect and district directors run from April 1 to April 30, 2021. Attorneys can vote online or by paper ballot. The voting process is as follows:

1. On April 1, attorneys eligible to vote will be mailed an election packet that includes a paper ballot, candidate brochures, and instructions on how to cast their vote. An email also will be sent to attorneys giving them instructions on how to vote online. **Be sure to check your spam filter and junk mail.** Election emails are sent from the State Bar's election provider, Election Services Corporation, and will be sent from **statebaroftexas@electionservicescorp.com**.

2. The election packet and email will contain a voter authorization number (VAN) with instructions on how to vote online. Attorneys may use this VAN and their bar card number to log on to the election website to cast their ballot. If attorneys do not have their VAN, they can also go to the State Bar website, **texasbar.com**, to cast their vote.

3. Attorneys may either submit their paper ballot via mail or vote online using the information provided. The secure election system will not allow duplicate votes.

Information about all the candidates can be reached at **texasbar.com/elections**.

THE DEADLINE TO CAST BALLOTS IS 5 P.M. CDT APRIL 30, 2021.

the issues

STATE BAR OF TEXAS ELECTION 2021

Sara E. Dysart
San Antonio

Laura Gibson
Houston

The *Texas Bar Journal* asked 2021-2022 president-elect candidates Sara E. Dysart and Laura Gibson to share their perspectives on issues facing the bar. Vote online or by paper ballot from April 1 to April 30, 2021. For more information, go to texasbar.com/elections.

WHY DO YOU WANT TO SERVE AS PRESIDENT OF THE STATE BAR OF TEXAS?

DYSART: I want to make the case for the value of service to the bar. As State Bar president, I will encourage all Texas attorneys to engage actively with the bar at the local and state levels, stressing that the bar needs you and you need the bar. Regardless of your law practice, participation with the bar will enhance our profession and your career, broaden your perspective, and create a network of friends across the state.

As I reflect on my 40-year legal career, I realize how important my participation with state and local bar associations has been to me. From responding to the question posed in the early 1980s—"Why do you need a Bexar County Women's Bar Association?"—to recently talking with young attorneys at the REPTL Leadership Academy, my conviction that bar service brings attorneys together for personal and career development as well as the good of our profession and community has only grown. There are numerous opportunities to serve, including local and State Bar governing boards, commissions, sections, committees, grievance panels, pro bono clinics, and programs such as the Texas Lawyers' Assistance Program, SOLACE, and TexasBarCLE. My call to action will be "The Bar Needs You!"

GIBSON: I have devoted the entirety of my bar service to making our bar more welcoming and inclusive. I am a strong leader and will devote my time, energy, innovation, judgment, and diplomacy for the benefit of the bar, its members, and the public. I want to establish programs that create a stronger sense of community among our members and demonstrate that we support them.

Three programs I have conceived include establishing "All Rise," a mentoring program supporting groups of diverse, local, newly licensed lawyers throughout the state, which will meet regularly on their own. The bar will host periodic meetings for all cohorts to have opportunities to network and become connected to more seasoned lawyers. I will create a "We Care" campaign whereby the Office of Chief Disciplinary Counsel and Texas Lawyers' Assistance Program leadership write personalized caring letters asking at-risk lawyers how the bar can better support them. I will also create a grievance support attorney program called "Lean on Me" whereby lawyers can designate a grievance support attorney who will be notified in the event the designating lawyer does not respond to a grievance so that the grievance support attorney can encourage the lawyer to file a response.

IN YOUR OPINION, WHAT ARE THE MOST IMPORTANT ISSUES FACING THE LEGAL PROFESSION AND WHAT ROLE DO YOU

BELIEVE THE STATE BAR SHOULD PLAY IN ADDRESSING THEM?

DYSART: This last year has been overshadowed by the fear of contracting COVID-19, experiencing COVID-19, agonizing with others suffering from COVID-19, and losing loved ones to COVID-19. We have experienced social isolation and financial challenges. We have wrestled with new uses of technology and virtually conferred, mediated, and argued before courts.

The State Bar should address issues confronting Texas attorneys created by these extreme circumstances. TLAP will require additional resources to extend support services to attorneys and should consider offering services to their families and staff. A "Financial Wisdom Program" could be created within the law office management program to offer financial resources and guidance to all Texas attorneys, including a fund to help attorneys keep their law offices open. The State Bar should actively work with the Texas Supreme Court to determine whether and how Texas courts will operate virtually versus returning to in-person appearances.

GIBSON: I believe that maintaining a unified bar is critical to retaining our right to self-governance. The bar needs to ensure that all of our members have an equal opportunity to succeed in the practice of law, to be included in opportunities that help grow their legal skills, and to learn new technologies that make their jobs and lives easier. The bar must demonstrate a renewed commitment to diversity and inclusiveness. The rule of law is under attack. Without preservation of the rule of law, our democracy will not survive. The bar needs to educate the public on the importance of the rule of law and the role of lawyers and the judiciary in preserving order. Finally, after a year of remote working due to the COVID-19 virus, we must continue to increase our lawyers' feeling of belonging and educate them on the importance of lawyer well-being.

YOU HAVE SERVED THE PROFESSION IN A NUMBER OF CAPACITIES. WHICH OF THESE EXPERIENCES HAS BEST PREPARED YOU TO LEAD THE STATE BAR OF TEXAS?

DYSART: All of them! Service to our profession has allowed me to meaningfully interact with attorneys, gain an understanding of their perspectives, and celebrate our successes. As a transaction attorney and mediator, I know how to bring parties together with diverse interests. These experiences will be important if I have the opportunity to lead the State Bar's commitment to diversity, equity, and inclusion.

As a frequent speaker at State Bar CLE programs, I have learned how to communicate with Texas attorneys. As a volunteer attorney working with TLAP, and as a mentor, sponsor, and monitor of attorneys in recovery, I understand the struggles that many attorneys face with addictions, depression, and other mental health issues. As chair of the Real Estate Forms Committee, the committee that drafts the *Real Estate Forms Manual* used by most Texas real estate attorneys, I know the value of State Bar publications for practicing attorneys.

GIBSON: All. As chair of the board, I worked to equip newly elected board members with the knowledge to maximize their ability to effectively serve our members. As chair of the Houston Bar Association Labor & Employment Section, I emphasized to our council the importance of being ambassadors to our members and introducing them to others within our group. As a member of the Texas Minority Counsel Program Steering Committee, I suggested that we create the "Dine Around" program so that our members could get to know other lawyers throughout the state. While president of the HBA, we strengthened our mentorship program and reinvigorated our fellows program, which funds the great work of the Houston Volunteer Lawyers. As president of the Houston Association of Women Attorneys, under my leadership, we created the "Premier Women in Law Luncheon," which honors primarily women lawyers and raises money for scholarships for women law students.

WHAT CAN THE STATE BAR AND INDIVIDUAL LAWYERS DO TO ENSURE ACCESS TO JUSTICE FOR TEXANS, ONE OF THE STATE BAR'S CORE PURPOSES?

DYSART: A board of directors' resolution broadly defining legal services to the poor states: "that each Texas attorney should aspire to render at least 50 hours of legal services to the poor each year, or make an equivalent financial contribution to an organization that provides legal services to the poor." I am confident that most Texas attorneys are unaware of this aspirational resolution but meet or exceed this benchmark. Every bar association that I have worked with sponsors ways for its members to provide pro bono legal services and financial support. Many attorneys contribute financially to the Texas Access to Justice Commission and the Texas Bar Foundation and other bar foundations knowing that funds will be used to support access to justice. The State Bar should champion the significant contributions of Texas attorneys. Public awareness of Texas attorneys' contributions to access to justice is the perfect antidote to every lawyer joke.

GIBSON: Expand the reach of the Texas Opportunity & Justice Incubator. TOJI improves access to legal services by training attorneys to build sustainable, solo law firms; providing a supportive community in which attorneys develop efficient approaches to serving low-income and modest-income communities; and analyzing the sustainability and effectiveness of these methods in providing more of our citizens with access to justice. In my view, this program is a win-win: Young lawyers are trained, and the public has better access to justice. Since January 2020, TOJI has operated as a digital community with the silver lining being that the program reaches more attorneys who need assistance in establishing their practices and similarly, serves low-income clients in underserved communities.

The State Bar needs to continue to be innovative in the training and development of lawyers and increasing access to justice to those in need.

THIS PAST YEAR THE LEGAL PROFESSION WAS TRANSFORMED DUE TO COVID-19. WHAT IS ONE THING YOU HAVE LEARNED FROM THE PANDEMIC THAT TEXAS LAWYERS CAN USE TO BE SUCCESSFUL GOING FORWARD? WHAT CAN THE STATE BAR DO TO HELP LAWYERS ADJUST TO PANDEMIC LIFE AND BEYOND?

DYSART: Throughout my legal career, I have held on to two maxims. The first is "every day is a new opportunity" and the second is "how a person responds to

challenges defines her, not how she responds in good times." These two verses have been especially important since March 13, 2020, when I started writing a CLE article that was due in May because I wanted it to be finished when the sheltering in place was lifted. I think these maxims are beneficial every day.

While attorneys have been able to continue to practice law from their homes or redefined office space, many have suffered from COVID-19 and the consequences of it, including social isolation and financial insecurity. The State Bar must focus on this reality and develop programs through TLAP and the financial management program that provide guidance and resources.

GIBSON: I have learned that as long as we take care of ourselves with faith, sufficient rest, nutritious food, exercise, and good friends and family, we can be resilient. Before the pandemic, I didn't work from home. My preference was that when I was at the office, I worked hard and when I was at home, I recharged my batteries. That doesn't mean I didn't work on weekends—I just did it from the office. Entering our second year of working from home, I take comfort knowing that with the right equipment and support, I can do almost everything from home that I could do at the office. In many cases, I'm more efficient.

The State Bar needs to continue to provide support to our members, through law practice management offerings, wellness programs, and opportunities to engage with other members, so that we can support each other during these stressful times.

WHAT SHOULD THE BAR DO TO GUIDE AND PREPARE THE NEXT GENERATION OF LAWYERS?

DYSART: The bar should promote ways to introduce law students to experienced attorneys and their practice areas. I know the value of law students interacting with members of our profession from speaking at law school classes and initiating and participating in a Mentor Circles program at St. Mary's University School of Law.

The State Bar should make recent law graduates aware of (1) the Texas Young Lawyers Association, (2) free Law Practice Management programs and materials, and (3) discounts and scholarships at TexasBarCLE programs in every practice area. The State Bar should support opportunities for young attorneys to interact with members of our profession. Current programs such as internships, career days, and practice seminars offered by bar sections and local bar associations should be replicated and made available to as many young attorneys as possible throughout the state. We must develop our members and future leaders.

GIBSON: I favor continued support of TYLA. TYLA provides an opportunity for lawyers to network and get involved in a leadership role. Texas lawyers who are in their first five years of practice, regardless of age, and lawyers 36 years old or younger are TYLA members. TYLA is funded by the State Bar so no additional dues are required.

LeadershipSBOT, a yearlong program that is designed to give attorneys the tools to develop leadership roles in their firms, bar associations, and communities, is an excellent program especially for diverse attorneys. If elected, I will develop "All Rise," which will have a more expansive reach than the 20 nominated attorneys in each class of LeadershipSBOT. My hope is that this program will allow diverse attorneys to get to know one another, share ideas and best practices, and become connected with others in their legal community.

WHAT SHOULD THE BAR FOCUS ON TO ENSURE IT IS RELEVANT AND MEANINGFUL TO MEMBERS?

DYSART: Texas attorneys work together for a better State Bar and to govern and provide services benefiting its members. As members of the board of directors and with sections, committees, and the grievance system, Texas attorneys set policies and provide numerous valuable services, often with the help of committed public members.

The State Bar should communicate to its members what it does and what it cannot do for its members. Some Texas attorneys have criticized the State Bar for not benefiting them personally. I challenge these naysayers. For example, why does the State Bar impose a minimum annual CLE requirement? The obvious answer is that this requirement is to encourage and enable all Texas attorneys to stay current on the law, which benefits them and their clients. More significant is the State Bar's free CLE and discounts and scholarships for CLE courses available to its members to meet this requirement.

GIBSON: We need to continue to improve our communications with members. One tool that has been effective in communicating opportunities and supporting local bar associations is the Local Bar Leaders Conference. The purpose of the conference is to train leaders from local bar associations and to facilitate the sharing of best practices among local bar leaders.

The bar needs to continue to increase and improve member benefits and programming, which enable lawyers access to tools, such as the online library, and law practice management skills to enable lawyers to better serve their clients.

At the section level, the bar should continue to facilitate interactions among the chairs of the various State Bar sections with quarterly meetings of all chairs of sections. Here items of mutual interest and programs by which the State Bar can better serve its members can be discussed and evaluated.

HOW IMPORTANT ARE YOUR COMMUNITY ACTIVITIES TO BALANCING YOUR LIFE AS A LAWYER? WHICH HAS AFFECTED YOU THE MOST?

DYSART: Early in my career, my community service was exclusively law related. I was active with our local bar associations, TexasBarCLE, and St. Mary's University Law Alumni Association. In 2008, I branched out and joined the board of directors for the San Antonio Council on Alcohol and Drug Awareness. This experience helped me recognize the many valuable community services provided by local nonprofit organizations. I also realized that many attorneys participate on nonprofit boards. I currently serve on the boards of the San Antonio River Foundation, St. Mary's University, and Broadway Bank. These opportunities allow me to work with community leaders and to participate in worthy and interesting endeavors.

My most fun community activity has been chairing the baked oyster booth at St. Mary's

University Fiesta Oyster Bake for 20 years. I am very sad that the pandemic has again canceled this annual event that funds scholarships.

GIBSON: Very important. I serve on the Goodwill Industries of Houston Board of Directors as governance chair. I am proud of the fact that I can assist in the mission of Goodwill not only through my leadership skills but also by sharing my legal knowledge with our committee members so that we all are aware of our fiduciary duties and have appropriate bylaws in place.

I spent many years volunteering for the HBA Adopt-A-School Program. Having the opportunity to teach a student who may not encounter any lawyers in her life is impactful. Angela Dixon, a Houston lawyer, graduated from the school where we volunteered, and I am proud that she went on to serve as the editor of *The Houston Lawyer*.

As a board member of Justice Forward, watching the transformation of the lives of people who have become embroiled in the criminal justice system through addiction was restorative.

DESCRIBE YOUR MOST SATISFYING LEGAL EXPERIENCE.

DYSART: I represented family members when an adjacent landowner notified them that he intended to cut off a scenic access easement that crossed his property and would provide access through a newly constructed "goat trail." He neither referred to the new route as a "goat trail" nor did he mention that the "goat trail" was not convenient, safe, or attractive. After completing a review of limited documentation, I called the attorney for the adjacent landowner who proceeded to espouse the law and the facts. His concluding comment was that my family should appreciate the use of the "goat trail." After initial offers to discuss settlement did not materialize, a settlement was reached 24 months later as opposing counsel was about to take the deposition of my sister-in-law's then 83-year-old mother. This experience was satisfying because very good attorneys reached a settlement that was beneficial to all.

GIBSON: Representing a small home health care company, which was sued for violation of the Pregnancy Discrimination Act. The company believed the employee was a no-call-no-show and thus terminated the employee for absenteeism. Her supervisor testified that she tried to reach the plaintiff to determine when she would return to work but received no reply. The plaintiff produced a fax header showing the fax of a one-page document, which did not reveal what was faxed. The plaintiff claimed that the fax header demonstrated that she faxed a doctor's note. By the time suit was filed, the supervisor had left her job to go to work for another home health care company. The supervisor testified that no note was received. The jury found my client did not terminate the employee because of her pregnancy. My client was gratified that its reputation in the community as a fair and lawful employer remained intact.

WHAT CAN THE STATE BAR DO TO PROMOTE DIVERSITY AND INCLUSION WITHIN THE LEGAL PROFESSION?

DYSART: The State Bar is committed to diversity, equity, and inclusion for its members. The Office of Minority Affairs, Diversity in the Profession Committee, and LeadershipSBOT are three ways the State Bar demonstrates this commitment. These efforts should continue with renewed emphasis. We can always do more.

The Bexar County Women's Bar Association has set an example of how to start the conversation on diversity, equity, and inclusion by hosting bimonthly panels on *Acts of Allyship,* including "Understanding Our Role in Addressing Racism in Healthcare" and "Recognizing and Combatting 'Micro' Aggression in the Legal Community." Such panels are one of many ways to learn about the challenges that attorneys experience in order to improve the bar and the practice of law for all of us. Let's continue the conversation.

GIBSON: The bar does an excellent job of promoting diversity and inclusion through TMCP, which provides opportunities for lawyers to network with one another, attend high-quality CLE programs, meet other lawyers across the state, and interview with companies seeking more diverse counsel. Texas is known for having one of the premier diversity programs in the country by virtue of TMCP.

Additionally, we should all be working to identify diverse leaders to recruit for director positions or serve on the State Bar's committees. This summer, during the special meeting held in July, I identified 34 potentially diverse leaders whom I contacted and encouraged to get involved in bar leadership.

WHAT IS YOUR FAVORITE BOOK, TV, OR FILM REPRESENTATION OF A LAWYER? WHY?

DYSART: My favorite books about a lawyer are written by lawyer John Grisham. I read *The Firm* before I read *A Time to Kill* (my favorite) and have read every Grisham novel published since then, except the last two novels, which are on my reading list. I appreciate Grisham's knowledge of the legal system and the challenges faced by his protagonists. Grisham's books shine a light on the dark side of the practice of law while developing characters who use the legal system to fight for righteous causes. His books and the movies based upon them draw their audiences into the legal process with intrigue and adventure. I also appreciate that Grisham has written a series of children's legal thrillers based upon the Theodore Boone character. Grisham has likely encouraged many of his readers to become attorneys.

GIBSON: *My Cousin Vinny*. It most accurately depicts the rules of procedure and trial experience. Like real life, anything that could go wrong during the trial did. The movie also had the perfect ensemble cast. Fred Gwynne did an excellent job portraying trial Judge Chamberlain Haller, and Marisa Tomei was a fabulously uncooperative witness. Lane Smith's portrayal of DA Jim Trotter's opening is a CLE masterpiece of a near-perfect opening statement. Vinny's sharply leading cross-examination challenging the witness' perception of time using his recently acquired knowledge of how long it takes to cook grits was brilliant, as was his impeachment of an eyewitness with photographs of bushes, trees, and dirty window screens that obstructed the witnesses' view of the crime scene. The movie is also laugh-out-loud funny. Its realistic portrayal of the trial should be no surprise given that its director got his law degree from Cambridge University. **TBJ**

A LEARNING EXPERIENCE

Texas law schools respond and adjust to the coronavirus pandemic.

WRITTEN BY **JOAN R.M. BULLOCK**

Law schools are not an exception when it comes to being affected by the pandemic. Like any institution of higher education, law schools are challenged with the task of providing an engaging and effective learning experience either remotely or in created spaces designated for safety.

The *Texas Bar Journal* asked the deans of the Texas law schools[1] how their respective schools responded to and are adjusting to COVID-19. While not uniform in approach or tactic, a common theme emerged from the responses received. This theme can be broken into three components: responsive leadership, communication despite uncertainty, and empathy.

Responsive Leadership

While all the law schools enacted safety protocols that were recommended nationally and locally, they varied on the degree in which they offered courses completely online. A paramount concern was that students, especially those of the first year, got as much exposure to the traditional law school experience as possible. The requirement of social distancing limited the number of students who could be physically present in the classroom at any one time. Courses in these circumstances were offered hybrid, meaning that students would attend class on a staggered rotation and attend remotely on the other class days. Similarly, density occupancy was a consideration with some law schools requiring students leave the building immediately after classes. Social distancing and density occupancy were also considerations in staff placement and rotation. Further, many support services were placed online, limiting foot traffic in the building.

With safety protocols in place, fostering community has become a priority. With the goal of helping students form meaningful relationships, law schools learned to be intentional in finding ways to alleviate the isolating nature of remote, online education. One school sought to maintain normalcy and provide support to faculty, students, and staff. A high point in this regard was the school's ability to provide a traditional graduation ceremony for its May 2020 graduates who were not able to walk the stage because of the shutdown last spring. Twelve graduation ceremonies were held in person last October to provide those graduates with the time-honored event celebrating their achievement.

Communication Despite Uncertainty

Communication by leaders is not difficult when there is clarity of thought and vision. This pandemic, however, has caused disruption in a manner and on a scale never before seen, resulting in uncertainty on appropriate courses of action. Notwithstanding, communication is not just hearing from the top; it is a dialogue with the stakeholders. As Michael Barry, dean of South Texas College of Law Houston, provided,

> We communicated frequently and sought input before making decisions. I believed it important to be transparent, to acknowledge when we didn't have an answer, to allow faculty and students and staff an opportunity to be heard before decisions were made, and to communicate on a regular and personal basis. I can't tell you how many emails, video messages, and town halls I have sent, recorded, and held…

Dean Patricia Roberts, of St. Mary's University School of Law in San Antonio, surveyed the students as to the instruction modality that would work for them and ascertained that two-thirds of first-year students chose to learn in person (socially distant and with masks) and one-third of upper-class students chose in person.

Empathy

The uncertainty caused by the nature of this pandemic has caused the law schools to have more empathy in determining appropriate courses of action. Along with giving surveys, schools became flexible, giving faculty and students opportunities to teach and learn in person or remotely, depending on their health and family circumstances. Staff was also given flexibility on how they fulfilled their duties, depending on their personal circumstances.

For all, empathy itself became part of the learning process. The personal touch became more important as instruction and operations went remote. For example, Ward Farnsworth, dean of the University of Texas School of Law in Austin, stated that they increased the mentoring and other support resources offered to students. "We set up our first-year students in very small advising groups with faculty members. Students were matched with faculty and with other students according to their interests. Our goal was to make sure that every student gets to know a faculty member and some peers, even if a student is learning remotely and might not even be living near campus."

At Baylor Law School, staff and faculty served as the front line for communication with students to offer help and support for those in need. Faculty remained on Zoom after classes to see if there was a need or just to allow students to talk and have human connection. Extra Zoom office hours, social hours, music hours, and exercise in the park session were scheduled for faculty to spend time with their students. Faculty and alumni offered students rooms in their homes or offices as quiet places to study and to take their exams online when they had no other place to go.

The deans were also asked to opine on how COVID-19 affected legal education and the learning process. Dean Roberts had the following comments:

- Legal educators were pushed into being more creative and intentional in designing formative assessments throughout the curriculum;
- Students benefited a good deal from the ability to replay lectures and discussions if they had difficulty with some material; likewise, access to slides and supporting materials after class was helpful;
- Remote pro bono services can be just as impactful for the underserved as in-person services; and
- Legal educators were reminded that while online education may be new to us, it is not new to many of the students we teach.

At Texas Southern University Thurgood Marshall School of Law in Houston, I recognized the challenge of online learning for law students. Online learning can become tedious when students spend long hours sitting in front of a computer screen for class, meetings with professors and their peers, and studying. The experience can be numbing and can test the most ardent student with distraction. Further, with remote learning, many students are not able to remove themselves from the responsibilities and activities of the home. Serving as a caretaker and needing a separate, quiet space to study impede students' ability to focus.

Not to end on a low note, the deans were asked what were some takeaways that would permit the law schools to emerge from this challenging experience stronger and with increased relevance.

As Dean Roberts aptly delineated:

- We are unlikely to ever take being together in a classroom, a hallway, outside, or in an office with others for granted again;
- The digital divide is real, even among law students; law schools must be ready with loaner equipment or stipends/emergency funds for Wi-Fi or study spaces to ensure all students have equal access to learning;
- The role our faculty play in supporting students personally is as important as the role they play professionally, even in a virtual environment;
- Legal education can be done well virtually, but it takes intentionality to make up for the benefits lost by having students collaborating with each other and their professors in person;
- Great teachers are great teachers no matter the modality; and
- Zoom, while incredibly effective during this crisis, is not able to duplicate the energy one finds in traditional law school classrooms and causes additional fatigue among students and faculty and staff.

Associate Dean Leah Jackson Teague, of Baylor Law School, noted that the crisis itself is a learning opportunity. Through this adversity, students can develop grit, resilience, and a growth mindset. Lawyers are change agents and difference makers who hold positions of influence. The grit and resilience students are developing will help them conquer future challenges. The growth mindset would permit them to encounter difficulties and setbacks in a healthy and productive manner. As such, they will be "ready to weather the storms in their own lives while also maintaining unflappable strength for their clients and communities."

Dean Barry may also speak for all in the following:

> What we have learned (or confirmed) is that this is a caring, supportive community that will put the interests of its students first. What we have learned is that we are stronger, more flexible, more agile, and more capable than we ever dreamed. We adapted, we modified, we learned, we improved, we succeeded. I am very, very proud of our community and our school.

In sum, what we have learned is that we are all learners. While we yearn for the time when things get back to normal, we are already considering ways in which we can take what we have learned and move beyond normal. With that, we may not go back to where we were, we plan not to stay where we are, and we look forward to what we can become. **TBJ**

NOTES

1. The 10 Texas law schools are Baylor Law School, SMU Dedman School of Law, South Texas College of Law Houston, St. Mary's University School of Law, Texas A&M University School of Law, Texas Southern University Thurgood Marshall School of Law, Texas Tech University School of Law, the University of Houston Law Center, the University of Texas School of Law, and UNT Dallas College of Law.

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Lawyer Well-Being

TLAP in the coronavirus era.

WRITTEN BY **CHRIS RITTER**

This has been a historic year for mental health challenges to say the least, but few people have struggled like attorneys. Isolation is unhealthy on its own, but isolation combined with handling everyone else's biggest life crises can be overwhelming. In a normal year, lawyers are at or near the top of the list in rates of depression, anxiety disorders, and suicide. Considering the many extraordinary difficulties this past year has presented—including the COVID-19 pandemic, the extended periods of being homebound, the heightened anxiety related to elections and societal issues, family and common financial grief and loss, the heavy use of technology, the exposure to too much social media and news, the new/transformed style of practicing law remotely, and much more—it is remarkable that we are functioning as well as we are. Not to mention, we have been enduring this all without many of our normal tools for self-care.

The Texas Lawyers' Assistance Program, or TLAP, has been doing all it can to help. When the pandemic began, the phones were unusually quiet as many were in a sort of "shock mode" securing the necessities like toilet paper, hand sanitizer, and adjusting to the new normal. After a few weeks, calls reflected a heightened intensity of dire circumstances that has not subsided. The number of calls has fluctuated, but the severity of the issues faced by lawyers and law students has never been more consistently high. Attorneys facing financial devastation, the loss of a spouse or parent, or paralyzing depression due to isolation have been the norm.

Quarantining may keep us safe from the virus, but it is mentally very unhealthy. In a study of 129 participants during SARS quarantine, 28.9% had symptoms of post-traumatic stress disorder and 31% had symptoms of depression[1] (7.1% is the rate for the general population).[2] Nearly half of all lawyers experience depression during their careers when life is normal.[3] However, this quadrupling of the rate of depression in the general population because of quarantining should send a strong warning to our legal community that we must take these conditions seriously.

For TLAP, we have spent most of this year working to improve our service to many struggling lawyers, law students, and judges. We have become a presence in the Zoom universe with numerous monthly programs and have created more than 23 recorded hours of lawyer mental health support video programs that can be accessed at the TLAP Support Toolbox button at the top of our website at tlaphelps.org or directly at texasbar.com/tlapsupporttoolbox. The video programs we have produced feature experienced lawyers and licensed mental health professionals covering topics that include crisis fatigue, handling anxiety and depression during the COVID-19 era, grief and loss, boundaries during quarantine, well-being at home, COVID fatigue, and many more. Additionally, the toolbox offers access to many online forms of group support, including Lawyers Concerned for Lawyers, or LCL (independent support groups for lawyers and law students in or seeking recovery from substance use or other mental health struggles). These options provide lawyers, law students, and judges with solid access to peer support for mental health and substance use disorders from their homes.

We have also ramped up the use of our Facebook page

(facebook.com/tlaphelps) as a hub to share online well-being support for lawyers and law students, including news about programs, events, and educational articles on how to handle the challenges we face.

To improve accessibility for lawyers, TLAP can now be reached by text or phone at 800-343-TLAP (8527). The text messaging option has made a difference for the many lawyers and law students who prefer not to talk when they are just seeking informational resources for their mental health or substance use support needs. We are also now able to connect attorneys, when needed, immediately to a licensed mental health professional for a telephonic counseling session as a bridge of support to help with the delay between the time that callers reach TLAP and when they are able to see their local professional.

Perhaps as important as any other TLAP development, during this past year TLAP produced a one-hour depression and suicide prevention video, which will be released in April and is planned to be a free CLE. This groundbreaking video is an educational documentary that we hope will captivate the attention of our legal world and save lives. A study by the U.S. Air Force found that suicide prevention training included in all military training reduced the mean suicide rate within the population studied by an unprecedented 21%,[4] and TLAP hopes that this film will have a similar effect and save lives while providing essential education to our legal community. You will be able to find out how to watch this video at tlaphelps.org and on our Facebook page beginning in April.

We hope that these efforts help. I am honored to be a part of a team that includes the amazing Erica Grigg, who is now our lead TLAP professional, along with great new addition Michelle Fontenot, an attorney and TLAP's clinical professional. All three TLAP attorneys now have substantive graduate-level educations in mental health counseling, and I cannot be more proud of the kindness and compassion of this new team.

All of that said, we recognize that one of the most serious obstacles to lawyer well-being is our lack of self-care. For that, here are three important tips. First, lawyers often have no time to take care of themselves. Nothing is more important than taking steps to make room in our difficult schedules for self-care. Do we not deserve 4% of our lives? That would be an hour each day. Few lawyers give themselves that kind of support. If we shoot for making even 1% of our lives about self-care, it can make a huge difference. Try using your calendar to put three things per week for an hour of self-care—social time with a friend, an exercise hour, an hour to enjoy a personal hobby, or anything else that fills you back up. These three hours of relief will pay off and reveal how much better life can be when we use our boundaries to value our self-care. Do you remember studying for the bar? If we studied more than eight to 10 hours per day, it was not worth it. We would overload and waste time. If we took some healthy breaks, hours less of studying actually resulted in more accomplished. This is how taking time for self-care works for lawyers.

Taking the time to fill back up is often the primary struggle for lawyers. Using your calendar to help is important, but limiting the things that take up your time unconsciously is also essential. We are getting 120 new emails per day and 94 text messages, along with letters, phone calls, faxes, etc. Social media eats away at our free time. Americans are averaging about 24 hours per week on the internet and nearly three and a half hours per day on our smartphones.[5] To help find more time, try cutting back on technology by turning off notifications on your phone aside from essential applications, use "do not disturb" for personal time and self-care when possible, and stay away from your phone and social media in the evening and in bed.

A second critical self-care tip is finding someone to share your hardships with weekly. Therapists spend their first 3,000 hours of their practice debriefing weekly for an hour as part of their licensure requirements.[6] It is no surprise that therapists, with the same trauma clients as lawyers, had much less stress. Lawyers need this debriefing. If you do not have a person that you can talk to weekly to discuss the things that you are struggling with, please find someone you can trust and debrief at least once per week. Whether by best friend, trusted lawyer confidant, or therapist, debriefing can make a world of difference.

Third, employ the positive-psychology skill of a gratitude practice. Lawyers are trained in law school to become masters at problem spotting. If there was a fact pattern on a law school exam and we could spot 100 issues, we would get an "A." We need this skill to be good lawyers. However, problem spotting and looking for flaws can affect our perspective if we neglect our positive thinking. Use of a three-item gratitude journal every day can help you reflect on things you are grateful to have in your life, and one study showed it can decrease symptoms of depression by 50%.[7] If you are feeling flat, try two weeks of gratitude journaling. It works.

