10-1-1996

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Mitchel L. Winick
Debra Thomas
Robin Sisco

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Available at: https://doi.org/10.37419/TWLR.V3.I1.1

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ATTORNEY ADVERTISING IN TEXAS: REGULATIONS MEAN SERIOUS BUSINESS

MITCHEL L. WINICK†
DEBRA THOMAS††
ROBIN SISCO†††

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† B.A., University of the Pacific 1976, J.D. University of Houston 1978. Mr. Winick is an adjunct professor of Law at Texas Wesleyan University School of Law and Texas Tech University School of Law. He is a member of the State Bar of Texas Advertising Review Committee and a Faculty Member of the Texas Center for Legal Ethics and Professionalism. Mr. Winick is also a Law Firm Management Consultant. The authors thank Ms. Christine Crase who helped research and write an earlier article used as background for the constitutional history of attorney advertising. See Mitchel L. Winick et al., Attorney Advertising on the Internet: From Arizona to Texas — Regulating Speech on the Cyber-Frontier, 27 TEX. TECH. L. REV. 1487 (1996).
††† B.S., University of Texas at Austin 1989, M.P.A., Texas Tech University 1992. Ms. Sisco is the Director of the Advertising Review Department of the State Bar of Texas.
INTRODUCTION

An attorney’s failure to maintain a separate trust account for client funds violates the Texas Disciplinary Rules of Professional Conduct.1 It is not surprising that subject to a finding of just cause under the Texas Rules of Disciplinary Procedure,2 this action could result in imposition of attorney sanctions ranging from a private reprimand to dis-

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2. “Just cause” means such cause found to exist following a reasonable inquiry that would lead a reasonable and prudent person to believe that an attorney has committed an act of professional misconduct warranting a sanction. See TEX. R. DISCIPLINARY P. 1.06(P) (1992), reprinted in TEX. GOV’T CODE ANN., tit. 2, subtit. G app. (West Supp. 1996). “Just cause” is determined by the investigatory panel called by the Chair of the District Grievance Committee (“Committee”) for the county where the alleged professional misconduct occurred. Id. Rule 2.11 (1994).
barment. Although the general applications of existing rules are well known to Texas attorneys and legal professionals, obscurities, additions and changes in the rules relating to attorney advertising are catching Texas attorneys by surprise. For example, it is a violation of the Texas Disciplinary Rules of Professional Conduct if an attorney fails to properly file a copy of a non-exempt attorney advertisement with the Committee on Lawyer Advertisement and Solicitation ("Advertising Review Committee") of the State Bar of Texas ("State Bar") prior to or concurrently with publishing the advertisement. Subject to a finding of just cause under the Texas Rules of Disciplinary Procedure, this act or omission could also result in attorney sanctions ranging from a private reprimand to disbarment.

WHAT WAS THAT AGAIN? . . . suspension of a law license for failure to properly file a Yellow Pages advertisement with a State Bar committee? . . . public reprimands for failure to properly disclose board certification disclaimers? (1) Could this be true? (2) When and how did this happen? (3) Why don't Texas lawyers know that violating the new advertising rules may result in serious consequences? Under the current rules, Texas attorneys must file certain attorney advertisements with the Advertising Review Committee of the State Bar. Failure to properly file non-exempt attorney advertisements with the Committee violates the Texas Disciplinary Rules of Professional Conduct, Part VII: Information about Legal Services. Because violation of the rules constitutes professional misconduct, an attorney, subject to a finding of just cause under the Texas Rules of Disciplinary Procedure, may be sanctioned by disbarment, resignation, suspension, probation, public reprimand, or private reprimand. The new advertising and solicitation rules were approved by a State