As "quarinfinity" marches on, TLAP is here and cares. We want to support and encourage lawyers, law students, and judges. We are able to help connect struggling lawyers and law students to professional support, peer and group support, and even financial support for mental health or substance use disorder care by means of the Sheeran-Crowley Trust. We can be reached by phone or text at 800-343-TLAP (8527), and we are strictly confidential. If you or someone you know needs help, please consider us. **TBJ**

NOTES

1. Laura Hawryluck et al., *SARS Control and Psychological Effects of Quarantine, Toronto, Canada,* Emerging Infections Diseases, July 2004, www.ncbi.nlm.nih.gov/pmc/articles/PMC3323345/.
2. Major Depression, National Institute of Mental Health (last updated Feb. 2019), https://www.nimh.nih.gov/health/statistics/major-depression.shtml.
3. *See* Patrick Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys,* 10 Journal of Addiction Medicine 46-52 (2016), https://journals.lww.com/journaladdictionmedicine/fulltext/2016/02000/the_prevalence_of_substance_use_and_other_mental.8.aspx.
4. *See* Eric D. Caine, *Suicide Prevention Is A Winnable Battle,* 102 Am. Journal of Pub. Health S1 (2012).
5. *See* Jamie Condliffe, *The average American spends 24 hours a week online,* MIT Technology Review (Jan. 23), https://www.technologyreview.com/2018/01/23/146069/the-average-american-spends-24-hours-a-week-online/; and Rani Molla, *Tech companies tried to help us spend less time on our phones. It didn't work.* Vox (Jan. 6, 2020, 12:30 PM), https://www.vox.com/recode/2020/1/6/21048116/tech-companies-time-well-spent-mobile-phone-usage-data.
6. Tex. Admin. Code, Title 22, Part 30, Chapter 681, Subchapter C, Rule § 681.92.
7. *Gratitude Is Better Than Winning the Lottery,* Josh Hunt, https://www.joshhunt.com/2015/11/25/gratitude-is-better-than-winning-the-lottery/.

CHRIS RITTER
is the director of the Texas Lawyers' Assistance Program.

PERSEVERING DURING THE PANDEMIC

The Texas Young Lawyers Association's commitment to public service is stronger than ever.

WRITTEN BY **BRITNEY HARRISON**

When the World Health Organization declared COVID-19 a pandemic in March 2020, the entire world seemed to stop. And certainly, in some ways it did. But, in other ways, life, play, and work continued despite the federal, state, and local health mandates that necessitated our lives moving into the virtual setting. The work of the Texas Young Lawyers Association, or TYLA, was no exception. The pivot to remote work was nearly immediate, and the organization worked hard to not miss a beat in fulfilling its purpose. The service-minded nature of the TYLA board and staff persisted despite the steep learning curve of such a radical paradigm shift.

For some background, TYLA is commonly referred to as the "public service arm" of the State Bar of Texas. TYLA's primary purposes are to facilitate the administration of justice, foster respect for the law, and advance the role of the legal profession in serving the public. Each year, TYLA creates projects aimed at providing tangible resources for all lawyers, law students, and the public. These projects include written (print and digital) guides; high-quality podcasts and videos; outreach and programming at grade schools, universities, and law schools; and much more. To achieve these goals, many of the deliverables require in-person attendance and interaction. But, like all other organizations, accommodations had to be made to safely carry out TYLA's public service goals once the pandemic was officially declared.

For the most part, TYLA's programming and projects have been successfully executed despite the challenges of moving almost all of its work to conference calls and Zoom. TYLA would be deeply remiss to not first recognize the incredible work of the State Bar staff that supports TYLA: Tracy Brown, Bree Trevino, and Michelle Palacios. Without them, our quick pivot from in-person to fully digital would have been impossible. Our board members did not allow the challenges of fully virtual work to deter their collective drive to see projects through to completion.

Welcome to the Zoom Stage!

Ah, the ubiquitous Zoom. We all have it, we all use it, we all still leave ourselves muted when we should be unmuted, and we still ask, "Can you all hear me?" when we know our mics are on and working.

It was obvious early in the pandemic that staff and directors were starved for the in-person interaction to which we were all accustomed. "Zoom fatigue" quickly became a household term and a less-than-ideal reality for those of us fortunate enough to work and serve from home. TYLA worked hard to make sure that Zoom fatigue did not best us as an organization.

TYLA Quarterly Board Meetings

Our board consists of 48 directors, officers, liaisons, and support staff. We are located in all portions of the state. One of the special parts of being on the TYLA board is convening for our quarterly meetings to hear about all of the great work being done and meeting with our committee members to work through projects. This has been the hardest part to replace in a virtual setting. There is simply no substitute for sitting down for a meal with our fellow directors, participating in community service events, or enjoying in-person wellness activities. However, the safety of every member was of utmost concern. Meeting safely in person was not an option. As such, one of the earliest transitions to Zoom was our quarterly board meetings.

To ensure that this large group remained engaged and did not get lost in the tiles on the screen, I decided to bring one of my guilty pleasures to the meeting: World Wrestling Entertainment, or WWE. I personally love watching wrestling, and I challenged each committee to come up with intro music like my favorite wrestlers. Rather than just transition from slide to slide, our chair, Tim Williams, plays the music before the committee representatives speak. Additionally, I wanted to bring out the competitive side of our members and decided to award Large City and Small City Champs each quarter. In true WWE style, we have obnoxious, but equally awesome, championship belts that two board members receive each quarter. The champs hold the title until the next quarter and then pass the belt on to the new champs. Our champs exemplify the servant-leader approach and the spirit of TYLA.

In addition to hearing the project status updates, we announce important life events of our board members, such as marriages and the birth of a child. We also acknowledge and celebrate the accomplishments of our board members. Between meetings, the individual committees have hosted virtual social hours where we have played trivia games to get to know each other better, family feud, bingo, and even hosted a holiday gift exchange. TYLA is a family and we love to connect with each other.

Attorney Wellness

Attorney wellness is an important focus of TYLA. We typically

incorporate optional wellness activities the weekend of our meetings. We have offered virtual yoga, which focuses on stretches and movements we can do from our desk chairs, Zoom-ba (Zumba), and even wellness activity social media challenges.

TYLA also hosted its inaugural virtual triathlon. We encouraged lawyers and their families to participate in the three-month-long event and post on social media. The triathlon was a great success, so we plan to bring it back this spring.

Advocacy Competitions

At the beginning of the 2020-2021 bar year, our State Moot Court competition went virtual. This competition normally takes place at the State Bar of Texas Annual Meeting. Our committee managed to pull off a successful competition by gathering attorneys from across the state to judge our competition remotely and culminated with the final round in front of the Texas Supreme Court. Though this was a definite challenge for the law students competing and the TYLA committee members working behind the scenes, everyone rose to the occasion. For the law students, the competition resulted in some real-life experience.

The National Trial Competition, or NTC, is currently in full swing with virtual regional competitions across the country. The NTC was established in 1975 to encourage and strengthen law students' advocacy skills through quality competition and valuable interaction with members of the bench and bar. TYLA administers the competition, which is co-sponsored by the American College of Trial Lawyers, during the spring semester. This competition attracts teams from more than 140 law schools and involves more than 1,000 law students each year. TYLA aims to expose law students to the nature of trial practice and to serve as a supplement to their education.

Continued Service to the Public

As the public service arm of the State Bar of Texas, TYLA has continued to provide useful resources to the public. Our programs are all available online at tyla.org and we continue to roll out our resources across the state. By changing to a virtual format, we have continued to reach educators and students. One of my favorite projects, *Bookshelves in the Courtroom,* is going digital. Our *Bookshelves* program put bookshelves full of free books in courthouses across the state. Any child who has to be at the courthouse now has a book to read and can take it with them. Because most court hearings are now virtual, TYLA is working with the Dallas Association of Law Librarians to put together a digital library for children to access if they have to attend court hearings.

Additionally, as discussed in last month's TYLA President's Page, we have launched *Iconic Women in Legal History,* a website highlighting the role of women in American society. Even in the pandemic, we have managed to obtain interviews over Zoom or in a safe, socially distanced in-person setting. I am so proud of our board members. They have never lost sight of our purpose and mission. Whether we are in the midst of COVID-19 or not, we will still serve the public.

Continued Service to the Profession

Regardless of the pandemic, TYLA has continued to provide additional resources for our lawyers. Some of our projects work well in this remote setting, such as our podcast series. TYLA launched a new series titled *Practice Areas 101,* which was recorded remotely over Zoom and features young lawyers from all over the state and in various areas of practice, including family law, criminal law (from the perspective of the defense attorney and prosecution), entertainment law, in-house counsel, and more.

Overall, TYLA has strived to maintain the excellence of service that we have always delivered. Our board members have worked together, and even though some of us have never actually met in person, we have created a family of hard workers who support each other. I am thankful that technology has kept us safely apart but together in spirit. In the words of my predecessor, Victor A. Flores, we are better together. **TBJ**

The author would like to thank Chelsea Mikulencak for her contributions to this article.

BRITNEY HARRISON
is the president of the Texas Young Lawyers Association.

2020 INDEPENDENT AUDITOR'S REPORT

Summary of the Independent Auditor's Report

The State Bar of Texas received an unmodified—or "clean"—opinion from an independent auditor on its annual financial report for the fiscal year that ended May 31, 2020. The auditor, Weaver, concluded the financial statements presented fairly, in all material respects, the respective financial position of the State Bar in accordance with generally accepted accounting principles.

The State Bar of Texas' basic financial statements are composed of three components: 1) government-wide financial statements, 2) fund financial statements, and 3) notes to the basic financial statements. The user of the financial statements should refer to the full annual financial report to gain a complete understanding of the State Bar's financial position. The full report is available on the Our Finances page of the State Bar's website at texasbar.com/finances. This report also contains supplementary information in addition to the basic financial statements.

An excerpt of the State Bar's financial statements is presented on the following pages, consisting of the government-wide financial statements, the governmental fund financial statements, and reconciliations between the two statements.

Government-wide Financial Statements
Government-wide financial statements (pages 16-18 of the full report) are presented using full accrual accounting and report the State Bar's financial position, including all capital assets and long-term liabilities, including pension and other post-employment benefits, or retirees' health insurance benefits liabilities.

On the full accrual financial statement, the assets of the State Bar were below its liabilities for the fiscal year that ended May 31, 2020, by $69,305,243 (net position). This is due to the implementation of Governmental Accounting Standards Board, or GASB, Statements No. 68 and No. 75, which require all governments to report pension and retirees' health insurance benefit liability on their government-wide financial statements in an effort to increase transparency. The State Bar participates in a plan to provide health insurance and defined pension benefits to its retirees that is administered by the Employees Retirement System of Texas (ERS), which determines the amount of contributions that the State Bar and all other participating state agencies must make to fund the plans. The State Bar has made all of the required contributions to ERS. The amount of pension and retirees' health insurance benefits liability recorded on the government-wide financial statements represents the State Bar's proportionate share of the plans' total actuarially determined liability based on the State Bar's total contributions to the plan. The State Bar does not control or establish the amount of unfunded liability.

Governmental-fund Financial Statements
Governmental-fund financial statements (pages 19-22 of the full report) are reported using the modified accrual basis of accounting. These financial statements provide a financial indication on the State Bar's ability to meet its purpose using the revenues it receives during the year. The State Bar is prohibited by statute to issue debt, and therefore, must budget and expend its resources in a controlled manner to maintain a healthy fund balance on its fund financial statements.

As of the close of the last fiscal year, the State Bar's governmental funds reported combined ending fund balances of $39,701,398, an increase of $3,709,671 in comparison with the prior year. This increase in fund balance is primarily due to the strong performance of TexasBarCLE, membership dues, and MCLE revenues. As indicated on page 21 of the full report, the general fund, or the operating fund of the State Bar, retained a fund balance of $20,390,297, or 49% of the total general fund expenditures and transfers for the fiscal year that ended May 31, 2020.

STATE BAR of TEXAS

STATEMENT OF NET POSITION: MAY 31, 2020

	GOVERNMENTAL ACTIVITIES	BUSINESS-TYPE ACTIVITIES	TOTAL
ASSETS			
CURRENT ASSETS:			
CASH AND CASH EQUIVALENTS–CASH IN BANK	$20,016,432	—	$20,016,432
INVESTMENTS	30,673,108	—	30,673,108
RECEIVABLES:			
SALES, NET OF AN ALLOWANCE FOR UNCOLLECTIBLES OF $4,797 AND $93,101, RESPECTIVELY	91,152	761,902	853,054
INTEREST RECEIVABLE	121,540	—	121,540
OTHER ACCOUNTS RECEIVABLE	2,675,671	—	2,675,671
INTERNAL BALANCES	(369,774)	369,774	—
INVENTORIES, NET OF OBSOLESCENCE	11,572	402,646	414,218
PREPAID EXPENSES	1,183,441	1,745	1,185,186
TOTAL CURRENT ASSETS	**$54,403,142**	**$1,536,067**	**$55,939,209**
NONCURRENT ASSETS:			
CAPITAL ASSETS:			
LAND	154,074	—	154,074
CONSTRUCTION IN PROGRESS	604,551	180,183	784,734
BUILDINGS, NET	780,927	—	780,927
FURNITURE, FIXTURES, COMPUTER EQUIPMENT, SOFTWARE AND OTHER EQUIPMENT, NET	4,726,886	35,322	4,762,208
TOTAL NONCURRENT ASSETS	**$6,266,438**	**$215,505**	**$6,481,943**
TOTAL ASSETS	**$60,669,580**	**$1,751,572**	**$62,421,152**
DEFERRED OUTFLOWS OF RESOURCES			
OPEB RELATED AMOUNTS	7,769,115	495,901	8,265,016
PENSION RELATED AMOUNTS	20,714,722	1,322,217	22,036,939
TOTAL DEFERRED OUTFLOWS OF RESOURCES	**$28,483,837**	**$1,818,118**	**$30,301,955**
LIABILITIES			
CURRENT LIABILITIES:			
ACCOUNTS PAYABLE	$903,187	—	$903,187
ACCRUED LIABILITIES	473,390	97,550	570,940
DUE TO AGENCY FUNDS	651,380	—	651,380
UNEARNED REVENUE	12,673,787	—	12,673,787
CURRENT PORTION CAPITAL LEASE OBLIGATIONS	77,362	—	77,362
CURRENT PORTION OPEB LIABILITY	949,641	60,615	1,010,256
CURRENT PORTION COMPENSATED ABSENCES	630,981	46,811	677,792
TOTAL CURRENT LIABILITIES	**$16,359,728**	**$204,976**	**$16,564,704**
NONCURRENT LIABILITIES:			
CAPITAL LEASE OBLIGATIONS	98,234	—	98,234
DEFERRED RENT	220,908	—	220,908
OPEB LIABILITY	39,626,404	2,529,345	42,155,749
COMPENSATED ABSENCES	974,698	54,705	1,029,403
NET PENSION LIABILITY	82,055,157	5,237,563	87,292,720
TOTAL NONCURRENT LIABILITIES	**$122,975,401**	**$7,821,613**	**$130,797,014**
TOTAL LIABILITIES	**$139,335,129**	**$8,026,589**	**$147,361,718**
DEFERRED INFLOWS OF RESOURCES			
OPEB RELATED AMOUNTS	10,123,032	646,151	10,769,183
PENSION RELATED AMOUNTS	$3,663,602	$233,847	$3,897,449
TOTAL DEFERRED INFLOWS OF RESOURCES	**$13,786,634**	**$879,998**	**$14,666,632**
NET POSITION (DEFICIT)			
NET INVESTMENT IN CAPITAL ASSETS	$6,090,842	$215,505	$6,306,347
UNRESTRICTED (DEFICIT)	(70,059,188)	(5,552,402)	(75,611,590)
TOTAL NET POSITION (DEFICIT)	**$(63,968,346)**	**$(5,336,897)**	**$(69,305,243)**

STATE BAR of TEXAS

STATEMENT OF ACTIVITIES FOR THE YEAR ENDED MAY 31, 2020

FUNCTIONS/PROGRAMS	EXPENSES	PROGRAM REVENUES: CHARGES FOR SERVICES	PROGRAM REVENUES: OPERATING GRANTS AND CONTRIBUTIONS	NET (EXPENSES) REVENUES AND CHANGES IN NET POSITION: GOVERNMENTAL ACTIVITIES	NET (EXPENSES) REVENUES AND CHANGES IN NET POSITION: BUSINESS-TYPE ACTIVITIES	NET (EXPENSES) REVENUES AND CHANGES IN NET POSITION: TOTAL
PRIMARY GOVERNMENT:						
GOVERNMENTAL ACTIVITIES:						
General government	$11,531,101	$1,135,617	—	$(10,395,484)	—	$(10,395,484)
Public services	5,027,902	439,487	276,106	(4,312,309)	—	(4,312,309)
Member services	25,078,524	18,729,866	1,363,120	(4,985,538)	—	(4,985,538)
Public protection	16,122,685	567,182	38,919	(15,516,584)	—	(15,516,584)
TOTAL GOVERNMENTAL ACTIVITIES	**$57,760,212**	**$20,872,152**	**$1,678,145**	**$(35,209,915)**	**—**	**$(35,209,915)**
BUSINESS-TYPE ACTIVITIES						
Books	4,255,854	2,341,355	—	—	(1,914,499)	(1,914,499)
TOTAL BUSINESS-TYPE ACTIVITIES	**$4,255,854**	**$2,341,355**	**—**	**—**	**$(1,914,499)**	**$(1,914,499)**
TOTAL PRIMARY GOVERNMENTAL ACTIVITIES	**$62,016,066**	**$23,213,507**	**$1,678,145**	**$(35,209,915)**	**$(1,914,499)**	**$(37,124,414)**
GENERAL REVENUES:						
Membership dues				24,872,966	—	24,872,966
Investment income				1,427,944	9,366	1,437,310
Royalty revenue				1,591,507	1,227,197	2,818,704
Other income				448,977	—	448,977
Total general revenues				**$28,341,394**	**$1,236,563**	**$29,577,957**
Change in net position				**$(6,868,521)**	**$(677,936)**	**$(7,546,457)**
Net position (deficit) at beginning of year, as restated				**$(57,099,825)**	**$(4,658,961)**	**$(61,758,786)**
Net position (deficit) at end of year				**$(63,968,346)**	**$(5,336,897)**	**$(69,305,243)**

BALANCE SHEET—GOVERNMENTAL FUNDS: MAY 31, 2020

	GENERAL FUND	SECTIONS AND DIVISIONS	NONMAJOR GOVERNMENTAL FUNDS	TOTAL GOVERNMENTAL FUNDS
ASSETS				
CURRENT ASSETS:				
Cash and cash equivalents–cash in bank	$8,258,304	$7,887,095	$3,871,033	$20,016,432
Investments	21,933,831	1,163,668	7,575,609	30,673,108
Receivables:				
Sales to members and others, net of an allowance for uncollectibles of $4,797	91,152	—	—	91,152
Interest receivable	84,637	162	36,741	121,540
Other accounts receivable	2,428,491	240,202	6,978	2,675,671
Due from other governmental funds	1,115,863	1,048,500	97,803	2,262,166
Inventories	11,572	—	—	11,572
Prepaid items	802,933	74,018	306,490	1,183,441
TOTAL ASSETS	**$34,726,783**	**$10,413,645**	**$11,894,654**	**$57,035,082**
LIABILITIES AND FUND BALANCE				
CURRENT LIABILITIES:				
Accounts payable	$817,114	$86,073	—	$903,187
Accrued liabilities	472,556	16	818	473,390
Due to other governmental funds	1,146,303	198,828	917,035	2,262,166
Due to enterprise fund	369,774	—	—	369,774
Due to agency fund	651,380	—	—	651,380
Unearned revenue	10,879,359	1,193,329	601,099	12,673,787
TOTAL CURRENT LIABILITIES	**$14,336,486**	**$1,478,246**	**$1,518,952**	**$17,333,684**
FUND BALANCES:				
Nonspendable	814,505	74,018	306,490	1,195,013
Committed	4,694,066	8,861,381	10,069,212	23,624,659
Unassigned	14,881,726	—	—	14,881,726
TOTAL FUND BALANCES	**$20,390,297**	**$8,935,399**	**$10,375,702**	**$39,701,398**
TOTAL LIABILITIES AND FUND BALANCES	**$34,726,783**	**$10,413,645**	**$11,894,654**	**$57,035,082**

RECONCILIATION OF THE BALANCE SHEET OF GOVERNMENTAL FUNDS TO THE STATEMENT OF NET POSITION: MAY 31, 2020

Total fund balance–Governmental Funds	$39,701,398
Amounts reported for governmental activities in the statement of net position are difference because:	
Capital assets, including accumulated depreciation, used in governmental activities are not financial resources and, therefore, are not reported in the funds.	6,266,438
Employee benefit related liabilities, and related accounts, are not due and payable in the current period and are not included in the fund financial statements, but are reported in the governmental activities in the statement of net positions. These items include:	
Net pension liability	(82,055,157)
OPEB liability	(40,576,045)
Deferred outflows related to net OPEB liability	7,769,115
Deferred inflows related to net OPEB liability	(10,123,032)
Deferred outflows related to net pension liability	20,714,722
Deferred inflows related to net pension liability	(3,663,602)
Long-term liabilities are not due and payable in the current period and therefore are not reported in the funds. These items include:	
Capital lease payable	(175,596)
Deferred Rent	(220,908)
Compensated absences	(1,605,679)
NET POSITION OF GOVERNMENTAL ACTIVITIES	**$(63,968,346)**

STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE—GOVERNMENTAL FUNDS FOR THE YEAR ENDED MAY 31, 2020

	GENERAL FUND	SECTIONS AND DIVISIONS	NONMAJOR GOVERNMENTAL FUNDS	TOTAL GOVERNMENTAL FUNDS
REVENUES:				
Membership dues	$21,109,358	$2,557,623	1,205,985	$24,872,966
Accounting and management fees	650,351	—	—	650,351
Texas Bar Journal	632,032	—	—	632,032
MCLE fees	3,376,884	—	—	3,376,884
Professional development	13,628,029	599,360	—	14,227,389
Minority affairs	482,478	—	—	482,478
Investment income	939,126	49,873	438,945	1,427,944
Grant revenue	—	—	363,606	363,606
Member benefits	872,804	—	—	872,804
Website	586,256	—	—	586,256
Advertising review	329,300	—	—	329,300
CDC disciplinary fees	567,182	—	—	567,182
Other income	948,966	790,862	877,474	2,617,302
TOTAL REVENUES	**$44,122,766**	**$3,997,718**	**$2,886,010**	**$51,006,494**
EXPENDITURES:				
Executive	$2,882,528	—	—	$2,882,528
Member and public service	2,707,219	—	—	2,707,219
Professional development	9,312,703	—	—	9,312,703
Legal and attorney services	1,981,183	—	—	1,981,183
Access to Justice Commission	626,729	—	—	626,729
Member benefits and research	203,771	—	—	203,771
Attorney compliance	1,856,243	—	—	1,856,243
Operations and security division	1,263,683	—	72,011	1,335,694
Finance and information technology	5,063,957	—	540,402	5,604,359
Communications	2,360,465	—	—	2,360,465
Public protection	10,646,348	—	719,211	11,365,559
Special Services	—	3,293,221	2,300,915	5,594,136
Expenditures related to Board commitments	748,590	—	—	748,590
Capital outlay	—	—	706,334	706,334
Debt service:				
Principal	—	—	169,540	169,540
Interest	—	—	5,753	5,753
TOTAL EXPENDITURES	**$39,653,419**	**$3,293,221**	**$4,514,166**	**$47,460,806**
Excess (deficiency) of revenues over (under) expenditures	4,469,347	704,497	(1,628,156)	3,545,688
OTHER FINANCING SOURCES (USES):				
Proceeds from capital leases	—	—	163,983	163,983
Transfers in	—	—	1,738,800	1,738,800
Transfers out	(1,738,800)	—	—	(1,738,800)
TOTAL OTHER FINANCING SOURCES (USES)	**$(1,738,800)**	—	**$1,902,783**	**$163,983**
Net change in fund balances	2,730,547	704,497	274,627	3,709,671
Fund balances, beginning of year, as restated	17,659,750	8,230,902	10,101,075	35,991,727
Fund balances, end of year	$20,390,297	$8,935,399	$10,375,702	$39,701,398

RECONCILIATION OF THE STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE OF THE GOVERNMENTAL FUNDS TO THE STATEMENT OF ACTIVITIES FOR THE YEAR ENDED MAY 31, 2020

Net change in fund balance — total Governmental Funds	$3,709,671
Amounts reported for governmental activities in the statement of activities are different because:	
Revenues in the statement of activities that do not provide current financial resources are not reported as revenues in the funds	
Governmental funds report capital outlays as expenditures; however, in the statement of activities, the cost of those assets is allocated over their estimated useful lives as depreciation and amortization expense:	
Capital outlay	849,504
Depreciation and amortization expense	(888,188)
Proceeds from capital leases provide current financial resources to governmental funds, but issuing debt increases noncurrent liabilities in the statement of net position; repayment of capital leases is an expenditure in the governmental funds, but the repayment reduces noncurrent liabilities in the statement of net position:	
Proceeds from capital leases	(163,983)
Repayment of capital leases	119,471
Some expenses reported in the statement of activities do not require the use of current financial resources and, therefore, are not reported as expenditures in governmental funds:	
Change in pension liability and related deferred inflows and outflows	(14,731,469)
Change in OPEB liability and related deferred inflows and outflows	4,385,628
Change in deferred rent	(64,968)
Change in compensated absences	(84,187)
Change in net position of governmental activities	$(6,868,521)

Audited financial statements, including notes and supporting schedules, are available at texasbar.com/finances.

the issues

TEXAS YOUNG LAWYERS ASSOCIATION ELECTION 2021

Michael J. Ritter

San Antonio

Reginald D. Wilson Jr.

Houston

The *Texas Bar Journal* asked 2021-2022 Texas Young Lawyers Association president-elect candidates Michael J. Ritter and Reginald D. Wilson Jr. to share their perspectives on issues facing young lawyers in the state. For biographical information on the candidates, go to texasbar.com/elections or see p. 234 of the March issue. Vote online or by paper ballot from April 1 to April 30, 2021. The deadline to cast ballots is 5 p.m. CDT April 30, 2021.

WHY DO YOU WANT TO SERVE AS PRESIDENT OF THE TEXAS YOUNG LAWYERS ASSOCIATION?

RITTER: In 2014, as a fourth-year lawyer, I wanted to quit the law. I hated my job. After clerking, I took a pay cut to get that job. In the Great Recession's aftermath, the job didn't pay enough to cover my living expenses and student loans. I had anxiety, depression, and thoughts of suicide. I wasn't really involved in the community. I could barely get dressed in the morning.

This type of adversity wasn't new to me. I grew up gay in a small town. From ages 12 to 16, I was sexually abused by online predators. My parents sent me to conversion therapy. And my speech disorder went undiagnosed until college.

Now, as a 10th-year lawyer, I have a job I love. I've paid off my student loans. I'm double board certified. I've married the love of my life. I'm very involved in the legal and local community. And this past January, the TYLA board unanimously nominated me to run for TYLA president.

I want to serve as TYLA president to empower other young lawyers, regardless of their past and present challenges, to achieve their goals by never giving up, finding meaningful jobs, and growing as professionals and as people.

WILSON: That's a great question. I recall my first official meeting with TYLA. I was voted in by the TYLA Board of Directors to fill a vacant seat in Houston. It just so happened to be a nominations meeting for the next slate of executive board members and candidates for president-elect. Everyone was on edge, and I thought to myself, *What did I just walk into?* All I knew was that I am passionate about paying it forward, but at the time, I didn't think president-elect would be an option for me. In fact, for years I struggled with self-doubt and depression. However, through my increasing involvement and leadership in TYLA over the past five years, I realized that I'm more than capable of serving as president-elect.

I believe TYLA can utilize more resources on mental health. Mental health is a constant battle in the legal profession. Not only do we solve complex client issues, but we are also tasked with balancing the challenges we face in our personal lives. Serving as president-elect of TYLA will allow me to implement projects and utilize resources to address mental health concerns. Access is the key to overcoming internal struggles.

WHAT ARE THE THREE MOST IMPORTANT ISSUES FACING YOUNG LAWYERS IN TEXAS AND WHAT ROLE SHOULD TYLA PLAY IN ADDRESSING THEM?

RITTER: First, financial stress is caused by outrageously high student loan payments and many jobs just don't offer sufficient pay. Second, jobs with sufficient pay generally come with unacceptably high demands and aren't sufficiently inclusive of diverse attorneys, causing constant stress, burnout, and more severe mental health issues. Third, COVID-19 has created too much uncertainty with changes to the economy and the practice of law.

As TYLA president, my priority would be empowering our members to gain access to better jobs with fairer pay by creating more skills, career, and business development resources. If young lawyers are constantly stressed out by finances and job responsibilities, with no solution in sight, then we will never be the best lawyers and people we can be for ourselves, for our families, or in serving others. With the right tools, young lawyers can overcome these challenges and more.

WILSON: TYLA is the "public service arm" of the State Bar of Texas. TYLA has the resources to change lives, and we are well equipped for addressing public concerns that affect the quality of life, education, development, and growth across the state. As I briefly discussed, I believe mental health is the number one challenge facing young lawyers in Texas, along with diversity and inclusion and work-life balance.

The demand for diversity and inclusion is long overdue. We are in an era where we have access to unlimited information at our fingertips. Let's create programs that enhance diversity and inclusion, internally and externally.

We often think of work-life balance as taking vacation. However, finding balance is more than taking time away from work. It also encompasses your physical, mental, and emotional health. I would like to create partnerships that give Texas lawyers benefits for utilizing services and products.

YOU HAVE SERVED THE PROFESSION IN A NUMBER OF CAPACITIES AT A NUMBER OF LEVELS. WHICH OF THESE EXPERIENCES HAS BEST PREPARED YOU TO LEAD TYLA?

RITTER: Serving as vice president has best prepared me to lead TYLA. As vice president, I've reached out to members for their input on what it means to be a "young lawyer" and engaged newly licensed Texas lawyers on the biggest issues they're facing. Too many leaders don't listen or listen but don't act. As vice president, I've listened to our members. As president, I'd put the following plans into action:

I'd work with the board to improve communication about and access to State Bar and other associations' membership benefits that help with skills, career, and business development; create resources guiding first-year lawyers on all the requirements to maintain their law license; and prioritize, ensuring our projects (such as *I Was the First. You Can Be a Lawyer Too!* and projects on child and animal abuse) were presented in schools and other venues, as a way to reconnect with our communities.

WILSON: It's not the successes and triumphs in my various leadership roles that have prepared me to lead TYLA, but rather, an accumulation of my failures, trials, and tribulations. I'm a firm believer that there is more to learn from failures than successes. Life experiences are the best teachers, and over the years, I've learned to listen more than I speak. Being a leader is about the ability to adapt to various personalities, situations, and tasks, which I've learned during my time on my firm's hiring committee. Furthermore, leadership, to me, means big team/little me. That became more apparent during my time as a two-time football captain for Texas Southern University. I follow the concept that "leaders eat last," which means leaders first take care of their people, and only after they can think of themselves. In other words, every decision I make would benefit TYLA, not me.

IF A COLLEGE STUDENT SOUGHT YOUR ADVICE ON WHETHER TO PURSUE A LEGAL CAREER, HOW WOULD YOU ANSWER?

RITTER: I'd first ask the student about their priorities, concerns, and most importantly what makes them happy on a day-to-day basis. Anyone can be a lawyer, but not everyone will be able to find happiness as a lawyer. I want people to be happy. Law is not the best place for everyone to find their happiness in life.

Law is a great place to learn many skills. For example, in the law, I've learned critical thinking, researching, writing, and career/business development skills. Using those skills, I built my own campaign website, designed my own campaign brochure, and have designed all of my social media posts. These skills are invaluable both in the law and elsewhere, but sometimes the law is not the best path for everyone to take right out of college. But, for those who have a passion for serving others, I'd highly encourage the pursuit of a legal career.

WILSON: Honesty is key when giving any type of advice. I would verify that the college student is entering the profession for the right reasons. Finances come and go, but the passion, drive, and determination that burns deep down inside stays, even when it wavers. We've all witnessed people burn out and leave the profession because money was the motivating factor, but that cannot be the only reason. You have to love what you do. It's challenging to go to work every day and hate your career. That weighs on a person mentally, physically, and emotionally. I would also encourage the student to do their research on the different areas of law. The legal profession allows access to unlimited possibilities, and if the student can merge a hobby or passion with a particular area of law, then it would make their career that much more meaningful.

HOW DO YOU BALANCE YOUR PERSONAL LIFE WITH YOUR PROFESSIONAL LIFE?

RITTER: There's strength in balance and balance in strength. Take frequent breaks to help find balance and strength in your law practice. Don't forget simple ways to stay active around the house. Commit to making time to focus on your physical health. Going for a quick walk can relieve stress in a natural and healthy way. Always remember we can't be perfect all the time and practice means making mistakes. Sometimes, all we need is a good laugh with someone we love; so if you're feeling down, reach out to a loved one. Volunteering to help others can also do wonders for your mental health. Being able to give back was only possible by making tough changes to find happiness in my job and personal life. So, finding the right fit for your job is the best place to start for a work-life balance.

WILSON: Work-life balance is a concerted effort. Creating balance is more than taking vacations. We have to create daily routines that purposefully address our emotional, mental, spiritual, and physical health. Personally, I utilize a few minutes every morning to pray, meditate, and reflect. My wife and I also set aside weekly "family time" with a strict no-cellphone policy. We also enjoy going on hikes, bike rides, walks, and picnics to reset for the upcoming week. Additionally, we are major advocates for "staycations." To me, a staycation is when you book lodging locally and treat the opportunity as a normal vacation. It's no secret creating work-life balance is challenging, especially for young lawyers. It takes patience, time, and practice. I would advise young lawyers to create routines, set boundaries, request time off, and silence their phones. **TBJ**

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 21-9026

THIRTY-SIXTH EMERGENCY ORDER REGARDING THE COVID-19 STATE OF DISASTER

ORDERED that:

1. Governor Abbott has declared a state of disaster in all 254 counties in the State of Texas in response to the imminent threat of the COVID-19 pandemic. This Order is issued pursuant to Section 22.0035(b) of the Texas Government Code.

2. The Thirty-Third Emergency Order (Misc. Dkt. No. 21-9004) is renewed as amended.

3. Subject only to constitutional limitations, all courts in Texas may in any case, civil or criminal—and must to avoid risk to court staff, parties, attorneys, jurors, and the public—without a participant's consent:

a. except as provided in paragraph (b), modify or suspend any and all deadlines and procedures, whether prescribed by statute, rule, or order, for a stated period ending no later than June 1, 2021;

b. in all proceedings under Subtitle E, Title 5 of the Family Code:

(i) extend the initial dismissal date as calculated under Section 263.401(a) only as provided by Section 263.401(b) or (b-1);

(ii) for any case previously retained on the court's docket pursuant to Section 263.401(b) or (b-1), or for any case whose dismissal date was previously modified under an Emergency Order of this Court related to COVID-19, extend the dismissal for an additional period not to exceed 180 days from the date of this Order;

c. except as this Order provides otherwise, allow or require anyone involved in any hearing, deposition, or other proceeding of any kind—including but not limited to a party, attorney, witness, court reporter, grand juror, or petit juror—to participate remotely, such as by teleconferencing, videoconferencing, or other means;

d. consider as evidence sworn statements made out of court or sworn testimony given remotely, out of court, such as by teleconferencing, videoconferencing, or other means;

e. conduct proceedings away from the court's usual location with reasonable notice and access to the participants and the public;

f. require every participant in a proceeding to alert the court if the participant has, or knows of another participant who has: (i) COVID-19 or a fever, chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, sore throat, loss of taste or smell, congestion or runny nose, nausea or vomiting, or diarrhea; or (ii) recently been in close contact with a person who is confirmed to have COVID-19 or exhibiting the symptoms described above;

g. take any other reasonable action to avoid exposing court proceedings to the threat of COVID-19, including requiring compliance with social distancing protocols and face coverings worn over the nose and mouth.

4. Courts should continue to use reasonable efforts to conduct proceedings remotely.

5. Upon request and good cause shown by a court participant other than a juror—including but not limited to a party, an attorney, a witness, or a court reporter—a court must permit the participant to participate remotely in any proceeding, subject to constitutional limitations.

6. A court of appeals may conduct in-person proceedings if the chief justice of the court of appeals adopts minimum standard health protocols for court participants and the public attending court proceedings that will be employed in the courtroom and in public areas of the court building.

7. A district court, statutory or constitutional county court, statutory probate court, justice court, or municipal court may conduct in-person proceedings, including both jury and non-jury proceedings, if the local administrative district judge or presiding judge of a municipal court, as applicable, adopts, in consultation with the judges in the county or municipal court buildings:

a. minimum standard health protocols for court proceedings and the public attending court proceedings that will be employed in all courtrooms and throughout all public areas of the court buildings, including masking, social distancing, or both; and

b. an in-person proceeding schedule for all judges in the county or municipal court buildings, as applicable.

8. A court may conduct an in-person jury proceeding if:

a. to assist with coordination of local resources and

to manage capacity issues, the court has obtained prior approval, including a prior approved schedule, for the jury proceeding from the local administrative district judge or presiding judge of the municipal courts, as applicable;

b. the court has considered on the record any objection or motion related to proceeding with the jury proceeding at least seven days before the jury proceeding or as soon as practicable if the objection or motion is made or filed within seven days of the jury proceeding;

c. the court has established communication protocols to ensure that no court participants have tested positive for COVID-19 within the previous 10 days, have had symptoms of COVID-19 within the previous 10 days, or have had recent known exposure to COVID-19 within the previous 14 days;

d. the court has included with the jury summons information on the precautions that have been taken to protect the health and safety of prospective jurors and a COVID-19 questionnaire to be submitted in advance of the jury selection that elicits from prospective jurors information about their exposure or particular vulnerability to COVID-19; and

e. the court has excused or rescheduled prospective jurors who provide information confirming their COVID-19 infection or exposure, or their particular vulnerability to COVID-19 and request to be excused or rescheduled.

9. In criminal cases where confinement in jail or prison is a potential punishment, remote jury proceedings must not be conducted without appropriate waivers and consent obtained on the record from the defendant and prosecutor. In all other cases, remote jury proceedings must not be conducted unless the court has complied with paragraph 8(b).

10. Except for non-binding proceedings, a court may not permit or require a petit juror to appear remotely unless the court ensures that all potential and selected petit jurors have access to technology to participate remotely.

11. The Office of Court Administration should issue, and update from time to time, best practices to assist courts with safely and effectively conducting in-person and remote court proceedings under this Order.

12. In determining a person's right to possession of and access to a child under a court-ordered possession schedule in a Suit Affecting the Parent-Child Relationship, the existing trial court order shall control in all instances. Possession of and access to a child shall not be affected by any shelter-in-place order or other order restricting movement issued by a governmental entity that arises from the pandemic. The original published school schedule shall also control, and possession and access shall not be affected by the school's closure that arises from the pandemic. Nothing herein prevents parties from altering a possession schedule by agreement if allowed by their court order(s), or courts from modifying their orders on an emergency basis or otherwise.

13. An evidentiary panel in an attorney professional disciplinary or disability proceeding may—and must to avoid risk to panel members, parties, attorneys, and the public—without a participant's consent:

a. conduct the proceeding remotely, such as by teleconferencing, videoconferencing, or other means;

b. allow or require anyone involved in the proceeding—including but not limited to a party, attorney, witness, court reporter—to participate remotely, such as by teleconferencing, videoconferencing, or other means; and

c. consider as evidence sworn statements or sworn testimony given remotely, such as by teleconferencing, videoconferencing, or other means.

14. This Order is effective immediately and expires June 1, 2021, except as otherwise stated herein, unless extended by the Chief Justice of the Supreme Court.

15. The Clerk of the Supreme Court is directed to:

a. post a copy of this Order on www.txcourts.gov;

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

c. send a copy of this Order to the Governor, the Attorney General, and each member of the Legislature.

16. The State Bar of Texas is directed to take all reasonable steps to notify members of the Texas bar of this Order.

Dated: March 5, 2021

JUSTICE BOYD, JUSTICE DEVINE, and JUSTICE BLACKLOCK dissent.

Nathan L. Hecht, Chief Justice
Eva M. Guzman, Justice
Debra H. Lehrmann, Justice
J. Brett Busby, Justice
Jane N. Bland, Justice
Rebeca A. Huddle, Justice

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 21-9029

ORDER SETTING PUBLIC DELIBERATIONS ON AMENDMENTS TO THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT AND THE TEXAS RULES OF DISCIPLINARY PROCEDURE

ORDERED that:

1. On September 29, 2020, in Misc. Dkt. No. 20-9114, the Court submitted proposed amendments to the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure ("Proposed Rules") to the State Bar of Texas members for a referendum.

2. Pursuant to Texas Government Code Section 81.0878, the referendum occurred between February 2, 2021, and March 4, 2021.

3. On March 5, 2021, the State Bar of Texas Executive Director certified that the Proposed Rules were approved by a majority of the votes cast, and, on March 11, 2021, submitted a Petition for Order of Promulgation ("Petition") requesting the Court's adoption of the Proposed Rules effective July 1, 2021. The Petition is attached as Exhibit 1 to this Order.

4. Pursuant to Texas Government Code Section 81.08791, the Court provides notice of deliberations on the Proposed Rules, which will be held on May 4, 2021, from 9:00 a.m. to 12:00 p.m by Zoom videoconferencing. The public may view the Court's deliberations on the Court's YouTube channel.

5. Pursuant to Texas Government Code Section 81.08793, the Court invites written public comments. Written comments should be sent to rulescomments@txcourts.gov. The Court requests that comments be sent by April 15, 2021.

6. 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 elected member of the Legislature; and

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

7. The State Bar of Texas is directed to take all reasonable steps to notify members of the State Bar of Texas of this Order.

Dated: March 15, 2021.

Nathan L. Hecht, Chief Justice
Eva M. Guzman, Justice
Debra H. Lehrmann, Justice
Jeffrey S. Boyd, Justice
John P. Devine, Justice
James D. Blacklock, Justice
J. Brett Busby, Justice
Jane N. Bland, Justice
Rebeca A. Huddle, Justice

EXHIBIT 1

IN THE SUPREME COURT OF TEXAS

IN RE: PETITION OF THE STATE BAR OF TEXAS FOR ORDER OF PROMULGATION	**§ § §**	**MISC. DOCKET NO. 21-**

PETITION FOR ORDER OF PROMULGATION OF AMENDMENTS TO THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT AND THE TEXAS RULES OF DISCIPLINARY PROCEDURE

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF SAID COURT:

COMES NOW the State Bar of Texas (the "Petitioner") and respectfully petitions this Honorable Court for an Order of Promulgation. In support thereof, the Petitioner submits the following:

I.

In accordance with this Court's Order Misc. Docket No. 20-9114 of September 29, 2020, a rules vote referendum of the State Bar members was conducted by both electronic online voting as authorized under TEX. GOV'T CODE § 81.0241, and by written ballot sent to each eligible member. The referendum concerned the following proposed amendments (detailed in Exhibit "A") to the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure:

A. Scope and Objectives of Representation; Clients with Diminished Capacity

Do you favor the adoption of the proposed amendments to Rule 1.02 of the Texas Disciplinary Rules of Professional Conduct and the adoption of Proposed Rule 1.16 of the Texas Disciplinary Rules of Professional Conduct, as published in the January 2021 issue of the *Texas Bar Journal*?

B. Confidentiality of Information – Exception to Permit Disclosure to Secure Legal Ethics Advice

Do you favor the adoption of Proposed Rule 1.05(c)(9) of the Texas Disciplinary Rules of Professional Conduct, as published in the January 2021 issue of the *Texas Bar Journal*?

C. Confidentiality of Information – Exception to Permit Disclosure to Prevent Client Death by Suicide

Do you favor the adoption of Proposed Rule 1.05(c)(10) of the Texas Disciplinary Rules of Professional Conduct, as published in the January 2021 issue of the *Texas Bar Journal*?

D. Conflict of Interest Exceptions for Nonprofit and Limited Pro Bono Legal Services

Do you favor the adoption of Proposed Rule 6.05 of the Texas Disciplinary Rules of Professional Conduct, as published in the January 2021 issue of the *Texas Bar Journal*?

E. Information About Legal Services (Lawyer Advertising and Solicitation)

Do you favor the adoption of the proposed amendments to Part VII of the Texas Disciplinary Rules of Professional Conduct, as published in the January 2021 issue of the *Texas Bar Journal*?

F. Reporting Professional Misconduct and Reciprocal Discipline for Federal Court or Federal Agency Discipline

Do you favor the adoption of the proposed amendments to Rule 8.03 of the Texas Disciplinary Rules of Professional Conduct and Rules 1.06 and 9.01 of the Texas Rules of Disciplinary Procedure, as published in the January 2021 issue of the *Texas Bar Journal*?

G. Assignment of Judges in Disciplinary Complaints and Related Provisions

Do you favor the adoption of the proposed amendments to Rules 3.01–3.03 of the Texas Rules of Disciplinary Procedure, as published in the January 2021 issue of the *Texas Bar Journal*?

H. Voluntary Appointment of Custodian Attorney for Cessation of Practice

Do you favor the adoption of Proposed Rule 13.04 of the Texas Rules of Disciplinary Procedure, as published in the January 2021 issue of the *Texas Bar Journal*?

II.

On February 2, 2021, online voting commenced at 8:00 a.m. CST and written ballots were mailed to each State Bar of Texas member who was registered and eligible to vote in the Rules Vote Referendum. There were 106,760 registered members eligible to vote. Ballots received after 5:00 p.m. CST on March 4, 2021, were not counted.

III.

The results of the vote count were as follows:

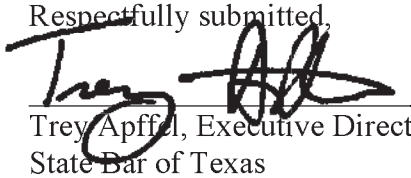
Ballot Item	"YES" VOTES	"NO" VOTES	TOTAL
A	17,587	2,011	19,598
B	18,598	1,116	19,714
C	18,041	1,666	19,707
D	17,573	2,045	19,618
E	15,452	4,125	19,577
F	16,274	3,180	19,454
G	16,756	2,646	19,402
H	18,447	1,198	19,645

The above vote count has been certified by the Executive Director of the State Bar of Texas. Such certification of votes was provided to this Court on March 5, 2021. Based on the results of each ballot item as indicated, Ballot Items A through H were approved by a majority of votes cast. Therefore, Ballot Items A through H were approved by State Bar members under TEX. GOV'T CODE § 81.0878.

IV.

WHEREFORE, premises considered, Petitioner prays that this Court enter an order promulgating the proposed amendments to the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure that were approved by State Bar members pursuant to TEX. GOV'T CODE § 81.0878, and provide that such changes become effective, July 1, 2021.

Respectfully submitted,



Trey Apffel, Executive Director
State Bar of Texas
State Bar No. 00000091
Larry McDougal, President
State Bar of Texas
State Bar No. 00000100
P.O. Box 12487
Austin, Texas 78711

Exhibit A

Proposed Amendments to the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure

Scope and Objectives of Representation; Clients with Diminished Capacity

Texas Disciplinary Rules of Professional Conduct

Rule 1.02. Scope and Objectives of Representation

(a) Subject to paragraphs (b), (c), (d), ~~and~~ (e), and (f), ~~and (g),~~ a lawyer shall abide by a client's decisions:

(1) concerning the objectives and general methods of representation;

(2) whether to accept an offer of settlement of a matter, except as otherwise authorized by law;

(3) In a criminal case, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

(b) A lawyer may limit the scope, objectives and general methods of the representation if the client consents after consultation.

(c) A lawyer shall not assist or counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent. A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel and represent a client in connection with the making of a good faith effort to determine the validity, scope, meaning or application of the law.

(d) When a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in substantial injury to the financial interests or property of another, the lawyer shall promptly make reasonable efforts under the circumstances to dissuade the client from committing the crime or fraud.

(e) When a lawyer has confidential information clearly establishing that the lawyer's client has committed a criminal or fraudulent act in the commission of which the lawyer's services have been used, the lawyer shall make reasonable efforts under the circumstances to persuade the client to take corrective action.

(f) When a lawyer knows that a client expects representation not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

~~(g) A lawyer shall take reasonable action to secure the appointment of a guardian or other legal representative for, or seek other protective orders with respect to, a client whenever the lawyer reasonably believes that the client lacks legal competence and that such action should be taken to protect the client.~~

Comment:

***

~~**Client Under a Disability**~~

~~12. Paragraph (a) assumes that the lawyer is legally authorized to represent the client. The usual attorney-client relationship is established and maintained by consenting adults who possess the legal capacity to agree to the relationship. Sometimes the relationship can be established only by a legally effective appointment of the lawyer to represent a person. Unless the lawyer is legally authorized to act for a person under a disability, an attorney-client relationship does not exist for the purpose of this rule.~~

~~13. If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. If a legal representative has not been appointed, paragraph (g) requires a lawyer in some situations to take protective steps, such as initiating the appointment of a guardian. The lawyer should see to such appointment or take other protective steps when it reasonably appears advisable to do so in order to serve the client's best interests. See Rule 1.05(c)(4), d(1) and (d)(2)(i) in regard to the lawyer's right to reveal to the court the facts reasonably necessary to secure the guardianship or other protective order.~~

Rule 1.16. Clients with Diminished Capacity

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for another reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken, and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action. Such action may include, but is not limited to, consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, attorney ad litem, amicus attorney, or conservator, or submitting an information letter to a court with jurisdiction to initiate guardianship proceedings for the client.

(c) When taking protective action pursuant to (b), the lawyer may disclose the client's confidential information to the extent the lawyer reasonably believes is necessary to protect the client's interests.

Comment:

1. The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. However, maintaining the ordinary client-lawyer relationship may not be possible when the client suffers from a mental impairment, is a minor, or for some other reason has a diminished capacity to make adequately considered decisions regarding representation. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often can understand, deliberate on, and reach conclusions about matters affecting the client's own well-being. For example, some people of advanced age are capable of handling routine financial matters but need special legal protection concerning major transactions. Also, some children are regarded as having opinions entitled to weight in legal proceedings concerning their custody.

2. In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as the client's ability to articulate reasoning leading to a decision, variability of state of mind, and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the lawyer's knowledge of the client's long-term commitments and values.

3. The fact that a client suffers from diminished capacity does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the client has a guardian or other legal representative, the lawyer should, as far as possible, accord the client the normal status of a client, particularly in maintaining communication. If a guardian or other legal representative has been appointed for the client, however, the law may require the client's lawyer to look to the representative for decisions on the client's behalf. If the lawyer represents the guardian as distinct from the ward and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct.

4. The client may wish to have family members or other persons participate in discussions with the lawyer; however, paragraph (a) requires the lawyer to keep the client's interests foremost and, except when taking protective action authorized by paragraph (b), to look to the client, not the family members or other persons, to make decisions on the client's behalf. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor.

Taking Protective Action

5. Paragraph (b) contains a non-exhaustive list of actions a lawyer may take in certain circumstances to protect a client who does not have a guardian or other legal representative. Such actions could include consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as existing durable powers of attorney, or consulting with support groups, professional services, adult-protective agencies, or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the client's wishes and values to the extent known, the client's best interests, and the goals of intruding

into the client's decision-making autonomy to the least extent feasible, maximizing client capacities, and respecting the client's family and social connections.

6. A client with diminished capacity also may cause or threaten physical, financial, or other harm to third parties. In such situations, the client's lawyer should consult applicable law to determine the appropriate response.

7. When a legal representative has not been appointed, the lawyer should consider whether an appointment is reasonably necessary to protect the client's interests. Thus, for example, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, applicable law provides for the appointment of legal representatives in certain circumstances. For example, the Texas Family Code prescribes when a guardian ad litem, attorney ad litem, or amicus attorney should be appointed in a suit affecting the parent-child relationship, and the Texas Probate Code prescribes when a guardian should be appointed for an incapacitated person. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the lawyer's professional judgment. In considering alternatives, the lawyer should be aware of any law that requires the lawyer to advocate on the client's behalf for the action that imposes the least restriction.

Disclosure of the Client's Condition

8. Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. As with any client-lawyer relationship, information relating to the representation of a client is confidential under Rule 1.05. However, when the lawyer is taking protective action, paragraph (b) of this Rule permits the lawyer to make necessary disclosures. Given the risks to the client of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or in seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted will act adversely to the client's interests before discussing matters related to the client.

Emergency Legal Assistance

9. In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person

in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

10. A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

Confidentiality of Information – Exception to Permit Disclosure to Secure Legal Ethics Advice

Texas Disciplinary Rules of Professional Conduct

Rule 1.05. Confidentiality of Information

(a) "Confidential information" includes both "privileged information" and "unprivileged client information." "Privileged information" refers to the information of a client protected by the lawyer-client privilege of Rule 503 of the Texas Rules of Evidence or of Rule 503 of the Texas Rules of Criminal Evidence or by the principles of attorney-client privilege governed by Rule 501 of the Federal Rules of Evidence for United States Courts and Magistrates. "Unprivileged client information" means all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client.

(b) Except as permitted by paragraphs (c) and (d), or as required by paragraphs (e) and (f), a lawyer shall not knowingly:

(1) Reveal confidential information of a client or a former client to:

(i) a person that the client has instructed is not to receive the information; or

(ii) anyone else, other than the client, the client's representatives, or the members, associates, or employees of the lawyer's law firm.

(2) Use confidential information of a client to the disadvantage of the client unless the client consents after consultation.

(3) Use confidential information of a former client to the disadvantage of the former client after the representation is concluded unless the former client consents after consultation or the confidential information has become generally known.

(4) Use privileged information of a client for the advantage of the lawyer or of a third person, unless the client consents after consultation.

(c) A lawyer may reveal confidential information:

***

(9) To secure legal advice about the lawyer's compliance with these Rules.

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Comment:

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Permitted Disclosure or Use When the Lawyer Seeks Legal Advice

23. A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's responsibility to comply with these Rules. In most situations, disclosing or using confidential information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure or use is not impliedly authorized, subparagraph (c)(9) allows such disclosure or use because of the importance of a lawyer's compliance with these Rules.

Confidentiality of Information – Exception to Permit Disclosure to Prevent Client Death by Suicide

Texas Disciplinary Rules of Professional Conduct

Rule 1.05. Confidentiality of Information

(a) "Confidential information" includes both "privileged information" and "unprivileged client information." "Privileged information" refers to the information of a client protected by the lawyer-client privilege of Rule 503 of the Texas Rules of Evidence or of Rule 503 of the Texas Rules of Criminal Evidence or by the principles of attorney-client privilege governed by Rule 501 of the Federal Rules of Evidence for United States Courts and Magistrates. "Unprivileged client information" means all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client.

(b) Except as permitted by paragraphs (c) and (d), or as required by paragraphs (e) and (f), a lawyer shall not knowingly:

(1) Reveal confidential information of a client or a former client to:

(i) a person that the client has instructed is not to receive the information; or

(ii) anyone else, other than the client, the client's representatives, or the members, associates, or employees of the lawyer's law firm.

(2) Use confidential information of a client to the disadvantage of the client unless the client consents after consultation.

(3) Use confidential information of a former client to the disadvantage of the former client after the representation is concluded unless the former client consents after consultation or the confidential information has become generally known.

(4) Use privileged information of a client for the advantage of the lawyer or of a third person, unless the client consents after consultation.

(c) A lawyer may reveal confidential information:

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(10) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from dying by suicide.

***

[No Proposed Comment Changes Associated with this Item]

Conflict of Interest Exceptions for Nonprofit and Limited Pro Bono Legal Services

Texas Disciplinary Rules of Professional Conduct

Rule 6.05. Conflict of Interest Exceptions for Nonprofit and Limited Pro Bono Legal Services

(a) The conflicts of interest limitations on representation in Rules 1.06, 1.07, and 1.09 do not prohibit a lawyer from providing, or offering to provide, limited pro bono legal services unless the lawyer knows, at the time the services are provided, that the lawyer would be prohibited by those limitations from providing the services.

(b) Lawyers in a firm with a lawyer providing, or offering to provide, limited pro bono legal services shall not be prohibited by the imputation provisions of Rules 1.06, 1.07, and 1.09 from representing a client if that lawyer does not:

(1) disclose confidential information of the pro bono client to the lawyers in the firm; or

(2) maintain such information in a manner that would render it accessible to the lawyers in the firm.

(c) The eligibility information that an applicant is required to provide when applying for free legal services or limited pro bono legal services from a program described in subparagraph (d)(1) by itself will not create a conflict of interest if:

(1) the eligibility information is not material to the legal matter; or

(2) the applicant's provision of the eligibility information was conditioned on the applicant's informed consent that providing this information would not by itself prohibit a representation of another client adverse to the applicant.

(d) As used in this Rule, "limited pro bono legal services" means legal services that are:

(1) provided through a pro bono or assisted pro se program sponsored by a court, bar association, accredited law school, or nonprofit legal services program;

(2) short-term services such as legal advice or other brief assistance with pro se documents or transactions, provided either in person or by phone, hotline, internet, or video conferencing; and

(3) provided without any expectation of extended representation of the limited assistance client or of receiving any legal fees in that matter.

(e) As used in this Rule, a lawyer is not "in a firm" with other lawyers solely because the lawyer provides limited pro bono legal services with the other lawyers.

Comment:

1. Nonprofit legal services organizations, courts, law schools, and bar associations have programs through which lawyers provide short-term limited legal services typically to help low-income persons address their legal problems without further representation by the lawyers. In these programs, such as legal-advice hotlines, advice-only clinics, disaster legal services, or programs providing guidance to self-represented litigants, a client-lawyer relationship is established, but there is no expectation that the relationship will continue beyond the limited consultation and there is no expectation that the lawyer will receive any compensation from the client for the services. These programs are normally operated under circumstances in which it is not feasible for a lawyer to check for conflicts of interest as is normally required before undertaking a representation.

2. Application of the conflict of interest rules has deterred lawyers from participating in these programs, preventing persons of limited means from obtaining much needed legal services. To facilitate the provision of free legal services to the public, this Rule creates narrow exceptions to the conflict of interest rules for limited pro bono legal services. These exceptions are justified because the limited and short-term nature of the legal services rendered in such programs reduces the risk that conflicts of interest will arise between clients represented through the program and other clients of the lawyer or the lawyer's firm. Other than the limited exceptions set forth in this Rule, a lawyer remains subject to all applicable conflict of interest rules.

Scope of Representation

3. A lawyer who provides services pursuant to this Rule should secure the client's consent to the limited scope of the representation after explaining to the client what that means in the particular circumstance. See Rule 1.02(b). If a short-term limited representation would not be fully sufficient under the circumstances, the lawyer may offer advice to the client but should also advise the client of the need for further assistance of counsel. See Rule 1.03(b).

Conflicts and the Lawyer Providing Limited Pro Bono Legal Services

4. Paragraph (a) exempts compliance with Rules 1.06, 1.07, and 1.09 for a lawyer providing limited pro bono legal services unless the lawyer actually knows that the representation presents a conflict of interest for the lawyer or for another lawyer in the lawyer's firm. A lawyer providing limited pro bono legal services is not obligated to perform a conflicts check before undertaking the limited representation. If, after commencing a representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis or the lawyer charges a fee for the legal assistance, the exceptions provided by this Rule no longer apply.

Imputation of Conflicts

5. Paragraph (b) provides that a conflict of interest arising from a lawyer's representation covered by this Rule will not be imputed to the lawyers in the pro bono lawyer's firm if the pro bono lawyer complies with subparagraphs (b)(1) and (2).

6. To prevent a conflict of interest arising from limited pro bono legal services from being imputed to the other lawyers in the firm, subparagraph (b)(1) requires that the pro bono lawyer not disclose to any lawyer in the firm any confidential information related to the pro bono representation.

7. Subparagraph (b)(2) covers the retention of documents or other memorialization of confidential information, such as the pro bono lawyer's notes, whether in paper or electronic form. To prevent imputation, a pro bono lawyer who retains confidential information is required by subparagraph (b)(2) to segregate and store it in such a way that no other lawyer in the pro bono lawyer's firm can access it, either physically or electronically.

Eligibility Information

8. Paragraph (c) recognizes the unusual and uniquely sensitive personal information that applicants for free legal assistance may be required to provide. Organizations that receive funding to provide free legal assistance to low-income clients are generally required, as a condition of their funding, to screen the applicants for eligibility and to document eligibility for services paid for by those funding sources. Unlike other lawyers, law firms, and legal departments, these organizations ask for confidential information to determine an applicant's eligibility for free legal assistance and are required to maintain records of such eligibility determinations for potential audit by their funding sources. Required eligibility information typically includes income, asset values, marital status, citizenship or immigration status, and other facts the applicant may consider sensitive. Paragraph (c) provides a limited exception to the conflict of interest provisions contained in Rules 1.06, 1.07, and 1.09 that apply when an applicant provides such information but no legal services are provided. This exception is available only in the two situations described in subparagraphs (c)(1) and (c)(2).

9. The first situation where the paragraph (c) exception is available is where none of the eligibility information is material to an issue in the legal matter. Alternatively, under subparagraph (c)(2), if the applicant provided confidential information after giving informed consent that the eligibility information would not prohibit the persons or entities identified in the consent from representing any other present or future client, then the eligibility information alone will not prohibit the representation. The lawyer should document the receipt of such informed consent, though a formal writing is not required. What constitutes informed consent is discussed in the comments to Rule 1.06.

10. Rule 1.05 continues to apply to the use or disclosure of all confidential information provided during an intake interview. Similarly, Rule 1.09 continues to apply to the representation of a person in a matter adverse to the applicant. Notably, Rule 1.05(c)(2) permits a lawyer to use or disclose information provided during an intake interview if the applicant consents after consultation to such use or disclosure, and Rule 1.09(a) excludes from its restrictions the representation of a person adverse to the applicant in the same or a substantially related matter if the applicant consents to such a representation.

Limited Pro Bono Legal Service Programs

11. This Rule applies only to services offered through a program that meets one of the descriptions in subparagraph (d)(1), regardless of the nature and amount of support provided. Some programs may be jointly sponsored by more than one of the listed sponsor types.

12. The second element of "limited pro bono legal services," set forth in subparagraph (d)(2), is designed to ensure that the services offered are so limited in time and scope that there is little risk that conflicts will arise between clients represented through the program and other clients of the lawyer or the lawyer's firm.

13. The third element of the definition, set forth in subparagraph (d)(3), is that the services are offered and provided without any expectation of either extended representation or the collection of legal fees in the matter. Before agreeing to proceed in the representation beyond "limited pro bono legal services," the lawyer should evaluate the potential conflicts of interest that may arise from the representation as with any other representation. Likewise, the exceptions in paragraphs (a) and (b) do not apply if the lawyer expects to collect any legal fees in the limited assistance matter.

Firm

14. Lawyers are not deemed to be part of the same firm simply because they volunteer through the same pro bono program. Nor will the personal prohibition of a lawyer participating in a pro bono program be imputed to other lawyers participating in the program solely by reason of that volunteer connection.

Information About Legal Services (Lawyer Advertising and Solicitation)

Texas Disciplinary Rules of Professional Conduct

VII. INFORMATION ABOUT LEGAL SERVICES

Rule 7.01. Communications Concerning a Lawyer's Services ~~Firm Names and Letterhead~~

(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 7.06:

> (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.
>
> (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.

(c) Lawyers may practice law under a trade name that is not false or misleading. 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. 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 sufficiently clear that it can reasonably be understood by an ordinary person and 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 in the representation by unlawful use of 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.

(g) If a lawyer who advertises the amount of a verdict secured on behalf of a client knows that the verdict was later reduced or reversed, or that the case was settled for a lesser amount, the lawyer must state in each advertisement of the verdict, with equal or greater prominence, the amount of money that was ultimately received by the client.

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

1. This Rule governs all communications about a lawyer's services, including firm names, letterhead, and professional designations. Whatever means are used to make known a lawyer's

services, statements about them must be truthful and not misleading. As subsequent provisions make clear, some rules apply only to "advertisements" or "solicitation communications." A statement about a lawyer's services falls within those categories only if it was "substantially motivated by pecuniary gain," which means that pecuniary gain was a substantial factor in the making of the statement.