3. See id. Rule 1.06(T)(1)-(8).
4. See Tex. Disciplinary R. Prof. Conduct 7.07(b)(1)-(4) (1995). The Committee meets on at least a quarterly basis to review advertisements and solicitation letters, develop interpretive comments, and establish administrative procedures for maintaining a proper level of review of submitted materials. See State Bar of Texas, Lawyer Advertisement and Solicitation Review Comm., Internal Operating Rules and Procedures Rule 5(a) (1995) [hereinafter "Internal Operating Rules"]. The Committee is a permanent State Bar committee and is composed of twelve members, three of which must be nonlawyer "public" members. See id. Rules 3 & 4(a)(i). Members are nominated for three year terms by the State Bar president subject to the Board of Directors' concurrence. See id. Rule 4(b).
6. See id. Rule 1.06(T)(1)-(8).
7. See Tex. Disciplinary R. Prof. Conduct 7.07 (1995). Types of attorney advertisements that must be filed are discussed infra Part II.B.
11. See id. Rule 2.13, 2.17, 1.06(T).
Bar referendum\textsuperscript{12} and adopted by the Supreme Court of Texas in November 1994.\textsuperscript{13} The new rules became effective on July 29, 1995.\textsuperscript{14}

Texas attorneys have been repeatedly notified about the new rules, the rules' interpretive comments, and commentary in articles published in the Texas Bar Journal,\textsuperscript{15} the Texas Lawyer,\textsuperscript{16} and MCLE Seminars.\textsuperscript{17} Moreover, the Advertising Review Committee has begun sending grievance complaints to the Office of Chief Disciplinary Counsel (General Counsel of the State Bar) for investigation and possible sanctions related to violations of the State Bar advertising and solicitation rules.\textsuperscript{18}

The purpose of this article is to provide attorneys with additional notice and explanation of the history, constitutional basis, and interpretation of Texas' attorney advertising and solicitation rules. If an ounce of prevention is worth a pound of cure, the objective of this article is to help prevent unnecessary grievances and sanctions caused by a lack of knowledge about the Texas attorney advertising and solicitation rules. Part I of this article reviews the creation of the Texas rules and the Advertising Review Committee. Part II provides a summary of the new Texas rules, including a discussion of the most common violations. Part III provides a history of the constitutional issues related to the First Amendment and commercial speech. In conclusion, Texas attorneys should note that compliance with the advertising and solicitation rules is required to avoid potentially serious sanctions.

\textsuperscript{12} See Referendum '94 Update, 57 TEX. B.J. 724, 724 (1994).

\textsuperscript{13} See In the Supreme Court of Texas (Miscellaneous Docket No. 94-9167): Order of Promulgations and Adoption of Disciplinary Rules, 58 TEX. B.J. 66, 66 (1995).


\textsuperscript{17} See State Bar of Texas, Commission on Lawyer Advertisement and Solicitation, Meeting Report on Educational Efforts (May 1996) (includes a list of 18 presentations made from 1995 through May 1996 by committee and staff members as part of various continuing education programs throughout Texas) (copy on file with author, Winick).

\textsuperscript{18} See State Bar of Texas, Commission on Lawyer Advertisement and Solicitation, Meeting Minutes 1 (Jan. 7-8, 1996) (copy on file with author, Winick).
I. Creation of the Texas Rules and the Advertising Review Committee

A. Brief History of the Texas Rules

In April 1993, the State Bar Board of Directors reviewed proposed attorney advertising and solicitation amendments to the Texas Disciplinary Rules of Professional Conduct.\(^{19}\) The newly created Committee on Lawyer Advertising presented the original draft of the new attorney advertising rules in a series of public hearings held in the spring of 1993.\(^{20}\) Hearings held in eight cities across Texas solicited opinions from the public and attorneys alike to determine what additional changes needed to be made to the new rules.\(^{21}\) Following the hearings, the Committee revised the rules, and submitted a final draft to the State Bar Board of Directors in September 1993.\(^{22}\) The Board of Directors approved and submitted the draft to the Supreme Court of Texas which authorized the necessary bar-wide referendum on the new rules.\(^{23}\)

Referendums were mailed in November with a deadline of December 20, 1993.\(^{24}\) However, because less than fifty-one percent of the Bar's membership participated, the rules could not be promulgated.\(^{25}\) Thus, in January 1994, the State Bar re-approached the Supreme Court which granted authorization of a second referendum.\(^{26}\) During the second referendum, held in April and May of 1994, the draft of the new advertising rules was approved by the bar's membership.\(^{27}\) In November 1994, the Supreme Court of Texas issued an order promulgating and adopting the amendments and additions to Parts VII and VIII of the Texas Rules of Professional Conduct.\(^{28}\)

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24. See id. at 1034.