Misleading Truthful Statements

2. Misleading truthful statements are prohibited by this Rule. For example, a truthful statement is misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

Use of Actors

3. The use of an actor to portray a lawyer in a commercial is misleading if there is a substantial likelihood that a reasonable person will conclude that the actor is the lawyer who is offering to provide legal services. Whether a disclaimer—such as a statement that the depiction is a "dramatization" or shows an "actor portraying a lawyer"—is sufficient to make the use of an actor not misleading depends on a careful assessment of the relevant facts and circumstances, including whether the disclaimer is conspicuous and clear. Similar issues arise with respect to actors portraying clients in commercials. Such a communication is misleading if there is a substantial likelihood that a reasonable person will reach erroneous conclusions based on the dramatization.

Intent to Refer Prospective Clients to Another Firm

4. A communication offering legal services is misleading if, at the time a lawyer makes the communication, the lawyer knows or reasonably should know, but fails to disclose, that a prospective client responding to the communication is likely to be referred to a lawyer in another firm.

Unjustified Expectations

5. A communication is misleading if there is a substantial likelihood that it will create unjustified expectations on the part of prospective clients about the results that can be achieved. A communication that truthfully reports results obtained by a lawyer 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. Depending on the facts and circumstances, the inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to mislead the public.

Required Statements and Disclaimers

6. A statement or disclaimer required by these Rules must be presented clearly and conspicuously such that it is likely to be noticed and reasonably understood by an ordinary person. In radio,

television, and Internet advertisements, verbal statements must be spoken in a manner that their content is easily intelligible, and written statements must appear in a size and font, and for a sufficient length of time, that a viewer can easily see and read the statements.

Unsubstantiated Claims and Comparisons

7. An unsubstantiated claim about a lawyer's or law firm's services or fees, or an unsubstantiated comparison of the lawyer's or law firm's services or fees with those of other lawyers or law firms, may be misleading if presented with such specificity as to lead a reasonable person to conclude that the comparison or claim can be substantiated.

Public Education Activities

8. As used in these Rules, the terms "advertisement" and "solicitation communication" do not include statements made by a lawyer that are not substantially motivated by pecuniary gain. Thus, communications which merely inform members of the public about their legal rights and about legal services that are available from public or charitable legal-service organizations, or similar non-profit entities, are permissible, provided they are not misleading. These types of statements may be made in a variety of ways, including community legal education sessions, know-your-rights brochures, public service announcements on television and radio, billboards, information posted on organizational social media sites, and outreach to low-income groups in the community, such as in migrant labor housing camps, domestic violence shelters, disaster resource centers, and dilapidated apartment complexes.

Web Presence

9. A lawyer or law firm may be designated by a distinctive website address, e-mail address, social media username or comparable professional designation that is not misleading and does not otherwise violate these Rules.

Past Success and Results

10. A communication about legal services may be misleading because it omits an important fact or tells only part of the truth. A lawyer who knows that an advertised verdict was later reduced or reversed, or that the case was settled for a lesser amount, must disclose those facts with equal or greater prominence to avoid creating unjustified expectations on the part of potential clients. A lawyer may claim credit for a prior judgement or settlement only if the lawyer played a substantial role in obtaining that result. This standard is satisfied if the lawyer served as lead counsel or was primarily responsible for the settlement. In other cases, whether the standard is met depends on the facts. A lawyer who did not play a substantial role in obtaining an advertised judgment or settlement is subject to discipline for misrepresenting the lawyer's experience and, in some cases, for creating unjustified expectations about the results the lawyer can achieve.

Related Rules

11. It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. *See* Rule 8.04(a)(3); *see also* Rule 8.04(a)(5) (prohibiting communications stating or implying an ability to improperly influence a government agency or official).

~~1. A lawyer or law firm may not practice law using a name that is misleading as to the identity of the lawyers practicing under such name, but the continued use of the name of a deceased or retired member of the firm or of a predecessor firm is not considered to be misleading. Trade names are generally considered inherently misleading. Other types of firm names can be misleading as well, such as a firm name that creates the appearance that lawyers are partners or employees of a single law firm when in fact they are merely associated for the purpose of sharing expenses. In such cases, the lawyers involved may not denominate themselves in any manner suggesting such an ongoing professional relationship as, for example, "Smith and Jones" or "Smith and Jones Associates" or "Smith and Associates." Such titles create the false impression that the lawyers named have assumed a joint professional responsibility for clients' legal affairs. See paragraph (d).~~

~~2. The practice of law firms having offices in more than one state is commonplace. Although it is not necessary that the name of an interstate firm include Texas lawyers, a letterhead including the name of any lawyer not licensed in Texas must indicate the lawyer is not licensed in Texas.~~

~~3. Paragraph (c) is designed to prevent the exploitation of a lawyer's public position for the benefit of the lawyer's firm. Likewise, because it may be misleading under paragraph (a), a lawyer who occupies a judicial, legislative, or public executive or administrative position should not indicate that fact on a letterhead which identifies that person as an attorney in the private practice of law. However, a firm name may include the name of a public official who is actively and regularly practicing law with the firm. But see Rule 7.02(a)(5).~~

~~4. With certain limited exceptions, paragraph (a) forbids a lawyer from using a trade name or fictitious name. Paragraph (e) sets out this same prohibition with respect to advertising in public media or communications seeking professional employment and contains additional restrictions on the use of trade names or fictitious names in those contexts. In a largely overlapping measure, paragraph (f) forbids the use of any such name or designation if it would amount to a "false or misleading communication" under Rule 7.02(a).~~

Rule 7.02. Advertisements ~~Communications Concerning a Lawyer's Services~~

(a) An advertisement of legal services 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 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:

(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"; 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 membership or grants certification only on the basis of published criteria which the Texas Board of Legal Specialization has established as required for such certification.

(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 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.

~~(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;~~

~~(3) 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;~~

~~(4) compares the lawyer's services with other lawyers' services, unless the comparison can be substantiated by reference to verifiable, objective data;~~

~~(5) states or implies that the lawyer is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official;~~

~~(6) designates one or more specific areas of practice in an advertisement in the public media or in a 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)(6) 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)(6) 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 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. These Rules permit the dissemination of information that is not false or misleading about a lawyer's or law firm's name, address, e-mail address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language abilities; names of references and, with their consent, names of clients regularly represented; and other similar information that might invite the attention of those seeking legal assistance.

Communications about Fields of Practice

2. Lawyers often benefit from associating with other lawyers for the development of practice areas. Thus, practitioners have established associations, organizations, institutes, councils, and practice groups to promote, discuss, and develop areas of the law, and to advance continuing education and skills development. While such activities are generally encouraged, participating lawyers must refrain from creating or using designations, titles, or certifications which are false or misleading. A lawyer shall not advertise that the lawyer is a member of an organization whose name implies

that members possess special competence, unless the organization meets the standards of Rule 7.02(b). Merely stating a designated class of membership, such as Associate, Master, Barrister, Diplomate, or Advocate, does not, in itself, imply special competence violative of these Rules.

3. Paragraph (b) of this Rule permits a lawyer to communicate that the lawyer does or does not practice in particular areas of law. A lawyer is generally permitted to state that the lawyer "concentrates in" or is a "specialist," practices a "specialty," or "specializes in" particular fields based on the lawyer's experience, specialized training or education, but such communications are subject to the "false and misleading" standard applied by Rule 7.01 to communications concerning a lawyer's services.

4. The Patent and Trademark Office has a long-established policy of designating lawyers practicing before the Office. The designation of Admiralty practice also has a long historical tradition associated with maritime commerce and the federal courts. A lawyer's communications about these practice areas are not prohibited by this Rule.

Certified Specialist

5. This Rule permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by the Texas Board of Legal Specialization or by an organization that applies standards of experience, knowledge and proficiency to ensure that a lawyer's recognition as a specialist is meaningful and reliable, if the organization is accredited by the Texas Board of Legal Specialization. To ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

~~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 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. Sub-paragraphs (a)(2) and (3) recognize that truthful statements may create "unjustified expectations." 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 unique circumstances would ordinarily preclude advertisements in the public media and 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.~~

~~5. Sub-paragraph (a)(4) recognizes that comparisons of lawyer's services may also be misleading unless those comparisons "can be substantiated by reference to verifiable objective data." Similarly, an unsubstantiated comparison of the 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. 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 so does not violate sub-paragraph (a)(4). Similarly, a lawyer making a referral to another lawyer may express a good faith subjective opinion regarding that other lawyer.~~

~~8. 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 solicitation communication, 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

10. Paragraphs (a)(6), (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 solicitation communication 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)(6) prohibits the designation of a field of practice unless the communicating lawyer is in fact competent in the area.

11. 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)(6) 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).

12. Lawyers who wish to advertise in the public media that they specialize should refer to Rule 7.04. Lawyers who wish to assert a specialty in a solicitation communication should refer to Rule 7.05.

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

14. 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. Solicitation and Other Prohibited Communications ~~Prohibited Solicitations and Payments~~

(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 shall not send, deliver, or transmit, or knowingly permit or cause another person to send, deliver, or transmit, a communication that involves coercion, duress, overreaching, intimidation, or undue influence.

(d) A lawyer shall not send, deliver, or transmit, or knowingly permit or cause another person to send, deliver, or transmit, a solicitation communication to a prospective client, if:

(1) the communication is misleadingly designed to resemble a legal pleading or other legal document; or

(2) the communication is not plainly marked or clearly designated an "ADVERTISEMENT" unless the target of the communication is:

(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.

(e) 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 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.

(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 Texas law.

(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;

(ii) clients are informed of the existence and nature of the agreement; and

(iii) the lawyer exercises independent professional judgment in making referrals.

(f) A lawyer shall not, for the purpose of securing employment, pay, give, advance, or offer to pay, give, or advance anything of value to a prospective client, other than actual litigation expenses and other financial assistance permitted by Rule 1.08(d), or ordinary social hospitality of nominal value.

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

~~(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 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 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:

Solicitation by Public and Charitable Legal Services Organizations

1. Rule 7.01 provides that a "'solicitation communication' is a communication substantially motivated by pecuniary gain." Therefore, the ban on solicitation imposed by paragraph (b) of this Rule does not apply to the activities of lawyers working for public or charitable legal services organizations.

Communications Directed to the Public or Requested

2. A lawyer's communication is not 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 made in response to a request for information, including an electronic search for information. The terms "advertisement" and "solicitation communication" are defined in Rule 7.01(b).

The Risk of Overreaching

3. A potential for overreaching exists when a lawyer, seeking pecuniary gain, solicits a person known to be in need of legal services via in-person or regulated telephone, social media, or other electronic contact. These forms of contact subject a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to fully evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon an immediate response. The situation is fraught with the possibility of undue influence, intimidation, and overreaching.

4. The potential for overreaching that is inherent in in-person or regulated telephone, social media, or other electronic contact justifies their prohibition, since lawyers have alternative means of conveying necessary information. In particular, communications can be sent by regular mail or e-mail, or by other means that do not involve communication in a live or electronically interactive manner. These forms of communications make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, with minimal risk of overwhelming a person's judgment.

5. The contents of live person-to-person contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

Targeted Mail Solicitation

6. Regular mail or e-mail targeted to a person that offers to provide legal services that the lawyer knows or reasonably should know the person needs in a particular matter is a solicitation communication within the meaning of Rule 7.01(b)(2), but is not prohibited by subsection (b) of this Rule. Unlike in-person and electronically interactive communication by "regulated telephone, social media, or other electronic contact," regular mail and e-mail can easily be ignored, set aside, or reconsidered. There is a diminished likelihood of overreaching because no lawyer is physically present and there is evidence in tangible or electronic form of what was communicated. *See Shapero v. Kentucky B. Ass'n*, 486 U.S. 466 (1988).

Personal, Family, Business, and Professional Relationships

7. There is a substantially reduced likelihood that a lawyer would engage in overreaching against a former client, a person with whom the lawyer has a close personal, family, business or professional relationship, or in situations in which the lawyer is motivated by considerations other than pecuniary gain. Nor is there a serious potential for overreaching when the person contacted is a lawyer or is known to routinely use the type of legal services involved for business purposes. Examples include persons who routinely hire outside counsel to represent an entity; entrepreneurs who regularly engage business, employment law, or intellectual property lawyers; small business proprietors who routinely hire lawyers for lease or contract issues; and other people who routinely retain lawyers for business transactions or formations.

Constitutionally Protected Activities

8. Paragraph (b) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee, or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries. *See In re Primus*, 436 U.S. 412 (1978).

Group and Prepaid Legal Services Plans

9. This Rule does not prohibit a lawyer from contacting representatives of organizations or entities that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries, or other third parties. Such communications may provide information about the availability and terms of a plan which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to persons who are seeking legal services for themselves. Rather, it is usually addressed to a fiduciary seeking a supplier of legal services for others, who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the information transmitted is functionally similar to the types of advertisements permitted by these Rules.

Designation as an Advertisement

10. For purposes of paragraph (d)(2) of this Rule, a communication is rebuttably presumed to be "plainly marked or clearly designated an 'ADVERTISEMENT'" if: (a) in the case of a letter transmitted in an envelope, both the outside of the envelope and the first page of the letter state the word "ADVERTISEMENT" in bold face all-capital letters that are 3/8" high on a uncluttered background; (b) in the case of an e-mail message, the first word in the subject line is "ADVERTISEMENT" in all capital letters; and (c) in the case of a text message or message on social media, the first word in the message is "ADVERTISEMENT" in all capital letters.

Paying Others to Recommend a Lawyer

11. This Rule allows a lawyer to pay for advertising and communications, including the usual costs of printed or online directory listings or advertisements, television and radio airtime, domain-name registrations, sponsorship fees, and group advertising. A lawyer may compensate employees, agents, and vendors who are engaged to provide marketing or client development services, such as publicists, public-relations personnel, business-development staff, television and radio station employees or spokespersons, and website designers.

12. This Rule permits lawyers to give nominal gifts as an expression of appreciation to a person for recommending the lawyer's services or referring a prospective client. The gift may not be more than a token item as might be given for holidays, or other ordinary social hospitality. A gift is prohibited if offered or given in consideration of any promise, agreement, or understanding that such a gift would be forthcoming or that referrals would be made or encouraged in the future.

13. A lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rule 5.04(a) (division of fees with nonlawyers) and Rule 5.04(c) (nonlawyer interference with the professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.01 (communications concerning a lawyer's services).

To comply with Rule 7.01, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. *See also* Rule 5.03 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.04(a)(1) (duty to avoid violating the Rules through the acts of another).

Charges of and Referrals by a Legal Services Plan or Lawyer Referral Service

14. A lawyer may pay the usual charges of a legal services plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Qualified referral services are consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements.

15. A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association.

Reciprocal Referral Arrangements

16. A lawyer does not violate paragraph (e) of this Rule by agreeing to refer clients to another lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive, the client is informed of the referral agreement, and the lawyer exercises independent professional judgment in making the referral. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. A lawyer should not enter into a reciprocal referral agreement with another lawyer that includes a division of fees without determining that the agreement complies with Rule 1.04(f).

Meals or Entertainment for Prospective Clients

17. This Rule does not prohibit a lawyer from paying for a meal or entertainment for a prospective client that has a nominal value or amounts to ordinary social hospitality.

~~1. In many situations, in-person, telephone, or other prohibited electronic solicitations by lawyers involve well-known opportunities for abuse of prospective clients. Traditionally, the principal concerns presented by such contacts are that they can overbear the prospective client's will, lead to hasty and ill advised decisions concerning choice of counsel, and be very difficult to police. The approach taken by this Rule may be found in paragraph (f), which prohibits such communications if they are initiated by or on behalf of a lawyer or law firm and will result in the person contacted~~

~~communicating with any person by telephone or other electronic means. Thus, forms of electronic communications are prohibited that pose comparable dangers to face-to-face solicitations, such as soliciting business and "chat rooms" or transmitting an unsolicited, interactive communication to a prospective client that, when accessed, puts the recipient in direct contact with another person. Those that do not present such opportunities for abuse, such as pre-recorded telephone messages requiring a separate return call to speak to or retain an attorney or websites that must be accessed by an interested person and that provide relevant and truthful information concerning a lawyer or law firm, are permitted.~~

~~2. Nonetheless, paragraph (a) and (f) unconditionally prohibit those activities only when profit for the lawyer is a significant motive and the solicitation concerns matters arising out of a particular occurrence, event, or series of occurrences or events. The reason this outright ban is so limited is that there are circumstances where the dangers of such contacts can be reduced by less restrictive means. As long as the conditions of sub-paragraphs (a)(1) through (a)(3) are not violated by a given contact, a lawyer may engage in in-person, telephone, or other electronic solicitations when the solicitation is unrelated to a specific occurrence, event, or series of occurrences or events. Similarly, subject to the same restrictions, in-person, telephone, or other electronic solicitations are permitted where the prospective client either has a family or past or present attorney-client relationship with the lawyer or where the potential client had previously contacted the lawyer about possible employment in the matter.~~

~~3. In addition, Rule 7.03(a) does not prohibit a lawyer for a qualified non-profit organization from in-person, telephone, or other electronic solicitation of prospective clients for purposes related to that organization. Historically and by law, nonprofit legal aid agencies, unions, and other qualified nonprofit organizations and their lawyers have been permitted to solicit clients in-person or by telephone, and more modern electronic means of communication pose no additional threats to consumers justifying a more restrictive treatment. Consequently, Rule 7.03(a) is not in derogation of those organizations' constitutional rights to employ such methods. Attorneys for such nonprofit organizations, however, remain subject to this Rule's general prohibitions against undue influence, intimidation, overreaching, and the like.~~

~~Paying for Solicitation~~

~~4. Rule 7.03(b) does not prohibit a lawyer from paying standard commercial fees for advertising or public relations services rendered in accordance with these Rules. In addition, a lawyer may pay the fees required by a lawyer referral service that meet the requirements of Occupational Code Title 5, Subtitle B, Chapter 952. However, paying, giving, or offering to pay or give anything of value to persons not licensed to practice law who solicit prospective clients for lawyers has always been considered to be against the best interest of both the public and the legal profession. Such actions circumvent these Rules by having a non-lawyer do what a lawyer is ethically proscribed from doing. Accordingly, the practice is forbidden by Rule 7.03(b). As to payments or gifts of value to licensed lawyers for soliciting prospective clients, see Rule 1.04(f).~~

~~5. Rule 7.03(c) prohibits a lawyer from paying or giving value directly to a prospective client or any other person as consideration for employment by that client except as permitted by Rule 1.08(d).~~

~~6. Paragraph (d) prohibits a lawyer from agreeing to or charging for professional employment obtained in violation of Rule 7.03. Paragraph (e) further requires a lawyer to decline business generated by a lawyer referral service unless the lawyer knows or reasonably believes that service is operated in conformity with statutory requirements.~~

~~7. References to "a lawyer" in this and other Rules include lawyers who practice in law firms. A lawyer associated with a firm cannot circumvent these Rules by soliciting or advertising in the name of that firm in a way that violates these Rules. See Rule 7.04(e).~~

Rule 7.04. Filing Requirements for Advertisements and Solicitation Communications ~~Advertisements in the Public Media~~

(a) Except as exempt under Rule 7.05, a lawyer shall file with the Advertising Review Committee, State Bar of Texas, no later than ten (10) days after the date of dissemination of an advertisement of legal services, or ten (10) days after the date of a solicitation communication sent by any means:

(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 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.

(c) A lawyer who desires to secure pre-approval of an advertisement or solicitation communication may submit to the Advertising Review Committee, not fewer 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.

~~(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 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, 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, 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, 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 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.

(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 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:

1. The Advertising Review Committee shall report to the appropriate disciplinary authority any lawyer whom, based on filings with the Committee, it reasonably believes disseminated a communication that violates Rules 7.01, 7.02, or 7.03, or otherwise engaged in conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects. *See* Rule 8.03(a).

Multiple Solicitation Communications

2. Paragraph (a) does not require that a lawyer submit a copy of each written solicitation letter a lawyer sends. If the same form letter is sent to several persons, only a representative sample of each form letter, along with a representative sample of the envelopes used to mail the letters, need be filed.

Requests for Additional Information

3. Paragraph (b) does not empower the Advertising Review Committee to seek information from a lawyer to substantiate statements or representations made or implied in communications about legal services that were not substantially motivated by pecuniary gain.

~~1. Neither Rule 7.04 nor Rule 7.05 prohibits communications authorized by law, such as notice to members of a class in class action litigation.~~

~~**Advertising Areas of Practice and Special Competence**~~

~~2. Paragraphs (a) and (b) permit a lawyer, under the restrictions set forth, to indicate areas of practice in advertisements about the lawyer's services. See also paragraph (d). The restrictions are designed primarily to require that accurate information be conveyed. These restrictions recognize that a lawyer has a right protected by the United States Constitution to advertise publicly, but that the right may be regulated by reasonable restrictions designed to protect the public from false or misleading information. The restrictions contained in Rule 7.04 are based on the experience of the legal profession in the State of Texas and are designed to curtail what experience has shown to be~~

misleading and deceptive advertising. To ensure accountability, sub-paragraph (b)(1) requires identification of at least one lawyer responsible for the content of the advertisement.

3. Because of long-standing tradition 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. As recognized by paragraph (a)(1), a lawyer engaged in patent and trademark practice may hold himself out as concentrating in "intellectual property law," "patents, or trademarks and related matters," or "patent, trademark, copyright law and unfair competition" or any combination of those terms.

4. Paragraph (a)(2) recognizes the propriety of listing a lawyer's name in legal directories according to the areas of law in which the lawyer will accept new matters. The same right is given with respect to lawyer referral service offices, but only if those services comply with statutory guidelines. The restriction in paragraph (a)(2) does not prevent a legal aid agency or prepaid legal services plan from advertising legal services provided under its auspices.

5. Paragraph (a)(3) continues the historical exception that permits advertisements by lawyers to other lawyers in legal directories and legal newspapers (whether written or electronic), subject to the same requirements of truthfulness that apply to all other forms of lawyer advertising. Such advertisements traditionally contain information about the name, location, telephone numbers, and general availability of a lawyer to work on particular legal matters. Other information may be included so long as it is not false or misleading. Because advertisements in these publications are not available to the general public, lawyers who list various areas of practice are not required to comply with paragraph (b).

6. Some advertisements, sometimes known as tombstone advertisements, mention only such matters as the name of the lawyer or law firm, a listing of lawyers associated with the firm, office addresses and telephone numbers, office and telephone service hours, dates of admission to bars, the acceptance of credit cards, and fees. The content of such advertisements is not the kind of information intended to be regulated by Rule 7.04 (b). However, if the advertisement in the public media mentions any area of the law in which the lawyer practices, then, because of the likelihood of misleading material, the lawyer must comply with paragraph (b).

7. Sometimes lawyers choose to advertise in the public media the fact that they have been certified or designated by a particular organization or that they are members of a particular organization. Such statements naturally lead the public to believe that the lawyer possesses special competence in the area of law mentioned. Consequently, in order to ensure that the public will not be misled by such statements, sub-paragraph (b)(2) and paragraph (c) place limited but necessary restrictions upon a lawyer's basic right to advertise those affiliations.

8. Rule 7.04(b)(2) gives lawyers who possess certificates of specialization from the Texas Board of Legal Specialization or other meritorious credentials from organizations approved by the Board the option of stating that fact, provided that the restrictions set forth in subparagraphs (b)(2)(i) and (b)(2)(ii) are followed.

9. Paragraph (c) is intended to ensure against misleading or material variations from the statements required by paragraph (b).

10. Paragraphs (e) and (f) provide the advertising lawyer, the Bar, and the public with requisite records should questions arise regarding the propriety of a public media advertisement. Paragraph (e), like paragraph (b)(1), ensures that a particular attorney accepts responsibility for the advertisement. It is in the public interest and in the interest of the legal profession that the records of those advertisements and approvals be maintained.

Examples of Prohibited Advertising

11. Paragraphs (g) through (o) regulate conduct that has been found to mislead or be likely to mislead the public. Each paragraph is designed to protect the public and to guard the legal profession against these documented misleading practices while at the same time respecting the constitutional rights of any lawyer to advertise.

12. Paragraph (g) prohibits lawyers from misleading the public into believing a non-lawyer portrayor or narrator in the advertisement is one of the lawyers prepared to perform services for the public. It does not prohibit the narration of an advertisement in the third person by an actor, as long as it is clear to those hearing or seeing the advertisement that the actor is not a lawyer prepared to perform services for the public.

13. Contingent fee contracts present unusual opportunities for deception by lawyers or for misunderstanding by the public. By requiring certain disclosures, paragraph (h) safeguards the public from misleading or potentially misleading advertisements that involve representation on a contingent fee basis. The affirmative requirements of paragraph (h) are not triggered solely by the expression of "contingent fee" or "percentage fee" in the advertisement. To the contrary, they encompass advertisements in the public media where the lawyer or firm expresses a mere willingness or potential willingness to render services for a contingent fee. Therefore, statements in an advertisement such as "no fee if no recovery" or "fees in the event of recovery only" are clearly included as a form of advertisement subject to the disclosure requirements of paragraph (h).

14. Paragraphs (i), (j), (k) and (l) jointly address the problem of advertising that experience has shown misleads the public concerning the fees that will be charged, the location where services will be provided, or the attorney who will be performing these services. Together they prohibit the same sort of "bait and switch" advertising tactics by lawyers that are universally condemned.

15. Paragraph (i) requires a lawyer who advertises a specific fee or range of fees in the public media to honor those commitments 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 itself specifies a shorter period. In no event, however, is a lawyer required to honor an advertised fee or range of fees for more than one year after publication.

16. Paragraph (j) prohibits advertising the availability of a satellite office unless the requirements of subparagraphs (1) or (2) are satisfied. Paragraph (j) does not require, however, that a lawyer or

firm specify which of several properly advertised offices is its "principal" one, as long as the principal office is among those advertised and the advertisement discloses the city or town in which that office is located. Experience has shown that, in the absence of such regulation, members of the public have been misled into employing a lawyer in a distant city who advertises that there is a nearby satellite office, only to learn later that the lawyer is rarely available to the client because the nearby office is seldom open or is staffed only by lay personnel. Paragraph (j) is not intended to restrict the ability of legal services programs to advertise satellite offices in remote parts of the program's service area even if those satellite offices are staffed irregularly by attorneys. Otherwise low-income individuals in and near such communities might be denied access to the only legal services truly available to them.

17. When a lawyer or firm advertises, the public has a right to expect that lawyer or firm will perform the legal services. Experience has shown that attorneys not in the same firm may create a relationship wherein one will finance advertising for the other in return for referrals. Nondisclosure of such a referral relationship is misleading to the public. Accordingly, paragraph (k) prohibits such a relationship between an advertising lawyer and a lawyer who finances the advertising unless the advertisement discloses the nature of the financial relationship between the two lawyers. Paragraph (l) addresses the same problem from a different perspective, requiring a lawyer who advertises the availability of legal services and who know or should know at the time that the advertisement is placed in the media that business will likely be referred to another lawyer or firm, to include a conspicuous statement of that fact in any such advertising. This requirement applies whether or not the lawyer to whom the business is referred is financing the advertisements of the referring lawyer. It does not, however, require disclosure of all possible scenarios under which a referral could occur, such as an unforeseen need to associate with a specialist in accordance with Rule 1.01(a) or the possibility of a referral if a prospective client turns out to have a conflict of interest precluding representation by the advertising lawyer. Lawyers participating in any type of arrangement to refer cases must comply with Rule 1.04(f).

18. Paragraph (m) protects the public by forbidding mottos, slogans, and jingles that are false or misleading. There are, however, mottos, slogans, and jingles that are informative rather than false or misleading. Accordingly, paragraph (m) recognizes an advertising lawyer's constitutional right to include appropriate mottos, slogans, and jingles in advertising.

19. Some lawyers choose to band together in a cooperative or joint venture to advertise. Although those arrangements are lawful, the fact that several independent lawyers have joined together in a single advertisement increases the risk of misrepresentation or other forms of inappropriate expression. Special care must be taken to ensure that cooperative advertisements identify each cooperating lawyer, state that each cooperating lawyer is paying for the advertisement, and accurately describe the professional qualifications of each cooperating lawyer. See paragraph (o). Furthermore, each cooperating lawyer must comply with the filing requirements of Rule 7.07. See paragraph (p).

20. The use of disclosures, disclaimers and qualifying information is necessary to inform the public about various aspects of a lawyer or firm's practice in public media advertising and solicitation communications. In order to ensure that disclaimers required by these rules are conspicuously displayed, paragraph (q) requires that such statements be presented in the same manner as the

~~communication and with prominence equal to that of the matter to which it refers. For example, in a television advertisement that necessitates the use of a disclaimer, if a statement or claim is made verbally, the disclaimer should also be included verbally in the commercial. When a statement or claim appears in print, the accompanying disclaimer must also appear in print with equal prominence and legibility.~~

Rule 7.05. Communications Exempt from Filing Requirements ~~Prohibited Written, Electronic, Or Digital Solicitations~~

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:

(a) 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;

(b) information and links posted on a law firm website, except the contents of the website homepage, unless that information is otherwise exempt from filing;

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

(d) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or law firm, or a business card;

(e) a professional newsletter in any media that it is sent, delivered, or transmitted only to:

(1) existing or former clients;

(2) other lawyers or professionals;

(3) persons known by the lawyer to be experienced users of the type of legal services involved for business matters;

(4) members of a nonprofit organization which has requested that members receive the newsletter; or

(5) persons who have asked to receive the newsletter;

(f) a solicitation communication directed by a lawyer to:

(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;

(g) 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;

(h) an advertisement that:

(1) identifies a lawyer or a firm as a contributor or sponsor of a charitable, community, or public interest program, activity, or event; and

(2) 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;

(i) communications that contain only the following types of information:

(1) the name of the law firm and any lawyer in the law firm, office addresses, electronic addresses, social media names and addresses, telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession, such as "attorney," "lawyer," "law office," or "firm;"

(2) the areas of law in which lawyers in the firm practice, concentrate, specialize, or intend to practice;

(3) the admission of a lawyer in the law firm to the State Bar of Texas or the bar of any court or jurisdiction;

(4) the educational background of the lawyer;

(5) technical and professional licenses granted by this state and other recognized licensing authorities;

(6) foreign language abilities;

(7) areas of law in which a lawyer is certified by the Texas Board of Legal Specialization or by an organization that is accredited by the Texas Board of Legal Specialization;

(8) identification of prepaid or group legal service plans in which the lawyer participates;

(9) the acceptance or nonacceptance of credit cards;

(10) fees charged for an initial consultation or routine legal services;

(11) identification of a lawyer or a law firm as a contributor or sponsor of a charitable, community, or public interest program, activity or event;

(12) any disclosure or statement required by these Rules; and

(13) any other information specified in orders promulgated by the Supreme Court of Texas.

~~(a) A lawyer shall not send, deliver, or transmit or knowingly permit or knowingly cause another person to send, deliver, or transmit 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 (g) through (q) 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 (f) of this Rule, a written, electronic, or digital solicitation communication to prospective clients for the purpose of obtaining professional employment:~~

~~(1) shall, in the case of a non-electronically transmitted written communication, be plainly marked "ADVERTISEMENT" on its first page, and on the face of the envelope 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;~~

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

(5) shall disclose how the lawyer obtained the information prompting 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.

(d) 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.

(e) 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, 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.~~

~~(f) 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:

1. This Rule exempts certain types of communications from the filing requirements of Rule 7.04. Communications that were not substantially motivated by pecuniary gain do not need to be filed.

Website-Related Filings

2. While the entire website of a lawyer or law firm must be compliant with Rules 7.01 and 7.02, the only material on the website that may need to be filed pursuant to this Rule is the contents of the homepage. However, even a homepage does not need to be filed if the contents of the homepage are exempt from filing under the provisions of this Rule. Under Rule 7.04(c), a lawyer may voluntarily seek pre-approval of any material that is part of the lawyer's website.

~~1. Rule 7.03 deals with in-person, telephone, and other prohibited electronic contact between a lawyer and a prospective client wherein the lawyer seeks professional employment. Rule 7.04 deals with advertisements in the public media by a lawyer seeking professional employment. This Rule deals with solicitations between a lawyer and a prospective client. Typical examples are letters or other forms of correspondence (including those sent, delivered, or transmitted electronically), recorded telephone messages, audiotapes, videotapes, digital media, and the like, addressed to a prospective client.~~

~~2. Written, audio, audio-visual, and other forms of electronic solicitations raise more concerns than do comparable advertisements. Being private, they are more difficult to monitor, and for that reason paragraph (e) requires retention for four years of certain information regarding all such solicitations. See also Rule 7.07(a). Paragraph (a) addresses such concerns as well as problems stemming from exceptionally outrageous communications such as solicitations involving fraud,~~

intimidation, or deceptive and misleading claims. Because receipt of multiple solicitations appears to be most pronounced and vexatious in situations involving accident victims, paragraphs (b)(1), (b)(2), (c)(1), (c)(4) and (c)(5) require that the envelope or other packaging used to transmit the communication, as well as the communication itself, plainly disclose that the communication is an advertisement, while paragraphs (b)(5) and (c)(3) require disclosure of the source of information if the solicitation was prompted by a specific occurrence.

3. Because experience has shown that many written, audio, audio-visual, electronic mail, and other forms of electronic solicitations have been intrusive or misleading by reason of being personalized or being disguised as some form of official communication, special prohibitions against such practices are necessary. The requirements of paragraph (b) and (c) greatly lessen those dangers of deception and harassment.

4. Newsletters or other works published by a lawyer that are not circulated for the purpose of obtaining professional employment are not within the ambit of paragraph (b) or (c).

5. This Rule also regulates audio, audio-visual, or other forms of electronic communications being used to solicit business. It includes such formats as recorded telephone messages, movies, audio or audio-visual recordings or tapes, digital media, the Internet, and other comparable forms of electronic communications. It requires that such communications comply with all of the substantive requirements applicable to written solicitations that are compatible with the different forms of media involved, as well as with all requirements related to approval of the communications and retention of records concerning them. See paragraphs (c), (d), and (e).

6. In addition to addressing these special problems posed by solicitations, Rule 7.05 regulates the content of those communications. It does so by incorporating the standards of Rule 7.02 and those of Rule 7.04 that would apply to the solicitation were it instead a comparable form of advertisement in the public media. See paragraphs (a)(2) and (3). In brief, this approach means that, except as provided in paragraph (f), a lawyer may not include or omit anything from a solicitation unless the lawyer could do so were the communication a comparable form of advertisement in the public media.

7. Paragraph (f) provides that the restrictions in paragraph (b) and (c) do not apply in certain situations because the dangers of deception, harassment, vexation and overreaching are quite low. For example, a written solicitation may be directed to a family member or a present or a former client, or in response to a request by a prospective client without stating that it is an advertisement. Similarly, a written solicitation may be used in seeking general employment in commercial matters from a bank or other corporation, when there is neither concern with specific existing legal problems nor concern with a particular past event or series of events. All such communications, however, remain subject to Rule 7.02 and paragraphs (h) through (o) of Rule 7.04. See subparagraph (a)(2).

8. In addition, paragraph (f) allows such communications in situations not involving the lawyer's pecuniary gain. For purposes of these rules, it is presumed that communications made on behalf of a nonprofit legal aid agency, union, or other qualified nonprofit organization are not motivated

~~by a desire for, or by the possibility of obtaining, pecuniary gain, but that presumption may be rebutted.~~

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 7.03~~5~~, 8.04(a)(2), or 8.04(a)(9), engaged in by that lawyer personally or by another ~~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 7.03~~5~~, 8.04(a)(2), or 8.04(a)(9), engaged in by another ~~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 7.03~~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.

Comment:

1. This Rule deals with three different situations: personal disqualification, imputed disqualification, and referral-related payments.

Personal Disqualification

2. Paragraph (a) addresses situations where the lawyer in question has violated the specified advertising rules or other provisions dealing with serious crimes and barratry. The Rule makes clear that the offending lawyer cannot accept or continue to provide representation. This prohibition also applies if the lawyer ordered, encouraged, or knowingly permitted another to violate the Rules in question.

Imputed Disqualification

3. Second, paragraph (b) addresses whether other lawyers in a firm can provide representation if a person or entity in the firm has violated the specified advertising rules or other provisions dealing with serious crimes and barratry, or has ordered, encouraged, or knowingly permitted another to engage in such conduct. The Rule clearly indicates that the other lawyers cannot provide representation if they knew or reasonably should have known that the employment was procured by conduct prohibited by the stated Rules. This effectively means that, in such cases, the

disqualification that arises from a violation of the advertising rules and other specified provisions is imputed to other members of the firm.

Restriction on Referral-Related Payments

4. Paragraph (c) deals with situations where a lawyer knows or reasonably should know that a case referred to the lawyer or the lawyer's law firm was procured by violation of the advertising rules or other specified provisions. The Rule makes clear that, even if the lawyer's conduct did not violate paragraph (a) or (b), the lawyer can continue to provide representation only if the lawyer does not pay anything of value, such as a referral fee, to the person making the referral.

~~Selection of a lawyer by a client often is a result of the advice and recommendation of third parties--relatives, friends, acquaintances, business associates, and other lawyers. Although that method of referral is perfectly legitimate, the client is best served if the recommendation is disinterested and informed. All lawyers must guard against creating situations where referral from others is the consequence of some form of prohibited compensation or from some form of false or misleading communication, or by virtue of some other violation of any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9). Paragraph (a) forbids a lawyer who violated these rules in procuring employment in a matter from accepting or continuing employment in that matter. This prohibition also applies if the lawyer ordered, encouraged, or knowingly permitted another to violate these rules. Paragraph (b) also forbids a lawyer from accepting or continuing employment in a matter if the lawyer knows or reasonably should know that a member or employee of his or her firm or any other person has procured employment in a matter as a result of conduct that violates these rules. Paragraph (c) addresses the situation where the lawyer becomes aware that the matter was procured in violation of these rules by an attorney or individual, but had no culpability. In such circumstances, the lawyer may continue employment and collect a fee in the matter as long as nothing of value is given to the attorney or individual involved in the violation of the rule(s). See also Rule 7.03(d), forbidding a lawyer to charge or collect a fee where the misconduct involves violations of Rule 7.03(a), (b), or (c).~~

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

~~(a) Except as provided in paragraphs (c) and (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas, 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;~~

~~(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 for the sole purpose of defraying the expense of enforcing the rules related to such solicitations.

(b) 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 the first dissemination of an advertisement in the public media, a copy of each of 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 will 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;

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

(5) 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,

(d) A lawyer who desires to secure an advance advisory opinion, referred to as a request for pre-approval, concerning compliance of a contemplated solicitation communication or advertisement 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) or (b), 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. 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.

(e) The filing requirements of paragraphs (a), (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:

(i) the name of 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 particular areas of law in which the lawyer or firm 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;

(iv) 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;

(v) 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;

(ix) the acceptance or nonacceptance of credit cards;

(x) 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 sent, delivered, or transmitted only to:

(i) existing or former clients;

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

(f) if requested by the Advertising Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in any advertisement in the public media or solicitation communication by which the lawyer seeks paid professional employment.

Comment:

1. Rule 7.07 covers the filing requirements for public media advertisements (see Rule 7.04) and written, recorded, or other electronic solicitations (see Rule 7.05). Rule 7.07(a) deals with solicitation communication sent by a lawyer to one or more specified prospective clients. Rule 7.07(b) deals with advertisements in the public media. Rule 7.07(c) deals with websites. Although websites are a form of advertisement in the public media, they require different treatment in some respects and so are dealt with separately. Each provision allows the Bar to charge a fee for reviewing submitted materials, but requires that fee be set solely to defray the expenses of enforcing those provisions.

2. Copies of non-exempt solicitations communication or advertisements in public media (including websites) must be provided to the Advertising Review Committee of the State Bar of Texas either in advance or concurrently with dissemination, together with the fee required by the State Bar of Texas Board of Directors. Presumably, the Advertising Review Committee will report to the appropriate grievance committee any lawyer whom it finds from the reviewed products has disseminated an advertisement in the public media or solicitation communication that violates Rules 7.02, 7.03, 7.04, or 7.05, or, at a minimum, any lawyer whose violation raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects. See Rule 8.03(a).

3. Paragraph (a) does not require that a lawyer submit a copy of each and every written solicitation letter a lawyer sends. If the same form letter is sent to several people, only a representative sample of each form letter, along with a representative sample of the envelopes used to mail the letters, need be filed.

4. A lawyer wishing to do so may secure an advisory opinion from the Advertising Review Committee concerning any proposed advertisement in the public media (including a website) or any solicitation communication in advance of its first use or dissemination by complying with Rule 7.07(d). This procedure is intended as a service to those lawyers who want to resolve any possible doubts about their proposed advertisements' or solicitations' compliance with these Rules before utilizing them. Its use is purely optional. No lawyer is required to obtain advance clearance of any advertisement in the public media (including a website) or any solicitation communication from the State Bar. Although a finding of noncompliance by the Advertising Review Committee is not binding in a disciplinary proceeding, a finding of compliance is binding in favor of the submitting lawyer as to all materials actually submitted for review, as long as the lawyer's presentation to the Advertising Review Committee in connection with that advisory opinion is true and not misleading.

5. Under its Internal Rules and Operating Procedures, the Advertising Review Committee is to complete its evaluations no later than 25 days after the date of receipt of a filing. The only way that the Committee can extend that review period is to: (1) determine that there is reasonable doubt whether the advertisement or solicitation communication complies with these Rules; (2) conclude that further examination is warranted but cannot be completed within the 25-day period; and (3) advise the lawyer of those determinations in writing within that 25 day period. The Committee's Internal Rules and Operating Procedures also provide that a failure to send such a communication to the lawyer within the 25-day period constitutes approval of the advertisement or solicitation communication. Consequently, if an attorney submits an advertisement in the public media (including a website) or a solicitation communication to the Committee for advance approval not less than 30 days prior to the date of first dissemination as required by these Rules, the attorney will receive an assessment of that advertisement or communication before the date of its first intended use.

6. Consistent with the effort to protect the first amendment rights of lawyers while ensuring the right of the public to be free from misleading advertising and the right of the Texas legal profession to maintain its integrity, paragraph (e) exempts certain types of advertisements and solicitation communications prepared for the purpose of seeking paid professional employment from the filing requirements of paragraphs (a), (b), and (c). Those types of communications need not be filed at all if they were not prepared to secure paid professional employment.

7. For the most part, the types of exempted advertising listed in sub-paragraphs (e)(1) to (e)(5) are objective and less likely to result in false, misleading or fraudulent content. Similarly the types of exempted solicitation communications listed in sub-paragraphs (e)(6) to (e)(8) are those found least likely to result in harm to the public. See Rule 7.05(f), and comment 7 to Rule 7.05. The fact that a particular advertisement or solicitation made by a lawyer is exempted from the filing requirements of this Rule does not exempt a lawyer from the other applicable obligations of these Rules. See generally Rules 7.01 through 7.06.

8. Paragraph (f) does not empower the Advertising Review Committee to seek information from a lawyer to substantiate statements or representations made or implied in advertisements or written communications that do not seek to obtain paid professional employment for that lawyer.

Reporting Professional Misconduct and Reciprocal Discipline for Federal Court or Federal Agency Discipline

Texas Disciplinary Rules of Professional Conduct

Rule 8.03. Reporting Professional Misconduct

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(f) A lawyer who has been disciplined by the attorney-regulatory agency of another jurisdiction, or by a federal court or federal agency, must notify the chief disciplinary counsel within 30 days of the date of the order or judgment. The notice must include a copy of the order or judgment. For purposes of this paragraph, "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.

***

Texas Rules of Disciplinary Procedure

1.06. Definitions:

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CC. "Professional Misconduct" includes:

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2. Attorney conduct that occurs in another ~~state or in the District of Columbia~~ jurisdiction, including before any federal court or federal agency, and results in the disciplining of an attorney in that other jurisdiction, if the conduct is Professional Misconduct under the Texas Disciplinary Rules of Professional Conduct.

***

9.01. Orders From Other Jurisdictions: Upon receipt of information indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction, including by any federal court or federal agency, the Chief Disciplinary Counsel shall diligently seek to obtain a certified copy of the order or judgment of discipline from the other jurisdiction, and file it with the Board of Disciplinary Appeals along with a petition requesting that the attorney be disciplined in Texas. 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. For purposes of this Part, "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.

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[No Proposed Comment Changes Associated with this Item]

Assignment of Judges in Disciplinary Complaints and Related Provisions

Texas Rules of Disciplinary Procedure

3.01. Disciplinary Petition: If the Respondent timely elects to have the Complaint heard by a district court, with or without a jury, in accordance with Rule 2.15, the Chief Disciplinary Counsel shall, not more than sixty days after receipt of Respondent's election to proceed in district court, notify the ~~Supreme Court of Texas~~ Presiding Judge of the administrative judicial region covering the county of appropriate venue of the Respondent's election by transmitting a copy of the Disciplinary Petition in the name of the Commission to the ~~Clerk of the Supreme Court of Texas~~ Presiding Judge. The petition must contain:

A. Notice that the action is brought by the Commission for Lawyer Discipline, a committee of the State Bar.

B. The name of the Respondent and the fact that he or she is an attorney licensed to practice law in the State of Texas.

C. A request for assignment of an active district judge to preside in the case.

~~C~~D. Allegations necessary to establish proper venue.

~~D~~E. A description of the acts and conduct that gave rise to the alleged Professional Misconduct in detail sufficient to give fair notice to Respondent of the claims made, which factual allegations may be grouped in one or more counts based upon one or more Complaints.

~~E~~F. A listing of the specific rules of the Texas Disciplinary Rules of Professional Conduct allegedly violated by the acts or conduct, or other grounds for seeking Sanctions.

~~F~~G. A demand for judgment that the Respondent be disciplined as warranted by the facts and for any other appropriate relief.

~~G~~H. Any other matter that is required or may be permitted by law or by these rules.

3.02. Assignment of Judge:

A. Assignment Generally: Upon receipt of a Disciplinary Petition, the ~~Clerk of the Supreme Court of Texas shall promptly bring the Petition to the attention of the Supreme Court. The Supreme Court~~ Presiding Judge shall ~~promptly appoint~~ assign an active district judge ~~who does not reside in the Administrative Judicial District in which the Respondent resides~~ whose district does not include the county of appropriate venue to preside in the case. An assignment of a judge from another region shall be under Chapter 74, Government Code. The Presiding Judge ~~and the Clerk of the Supreme Court~~ shall transmit a copy of the ~~Supreme Court's appointing~~

Presiding Judge's assignment order to the Chief Disciplinary Counsel. Should the judge so ~~appointed~~ assigned be unable to fulfill the ~~appointment~~ assignment, he or she shall immediately notify the ~~Clerk of the Supreme Court~~ Presiding Judge, and the ~~Supreme Court~~ Presiding Judge shall ~~appoint~~ assign a replacement judge whose district does not include the county of appropriate venue. ~~The~~ A judge ~~appointed~~ assigned under this Rule shall be subject to ~~objection,~~ recusal or disqualification as provided by ~~law~~ the Texas Rules of Civil Procedure and the laws of this state. The ~~objection,~~ motion seeking recusal or motion to disqualify must be filed by either party ~~not later than sixty days from the date the Respondent is served with the Supreme Court's order appointing the judge~~ within the time provided by Rule 18a, Texas Rules of Civil Procedure. In the event of ~~objection,~~ recusal or disqualification, the ~~Supreme Court~~ Presiding Judge shall ~~appoint~~ assign a replacement judge ~~within thirty days~~ whose district does not include the county of appropriate venue. If an active district judge assigned to a disciplinary case becomes a retired, senior, or former judge, he or she may be assigned by the Presiding Judge to continue to preside in the case, provided the judge has been placed on a visiting judge list. If the Presiding Judge decides not to assign the retired, senior, or former judge to continue to preside in the case, the Presiding Judge shall assign an active district judge whose district does not include the county of appropriate venue. A visiting judge may only be assigned if he or she was originally assigned to preside in the case while an active judge. Any judge assigned under this Rule is not subject to objection under Chapter 74, Government Code.

B. Transfer of Case: If the county of alleged venue is successfully challenged, the case shall be transferred to the county of proper venue. If the case is transferred to a county in the assigned judge's district, the judge must recuse himself or herself, unless the parties waive the recusal on the record. In the event of recusal, the Presiding Judge of the administrative judicial region shall assign a replacement judge whose district does not include the county of appropriate venue. If the case is transferred to a county outside the administrative judicial region of the Presiding Judge who made the assignment, the Presiding Judge of the administrative judicial region where the case is transferred shall oversee assignment for the case and the previously assigned judge shall continue to preside in the case unless he or she makes a good cause objection to continued assignment, in which case the Presiding Judge shall assign a replacement judge whose district does not include the county of appropriate venue.

3.03. Filing, Service and Venue: After the trial judge has been ~~appointed~~ assigned, the Chief Disciplinary Counsel shall promptly file the Disciplinary Petition and a copy of the ~~Supreme Court's appointing Order~~ Presiding Judge's assignment order with the district clerk of the county of alleged venue. The Respondent shall then be served as in civil cases generally with a copy of the Disciplinary Petition and a copy of the ~~Supreme Court's appointing Order~~ Presiding Judge's assignment order. In a Disciplinary Action, venue shall be in the county of Respondent's principal place of practice; or if the Respondent does not maintain a place of practice within the State of Texas, in the county of Respondent's residence; or if the Respondent maintains neither a residence nor a place of practice within the State of Texas, then in the county where the alleged Professional Misconduct occurred, in whole or in part. In all other instances, venue is in Travis County, Texas.

[No Proposed Comment Associated with this Item]

Voluntary Appointment of Custodian Attorney for Cessation of Practice

Texas Rules of Disciplinary Procedure

13.04. Voluntary Appointment of Custodian Attorney for Cessation of Practice: In lieu of the procedures set forth in Rules 13.02 and 13.03, an attorney ceasing practice or planning for the cessation of practice ("appointing attorney" for purposes of this Rule) may voluntarily designate a Texas attorney licensed and in good standing to act as custodian ("custodian attorney" for purposes of this Rule) to assist in the final resolution and closure of the attorney's practice. The terms of the appointing documents, which shall be signed and acknowledged by the appointing attorney and custodian attorney, may include any of the following duties assumed:

A. Examine the client matters, including files and records of the appointing attorney's practice, and obtain information about any matters that may require attention.

B. Notify persons and entities that appear to be clients of the appointing attorney of the cessation of the law practice, and suggest that they obtain other legal counsel.

C. Apply for extension of time before any court or any administrative body pending the client's employment of other legal counsel.

D. With the prior consent of the client, file such motions and pleadings on behalf of the client as are required to prevent prejudice to the client's rights.

E. Give appropriate notice to persons or entities that may be affected other than the client.

F. Arrange for surrender or delivery to the client of the client's papers, files, or other property.

The custodian attorney shall observe the attorney-client relationship and privilege as if the custodian were the attorney of the client and may make only such disclosures as are necessary to carry out the purposes of this Rule. Except for intentional misconduct or gross negligence, no person acting as custodian attorney under this Rule shall incur any liability by reason of the actions taken pursuant to this Rule.

The privileges and limitations of liability contained herein shall not apply to any legal representation taken over by the custodian attorney.

[No Proposed Comment Associated with this Item]

[Clean Version]

Proposed Amendments to the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure

Scope and Objectives of Representation; Clients with Diminished Capacity

Texas Disciplinary Rules of Professional Conduct

Rule 1.02. Scope and Objectives of Representation

(a) Subject to paragraphs (b), (c), (d), (e), and (f), a lawyer shall abide by a client's decisions:

(1) concerning the objectives and general methods of representation;

(2) whether to accept an offer of settlement of a matter, except as otherwise authorized by law;

(3) In a criminal case, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

(b) A lawyer may limit the scope, objectives and general methods of the representation if the client consents after consultation.

(c) A lawyer shall not assist or counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent. A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel and represent a client in connection with the making of a good faith effort to determine the validity, scope, meaning or application of the law.

(d) When a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in substantial injury to the financial interests or property of another, the lawyer shall promptly make reasonable efforts under the circumstances to dissuade the client from committing the crime or fraud.

(e) When a lawyer has confidential information clearly establishing that the lawyer's client has committed a criminal or fraudulent act in the commission of which the lawyer's services have been used, the lawyer shall make reasonable efforts under the circumstances to persuade the client to take corrective action.

(f) When a lawyer knows that a client expects representation not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

Comment:

[Comment Paragraphs 1 – 11 Unchanged]

Rule 1.16. Clients with Diminished Capacity

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for another reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken, and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action. Such action may include, but is not limited to, consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, attorney ad litem, amicus attorney, or conservator, or submitting an information letter to a court with jurisdiction to initiate guardianship proceedings for the client.

(c) When taking protective action pursuant to (b), the lawyer may disclose the client's confidential information to the extent the lawyer reasonably believes is necessary to protect the client's interests.

Comment:

1. The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. However, maintaining the ordinary client-lawyer relationship may not be possible when the client suffers from a mental impairment, is a minor, or for some other reason has a diminished capacity to make adequately considered decisions regarding representation. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often can understand, deliberate on, and reach conclusions about matters affecting the client's own well-being. For example, some people of advanced age are capable of handling routine financial matters but need special legal protection concerning major transactions. Also, some children are regarded as having opinions entitled to weight in legal proceedings concerning their custody.

2. In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as the client's ability to articulate reasoning leading to a decision, variability of state of mind, and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the lawyer's knowledge of the client's long-term commitments and values.

3. The fact that a client suffers from diminished capacity does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the client has a guardian or other legal representative, the lawyer should, as far as possible, accord the client the normal status of a client,

particularly in maintaining communication. If a guardian or other legal representative has been appointed for the client, however, the law may require the client's lawyer to look to the representative for decisions on the client's behalf. If the lawyer represents the guardian as distinct from the ward and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct.

4. The client may wish to have family members or other persons participate in discussions with the lawyer; however, paragraph (a) requires the lawyer to keep the client's interests foremost and, except when taking protective action authorized by paragraph (b), to look to the client, not the family members or other persons, to make decisions on the client's behalf. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor.

Taking Protective Action

5. Paragraph (b) contains a non-exhaustive list of actions a lawyer may take in certain circumstances to protect a client who does not have a guardian or other legal representative. Such actions could include consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as existing durable powers of attorney, or consulting with support groups, professional services, adult-protective agencies, or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the client's wishes and values to the extent known, the client's best interests, and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities, and respecting the client's family and social connections.

6. A client with diminished capacity also may cause or threaten physical, financial, or other harm to third parties. In such situations, the client's lawyer should consult applicable law to determine the appropriate response.

7. When a legal representative has not been appointed, the lawyer should consider whether an appointment is reasonably necessary to protect the client's interests. Thus, for example, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, applicable law provides for the appointment of legal representatives in certain circumstances. For example, the Texas Family Code prescribes when a guardian ad litem, attorney ad litem, or amicus attorney should be appointed in a suit affecting the parent-child relationship, and the Texas Probate Code prescribes when a guardian should be appointed for an incapacitated person. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the lawyer's professional judgment. In considering alternatives, the lawyer should be aware of any law that requires the lawyer to advocate on the client's behalf for the action that imposes the least restriction.

Disclosure of the Client's Condition

8. Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. As with any client-lawyer relationship, information relating to the representation of a client is confidential under Rule 1.05. However, when the lawyer is taking protective action, paragraph (b) of this Rule permits the lawyer to make necessary disclosures. Given the risks to the client of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or in seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted will act adversely to the client's interests before discussing matters related to the client.

Emergency Legal Assistance

9. In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

10. A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

Confidentiality of Information – Exception to Permit Disclosure to Secure Legal Ethics Advice

Texas Disciplinary Rules of Professional Conduct

Rule 1.05. Confidentiality of Information

(a) "Confidential information" includes both "privileged information" and "unprivileged client information." "Privileged information" refers to the information of a client protected by the lawyer-client privilege of Rule 503 of the Texas Rules of Evidence or of Rule 503 of the Texas Rules of Criminal Evidence or by the principles of attorney-client privilege governed by Rule 501 of the Federal Rules of Evidence for United States Courts and Magistrates. "Unprivileged client information" means all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client.

(b) Except as permitted by paragraphs (c) and (d), or as required by paragraphs (e) and (f), a lawyer shall not knowingly:

(1) Reveal confidential information of a client or a former client to:

(i) a person that the client has instructed is not to receive the information; or

(ii) anyone else, other than the client, the client's representatives, or the members, associates, or employees of the lawyer's law firm.

(2) Use confidential information of a client to the disadvantage of the client unless the client consents after consultation.

(3) Use confidential information of a former client to the disadvantage of the former client after the representation is concluded unless the former client consents after consultation or the confidential information has become generally known.

(4) Use privileged information of a client for the advantage of the lawyer or of a third person, unless the client consents after consultation.

(c) A lawyer may reveal confidential information:

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(9) To secure legal advice about the lawyer's compliance with these Rules.

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Comment:

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Permitted Disclosure or Use When the Lawyer Seeks Legal Advice

23. A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's responsibility to comply with these Rules. In most situations, disclosing or using confidential information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure or use is not impliedly authorized, subparagraph (c)(9) allows such disclosure or use because of the importance of a lawyer's compliance with these Rules.

Confidentiality of Information – Exception to Permit Disclosure to Prevent Client Death by Suicide

Texas Disciplinary Rules of Professional Conduct

Rule 1.05. Confidentiality of Information

(a) "Confidential information" includes both "privileged information" and "unprivileged client information." "Privileged information" refers to the information of a client protected by the lawyer-client privilege of Rule 503 of the Texas Rules of Evidence or of Rule 503 of the Texas Rules of Criminal Evidence or by the principles of attorney-client privilege governed by Rule 501 of the Federal Rules of Evidence for United States Courts and Magistrates. "Unprivileged client information" means all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client.

(b) Except as permitted by paragraphs (c) and (d), or as required by paragraphs (e) and (f), a lawyer shall not knowingly:

(1) Reveal confidential information of a client or a former client to:

(i) a person that the client has instructed is not to receive the information; or

(ii) anyone else, other than the client, the client's representatives, or the members, associates, or employees of the lawyer's law firm.

(2) Use confidential information of a client to the disadvantage of the client unless the client consents after consultation.

(3) Use confidential information of a former client to the disadvantage of the former client after the representation is concluded unless the former client consents after consultation or the confidential information has become generally known.

(4) Use privileged information of a client for the advantage of the lawyer or of a third person, unless the client consents after consultation.

(c) A lawyer may reveal confidential information:

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(10) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from dying by suicide.

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[No Proposed Comment Changes Associated with this Item]

Conflict of Interest Exceptions for Nonprofit and Limited Pro Bono Legal Services

Texas Disciplinary Rules of Professional Conduct

Rule 6.05. Conflict of Interest Exceptions for Nonprofit and Limited Pro Bono Legal Services

(a) The conflicts of interest limitations on representation in Rules 1.06, 1.07, and 1.09 do not prohibit a lawyer from providing, or offering to provide, limited pro bono legal services unless the lawyer knows, at the time the services are provided, that the lawyer would be prohibited by those limitations from providing the services.

(b) Lawyers in a firm with a lawyer providing, or offering to provide, limited pro bono legal services shall not be prohibited by the imputation provisions of Rules 1.06, 1.07, and 1.09 from representing a client if that lawyer does not:

(1) disclose confidential information of the pro bono client to the lawyers in the firm; or

(2) maintain such information in a manner that would render it accessible to the lawyers in the firm.

(c) The eligibility information that an applicant is required to provide when applying for free legal services or limited pro bono legal services from a program described in subparagraph (d)(1) by itself will not create a conflict of interest if:

(1) the eligibility information is not material to the legal matter; or

(2) the applicant's provision of the eligibility information was conditioned on the applicant's informed consent that providing this information would not by itself prohibit a representation of another client adverse to the applicant.

(d) As used in this Rule, "limited pro bono legal services" means legal services that are:

(1) provided through a pro bono or assisted pro se program sponsored by a court, bar association, accredited law school, or nonprofit legal services program;

(2) short-term services such as legal advice or other brief assistance with pro se documents or transactions, provided either in person or by phone, hotline, internet, or video conferencing; and

(3) provided without any expectation of extended representation of the limited assistance client or of receiving any legal fees in that matter.

(e) As used in this Rule, a lawyer is not "in a firm" with other lawyers solely because the lawyer provides limited pro bono legal services with the other lawyers.

Comment:

1. Nonprofit legal services organizations, courts, law schools, and bar associations have programs through which lawyers provide short-term limited legal services typically to help low-income persons address their legal problems without further representation by the lawyers. In these programs, such as legal-advice hotlines, advice-only clinics, disaster legal services, or programs providing guidance to self-represented litigants, a client-lawyer relationship is established, but there is no expectation that the relationship will continue beyond the limited consultation and there is no expectation that the lawyer will receive any compensation from the client for the services. These programs are normally operated under circumstances in which it is not feasible for a lawyer to check for conflicts of interest as is normally required before undertaking a representation.

2. Application of the conflict of interest rules has deterred lawyers from participating in these programs, preventing persons of limited means from obtaining much needed legal services. To facilitate the provision of free legal services to the public, this Rule creates narrow exceptions to the conflict of interest rules for limited pro bono legal services. These exceptions are justified because the limited and short-term nature of the legal services rendered in such programs reduces the risk that conflicts of interest will arise between clients represented through the program and other clients of the lawyer or the lawyer's firm. Other than the limited exceptions set forth in this Rule, a lawyer remains subject to all applicable conflict of interest rules.

Scope of Representation

3. A lawyer who provides services pursuant to this Rule should secure the client's consent to the limited scope of the representation after explaining to the client what that means in the particular circumstance. See Rule 1.02(b). If a short-term limited representation would not be fully sufficient under the circumstances, the lawyer may offer advice to the client but should also advise the client of the need for further assistance of counsel. See Rule 1.03(b).

Conflicts and the Lawyer Providing Limited Pro Bono Legal Services

4. Paragraph (a) exempts compliance with Rules 1.06, 1.07, and 1.09 for a lawyer providing limited pro bono legal services unless the lawyer actually knows that the representation presents a conflict of interest for the lawyer or for another lawyer in the lawyer's firm. A lawyer providing limited pro bono legal services is not obligated to perform a conflicts check before undertaking the limited representation. If, after commencing a representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis or the lawyer charges a fee for the legal assistance, the exceptions provided by this Rule no longer apply.

Imputation of Conflicts

5. Paragraph (b) provides that a conflict of interest arising from a lawyer's representation covered by this Rule will not be imputed to the lawyers in the pro bono lawyer's firm if the pro bono lawyer complies with subparagraphs (b)(1) and (2).

6. To prevent a conflict of interest arising from limited pro bono legal services from being imputed to the other lawyers in the firm, subparagraph (b)(1) requires that the pro bono lawyer not disclose to any lawyer in the firm any confidential information related to the pro bono representation.

7. Subparagraph (b)(2) covers the retention of documents or other memorialization of confidential information, such as the pro bono lawyer's notes, whether in paper or electronic form. To prevent imputation, a pro bono lawyer who retains confidential information is required by subparagraph (b)(2) to segregate and store it in such a way that no other lawyer in the pro bono lawyer's firm can access it, either physically or electronically.

Eligibility Information

8. Paragraph (c) recognizes the unusual and uniquely sensitive personal information that applicants for free legal assistance may be required to provide. Organizations that receive funding to provide free legal assistance to low-income clients are generally required, as a condition of their funding, to screen the applicants for eligibility and to document eligibility for services paid for by those funding sources. Unlike other lawyers, law firms, and legal departments, these organizations ask for confidential information to determine an applicant's eligibility for free legal assistance and are required to maintain records of such eligibility determinations for potential audit by their funding sources. Required eligibility information typically includes income, asset values, marital status, citizenship or immigration status, and other facts the applicant may consider sensitive. Paragraph (c) provides a limited exception to the conflict of interest provisions contained in Rules 1.06, 1.07, and 1.09 that apply when an applicant provides such information but no legal services are provided. This exception is available only in the two situations described in subparagraphs (c)(1) and (c)(2).

9. The first situation where the paragraph (c) exception is available is where none of the eligibility information is material to an issue in the legal matter. Alternatively, under subparagraph (c)(2), if the applicant provided confidential information after giving informed consent that the eligibility information would not prohibit the persons or entities identified in the consent from representing any other present or future client, then the eligibility information alone will not prohibit the representation. The lawyer should document the receipt of such informed consent, though a formal writing is not required. What constitutes informed consent is discussed in the comments to Rule 1.06.