26. See id.


B. Constitutional Challenge to the Rules

These new rules were immediately tested in federal court when the group Texans Against Censorship, Inc. challenged their constitutional validity.29 However, on March 31, 1995, in a declaratory judgement delivered by Judge William Wayne Justice of the U.S. District Court for the Eastern District of Texas, only three of the new rules were declared unconstitutional — two on their faces and one as applied.30 A request has been submitted to the Texas Supreme Court asking that the two rules found unconstitutional on their faces be deleted31 and that the third found unconstitutional as applied be modified so as to address Judge Justice’s concerns.32 Although the Supreme Court has yet to act, the first two are currently not enforced, and the third is being enforced as modified against all persons except one plaintiff.33

C. Publication of the New Rules

The new rules went into effect on July 29, 1995.34 The Special Committee on Lawyer Advertising published the new rules and several informative articles in the June 1995 issue of the Texas Bar Journal,35 and published examples of proper and improper solicitation letters and yellow pages advertisements in the July 1995 issue.36 In the November 1995 issue, the Committee published their interpretive comments developed to aid lawyers in understanding the somewhat vague references in the rules such as displayed conspicuously.37 In March 1996, the Committee published another interpretive comment in the Texas Bar Journal concerning how the rules will be applied to Internet advertising.38 Additionally, throughout 1995, the Texas Lawyer newspaper published numerous articles concerning the rules, the Advertising Review Committee, and the review process.39

D. The Advertising Review Committee

The Advertising Review Committee, charged with reviewing lawyer advertisements and written solicitations, began reviewing advertising

30. See id. at 1372.
31. See Comments, supra note 15, at 583, 589 (Rules 7.05(b)(4), (5)).
32. See id. at 583, 587 (Rule 7.04(j)).
33. See id. at 583, 589 (Rules 7.05(b)(4), (5)).
34. See id. at 583.
35. See Comments, supra note 15; Overview, supra note 15; Top 10 Violations, supra note 15.
37. See Interpretive Comments, supra note 15, at 1047.
38. See Internet, supra note 15, at 256.
in early July 1995. The Advertising Review Committee is a standing committee of the State Bar of Texas charged with implementing the advertising and solicitation rules. The Advertising Review Committee is made up of nine lawyers and three public members appointed by the President of the State Bar and holding office for three year terms. The Advertising Review Committee meets on a quarterly basis, or as required, to review advertisements and discuss applications of the rules to specific situations. In addition, an Advertising Review Department consisting of three full-time staff members—a director, an assistant director, and a secretary—supports the Advertising Review Committee. The staff also responds to questions from attorneys and others about the rules, manages the information database, and conducts the initial review of all applications.

The Advertising Review Committee officially began accepting advertising and written solicitation applications for review on July 3, 1995. The Advertising Review Committee received approximately two thousand one hundred applications during the first five months. However, the number of applications has somewhat diminished since the beginning of 1996. Through June 1996, the Advertising Review Committee has reviewed over four thousand one hundred advertisements and written solicitations. As of June 1996, sixty-six percent have been approved, twenty-four percent have been rejected and returned to the applicant for corrections, seven percent are currently under review, and three percent have been referred to the general counsel's office for grievance or disciplinary action.

II. SUMMARY OF THE TEXAS RULES

A. Filing Requirements

Rule 7.07 of the Texas Disciplinary Rules of Professional Conduct contains the filing requirements for public advertisements and written solicitations. It is crucial to note that the failure to file a non-exempt advertisement constitutes a violation of the rules. Further, the Ad-

41. See Internal Operating Rules, supra note 4, Rule 2(g).
42. See id. Rule 4(a)(i), 4(b).
43. See id. Rule 5(a).
44. See id. Rule 7.
45. See id. Rule 10.
47. See Advertising Review Department Report: Cases Filed by Ad Type, Dec. 6, 1995 (copy on file with author, Winick).
49. See Advertising Review Department Report: Cases Filed by Ad Type, July 1, 1996 (copy on file with author, Winick).
50. See id.
52. See id. Rule 7.07 cmt. 2.
vertising Review Committee is in the process of developing enforcement procedures in which clipping services and other sources will be used to identify advertisements that have not been filed with the Committee.53