10. Rule 1.05 continues to apply to the use or disclosure of all confidential information provided during an intake interview. Similarly, Rule 1.09 continues to apply to the representation of a person in a matter adverse to the applicant. Notably, Rule 1.05(c)(2) permits a lawyer to use or disclose information provided during an intake interview if the applicant consents after consultation to such use or disclosure, and Rule 1.09(a) excludes from its restrictions the representation of a person adverse to the applicant in the same or a substantially related matter if the applicant consents to such a representation.

Limited Pro Bono Legal Service Programs

11. This Rule applies only to services offered through a program that meets one of the descriptions in subparagraph (d)(1), regardless of the nature and amount of support provided. Some programs may be jointly sponsored by more than one of the listed sponsor types.

12. The second element of "limited pro bono legal services," set forth in subparagraph (d)(2), is designed to ensure that the services offered are so limited in time and scope that there is little risk that conflicts will arise between clients represented through the program and other clients of the lawyer or the lawyer's firm.

13. The third element of the definition, set forth in subparagraph (d)(3), is that the services are offered and provided without any expectation of either extended representation or the collection of legal fees in the matter. Before agreeing to proceed in the representation beyond "limited pro bono legal services," the lawyer should evaluate the potential conflicts of interest that may arise from the representation as with any other representation. Likewise, the exceptions in paragraphs (a) and (b) do not apply if the lawyer expects to collect any legal fees in the limited assistance matter.

Firm

14. Lawyers are not deemed to be part of the same firm simply because they volunteer through the same pro bono program. Nor will the personal prohibition of a lawyer participating in a pro bono program be imputed to other lawyers participating in the program solely by reason of that volunteer connection.

Information About Legal Services (Lawyer Advertising and Solicitation)

Texas Disciplinary Rules of Professional Conduct

VII. INFORMATION ABOUT LEGAL SERVICES

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 7.06:

> (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.
>
> (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.

(c) Lawyers may practice law under a trade name that is not false or misleading. 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. 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 sufficiently clear that it can reasonably be understood by an ordinary person and 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 in the representation by unlawful use of 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.

(g) If a lawyer who advertises the amount of a verdict secured on behalf of a client knows that the verdict was later reduced or reversed, or that the case was settled for a lesser amount, the lawyer must state in each advertisement of the verdict, with equal or greater prominence, the amount of money that was ultimately received by the client.

Comment:

1. This Rule governs all communications about a lawyer's services, including firm names, letterhead, and professional designations. Whatever means are used to make known a lawyer's services, statements about them must be truthful and not misleading. As subsequent provisions make clear, some rules apply only to "advertisements" or "solicitation communications." A statement about a lawyer's services falls within those categories only if it was "substantially motivated by pecuniary gain," which means that pecuniary gain was a substantial factor in the making of the statement.

Misleading Truthful Statements

2. Misleading truthful statements are prohibited by this Rule. For example, a truthful statement is misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

Use of Actors

3. The use of an actor to portray a lawyer in a commercial is misleading if there is a substantial likelihood that a reasonable person will conclude that the actor is the lawyer who is offering to provide legal services. Whether a disclaimer—such as a statement that the depiction is a "dramatization" or shows an "actor portraying a lawyer"—is sufficient to make the use of an actor not misleading depends on a careful assessment of the relevant facts and circumstances, including whether the disclaimer is conspicuous and clear. Similar issues arise with respect to actors portraying clients in commercials. Such a communication is misleading if there is a substantial likelihood that a reasonable person will reach erroneous conclusions based on the dramatization.

Intent to Refer Prospective Clients to Another Firm

4. A communication offering legal services is misleading if, at the time a lawyer makes the communication, the lawyer knows or reasonably should know, but fails to disclose, that a prospective client responding to the communication is likely to be referred to a lawyer in another firm.

Unjustified Expectations

5. A communication is misleading if there is a substantial likelihood that it will create unjustified expectations on the part of prospective clients about the results that can be achieved. A communication that truthfully reports results obtained by a lawyer 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. Depending on the facts and circumstances, the inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to mislead the public.

Required Statements and Disclaimers

6. A statement or disclaimer required by these Rules must be presented clearly and conspicuously such that it is likely to be noticed and reasonably understood by an ordinary person. In radio, television, and Internet advertisements, verbal statements must be spoken in a manner that their content is easily intelligible, and written statements must appear in a size and font, and for a sufficient length of time, that a viewer can easily see and read the statements.

Unsubstantiated Claims and Comparisons

7. An unsubstantiated claim about a lawyer's or law firm's services or fees, or an unsubstantiated comparison of the lawyer's or law firm's services or fees with those of other lawyers or law firms, may be misleading if presented with such specificity as to lead a reasonable person to conclude that the comparison or claim can be substantiated.

Public Education Activities

8. As used in these Rules, the terms "advertisement" and "solicitation communication" do not include statements made by a lawyer that are not substantially motivated by pecuniary gain. Thus, communications which merely inform members of the public about their legal rights and about legal services that are available from public or charitable legal-service organizations, or similar non-profit entities, are permissible, provided they are not misleading. These types of statements may be made in a variety of ways, including community legal education sessions, know-your-rights brochures, public service announcements on television and radio, billboards, information posted on organizational social media sites, and outreach to low-income groups in the community, such as in migrant labor housing camps, domestic violence shelters, disaster resource centers, and dilapidated apartment complexes.

Web Presence

9. A lawyer or law firm may be designated by a distinctive website address, e-mail address, social media username or comparable professional designation that is not misleading and does not otherwise violate these Rules.

Past Success and Results

10. A communication about legal services may be misleading because it omits an important fact or tells only part of the truth. A lawyer who knows that an advertised verdict was later reduced or reversed, or that the case was settled for a lesser amount, must disclose those facts with equal or greater prominence to avoid creating unjustified expectations on the part of potential clients. A lawyer may claim credit for a prior judgement or settlement only if the lawyer played a substantial role in obtaining that result. This standard is satisfied if the lawyer served as lead counsel or was primarily responsible for the settlement. In other cases, whether the standard is met depends on the facts. A lawyer who did not play a substantial role in obtaining an advertised judgment or settlement is subject to discipline for misrepresenting the lawyer's experience and, in some cases, for creating unjustified expectations about the results the lawyer can achieve.

Related Rules

11. It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. *See* Rule 8.04(a)(3); *see also* Rule 8.04(a)(5) (prohibiting communications stating or implying an ability to improperly influence a government agency or official).

Rule 7.02. Advertisements

(a) An advertisement of legal services 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 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:

> (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"; 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 membership or grants certification only on the basis of published criteria which the Texas Board of Legal Specialization has established as required for such certification.

(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 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.

Comment:

1. These Rules permit the dissemination of information that is not false or misleading about a lawyer's or law firm's name, address, e-mail address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language abilities; names of references and, with their consent, names of clients regularly represented; and other similar information that might invite the attention of those seeking legal assistance.

Communications about Fields of Practice

2. Lawyers often benefit from associating with other lawyers for the development of practice areas. Thus, practitioners have established associations, organizations, institutes, councils, and practice groups to promote, discuss, and develop areas of the law, and to advance continuing education and skills development. While such activities are generally encouraged, participating lawyers must refrain from creating or using designations, titles, or certifications which are false or misleading. A lawyer shall not advertise that the lawyer is a member of an organization whose name implies that members possess special competence, unless the organization meets the standards of Rule 7.02(b). Merely stating a designated class of membership, such as Associate, Master, Barrister, Diplomate, or Advocate, does not, in itself, imply special competence violative of these Rules.

3. Paragraph (b) of this Rule permits a lawyer to communicate that the lawyer does or does not practice in particular areas of law. A lawyer is generally permitted to state that the lawyer "concentrates in" or is a "specialist," practices a "specialty," or "specializes in" particular fields based on the lawyer's experience, specialized training or education, but such communications are subject to the "false and misleading" standard applied by Rule 7.01 to communications concerning a lawyer's services.

4. The Patent and Trademark Office has a long-established policy of designating lawyers practicing before the Office. The designation of Admiralty practice also has a long historical tradition associated with maritime commerce and the federal courts. A lawyer's communications about these practice areas are not prohibited by this Rule.

Certified Specialist

5. This Rule permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by the Texas Board of Legal Specialization or by an organization that applies standards of experience, knowledge and proficiency to ensure that a lawyer's recognition as a specialist is meaningful and reliable, if the organization is accredited by the Texas Board of Legal Specialization. To ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

Rule 7.03. Solicitation and Other Prohibited Communications

(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 shall not send, deliver, or transmit, or knowingly permit or cause another person to send, deliver, or transmit, a communication that involves coercion, duress, overreaching, intimidation, or undue influence.

(d) A lawyer shall not send, deliver, or transmit, or knowingly permit or cause another person to send, deliver, or transmit, a solicitation communication to a prospective client, if:

(1) the communication is misleadingly designed to resemble a legal pleading or other legal document; or

(2) the communication is not plainly marked or clearly designated an "ADVERTISEMENT" unless the target of the communication is:

(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.

(e) 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 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.

(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 Texas law.

(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;

(ii) clients are informed of the existence and nature of the agreement; and

(iii) the lawyer exercises independent professional judgment in making referrals.

(f) A lawyer shall not, for the purpose of securing employment, pay, give, advance, or offer to pay, give, or advance anything of value to a prospective client, other than actual litigation expenses and other financial assistance permitted by Rule 1.08(d), or ordinary social hospitality of nominal value.

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

Comment:

Solicitation by Public and Charitable Legal Services Organizations

1. Rule 7.01 provides that a "'solicitation communication' is a communication substantially motivated by pecuniary gain." Therefore, the ban on solicitation imposed by paragraph (b) of this Rule does not apply to the activities of lawyers working for public or charitable legal services organizations.

Communications Directed to the Public or Requested

2. A lawyer's communication is not 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 made in response to a request for information, including an electronic search for information. The terms "advertisement" and "solicitation communication" are defined in Rule 7.01(b).

The Risk of Overreaching

3. A potential for overreaching exists when a lawyer, seeking pecuniary gain, solicits a person known to be in need of legal services via in-person or regulated telephone, social media, or other electronic contact. These forms of contact subject a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to fully evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon an immediate response. The situation is fraught with the possibility of undue influence, intimidation, and overreaching.

4. The potential for overreaching that is inherent in in-person or regulated telephone, social media, or other electronic contact justifies their prohibition, since lawyers have alternative means of conveying necessary information. In particular, communications can be sent by regular mail or e-mail, or by other means that do not involve communication in a live or electronically interactive manner. These forms of communications make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, with minimal risk of overwhelming a person's judgment.

5. The contents of live person-to-person contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

Targeted Mail Solicitation

6. Regular mail or e-mail targeted to a person that offers to provide legal services that the lawyer knows or reasonably should know the person needs in a particular matter is a solicitation communication within the meaning of Rule 7.01(b)(2), but is not prohibited by subsection (b) of this Rule. Unlike in-person and electronically interactive communication by "regulated telephone, social media, or other electronic contact," regular mail and e-mail can easily be ignored, set aside, or reconsidered. There is a diminished likelihood of overreaching because no lawyer is physically present and there is evidence in tangible or electronic form of what was communicated. *See Shapero v. Kentucky B. Ass'n*, 486 U.S. 466 (1988).

Personal, Family, Business, and Professional Relationships

7. There is a substantially reduced likelihood that a lawyer would engage in overreaching against a former client, a person with whom the lawyer has a close personal, family, business or professional relationship, or in situations in which the lawyer is motivated by considerations other than pecuniary gain. Nor is there a serious potential for overreaching when the person contacted is a lawyer or is known to routinely use the type of legal services involved for business purposes.

Examples include persons who routinely hire outside counsel to represent an entity; entrepreneurs who regularly engage business, employment law, or intellectual property lawyers; small business proprietors who routinely hire lawyers for lease or contract issues; and other people who routinely retain lawyers for business transactions or formations.

Constitutionally Protected Activities

8. Paragraph (b) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee, or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries. *See In re Primus*, 436 U.S. 412 (1978).

Group and Prepaid Legal Services Plans

9. This Rule does not prohibit a lawyer from contacting representatives of organizations or entities that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries, or other third parties. Such communications may provide information about the availability and terms of a plan which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to persons who are seeking legal services for themselves. Rather, it is usually addressed to a fiduciary seeking a supplier of legal services for others, who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the information transmitted is functionally similar to the types of advertisements permitted by these Rules.

Designation as an Advertisement

10. For purposes of paragraph (d)(2) of this Rule, a communication is rebuttably presumed to be "plainly marked or clearly designated an 'ADVERTISEMENT'" if: (a) in the case of a letter transmitted in an envelope, both the outside of the envelope and the first page of the letter state the word "ADVERTISEMENT" in bold face all-capital letters that are 3/8" high on a uncluttered background; (b) in the case of an e-mail message, the first word in the subject line is "ADVERTISEMENT" in all capital letters; and (c) in the case of a text message or message on social media, the first word in the message is "ADVERTISEMENT" in all capital letters.

Paying Others to Recommend a Lawyer

11. This Rule allows a lawyer to pay for advertising and communications, including the usual costs of printed or online directory listings or advertisements, television and radio airtime, domain-name registrations, sponsorship fees, and group advertising. A lawyer may compensate employees, agents, and vendors who are engaged to provide marketing or client development services, such as publicists, public-relations personnel, business-development staff, television and radio station employees or spokespersons, and website designers.

12. This Rule permits lawyers to give nominal gifts as an expression of appreciation to a person for recommending the lawyer's services or referring a prospective client. The gift may not be more than a token item as might be given for holidays, or other ordinary social hospitality. A gift is

prohibited if offered or given in consideration of any promise, agreement, or understanding that such a gift would be forthcoming or that referrals would be made or encouraged in the future.

13. A lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rule 5.04(a) (division of fees with nonlawyers) and Rule 5.04(c) (nonlawyer interference with the professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.01 (communications concerning a lawyer's services). To comply with Rule 7.01, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. *See also* Rule 5.03 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.04(a)(1) (duty to avoid violating the Rules through the acts of another).

Charges of and Referrals by a Legal Services Plan or Lawyer Referral Service

14. A lawyer may pay the usual charges of a legal services plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Qualified referral services are consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements.

15. A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association.

Reciprocal Referral Arrangements

16. A lawyer does not violate paragraph (e) of this Rule by agreeing to refer clients to another lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive, the client is informed of the referral agreement, and the lawyer exercises independent professional judgment in making the referral. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. A lawyer should not enter into a reciprocal referral agreement with another lawyer that includes a division of fees without determining that the agreement complies with Rule 1.04(f).

Meals or Entertainment for Prospective Clients

17. This Rule does not prohibit a lawyer from paying for a meal or entertainment for a prospective client that has a nominal value or amounts to ordinary social hospitality.

Rule 7.04. Filing Requirements for Advertisements and Solicitation Communications

(a) Except as exempt under Rule 7.05, a lawyer shall file with the Advertising Review Committee, State Bar of Texas, no later than ten (10) days after the date of dissemination of an advertisement of legal services, or ten (10) days after the date of a solicitation communication sent by any means:

(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 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.

(c) A lawyer who desires to secure pre-approval of an advertisement or solicitation communication may submit to the Advertising Review Committee, not fewer 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.

Comment:

1. The Advertising Review Committee shall report to the appropriate disciplinary authority any lawyer whom, based on filings with the Committee, it reasonably believes disseminated a communication that violates Rules 7.01, 7.02, or 7.03, or otherwise engaged in conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects. *See* Rule 8.03(a).

Multiple Solicitation Communications

2. Paragraph (a) does not require that a lawyer submit a copy of each written solicitation letter a lawyer sends. If the same form letter is sent to several persons, only a representative sample of each form letter, along with a representative sample of the envelopes used to mail the letters, need be filed.

Requests for Additional Information

3. Paragraph (b) does not empower the Advertising Review Committee to seek information from a lawyer to substantiate statements or representations made or implied in communications about legal services that were not substantially motivated by pecuniary gain.

Rule 7.05. Communications Exempt from Filing Requirements

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:

(a) 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;

(b) information and links posted on a law firm website, except the contents of the website homepage, unless that information is otherwise exempt from filing;

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

(d) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or law firm, or a business card;

(e) a professional newsletter in any media that it is sent, delivered, or transmitted only to:

(1) existing or former clients;

(2) other lawyers or professionals;

(3) persons known by the lawyer to be experienced users of the type of legal services involved for business matters;

(4) members of a nonprofit organization which has requested that members receive the newsletter; or

(5) persons who have asked to receive the newsletter;

(f) a solicitation communication directed by a lawyer to:

(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;

(g) 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;

(h) an advertisement that:

(1) identifies a lawyer or a firm as a contributor or sponsor of a charitable, community, or public interest program, activity, or event; and

(2) 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;

(i) communications that contain only the following types of information:

(1) the name of the law firm and any lawyer in the law firm, office addresses, electronic addresses, social media names and addresses, telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession, such as "attorney," "lawyer," "law office," or "firm;"

(2) the areas of law in which lawyers in the firm practice, concentrate, specialize, or intend to practice;

(3) the admission of a lawyer in the law firm to the State Bar of Texas or the bar of any court or jurisdiction;

(4) the educational background of the lawyer;

(5) technical and professional licenses granted by this state and other recognized licensing authorities;

(6) foreign language abilities;

(7) areas of law in which a lawyer is certified by the Texas Board of Legal Specialization or by an organization that is accredited by the Texas Board of Legal Specialization;

(8) identification of prepaid or group legal service plans in which the lawyer participates;

(9) the acceptance or nonacceptance of credit cards;

(10) fees charged for an initial consultation or routine legal services;

(11) identification of a lawyer or a law firm as a contributor or sponsor of a charitable, community, or public interest program, activity or event;

(12) any disclosure or statement required by these Rules; and

(13) any other information specified in orders promulgated by the Supreme Court of Texas.

Comment:

1. This Rule exempts certain types of communications from the filing requirements of Rule 7.04. Communications that were not substantially motivated by pecuniary gain do not need to be filed.

Website-Related Filings

2. While the entire website of a lawyer or law firm must be compliant with Rules 7.01 and 7.02, the only material on the website that may need to be filed pursuant to this Rule is the contents of the homepage. However, even a homepage does not need to be filed if the contents of the homepage are exempt from filing under the provisions of this Rule. Under Rule 7.04(c), a lawyer may voluntarily seek pre-approval of any material that is part of the lawyer's website.

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 7.03, 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 7.03, 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 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 7.03, 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:

1. This Rule deals with three different situations: personal disqualification, imputed disqualification, and referral-related payments.

Personal Disqualification

2. Paragraph (a) addresses situations where the lawyer in question has violated the specified advertising rules or other provisions dealing with serious crimes and barratry. The Rule makes clear that the offending lawyer cannot accept or continue to provide representation. This prohibition also applies if the lawyer ordered, encouraged, or knowingly permitted another to violate the Rules in question.

Imputed Disqualification

3. Second, paragraph (b) addresses whether other lawyers in a firm can provide representation if a person or entity in the firm has violated the specified advertising rules or other provisions dealing with serious crimes and barratry, or has ordered, encouraged, or knowingly permitted another to engage in such conduct. The Rule clearly indicates that the other lawyers cannot provide representation if they knew or reasonably should have known that the employment was procured by conduct prohibited by the stated Rules. This effectively means that, in such cases, the disqualification that arises from a violation of the advertising rules and other specified provisions is imputed to other members of the firm.

Restriction on Referral-Related Payments

4. Paragraph (c) deals with situations where a lawyer knows or reasonably should know that a case referred to the lawyer or the lawyer's law firm was procured by violation of the advertising rules or other specified provisions. The Rule makes clear that, even if the lawyer's conduct did not violate paragraph (a) or (b), the lawyer can continue to provide representation only if the lawyer does not pay anything of value, such as a referral fee, to the person making the referral.

Reporting Professional Misconduct and Reciprocal Discipline for Federal Court or Federal Agency Discipline

Texas Disciplinary Rules of Professional Conduct

Rule 8.03. Reporting Professional Misconduct

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(f) A lawyer who has been disciplined by the attorney-regulatory agency of another jurisdiction, or by a federal court or federal agency, must notify the chief disciplinary counsel within 30 days of the date of the order or judgment. The notice must include a copy of the order or judgment. For purposes of this paragraph, "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.

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Texas Rules of Disciplinary Procedure

1.06. Definitions:

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CC. "Professional Misconduct" includes:

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2. Attorney conduct that occurs in another jurisdiction, including before any federal court or federal agency, and results in the disciplining of an attorney in that other jurisdiction, if the conduct is Professional Misconduct under the Texas Disciplinary Rules of Professional Conduct.

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9.01. Orders From Other Jurisdictions: Upon receipt of information indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction, including by any federal court or federal agency, the Chief Disciplinary Counsel shall diligently seek to obtain a certified copy of the order or judgment of discipline from the other jurisdiction, and file it with the Board of Disciplinary Appeals along with a petition requesting that the attorney be disciplined in Texas. 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. For purposes of this Part, "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.

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[No Proposed Comment Changes Associated with this Item]

Assignment of Judges in Disciplinary Complaints and Related Provisions

Texas Rules of Disciplinary Procedure

3.01. Disciplinary Petition: If the Respondent timely elects to have the Complaint heard by a district court, with or without a jury, in accordance with Rule 2.15, the Chief Disciplinary Counsel shall, not more than sixty days after receipt of Respondent's election to proceed in district court, notify the Presiding Judge of the administrative judicial region covering the county of appropriate venue of the Respondent's election by transmitting a copy of the Disciplinary Petition in the name of the Commission to the Presiding Judge. The petition must contain:

A. Notice that the action is brought by the Commission for Lawyer Discipline, a committee of the State Bar.

B. The name of the Respondent and the fact that he or she is an attorney licensed to practice law in the State of Texas.

C. A request for assignment of an active district judge to preside in the case.

D. Allegations necessary to establish proper venue.

E. A description of the acts and conduct that gave rise to the alleged Professional Misconduct in detail sufficient to give fair notice to Respondent of the claims made, which factual allegations may be grouped in one or more counts based upon one or more Complaints.

F. A listing of the specific rules of the Texas Disciplinary Rules of Professional Conduct allegedly violated by the acts or conduct, or other grounds for seeking Sanctions.

G. A demand for judgment that the Respondent be disciplined as warranted by the facts and for any other appropriate relief.

H. Any other matter that is required or may be permitted by law or by these rules.

3.02. Assignment of Judge:

A. Assignment Generally: Upon receipt of a Disciplinary Petition, the Presiding Judge shall assign an active district judge whose district does not include the county of appropriate venue to preside in the case. An assignment of a judge from another region shall be under Chapter 74, Government Code. The Presiding Judge shall transmit a copy of the Presiding Judge's assignment order to the Chief Disciplinary Counsel. Should the judge so assigned be unable to fulfill the assignment, he or she shall immediately notify the Presiding Judge, and the Presiding Judge shall assign a replacement judge whose district does not include the county of appropriate venue. A judge assigned under this Rule shall be subject to recusal or

disqualification as provided by the Texas Rules of Civil Procedure and the laws of this state. The motion seeking recusal or motion to disqualify must be filed by either party within the time provided by Rule 18a, Texas Rules of Civil Procedure. In the event of recusal or disqualification, the Presiding Judge shall assign a replacement judge whose district does not include the county of appropriate venue. If an active district judge assigned to a disciplinary case becomes a retired, senior, or former judge, he or she may be assigned by the Presiding Judge to continue to preside in the case, provided the judge has been placed on a visiting judge list. If the Presiding Judge decides not to assign the retired, senior, or former judge to continue to preside in the case, the Presiding Judge shall assign an active district judge whose district does not include the county of appropriate venue. A visiting judge may only be assigned if he or she was originally assigned to preside in the case while an active judge. Any judge assigned under this Rule is not subject to objection under Chapter 74, Government Code.

B. Transfer of Case: If the county of alleged venue is successfully challenged, the case shall be transferred to the county of proper venue. If the case is transferred to a county in the assigned judge's district, the judge must recuse himself or herself, unless the parties waive the recusal on the record. In the event of recusal, the Presiding Judge of the administrative judicial region shall assign a replacement judge whose district does not include the county of appropriate venue. If the case is transferred to a county outside the administrative judicial region of the Presiding Judge who made the assignment, the Presiding Judge of the administrative judicial region where the case is transferred shall oversee assignment for the case and the previously assigned judge shall continue to preside in the case unless he or she makes a good cause objection to continued assignment, in which case the Presiding Judge shall assign a replacement judge whose district does not include the county of appropriate venue.

3.03. Filing, Service and Venue: After the trial judge has been assigned, the Chief Disciplinary Counsel shall promptly file the Disciplinary Petition and a copy of the Presiding Judge's assignment order with the district clerk of the county of alleged venue. The Respondent shall then be served as in civil cases generally with a copy of the Disciplinary Petition and a copy of the Presiding Judge's assignment order. In a Disciplinary Action, venue shall be in the county of Respondent's principal place of practice; or if the Respondent does not maintain a place of practice within the State of Texas, in the county of Respondent's residence; or if the Respondent maintains neither a residence nor a place of practice within the State of Texas, then in the county where the alleged Professional Misconduct occurred, in whole or in part. In all other instances, venue is in Travis County, Texas.

[No Proposed Comment Associated with this Item]

Voluntary Appointment of Custodian Attorney for Cessation of Practice

Texas Rules of Disciplinary Procedure

13.04. Voluntary Appointment of Custodian Attorney for Cessation of Practice: In lieu of the procedures set forth in Rules 13.02 and 13.03, an attorney ceasing practice or planning for the cessation of practice ("appointing attorney" for purposes of this Rule) may voluntarily designate a Texas attorney licensed and in good standing to act as custodian ("custodian attorney" for purposes of this Rule) to assist in the final resolution and closure of the attorney's practice. The terms of the appointing documents, which shall be signed and acknowledged by the appointing attorney and custodian attorney, may include any of the following duties assumed:

A. Examine the client matters, including files and records of the appointing attorney's practice, and obtain information about any matters that may require attention.

B. Notify persons and entities that appear to be clients of the appointing attorney of the cessation of the law practice, and suggest that they obtain other legal counsel.

C. Apply for extension of time before any court or any administrative body pending the client's employment of other legal counsel.

D. With the prior consent of the client, file such motions and pleadings on behalf of the client as are required to prevent prejudice to the client's rights.

E. Give appropriate notice to persons or entities that may be affected other than the client.

F. Arrange for surrender or delivery to the client of the client's papers, files, or other property.

The custodian attorney shall observe the attorney-client relationship and privilege as if the custodian were the attorney of the client and may make only such disclosures as are necessary to carry out the purposes of this Rule. Except for intentional misconduct or gross negligence, no person acting as custodian attorney under this Rule shall incur any liability by reason of the actions taken pursuant to this Rule.

The privileges and limitations of liability contained herein shall not apply to any legal representation taken over by the custodian attorney.

[No Proposed Comment Associated with this Item]

Contact TYLA at tyla@texasbar.com or go to tyla.org.

Lifting Up SURVIVORS OF SEXUAL ASSAULT

BY PRESIDENTIAL DECLARATION IN 2009, April is Sexual Assault Awareness Month. This month gives us the opportunity to bring awareness, promote education, and discuss the prevention of sexual violence. Unofficial recognition for the month began back in the 1970s when advocates fought to bring a topic once considered taboo out for public discussion. Over the years, advocacy groups and organizations across the nation have provided resources and information for survivors.

In 2016, the Texas Young Lawyers Association created the *Not a Victim* website, which focuses on the rights and resources available for survivors, the accused, and family and friends of both. The project consists of an interactive website with written and video content as well as survivor stories. We concentrated on helping survivors learn how to navigate the justice system and included a specific focus on college students and Title IX legislation.

According to the National Sexual Violence Resource Center 2015 Data Brief, nearly 1 in 5 women (21.3% or an estimated 25.5 million women) in the United States reported completed or attempted rape at some point in their lifetime. Approximately 2.6% of U.S. men, or an estimated 2.8 million men, experienced completed or attempted rape in their lifetime. These numbers are staggering and may not be 100% accurate because so many women and men may not actually report their assaults.

SEXUAL ASSAULT Rights and Resources
Survivors • Families • The Accused

We featured the stories of Karen, Sophia, Ramona, and Paige. These brave women discussed their trauma, the struggles they dealt with in the aftermath, and their continued paths to healing. One of the quotes that resonated with me was from Paige Hardy. She stated:

"I prefer the term 'survivor' because there was a distinct point in which my assault stopped controlling me and I started controlling it and I had a lot more of the narrative that I got to write instead of the narrative being written about me."

I encourage you all to listen to their stories, which can be viewed at http://notavictim.tyla.org/survivor-stories through a series of short videos.

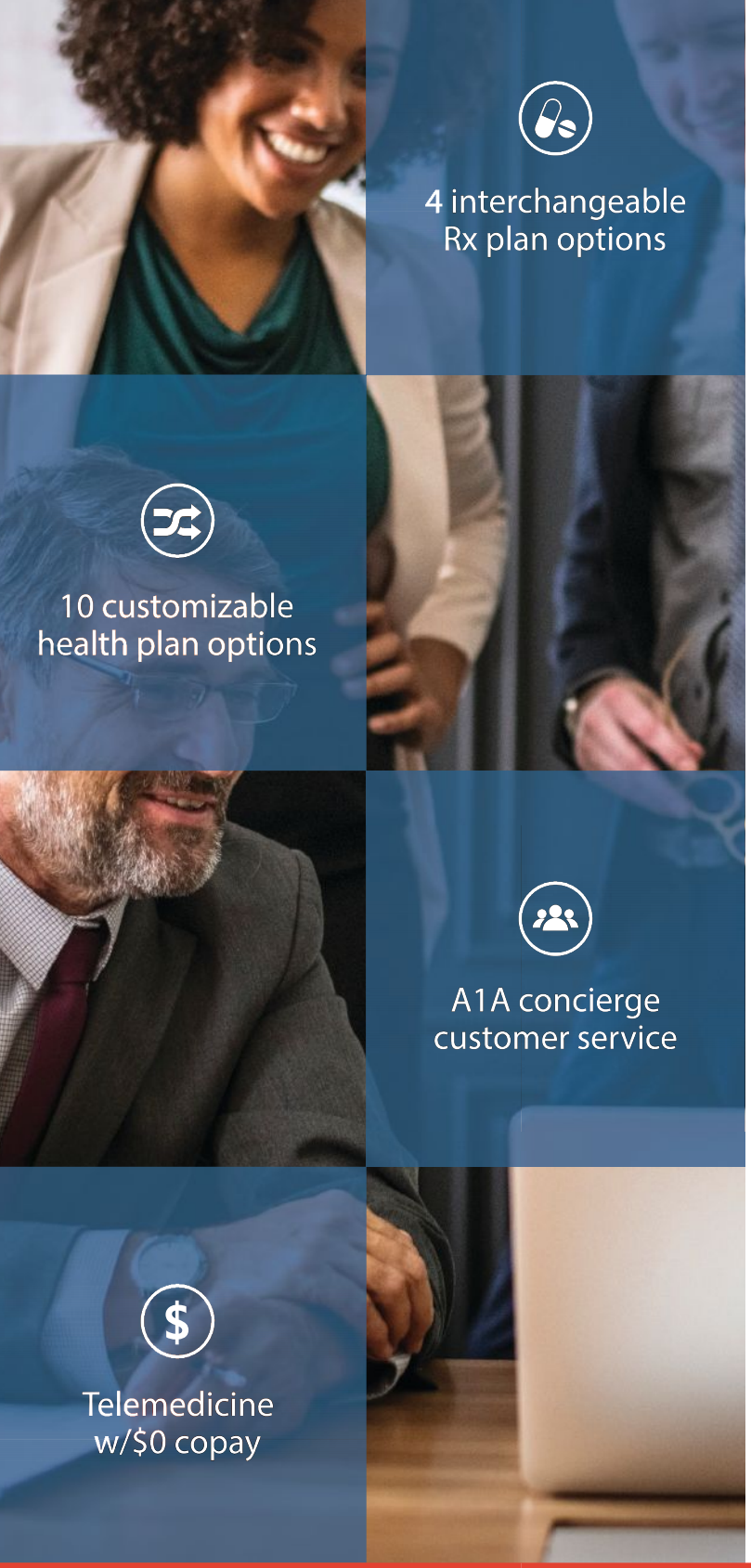
Not a Victim was the first TYLA project I worked on as a new board member. This project was particularly important to me because like so many women out there and including women within our profession: I am a survivor. I will admit I often hid that fact about me out of embarrassment, shame, and not wanting to be pitied. However, listening to the stories of these courageous women inspired me not to be embarrassed, but proud of myself for overcoming what happened to me in college and rising above it. I only hope that many others will be inspired by the stories of these women and learn how they can help fight and prevent sexual assault.