A filing consists of an application form, signed and dated by the attorney responsible for the advertisement, and a filing fee.54 If the submission is a written solicitation, a copy of the solicitation letter and its mailing envelope must be included with the application.55 A public media advertisement submission packet must include a copy of the print, photo, video, or audio tape.56 In addition, television and radio advertisements must be accompanied by a production script containing all the details of scenes, images, spoken statements, and relevant information.57 The application packet should contain duplicates of everything submitted58 with the exception of audio and video tapes, in which case a single copy is adequate.59 Finally, each application shall be accompanied by a check or money order in the amount of the filing fee made payable to the State Bar of Texas.60

Once an advertisement has been filed with the Committee, additional filings are not required unless substantive changes are made.61 The rearrangement of text, change in type style, changes of addresses or telephone numbers are generally not considered substantive changes.62 In addition, if the same advertisement is being used in multiple media outlets, only one filing will be required.63

B. Filing Exemptions

Rule 7.07(d) delineates certain types of advertisements and solicitations that are exempt from filing.64 For example, public media advertisements that contain only certain information, such as name, address, telephone number, board certifications, and dates admitted to practice are exempt from filing.65 Sponsorship announcements of a charity or community event or public service announcements are likewise exempt if the advertisement contains only the lawyer’s or firm’s

53. Telephone interview by Barbara Lindsay-Smith with Robin Sisco, Director, Advertising Review Department of the State Bar of Texas (Nov. 19, 1996).
54. See Internal Operating Rules, supra note 4, Rule 6(c).
56. See id. Rule 7.07(b)(1).
57. See id. Rule 7.07(b)(2).
58. See Internal Operating Rules, supra note 4, Rule 6(a)(i), 6(b)(i).
59. See id. Rule 6(b)(iii).
60. See id. Rule 6(c).
61. See id. Rule 6(a)(ii)(1)-(4).
62. See Telephone interview, supra note 53.
63. See Internal Operating Rules, supra note 4, Rule 6(a)(ii)(1); TEX. DISCIPLINARY R. PROF. CONDUCT 7.07 cmt. 3 (1995).
65. See id. Rule 7.07(d)(1).
name and location. Lists in regularly published law lists, such as Martindale-Hubbell Law Directory and the Texas Legal Directory, are exempt from filing, as are announcement cards or "tombstone" professional cards.

Newsletters sent exclusively to existing or former clients or other lawyers are also exempt from the filing requirement. Finally, a written communication, requested by a prospective client and that is not motivated by pecuniary gain, or that is not in response to a specific event or existing legal problem, is exempt from filing as well. Thus, the attorney should review the filing exemptions before submitting an advertisement or written solicitation application.

C. Pre-approval

Pre-approval of an advertisement, also called an advance advisory opinion, is not required. However, it is an option available for the lawyer's protection. Pre-approval allows the lawyer to have an advertisement reviewed prior to dissemination, without risk, and provides an opportunity for correction of potential violations. To obtain pre-approval, the lawyer must submit an application packet at least thirty days prior to the advertisement's first dissemination. Yellow Pages advertisements must be submitted at least thirty days prior to the last date on which the advertisement could be changed if a pre-approval is requested. The Committee or its staff must review the advertisement within thirty days of the date of receipt. Then, the Committee will notify the lawyer in writing as to approval or as to specific violations. While the Committee's Internal Operating Rules allow the Committee thirty days in which to respond, in most instances, a lawyer can expect a response within fifteen days of the date that a request for pre-approval is submitted. The Committee's letter noting violations provides the lawyer thirty five days to make appropriate corrections and re-submit the advertisement. If the appropriate corrections are made, the lawyer receives an approval upon re-submittal.