Though the content of this project was emotionally heavy, it showed that the young lawyers in this state were not afraid to address this unfortunate reality in our country and provide much-needed resources to assist those affected by sexual violence.

BRITNEY HARRISON
2020-2021 President, Texas Young Lawyers Association

MORE RESOURCES
The Texas Access to Justice Foundation's Legal Aid for Survivors of Sexual Assault provides survivors of sexual assault with a range of free legal services, including direct representation in civil legal matters. For more information call 844-303-7233 or go to teajf.org/grants/LASSA.aspx.

NOTES
1. Sharon G. Smith, Xinjian Zhang, Kathleen C. Basile et al., *The National Intimate Partner and Sexual Violence Survey: 2015 Data Brief—Updated Release,* National Center for Injury Prevention and Control Centers for Disease Control and Prevention (Nov. 2018), https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf.
2. *Id.*



What if you had the buying power of a law firm with *1000s* of employees?

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HOW TO START A SUCCESSFUL LEGAL BLOG AND WHY YOU SHOULD.

WRITTEN BY **STACEY E. BURKE**

ONE OF THE MOST COST-EFFECTIVE AND PROVEN METHODS of bolstering a law firm's online presence is starting a blog. Developing a successful legal blog primarily takes dedication and consistency. It's also a continual learning experience, but if you devote the time and resources to it, a blog can become one of your law firm's most valuable assets.

Five Components of an Optimized Law Firm Blog

- *Two Distinct Page Layouts:* Your blog should have page layouts designed for both a main blog page and a blog post page. The main blog page should showcase the most recent several posts in reverse chronological order with clickable links, have an easy-to-use archive of past posts by month and by year, and have a sidebar contact form. The individual blog post page layout should show the post author, publish date, category, image, other recent related posts and/or other posts by the same author, and allow for easy social media sharing.
- *Publish Date:* Each blog post should list the date it was written/published, which provides context to the reader. Even if you remove the dates from the user's view, Google can still see the publish date in the code, so you can't trick search engines into thinking it's newer than it is.
- *Author:* Each blog post should be associated with an author, complete with a link to the author's online biography. Ideally, on a law firm blog, the authors are the attorneys and their author byline should link to their website biography.
- *Practice Area Association:* Each blog post should be associated with one of your firm's practice areas and/or an industry you serve. This can be accomplished by using categories for each blog post.
- *Images:* All blog posts should include relevant, high-resolution imagery that is appropriately resized so as to not slow page load time (if the image is too large) but large enough to render well on the blog post itself and when the post is shared elsewhere, such as on social media.

Three Reasons Lawyers Should Blog

1. *To Improve Search Engine Rankings for a Law Firm Website:* Successful search engine optimization relies heavily on the presentation of valuable content. Websites with blogs that provide consistently reliable information will rank higher in search engine results.
2. *To Share Expertise and Become a Thought Leader:* If you blog about your practice areas of focus for several years with consistently high-quality content, you will become known as an expert on these topics. Over time, people will begin to view you as a valuable source of information.
3. *To Reach a Worldwide Audience You Would Not Reach Otherwise:* By using a blog to put your law practice out there, you can and will get in front of audiences you normally wouldn't be able to access.

What *Should* You Write About and What *Can* You Write About?

One of the most difficult aspects of blogging is creating better content than what's already out there. Remember that search engines want quality over quantity. Utilize a well-planned content marketing strategy to determine what your target audience is searching for, how you can address their questions, and ensure your posts are optimized and shared appropriately for digital success.

As always, lawyers must abide by mandatory advertising rules and ethical guidelines when transmitting information to the public.

Measuring Blogging Success

A successful legal blog should help you effectively engage with a variety of audiences. You can find out which blog posts are most interesting to users—and therefore among the most successful—by analyzing metrics like how many readers share your blog posts on social media or whether your posts generate comments. **TBJ**

This article was originally published on the Stacey E. Burke blog and has been edited and reprinted with permission.

STACEY E. BURKE has been a licensed Texas lawyer since 2001 and is the owner of Stacey E. Burke, P.C., which crafts and implements custom marketing strategies for lawyers around the country.

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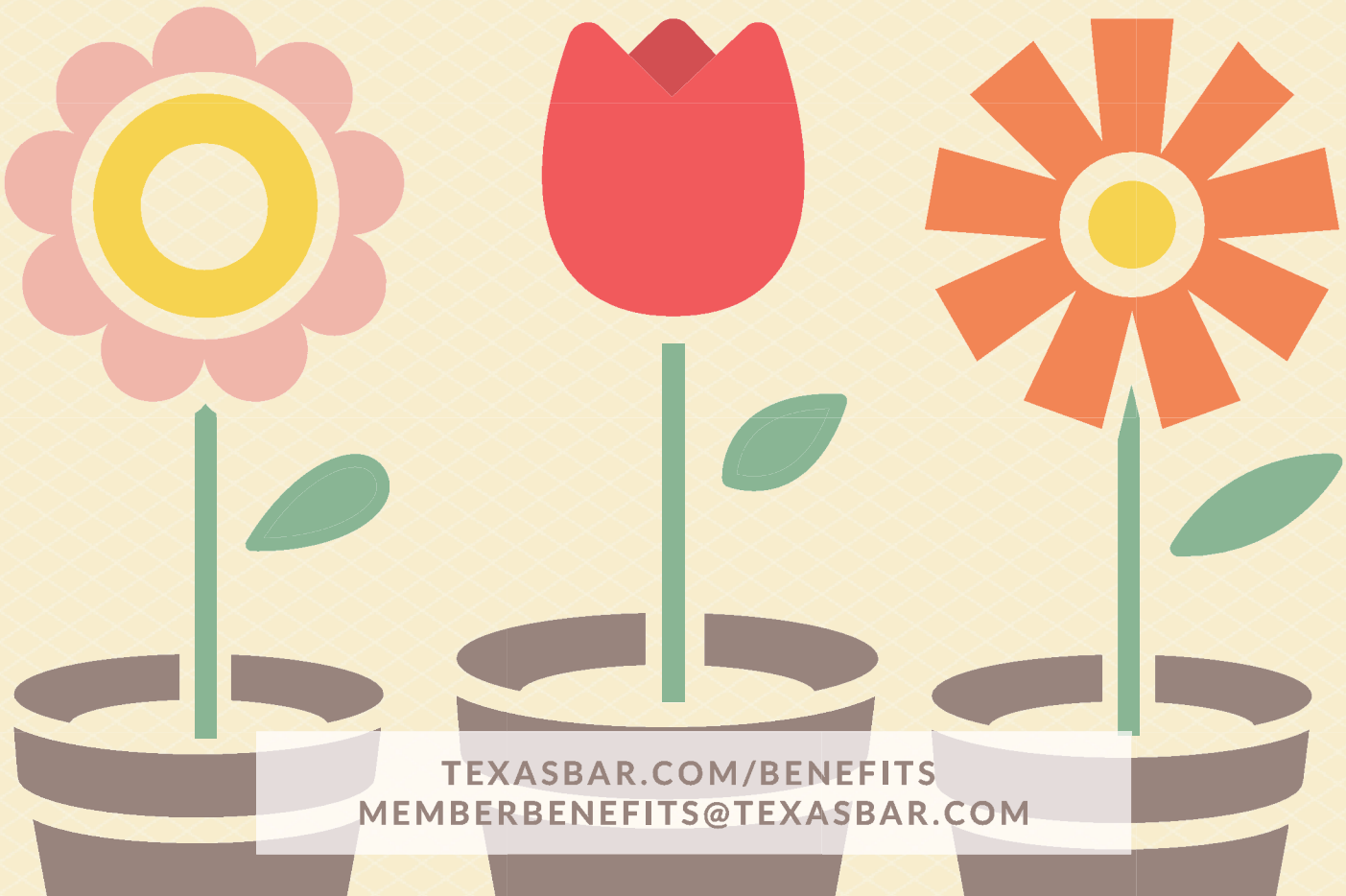

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Contact the Office of Chief Disciplinary Counsel at 512-453-5535, the Board of Disciplinary Appeals at 512-475-1578 or txboda.org, or the State Commission on Judicial Conduct at 512-463-5533.

JUDICIAL ACTIONS

To read the entire public sanctions, go to scjc.texas.gov.

On January 21, 2021, the State Commission on Judicial Conduct issued a public reprimand and order of additional education to **THOMAS G. JONES,** justice of the peace, Precinct 1, Place 1, Dallas, Dallas County. Jones has filed an appeal of his sanction to a special court of review.

On February 23, 2021, the State Commission on Judicial Conduct issued an order of suspension without pay to **TOMAS "TOMMY" RAMIREZ III,** justice of the peace, Precinct 4, Devine, Medina County.

SUSPENSIONS

On February 10, 2021, **HENRI M. COSEY** [#00783883], 66, of Sugar Land, received a two-year partially probated suspension effective March 1, 2021, with the first six months actively suspended and the remainder probated. An evidentiary panel of the District 5 Grievance Committee found that in representing the complainant in a business financial transaction, Cosey neglected the legal matter entrusted to him. Cosey failed to keep his client reasonably informed about the status of the matter and promptly comply with reasonable requests for information. Upon receiving funds or other property, Cosey failed to promptly notify the client and failed to promptly render a full accounting regarding such property.

Cosey violated Rules 1.01(b)(1), 1.03(a), and 1.14(b). He was ordered to pay $2,000 in restitution and $1,500 in attorneys' fees.

On January 22, 2021, **SARAH HOFFMAN** [#24075146], 37, of Dallas, received a two-year partially probated suspension effective February 15, 2021, with the first year actively suspended and the remainder probated. An evidentiary panel of the District 14 Grievance Committee found that on November 21, 2017, Hoffman was hired to prepare a will. Hoffman was paid $1,200 for the legal representation. During the representation, Hoffman neglected the legal matter and failed to keep the client reasonably informed about the status of the case. Upon termination of representation, Hoffman failed to refund unearned fees. Hoffman also failed to timely submit a response to the grievance.

Hoffman violated Rules 1.01(b)(1), 1.03(a), 1.15(d), and 8.04(a)(8). Hoffman was ordered to pay $1,200 in restitution and $1,300 in attorneys' fees and costs.

On January 22, 2021, **SARAH HOFFMAN** [#24075146], 37, of Dallas, received a two-year partially probated suspension effective February 15, 2021, with the first six months actively suspended and the remainder probated. An evidentiary panel of the District 14 Grievance Committee found that on September 6, 2018, Hoffman was hired to represent a client in a probate matter. Hoffman was paid $1,700 for the legal representation. During the representation, Hoffman neglected the legal matter, failed to keep the client reasonably informed about the status of the case, and failed to explain the probate matter to the extent reasonably necessary to permit the client to make informed decisions about the representation. Upon termination of representation, Hoffman failed to refund unearned fees. Hoffman also failed to timely submit a response to the grievance.

Hoffman violated Rules 1.01(b)(1), 1.03(a), 1.03(b), 1.15(d), and 8.04(a)(8). She was ordered to pay $1,000 in restitution and $1,500 in attorneys' fees and costs.

On January 22, 2021, **SARAH HOFFMAN** [#24075146], 37, of Dallas, received a two-year partially probated suspension effective February 15, 2021, with the first 18 months actively suspended and the remainder probated. An evidentiary panel of the District 14 Grievance Committee found that in representing two clients in separate probate matters, beginning January 30, 2017, and October 31, 2018, respectively, Hoffman neglected the clients' legal matters, failed to keep the clients reasonably informed about the status of their cases, and failed to provide a client with a refund of unearned fees. Hoffman also failed to timely submit a response to the grievance.

Hoffman violated Rules 1.01(b)(1), 1.03(a), 1.15(d), and 8.04(a)(8). She was ordered to pay $2,000 in restitution and $2,100 in attorneys' fees and costs.

On January 15, 2021, **JOE LUIS LUNA** [#12688900], 62, of Crystal City, accepted a six-month fully probated suspension effective January 15, 2021. An investigatory panel of the District 12 Grievance Committee found that Luna neglected a client's matters, failed to keep clients reasonably informed, failed to have a written statement in a contingent fee arrangement, represented clients when the representation reasonably appeared to be or became adversely limited by his duties to third persons or by his own interests, failed to make statements or disclaimers required under the Texas Disciplinary Rules of Professional Conduct in the same language as the original solicitation communication, and engaged in conduct involving a serious crime.

Luna violated Rules 1.01(b)(1), 1.03(a), 1.03(b), 1.04(d), 1.06(b)(2), 7.02(d), and 8.04(a)(2). He agreed to pay $1,750 in attorneys' fees and direct expenses.

On January 15, 2021, **JOE LUIS LUNA** [#12688900], 62, of Crystal City, accepted a three-month fully probated suspension effective January 15, 2021. An investigatory panel of the District 12 Grievance Committee found that Luna represented clients when the representation reasonably appeared to be or became adversely limited by his duties to third persons or by his own interests and engaged in conduct involving a serious crime.

Luna violated Rules 1.06(b)(2) and 8.04(a)(2). He agreed to pay $1,250 in attorneys' fees and direct expenses.

On January 29, 2021, **DAVID SAENZ** [#17514700], 70, of McAllen, agreed to a 24-month fully probated suspension effective February 1, 2021. An investigatory panel of the District 12 Grievance Committee found that Saenz failed to communicate with a client and permitted the conduct of a non-lawyer to violate disciplinary rules.

Saenz violated Rules 1.03(a) and 5.03(b)(1). He was ordered to pay $1,500 in attorneys' fees and direct expenses.

On January 28, 2021, **DANIEL ROBERT THERING** [#24042023], 44, of Austin, agreed to a 40-month partially probated suspension effective January 15, 2023, with the first 20 months actively served and the remainder probated. An evidentiary panel of the District 9 Grievance Committee found that in March 2018, Thering substituted into a lawsuit involving a real estate dispute as attorney of record for the complainant. On January 14, 2019, the trial court awarded the complainant damages and attorneys' fees to be paid from the earnest money being held by the title company relative to the underlying real estate transaction. In February 2019, the title company wired the earnest money to Thering's non-IOLTA account to satisfy the judgment. In April 2019, when the complainant inquired about the funds, Thering indicated that he could not deliver the funds to the complainant. Thering failed to safeguard the funds, failed to promptly notify the complainant upon Thering's receipt of the funds, and failed to promptly deliver the funds to the complainant. Upon conclusion of the contingent fee matter, Thering failed to provide the complainant a written statement reflecting the remittance of settlement funds to the complainant and the method of the determination. Further, Thering failed to communicate with the complainant and Thering failed to respond to the grievance.

Thering violated Rules 1.03(a), 1.04(d), 1.14(a), 1.14(b), and 8.04(a)(8). He was ordered to pay $500 in attorneys' fees and direct expenses.

On January 15, 2021, **DANIEL ROBERT THERING** [#24042023], 44, of Austin, agreed to a 48-month active suspension effective March 15, 2021. The District 9 Grievance Committee found that the complainants hired Thering on March 3, 2016, for representation in a medical malpractice lawsuit against a doctor for injuries that the complainants sustained during a medical procedure on January 30, 2016. On March 19, 2016, Thering filed a plaintiff's original petition and on March 20, 2016, Thering requested issuance of citation for service on the doctor. Thereafter, Thering neglected the legal matter and failed to have the doctor served with the lawsuit. Further, Thering accepted employment in a legal matter that he should have known was beyond his competence because Thering failed to obtain the necessary medical records and expert reports to prosecute a medical malpractice claim. The complainants made numerous requests for a status of the case, but Thering failed to communicate with them and failed to keep them reasonably informed as to the status of the matter. Further, even though Thering was provided notice of the complainants' grievance, Thering failed to respond to the grievance.

Thering violated Rules 1.01(a), 1.01(b)(1), 1.03(a), 1.03(b), and 8.04(a)(8). He was ordered to pay $500 in attorneys' fees and direct expenses.

PUBLIC REPRIMANDS

On January 7, 2021, **DEVIN MICHELLE AUCLAIR** [#24069065], 34, of Fort Worth, agreed to a public reprimand. An investigatory panel of the District 7 Grievance Committee found that in 2018, AuClair was representing the complainant in criminal matters. The complainant had a court-ordered bond condition of "Do not possess or consume any alcoholic beverage." During her representation of the complainant, AuClair and the complainant drank alcoholic beverages together on multiple occasions. The complainant had a court-ordered bond condition of "No contact with [victims] in any manner, including third party contact." During her representation of the complainant, AuClair socialized with the complainant and the victims together on multiple occasions, during which drinking alcoholic beverages by the adults was involved. AuClair assisted the complainant in engaging in conduct that she knew was fraudulent. AuClair engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation.

AuClair violated Rules 1.02(c) and 8.04(a)(3). She was ordered to pay $500 in attorneys' fees and direct expenses.

On January 29, 2021, **SYRIA SINOSKI** [#24079344], 43, of Houston, accepted a public reprimand. An investigatory panel of the District 4 Grievance Committee found that in representing a

client, Sinoski neglected a legal matter entrusted to her and frequently failed to carry out completely the obligations that she owed to the client.

Sinoski violated Texas Disciplinary Rules of Professional Conduct Rules 1.01(b)(1) and 1.01(b)(2). She was ordered to pay $1,000 in attorneys' fees.

On February 24, 2021, **STEPHEN DALE HOWEN** [#10117800], 60, of Waco, accepted a public reprimand. An investigatory panel of the District 8 Grievance Committee found that on August 15, 2018, the complainant paid Howen a $500 fee to file a long-term care claim with the U.S. Department of Veterans Affairs on behalf of the complainant's in-laws. During his representation of the complainant's in-laws, Howen neglected the matter by failing to file a long-term care claim and failing to keep the complainant informed of the matter, despite the complainant's requests. Howen also failed to file a response to the complainant's complaint.

Howen violated Rules 1.01(b)(1), 1.03(a), and 8.04(a)(8) of the Texas Disciplinary Rules of Professional Conduct, Article X, Section 9, State Bar Rules. He was ordered to pay $500 in restitution.

PRIVATE REPRIMANDS

Listed here is a breakdown of Texas Disciplinary Rules of Professional Conduct violations for 13 attorneys, with the number in parentheses indicating the frequency of the violation. Please note that an attorney may be reprimanded for more than one rule violation.

1.01(b)(1)—for neglecting a legal matter entrusted to the lawyer (1).

1.01(b)(2)—In representing a client, a lawyer shall not: Frequently fail to carry out completely the obligations that the lawyer owes to a client or clients (2).

1.03(a)—for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information (3).

1.03(b)—A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation (2).

1.08(g)—A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith (1).

1.14(b)—Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full

accounting regarding such property (2).

1.15(a)—A lawyer shall decline to represent a client or, where representation has commenced, shall withdraw, except as stated in paragraph (c), from the representation of a client, if (1) the representation will result in violation of Rule 3.08, other applicable rules of professional conduct or other law (1).

1.15(d)—Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payments of fees that have not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation (1).

5.04(a)—A lawyer or law firm shall not share or promise to share legal fees with a non-lawyer, except that: (1) an agreement by a lawyer with the lawyer's firm, partner, or associate, or a lawful court order, may provide for the payment of money, over a reasonable period of time, to the lawyer's estate to or for the benefit of the lawyer's heirs or personal representatives, beneficiaries, or former spouse, after the lawyer's death or as otherwise provided by law or court order; (2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer; and (3) a lawyer or law firm may include non-lawyer employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement (1).

5.05(a)—A lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction (1).

8.04(a)(3)—A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation (1).

8.04(a)(8)—A lawyer shall not fail to timely furnish to the Office of Chief Disciplinary Counsel or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so (1).

8.04(a)(11)—A lawyer shall not engage in the practice of law when the lawyer is on inactive status, except as permitted by section 81.053 of the Government Code and Article XIII of the State Bar Rules, or when the lawyer's right to practice has been suspended or terminated, including, but not limited to, situations where a lawyer's right to practice has been administratively suspended for failure to timely pay required fees or assessments or for failure to comply with Article XII of the State Bar Rules relating to Mandatory Continuing Legal Education (1). **TBJ**

CENTRAL

D. TODD SMITH is now an attorney with Butler Snow in Austin.

PEDRO A. VILLALOBOS is now an assistant district attorney with the Travis County District Attorney's Office, Assault Family Violence Division in Austin.

JENNIFER FERRI is now a partner in Jackson Walker in Austin.

CHAD J. HAMMERLIND is now counsel to Haynes and Boone in Austin.

CASSANDRA S. PILLONEL is now director of attorneys and legal staff at Zinda Law Group in Austin.

CYNTHIA BAST, of Locke Lord in Austin, is now office managing partner.

DAVID JUNKIN, previously with the 453rd Judicial District Court, and **CHARMAINE WILDE,** previously with the Law Office of John McGlothlin, are now partners in McGlothlin Junkin & Wilde in San Marcos.

EAST

JOHN D. MCELROY is now a federal public defender for the Office of the Federal Public Defender, Eastern District of Texas in Tyler.

GULF

KATHERINE TREISTMAN is now a partner in Arnold & Porter in Houston.

LISA M. THOMAS is now a partner in Cadwell Clonts & Reeder in Houston.

KEVIN DUBOSE, of Alexander Dubose & Jefferson in Houston, is now president of the American Academy of Appellate Lawyers.

RUBEN ANTHONY RANGEL NAJERA is now an immigration attorney with the Gonzalez Law Group in Houston.

BEN AGOSTO III and **G. BRAXTON SMITH** are now associates of Abraham, Watkins, Nichols, Agosto, Aziz & Stogner in Houston.

KIRSTEN VESEL and **AUSTIN WINGERSON** are now associates of Baker, Donelson, Bearman, Caldwell & Berkowitz in Houston. **ADAM GREEN,** also with the firm, is now certified as a Legionella water safety and management specialist by ASSE International, the International Association of Plumbing and Mechanical Officials, and the American National Standards Institute.

FROST BROWN TODD opened an office in Houston, 4400 Post Oak Pkwy., Ste. 2850, 77027. **COURTNEY GAHM-OLDHAM** is now a member in the firm.

SHANNON "SHAE" KEEFE is now a shareholder in Winstead in Houston.

WILLIAM L. MEDFORD, previously with Medford Law, is now an attorney with the Wajda Law Group, working out of Spring.

EDWARD BONTKOWSKI is now counsel to Haynes and Boone in Houston.

ROBERT H. FORD, of Bradley Arant Boult Cummings in Houston, was selected as a fellow of the Leadership Council on Legal Diversity.

ANDREA ALDANA, TASHA AREVALO, TANYA FERNANDEZ-ALANIZ, IVETT HUGHES, and **ROBERT MORALES** are now attorneys with the Unaccompanied Children's Program of the Catholic Charities of the Archdiocese of Galveston-Houston.

NORTH

ALISON BATTISTE, SARAH LOPANO, and **JORDAN STRAUSS** are now partners in Munck Wilson Mandala in Dallas.

GREG MCALLISTER, previously with Littler Mendelson, and **CHASE POTTER,** previously with Clark Hill Strasburger, are now partners in the Rogge Dunn Group in Dallas.

KRISTEN M. COX and **JEFFREY M. GLASSMAN** are now partners in Meadows, Collier, Reed, Cousins, Crouch & Ungerman in Dallas.

KARTIK R. SINGAPURA is now senior counsel to Bell Nunnally & Martin in Dallas. **ALEXANDRIA M. RISINGER** is now an associate of the firm.

RYAN SEGALL, previously with O'Neil Wysocki, is now a senior associate attorney with Walters Gilbreath in Dallas. **ANDREW SPEER,** previously with O'Neil Wysocki, is now an associate attorney with the firm.

AIMEE E. MARCOTTE is now an associate of Pope, Hardwicke, Christie, Schell, Kelly & Taplett in Fort Worth.

MEGHAN BURNS is now an attorney with Orsinger, Nelson, Downing & Anderson in Dallas.

PATRICK KNAPP is now an attorney with Jackson Walker in Dallas.

RAQUEL ALVARENGA, NATALIE DUBOSE, and **SCOTT THOMPSON** are now counsel to Haynes and Boone in Dallas. **SAMUEL DREZDZON** is now counsel to the firm in Plano.

ELIZABETH MACK, of Locke Lord in Dallas, is now office managing partner.

STEPHANIE DOWDY, of Harness, Dickey & Pierce in Dallas, was recognized as a "Woman to Watch" by the American Intellectual Property Law Association Women in IP Law Committee.

MATTHEW J. AGNEW is now a senior attorney with Bradley Arant Boult Cummings in Dallas.

SOUTH

PETER SAKAI, of the 225th District Court in San Antonio, received the Casey Excellence for Children Leadership Award from the Casey Family Programs. Sakai also received the Champion for Children Award from the Child Welfare League of America.

DAVID B. WEST is now a partner in Caldwell East & Finlayson in San Antonio.

ERICA BENITES GIESE is now a partner in Jackson Walker in San Antonio.

ROBERT M. PERRY, of Bandera, received the Albert Nelson Marquis Lifetime Achievement Award by Marquis Who's Who. **TBJ**

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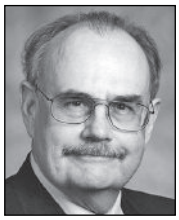
For information on closing a deceased attorney's practice, go to texasbarpractice.com/law-practice-management/close/.

LONNIE WAYNE FUGIT



Fugit, 71, of Pearland, died December 20, 2020. He served in the U.S. Navy from 1971 to 1973. Fugit received his law degree from the University of Texas School of Law and was admitted to the Texas Bar in 1977. He was an attorney with Freytag, Marshall, Beneke, LaForce, Rubinstein & Stutzman in Dallas from 1977 to 1987; Fugit, Hubbard, Woolley, Bloom & Mersky in Dallas from 1987 to 1990; Gardere & Wynne in Dallas from 1990 to 1991; Rubinstein & Perry in Dallas and Los Angeles, California, from 1991 to 1993; Cantilo, Maisel & Hubbard in Dallas from 1993 to 1999; and the University of Texas System Office of General Counsel in Austin from 1999 to 2005; and was program director of real estate services with the University of Texas M.D. Anderson Cancer Center in Houston from 2005 to 2011. Fugit earned the top score on the July 1977 Texas Bar Exam. He is survived by his wife of 39 years, Joyce Ann Harris Fugit; son, attorney Jeremiah Carlyle Fugit; daughter, Joyce Faith Fugit; brother, John Winters; sisters, Mona Shannon, Patricia Taylor, and Pamela Teehee; and two grandchildren.

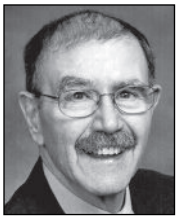
JOHNNIE MIKE AMERSON

Amerson, 64, of Houston, died September 16, 2020. He received his law degree from the University of Houston Law Center and was admitted to the Texas Bar in 1990. Amerson was a registered professional engineer from 1980 to 1987, an associate of Porter & Clements in Houston from 1990 to 1991, an associate of and later shareholder in Arnold, White & Durkee in Houston from 1991 to 1998, founding shareholder in Williams, Morgan & Amerson in Houston from 1998 to 2012, and founder of Amerson Law Firm in Houston from 2013 to 2020. He enjoyed golfing and traveling. Amerson is survived by his wife of 34 years, Linda Amerson.

MONTY BARBER

Barber, 89, of Dallas, died November 17, 2020. He received his law degree from the University of Texas School of Law and was admitted to the Texas Bar in 1955. Barber served in the U.S. Army from 1955 to 1957. He was a partner in Biggers, Baker, Lloyd & Carver from 1957 to 1967, vice president and general counsel to Liquid Paper from 1967 to 1968, and executive vice president and general counsel to Mary Kay from 1968 to 1989. Barber was inducted into the Direct Selling Association Hall of Fame in 1988. He was a member of the Texas Exes. Barber enjoyed rose gardening and dog breeding. He was a devout follower of his religion. Barber is survived by his son, Brandon Barber, and daughter, Kelty Barber.

R. MILTON WALKER JR.



Walker, 76, of Pearland, died February 19, 2020. He received his law degree from Texas Tech University School of Law and was admitted to the Texas Bar in 1972. Walker was an associate of Maner & Nelson in Lubbock in 1972; a partner in Greenberg & Walker in Irving from 1973 to 1976; and owner of Walker Law Offices in Amarillo from 1977 to 1982, in Panhandle and Borger from 1983 to 1989, and in Houston from 1989 to 2020. He focused on personal injury law but switched to wills and probate in his later years. From 2014 to 2020, Walker wrote 4,000 wills pro bono as a service for members of his church. He enjoyed music, being able to play instruments by ear. Walker was a fan of the Dallas Cowboys and Texas Tech. He is survived by his wife of 28 years, Mary House Walker; sons, Clint Walker and Ethan House; daughters, Sarah Walker Sturm and Erin House Schaefer; sisters, Shirley Hunt and attorney Deborah Walker; and six grandchildren.

JOHN N. SCHWARTZ

Schwartz, 50, of Dallas, died November 15, 2020. He received his law degree from the University of Texas School of Law and was admitted to the Texas Bar in 1996. Schwartz was counsel to Strasburg in Dallas, Winstead in Dallas, Jenkens & Gilchrist in Dallas, Fulbright & Jaworski in Dallas, and senior counsel to Norton Rose Fulbright in Dallas, focusing on bankruptcy and litigation. He did pro bono work for the Human Rights Initiative of North Texas from 2009 to 2020. Schwartz received the Human Rights Initiative Angel of Freedom Award in 2016. He was an accomplished athlete, completing marathons on all seven continents and 42 of the 50 states, five Ironman triathlons, and was awarded a total of 120 medals for various events. Schwartz is survived by his father, Gary Schwartz; mother, Arleen Schwartz; and sister, Aimee.

OSCAR A. PALACIOS

Palacios, 75, of San Juan, died December 27, 2020. He received his law degree from the University of Texas School of Law and was admitted to the Texas Bar in 1972. Palacios was an associate of F.B. Godinez in Lubbock from 1972 to 1973, a hearing officer at the Texas Water Quality Board in Austin in 1973, and a solo practitioner in Pharr from 1974 to 2020. He believed justice should not be determined by what you can afford. Palacios was an advocate for the underserved in the community and helped those in need when no one was looking. He is survived by his wife, Raquenel V. Palacios; son, J. Michael Palacios; daughters, Michelle P. Rodriguez and Marie Renee Palacios; sisters, Olga Rutledge, Oralia Gonzalez, Odilia Arredondo, and Orfelinda Vela; seven grandchildren; and one great-grandchild.

RUBEN G. REYES

Reyes, 56, of Lubbock, died December 12, 2020. He received his law degree from Baylor Law School and was admitted to the Texas Bar in 1990. Reyes was an associate of Hurley & Sowder in Lubbock from 1990 to 1994; a partner in Hurley, Sowder & Reyes in Lubbock from 1994 to 2000 and in Hurley, Reyes & Guinn in Lubbock from 2000 to 2006; and was appointed district judge of the 72nd District Court in Lubbock by Gov. Rick Perry in 2006, serving until 2020. Reyes was presiding judge of the Lubbock County Adult Drug Court and was on the National Association of Drug Court Professionals Board of Directors from 2010 to 2018, serving as chair from 2015 to 2017. He was inducted into the Stanley Goldstein Drug Court Hall of Fame in 2018. Reyes was appointed by the Texas Supreme Court to the State Commission on Judicial Conduct from 2017 to 2020, serving as vice chair in 2020. He was a Special Court Advisory Committee member from 2013 to 2017. Reyes had a passion for helping others live their best life and reach their full potential. He loved his family and enjoyed traveling and spending time with them and friends. Reyes is survived by his wife of 29 years, Melanie Reyes; son, attorney Ross G. Reyes; daughter, Hannah Neuburger; brother, Robert Reyes; and two grandchildren.

DOUGLAS A. LACEY

Lacey, 70, of Houston, died October 8, 2019. He received his law degree from Indiana University School of Law and was admitted to the Texas Bar in 1974. Lacey was a partner in Laswell & Lacey in Houston from 1974 to 1978 and a solo practitioner in Houston from 1978 to 2019. He enjoyed golfing. Lacey liked to visit national parks and watch college basketball. He is survived by his wife of 14 years, Teri Lacey; son, Matthew Lacey; daughter, Karen Lacey; brother, J. Randall Lacey; and one grandchild.

JAN M. RAMSAY

Ramsay, 60, of Wimberley, died November 11, 2020. She received her law degree from the University of Texas School of Law and was admitted to the Texas Bar in 1985. Ramsay was a partner in Gardere & Wynne in Dallas from 1985 to 1999. She enjoyed reading and playing music, including piano, guitar, and the flute. Ramsay is survived by her husband of 30 years, John D. Stark; sons, Mason R. Stark and John T. Stark; father, attorney Charles R. Ramsay II; brother, Charles R. Ramsay III; and sister, Julia Ramsay New.

JOHN H. BENNETT JR.

Bennett, 73, of Houston, died December 26, 2020. He received his law degree from the University of Texas School of Law and was admitted to the Texas Bar in 1972. Bennett was an attorney in the Banking and Business Law Section of Fulbright & Jaworski in Houston from 1972 to 1979; a solo practitioner in Houston in 1979; a partner in Gilpin, Maynard, Parsons, Pohl & Bennett in Houston in 1980, later Gilpin, Pohl & Bennett from 1980 to 1987; a partner in Pohl & Bennett, later Pohl, Bennett & Matthews, in Houston from 1988 to 2002; in private practice in Houston from 2002 to 2020; and of counsel to Boudreaux, Leonard & Hammond in Houston from 2003 to 2008. He served on the State Bar of Texas District 4 Grievance Committee from 2018 to 2019. Bennett was a member of the International Lawyers Group Executive Board from 1995 to 2020, serving as secretary from 1998 to 2001 and as chairman from 2005 to 2008. He was a guest speaker at past State Bar of Texas conventions. Bennett was intellectual and determined. He was a mentor to many. Bennett enjoyed traveling the world. He is survived by his wife of 52 years, Sue Bennett; sons, Matthew Robert Bennett and Kelly Burns Bennett; daughter, Caroline Bennett Clay; brothers, Charlie Bennett and Bill Bennett; sister, attorney Sarah Bennett; and seven grandchildren.

RICHARD E. TULK

Tulk, 77, of Austin, died November 23, 2020. He received his law degree from the University of Texas School of Law and was admitted to the Texas Bar in 1968. Tulk was an associate of McMahon, Smart, Sprain, Wilson & Camp in Abilene from 1968 to 1970, first assistant city attorney in Austin from 1970 to 1976, city attorney for Abilene from 1976 to 1977, partner and managing partner in Gibbins, Burrow & Bratton in Austin from 1977 to 1984, and partner in Tulk & Deaderick in Austin from 1984 to 2000. He was certified in civil trial law by the Texas Board of Legal Specialization. He enjoyed golfing, sailing, and cooking. Tulk is survived by his wife of 43 years, attorney Karen Parker; sons, Steve Tulk, Jim Tulk, and Daniel Tulk; daughter, attorney Lisa Tulk; sister, Penny Driessner; seven grandchildren; and two great-grandchildren.

ELDON L. YOUNGBLOOD

Youngblood, 80, of Dallas, died October 31, 2020. He received his law degree from Southern Methodist University School of Law and was admitted to the Texas Bar in 1967. Youngblood was a clerk for U.S. District Judge Sarah T. Hughes in 1967, an associate of and later partner in Coke & Coke, an attorney with Kelly, Hart & Hallman, and a founding partner in McGlinchey, Stafford and Youngblood & Associates. He was a member of the American College of Real Estate Lawyers. "Youngblood on Mechanics' and Materialmen's Liens in Texas" was published by the *Southwestern Law Journal* in 1972. He published *Youngblood on Texas Mechanic's Liens* treatise in 1996, with a second edition in 1999. Youngblood's vast library attested to his curiosity, ranging from English history to quantum mechanics. His main hobby was genealogy research, tracing his family history to the 9th century. Youngblood loved watching Texas Rangers baseball, playing Mozart's Clarinet Concerto in A Major, K. 622, and visiting ancestral homelands. He is survived by his wife of 36 years, Sandra Kirk Youngblood; sons, David and Kevin; daughters, Lisa Claire Thornhill, Mary

Farmer, Jennifer Ramirez, attorney Hilary Doitel, and Ariel Youngblood; brother, attorney Bruce; and seven grandchildren.

KELLY D. McGEHEE

McGehee, 77, of Dallas, died November 28, 2020. He served in the U.S. Army, receiving the National Defense Service Medal and Meritorious Service Medal, and was honorably discharged as a captain. McGehee received his law degree from Baylor Law School and was admitted to the Texas Bar in 1969. He was a solo practitioner in Dallas. McGehee was certified in estate planning and probate law by the Texas Board of Legal Specialization. He was a member of the Bar Association of the Fifth Federal Circuit, the Dallas Bar Association, and the Texas Bar College. McGehee loved spending time with his family, going to church, and fishing. He is survived by his wife, Shannon McGehee; son, David K. McGehee; daughter, Paige McGehee Johnson; sister, Bette Morris; four grandchildren; and one great-grandchild.

WILLIAM E. WATSON JR.

Watson, 91, of Luling, died December 5, 2020. He served in the U.S. Army from 1951 to 1953. Watson received his law degree from the University of Texas School of Law and was admitted to the Texas Bar in 1956. He was an attorney with Humble Oil and Refining, now ExxonMobil, in Houston from 1956 to 1963; general counsel to Wesley West Interests in Houston from 1963 to 1986; and a partner in Watson & Watson, with his wife, Lois, in Houston from 1986 to 1999. Watson served as mayor of West University Place and as a councilman. He served as a deacon and Bible teacher at Southwest Church of Christ. Watson and his wife semi-retired and fulfilled a lifelong plan by moving to their beloved cattle ranch outside of Luling. He is certified in oil and gas law by the Texas Board of Legal Specialization. Watson was a master naturalist and was active in the Chamber of Commerce, Genealogical and Historical Society, Zedler Mill Foundation, Caldwell County Appraisal District, Luling Independent School District ex-students association, the Luling Church of Christ, and Watson Ranch. He is survived by his wife of 69 years, attorney Lois Watson; son, William E. Watson III; daughters, Erin Leavitt and Margaret Girard; five grandchildren; and one great-grandchild.

HARTSON DUSTIN FILLMORE SR.

Fillmore, 89, of Fort Worth, died November 11, 2020. He served in the U.S. Air Force from 1951 to 1954. Fillmore received his law degree from the University of Texas School of Law and was admitted to the Texas Bar in 1956. He was an assistant district attorney in the Dallas County District Attorney's Office from 1957 to 1960, a partner in Fillmore, Parish, Martin, Kramer & Fillmore in Wichita Falls from 1960 to 1975, and a partner in Fillmore, Camp & Lee, now Fillmore Law Firm, from 1975 to 2002. Fillmore was a member of the American College of Trial Lawyers and the American Board of Trial Advocates. He received the Tarrant County Bar Association Blackstone Award in 2005. Fillmore practiced law with his sons for a decade. He was a man of God and a family man. Fillmore is survived by his wife of 64 years, Nancy Chambers Fillmore; sons, attorneys H. Dustin Fillmore III and Charles W. Fillmore; and 11 grandchildren.

VIRGIL BRYAN MEDLOCK JR.

Medlock, 83, of Dallas, died December 11, 2020. He received his law degree from the University of Oklahoma College of Law and was admitted to the Texas Bar in 1962. Medlock was admitted to the Oklahoma Bar in 1962 and to the U.S. Patent and Trademark Office. He was a patent attorney at Richards, Medlock & Andrews; Sidley Austin; and Banner Witcoff. Medlock was a Texas Bar Foundation and American College of Trial Lawyers fellow. He chaired the Southwestern Legal Foundation's Annual Institute on Patent Law for 27 years. Medlock served as chair of the State Bar of Texas Intellectual Property Law Section. He was managing editor of the *Oklahoma Law Review*. Medlock enjoyed hunting, including four trips to Africa, two with his son. He enjoyed flying and was a private, single, and multi-engine instrument rated pilot and owned several airplanes over the years. Medlock had wit and humor that filled the room—there was never a dull moment when he was around and his jokes and storytelling were legendary. He is survived by his wife of 59 years, Nancy; son, Virgil Medlock III; daughter, attorney Michele Medlock Cassidy; brother, Richard Medlock; and four grandchildren.

DAVID JEROME NAGLE

Nagle, 95, of Austin, died January 26, 2021. He served in the U.S. Navy from 1943 to 1946. Nagle received his law degree from the University of Houston Law Center and was admitted to the Texas Bar in 1958. He was admitted to the California Bar in 1975 and admitted to practice in Colorado in 1979. Nagle was an associate of Brown, Bates, Brock & Morgan in Houston, in private practice as a solo and with partners in Houston from 1968 to 1978 and in Greeley, Colorado, from 1979 to 1980, and sole owner of David Nagle & Associates in Austin from 1980 to 1998. He was a member of the Texas Trial Lawyers Association and the Association of Trial Lawyers of America. Nagle is survived by his sons, attorney Stephen Nagle, Timothy R. Nagle, and Nick Nagle; daughters, Jill Nagle O'Keefe and Barbara Nagle Craven; 10 grandchildren; and 10 great-grandchildren.

ROBERT WALDO LITTLE

Little, 79, of Longview, died January 15, 2021. He received his law degree from the University of Texas School of Law and was admitted to the Texas Bar in 1966. Little was a certified public accountant, establishing his firm in 1972 and practicing for over 40 years. He was active in numerous civic and charitable organizations. Little served as a deacon and Sunday school teacher at First Baptist Church Longview. He was a devoted husband, loving father, and doting granddad who treasured spending time with family and friends. Little is survived by his wife of 57 years, Carol Morris Little; son, attorney Joseph Little; daughter, Susan Hykel; and four grandchildren. **TBJ**

In loving memory of

George A. Hrdlicka

September 11, 1931 - December 31, 2020

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His spirit and his desire to be the best lawyer, mentor, and human being live on in each of us who knew George.

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The Judge's Daughter: PLEASANTRIES ABOUT LAWYERS

WRITTEN BY **PAMELA BUCHMEYER**

THE KILGORE COLLEGE RANGERETTES DANCED FOR RICHARD NIXON eight days before his election as vice president. Nixon and his wife, Pat, made a quick campaign stop in Gregg County. I know this because I found my father's 1953 yearbook from Kilgore College. The things you discover when cleaning out old boxes of books during the pandemic!

My father also had a book by Rosey Grier, the legendary defensive tackle for the New York Giants and the Los Angeles Rams in the 1950s and 1960s, who wrote about his favorite hobby—needlepoint—in *Rosey Grier's Needlepoint for Men*. Dad, the late Judge Jerry L. Buchmeyer, was known for his eclectic sense of humor. He wrote a legal humor column for 28 years for the *Texas Bar Journal*.

JUDGE JERRY L. BUCHMEYER (1933-2009) grew up in Overton and served as a federal judge in the Northern District of Texas after being nominated in 1979 by President Jimmy Carter. His monthly legal humor column ran in the *Texas Bar Journal* from 1980 to 2008.

But were lawyers funny in 1867? Yes, I have learned from another unpacked tome. Judge Charles Edwards, of New York, published *Pleasantries About Courts and Lawyers of the State of New York* in 1867 and its 500-plus pages are packed full of amusing anecdotes, poetics pleadings, and practical jokes among lawyers.

It's my pleasure to share below a few lightly edited highlights from Judge Edwards' book. Thank you for all the encouraging emails. It's a delight to receive them at pambuchmeyer@gmail.com.

Oyez! Oyez! Oyez!

Judge Edwards wrote fondly about a certain court crier in the New York Sessions Court who lacked the hoped-for gravitas for his job. The crier once announced to a rowdy courtroom:

> "Sirs! You really must make silence in the court. We have got many prisoners yet to try. We have already convicted six, without having heard a word of testimony against them."

The court crier often dozed off during court proceedings and one time when his slumber was interrupted by a peal of thunder, he jumped up and ordered the almighty: "Silence!"

Another time, the court crier was snoring so loudly that witnesses and counsel could not be heard. The crier's junior gave him a pointed nudge, "Sir, someone's snoring." The court crier sprang to his feet and shouted with his full senatorian lungs:

> "There will be no snoring in this court [glaring furiously at the assembly]! Your honor, the court recorder can go on now, without further interruption."

This reminds me of one of my father's favorite stories from his own courtroom. A witness for the U.S. Attorney's Office left the stand and confidently made his exit through a side court door. Long minutes passed as the entire assembly waited, tittering, for the poor man had not walked into the hallway but into an adjoining closet. He later said that after realizing his mistake, he'd hoped to stay hidden until court adjourned for the day.

Misc. Chuckles 1867

Evidently some things haven't changed in 150 years—the long-winded lawyer, the imperious judge, the woefully ill-prepared candidate for the bar—as these vignettes from Judge Edwards' book show.

> Counsel [after a long address]: I trust, your honor, I have been tediously clear.
> Judge: I'm not sure how far that might be, but you've been clearly tedious.

One judge was tenacious about the punctuality of jurymen. He fined any man tardy when the jury panel was called promptly at 10. One poor fellow was fined, and then a few days later, the judge himself was delayed for court.

> Juror: If I may be so free, Judge. It's thirty minutes past the hour. You yourself are late, and so it only seems fitting

that my fine receive a refund.
Judge [emphatically]: I desire the jury, and this juryman in particular, to understand, that it is not ten o'clock until the judge reaches the bench.

Thus, proving that for some judges even time stands still. Here's an anecdote from a bar exam, which according to the custom of the day, was done on verbal questions. On the subject of domestic relations:

Examiner: If a wife, knowing the infidelity of her husband, subsequently voluntarily cohabits with him, can she bring an action for divorce?
Law Student [nervously]: By infidelity, sir, do I understand you to mean a disbelief in the existence of the Supreme Being?

Poetic Pleadings and the One Cent Case

Judge Edwards provided an entire chapter of 1800s court pleadings written entirely in verse. Were they truly filed documents? Perhaps. The judge often provided citations, see for example, 27 American Jurist 247. Remember the very old language of pleadings? The plaintiff files a narrative or "narr." The defendant replies by demurrer, asking that the plaintiff "go forth sans day." The old-style pleading phrases remind me of my father when he was a fresh, young lawyer exhausted by repetitive drafting and I was a toddler with a brand new kitten that Dad promptly named "Whereas."

County of Albany, Let Justice all our wrongs redress.
Plaintiff's Narrative

Be it remembered, while time shall last,
That in the term of February past
Before the aforesaid justices there
By [t]his attorney smooth and fair….
Hill, the plaintiff in this suit,
Complains of Horton, oh the brute…
For that *whereas* the said defendant,
O'er who the scourge of law is pendent,
Did on the 30th day of May
A certain instrument convey
By which he promised to deliver
Twelve bantam hens, oh, the deceiver! …

Defendant's Demurrer

And the said Horton's ready here
To verify and make it clear
That the narr of the aforesaid Peter
Is bad in substance and in feature; …
First. In every narr, in every case,
You must allege a year and place.
But Hill's said narr containeth neither
And, therefore is not worth a feather…
And if 'tis damages you claim,
The wished amount you there must name
The narr aforesaid hath this flaw,
And, therefore, it is bad in law.

Appearance and Judgement

At which said term the judges meet,
And one another kindly greet.
And Utica's the favored place,
Where Justice shows her solemn face;
And Hill and Horton too appear,
Both trembling now and pale with fear.

It is considered, that said narr
And all its matters near and far,
Are both in terms and rhymes too rough;
And in the law not strong enough
For Hill one moment to maintain
The cause for which he doth complain…

And the said court do furthermore
Adjudge, upon the grievous score
Of costs by Horton fully paid
In the defense which he has made
That he therein shall be requited
(At which his heart must be delighted)
And, for the same, *award one cent*
(Which has his free and full assent)
And do award him execution
Of this most ample retribution.

In other words, the defendant was wrongly accused but his fair recompense is only one penny.

On a closing note, Judge Edwards explains humor among lawyers thusly: "...it is certain that the world at large laugh and ... enjoy the poking fun at others. And it is also true that lawyers, with all their seeming soberness, are, as to jokes, but children of a larger growth." Even for lawyers, we are all a child at heart. **TBJ**

PAMELA BUCHMEYER
is an attorney and award-winning writer who lives in Dallas and Jupiter, Florida. Her work-in-progress is a humorous murder mystery, *The Judge's Daughter.* She can be contacted at pambuchmeyer@gmail.com.

Houston Bar Foundation names Polly Fohn as chair

The Houston Bar Foundation has named Polly Fohn as its new chair, succeeding Susan L. Bickley. Fohn, a partner in Haynes and Boone, served as a foundation director from 2019 to 2021 and as co-chair of the Fellows Nominating Committee. "I am honored to be a part of an organization that does so much to help low-income residents in the greater Houston area exercise their legal rights," Fohn said. "The foundation's mission is more important than ever in these challenging times." Greg Heath will serve as treasurer and Jim Hart as vice chair. Hillary H. Holmes, Monica Karuturi, Quentin L. Smith, and Krisina Zuñiga will serve as directors from 2021 to 2023. Anna Archer will serve an unexpired term as a director in 2021. Bickley will continue to serve on the foundation board as immediate past chair. Ex officio members include Bill Kroger and Mindy Davidson. For more information about the Houston Bar Foundation, go to hba.org.

TEXAS COURT OF CRIMINAL APPEALS JUDGE SCOTT WALKER SWEARS IN HIS SON TO AN APPELLATE COURT

A judge on the state's highest criminal court, the Texas Court of Criminal Appeals, had the opportunity to swear in his son to one of the 14 intermediate appellate courts in Texas. Judge Scott Walker had the unique opportunity to swear in Justice Brian Walker on January 1, 2021, and also had the ceremonial honors at his son's investiture to the 2nd Court of Appeals in Fort Worth on January 21, 2021. "It was probably the greatest moment of my life to have the honor of having my father give me the oath of office," Justice Walker said. The socially distanced investiture featured some unique elements: Singer/songwriter Josh Weathers led the invocation and performed a couple of songs and Justice Walker's good friend, former Dallas Cowboy and three-time winning Super Bowl champion Jay Novacek, closed with the benediction.

Justice Brian Walker with his mother, Pam Walker, is sworn in by his father, Texas Court of Criminal Appeals Judge Scott Walker.

TEXAS LAWYERS APPROVE RULE AMENDMENTS IN 2021 RULES VOTE

Texas lawyers approved all eight proposed amendments to Texas' disciplinary and procedural rules in a monthlong voting process that ended March 4. The Texas Supreme Court now may adopt or reject the proposals approved by the bar's membership. For election results and details on the proposed amendments, go to texasbar.com/rulesvote. Under state law, proposed changes to attorney disciplinary rules must be approved by the Committee on Disciplinary Rules and Referenda, the State Bar of Texas Board of Directors, the bar's membership, and the Texas Supreme Court. On September 25, the State Bar board voted to petition the Supreme Court for a rules vote referendum on these eight proposals. The court ordered the referendum, and State Bar of Texas members voted via electronic or paper ballot between February 2 and 5 p.m. CST on March 4. Attorneys cast a total of 19,823 votes, representing a turnout of approximately 18.5% of eligible voters. Attorneys who are active and in good standing with the State Bar of Texas are eligible to vote in State Bar elections. "We sincerely thank all the lawyers who took the time to study the important issues at hand and exercised their right of self-governance to vote on these proposed rule amendments," said Trey Apffel, executive director of the State Bar of Texas.

TOJI NOMINATED FOR ABA LOUIS M. BROWN AWARD FOR LEGAL ACCESS

The Texas Opportunity & Justice Incubator, or TOJI, has been nominated for the American Bar Association Louis M. Brown Award for Legal Access. The award is presented to programs and projects that advance access to legal services for those of moderate income in ways that are exemplary and replicable. The criteria for the award include: 1) significant improvement of the delivery of legal services and information to moderate income people; 2) innovation in the development, funding, or implementation of the delivery of legal services; 3) the ability to replicate the program or project in other settings; 4) demonstrated success in the operation of the program or project; and 5) demonstrated capacity to generate compensation for lawyers providing affordable legal services. From April 2017 through November 2020, TOJI lawyers represented 5,282 clients, spent 20,333 hours serving 2,278 modest-income clients, provided full pro bono representation to 697 low-income clients, gave over 6,606 pro bono hours, and saved everyday Texans approximately $3,355,000. For more information about TOJI, go to txoji.com.

TEXASBARCLE HONORS OUTSTANDING VOLUNTEERS

Seven attorneys were recognized for their exceptional contributions in 2020 to the State Bar of Texas' continuing legal education efforts. TexasBarCLE gave Standing Ovation Awards to Kirby Drake, of Dallas; Rhonda Hunter, of Dallas; Marc D. Markel, of Boerne; Chris Ritter, of Austin; Mike Tolleson, of Austin; Mark C. Walker, of El Paso; and Zach Wolfe, of The Woodlands. "During this past year, which has been incredibly challenging for the legal community and the public, we applaud these lawyers for their extraordinary service to TexasBarCLE and their contributions to the continuing education of their peers," said Hedy Bower, TexasBarCLE director.

ETHICS COMMITTEE SEEKS PUBLIC COMMENTS ON ONE PROPOSED OPINION

The Professional Ethics Committee for the State Bar of Texas is accepting public comments on a proposed ethics opinion:

- **Proposed Opinion 21-2:** Does a lawyer have a duty under the Texas Disciplinary Rules of Professional Conduct to correct false statements made by his client in response to questioning by the opposing party's counsel during a deposition? (Comment deadline: April 27)

To read the proposed opinion and provide comments, go to texasbar.com/pec. **TBJ**

VOTE IN THE STATE BAR ELECTIONS

April 1–April 30, 2021

Votes for the State Bar of Texas and the Texas Young Lawyers Association presidents-elect and district directors can be cast via paper ballot or online from April 1 to April 30, 2021. The voting process will occur as follows:

1. On April 1, attorneys eligible to vote will be mailed an election packet that includes a paper ballot, candidate brochures, and instructions on how to cast their vote. An email also will be sent to attorneys, giving them instructions on how to vote online. **Be sure to check your spam filter and junk mail folder.** Election emails are sent by the State Bar's election provider, Election Services Corporation from **statebaroftexas@electionservicescorp.com.**

2. The election packet and email will contain a voter authorization number (VAN) with instructions on how to vote online. Attorneys may use this VAN and their bar card number to log on to the election website to cast their ballot. If attorneys do not have their VAN, they can go to the State Bar website, **texasbar.com,** to cast their vote.

3. Attorneys may either submit their paper ballot via mail or vote online using the information provided. The secure election system will not allow duplicate votes.

The deadline to cast ballots is 5 p.m. CDT April 30, 2021.

State Bar *of* Texas

ABA Delegate Applications Sought

THE STATE BAR OF TEXAS BOARD OF DIRECTORS has adopted a process to ensure diversity in the State Bar's delegation to the House of Delegates of the American Bar Association. The House of Delegates is the policymaking body of the ABA. Members serve two-year terms and no person may serve as a delegate of the State Bar for more than six consecutive years.

A special committee, chaired by Immediate Past President Randall O. Sorrels, of Houston, will nominate a slate of persons to produce a delegation with various types of practices, from all firm sizes and geographic locations and with diverse backgrounds reflective of the bar's membership. Appointments will be approved by the board of directors. **The deadline for receipt of applications is April 30, 2021.**

If you are interested in being a delegate of the State Bar of Texas to the ABA House of Delegates, **you can apply by sending a resume and cover letter, including your reasons for wanting to serve as a delegate and highlighting your experience with the State Bar of Texas and the ABA, via email to cbarber@texasbar.com or via mail to:**

Office of Executive Director
Attention: Chielsey Barber
State Bar of Texas
PO Box 12487
Austin, TX 78711

If you need additional information, contact Chielsey Barber at 512-427-1416; 800-204-2222, ext. 1416; or cbarber@texasbar.com.

texasbar.com

The ATJ Pro Bono Champion is a quarterly feature highlighting the work of an attorney chosen by the Texas Access to Justice Commission. To learn more about pro bono work in Texas or to get involved, go to probonotexas.org.

Mark MELTON

DALLAS-BASED TAX ATTORNEY MARK MELTON BEGAN HIS PRO BONO EFFORTS BY ACCIDENT. AFTER HIS SOCIAL MEDIA POSTS ON EVICTIONS DURING THE COVID-19 PANDEMIC NETTED HIM MORE RESPONSE THAN ANTICIPATED, HE STARTED DALLAS EVICTIONS 2020 TO MEET THE HUGE DEMAND, RECRUITING 175 VOLUNTEER ATTORNEYS TO ASSIST TENANTS FACING EVICTION IN DALLAS COUNTY. SO FAR, HIS GROUP HAS HELPED ABOUT 6,000 TENANTS.

INTERVIEW BY **ERIC QUITUGUA**
PHOTO COURTESY OF **MARK MELTON**

HOW ARE YOU AND YOUR FELLOW VOLUNTEER ATTORNEYS DOING?
It's been a long year. Since March 2020, we've recruited over 175 volunteer lawyers to assist tenants facing eviction in Dallas County. They cycle in and out of the program as they have time to assist. For me personally, I spent around 1,000 hours on this project in 2020, and I'd be lying if I said I wasn't tired. Most days I spend a lot of time talking with people having one of the worst days of their lives. That certainly takes its emotional toll, as it's hard not to absorb some of that pain. On the whole, it's rewarding work that makes a real and immediate difference in the lives of a lot of people who aren't otherwise able to help themselves.

HOW HAVE THE FEDERAL EVICTION MORATORIUM AND TENANT PROTECTIONS EVOLVED WHERE YOU'RE AT IN THE YEAR SINCE COVID-19 UPENDED "NORMALCY"?
Early during the pandemic, the Texas Supreme Court issued an order halting hearings on eviction cases, which, as a practical matter, acted as a statewide moratorium on evictions. When that protection ended, we saw a lot of evictions come through; although, the rent assistance programs from the Coronavirus Aid, Relief, and Economic Security, or CARES, Act incentivized landlords to leave some tenants in place so they could recover back rents from the government. The impact of that was a lower-than-normal number of eviction cases, but a lot of people were still displaced. The city of Dallas also passed an ordinance, which we helped draft, that effectively delayed eviction proceedings by up to 60 days. That also helped delay evictions until rent assistance could be obtained. Late in the year, the Centers for Disease Control and Prevention issued an order delaying evictions, which has been very helpful in keeping tenants in place. But due to a recent federal court ruling, the future applicability of that order is in question. What is almost certain is that without further government intervention, we should expect to see hundreds of thousands of evictions occur across the state of Texas.

DESPITE PROTECTIONS FOR TENANTS, WHAT IS THE SCOPE FOR EVICTIONS STILL OCCURRING FOR PEOPLE WHO ARE FACING HARDSHIPS BECAUSE OF THE PANDEMIC?
The CDC moratorium is really the only thing standing between us and massive amounts of people losing their homes. But even that protection isn't automatic. It only covers certain tenants, and only if those tenants provide a declaration to their landlords demonstrating eligibility. In my experience, most tenants have no idea this protection is available. And given their sense of helplessness, many don't show up for their court date and are evicted through a default judgment.

DOES DALLAS EVICTIONS 2020 REPRESENT THOSE PEOPLE, AS WELL AS LANDLORDS, IN CASES PRO BONO?
Our focus is on keeping vulnerable populations housed. We do not represent landlords trying to evict someone. We do, however, regularly educate landlords on the requirements of the various moratoria. In my view, a landlord that follows the law leads to one fewer tenant that we need to defend. We also assist landlords with getting their tenants to apply for rent assistance. We have positive working relationships with many landlords across the city and work collaboratively with them.

WHAT ARE SOME OF THE STORIES YOU'RE HEARING FROM TENANTS AND LANDLORDS ALIKE DURING THE PANDEMIC?
This isn't a scenario where there's a winner and loser. Everyone is losing. Tenants who have lost their jobs due to COVID-19 have limited to no options on account of a pandemic they didn't cause. Most were doing just fine before this happened. And landlords are equally frustrated by the inability to collect rents. They obviously have bills to pay too. We've seen many examples of compassion and collaboration to avoid eviction, but we've also seen a large number of aggressive attempts to remove tenants even where those tenants were protected under the law. My experience with this project has also highlighted the long-standing problem of a large number of rental units that are not maintained properly, especially in low-income areas. Mold and other hazards are a significant problem throughout these neighborhoods.

WHY DID YOU DECIDE TO FOCUS YOUR PRO BONO EFFORTS ON TENANT/LANDLORD RIGHTS?
This really all happened by accident. Last March, I started posting explainers on social media about the various eviction moratoria. Before I knew it I was spending all day, every day fielding questions about how these protections applied to people's specific circumstances. So I asked other lawyers to help, and this project grew into what it is now because the need became so large and the available resources were so few.

When I moved to Dallas in 1999, I did so because I lost my job and my own home. Married with two young kids, I hadn't yet gone to college, and I found myself in a situation similar to what these people are dealing with. I've felt those feelings of desperation and hopelessness. So as this housing crisis grew, I couldn't help but empathize with its victims. Even when I'm tired, that's what drives me to continue.

WHAT IS SOMETHING TENANTS IN TEXAS SHOULD KNOW IF THEY'RE FACING AN EVICTION?
For now, at least, tenants facing eviction should provide the CDC declaration to their landlord as early as possible. You can find these online or if you have been served with eviction papers, a copy of the declaration is attached to your citation. Possibly more importantly, don't try to do this alone. Reach out to legal aid providers in your area. And again, do this as early in the process as possible. Finally, apply for rent assistance at texasrentrelief.com. **TBJ**

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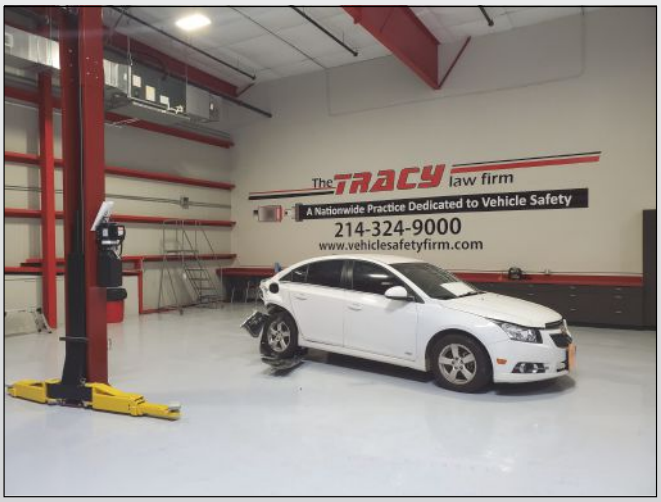
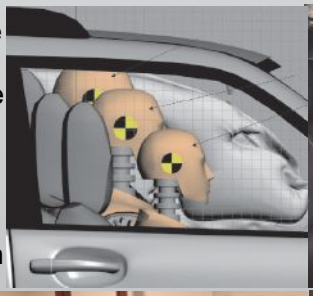
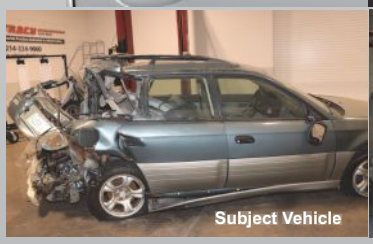
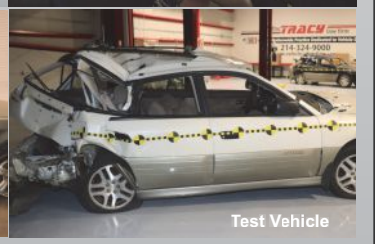


Every vehicle accident case you handle has the potential to be on one of the 235 racks or in one of our six inspection bays at the firm's Forensic Research Facility. We continually study vehicle safety through the use of engineering, biomechanics, physics and innovation.







If you have any questions about a potential case, please call us. There may be vehicle safety system defects that caused your clients' catastrophic injury or death.

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