66. See id. Rule 7.07(d)(2).
67. See id. Rule 7.07(d)(3).
68. See id. Rule 7.07(d)(5).
69. See id. Rule 7.07(d)(6)-(8).
70. See id. Rule 7.07(c) & cmt. 4.
71. See id.
72. See id. Rule 7.07(c).
73. See Telephone interview, supra note 53.
74. See Internal Operating Rules, supra note 4, Rule 9(c)(i).
75. See id. Rule 7(c)(i)(2)-(4).
76. See id. Rule 9(c)(i).
77. The expected response time is based on the author Winick's experience as a committee member.
78. See id. Rule 9(c)(ii).
79. See id. Rule 7(c)(i)(3).
D. **Filing Simultaneous with Publication**

If a lawyer does not utilize the pre-approval process, she must file the advertisement either before or simultaneously with publication.\(^\text{80}\) A filing means that the lawyer submits the application to the Lawyer Advertisement and Solicitation Committee of the State Bar of Texas.\(^\text{81}\) Upon receipt of a filing, the advertisement is reviewed by the Committee or its staff.\(^\text{82}\) If there are no violations, the lawyer receives approval.\(^\text{83}\) If the advertisement contains violations, the Committee shall offer the lawyer an opportunity to correct violations.\(^\text{84}\) After final review, if the advertisement still does not comply with the rules, it will be marked “Disapproved.”\(^\text{85}\) The Committee shall then file a complaint outlining the violation(s) with the Chief Disciplinary Counsel.\(^\text{86}\)

It is important to note that the thirty day deadline for response by the Committee mentioned above applies only to pre-approval requests and not to filings.\(^\text{87}\) The time frame within which the Committee must act in the case of simultaneous filings is within forty-five days of the date of receipt.\(^\text{88}\) The Advertising Review Department is not required to notify the attorney prior to forwarding a violation to the regional counsel’s office.\(^\text{89}\)

E. **Most Common Violations**

1. **Improper Use of Trade Names**

Rule 7.01 addresses “Firm Names and Letterhead.”\(^\text{90}\) A lawyer may not practice under a trade name.\(^\text{91}\) Examples of name violations include: “The Legal Clinic of John Doe,” “The Traffic Ticket Defense Firm,” “Texas Divorce Clinic,” or “The Houston Legal Center.”\(^\text{92}\)

2. **False and Misleading Content**

Rule 7.02 addresses false and misleading content.\(^\text{93}\) Communication that is false, misleading, or creates an unjustified expectation concerning the results a lawyer can obtain constitutes a violation of the

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\(^{81}\) See id. Rule 7.07(a)-(b).

\(^{82}\) See Internal Operating Rules, supra note 4, Rule 7.

\(^{83}\) See id.

\(^{84}\) See id. Rule 7(c)(ii)(1); Rule 9(c)(iii)-(iv).

\(^{85}\) See id. Rule 7(c)(ii)(2).

\(^{86}\) See id. Rule 8.


\(^{88}\) See Internal Operating Rules, supra note 4, Rule 9(c)(iii).


\(^{90}\) See id.

\(^{91}\) See id. Rule 7.01(a).

\(^{92}\) See id. Rule 7.01 cmt. 1; Complying with the New Advertising Rules, 58 Tex. B.J. 662, 664 (1995).

\(^{93}\) See Internal Operating Rules, supra note 4, Rule 7.02(a).
rules. Common violations occur in bankruptcy advertisements that contain statements like “Stop Foreclosure,” “Stop Repossession,” or “Stop the IRS” without adequate qualifications or disclaimers. An example of an appropriate qualifying statement is: “If you qualify, federal bankruptcy law may allow you to . . . .”

Another common violation is the addition of statements such as “licensed in all areas by the Texas Supreme Court” or in “all Texas courts.” Because such assertions have the potential to mislead the public, Rule 7.04(c) prohibits adding language to the statements or disclaimers that accompany any special competencies or certifications. However, the attorney may designate the specific federal courts in which she has been admitted to practice.

Statements in advertisements or writings about the results obtained on behalf of clients, such as the amount of damage awards or the lawyer’s record in obtaining favorable settlements or verdicts, may create unjustified expectations. If included, these statements must be accompanied by prominent disclaimers and other detailed information on the nature of the case or matter. Rule 7.02 also prohibits comparison of one lawyer’s or firm’s services to another’s without verifiable, objective data. This rule precludes statements such as “The best law firm in town” or “The most successful trial lawyer in recent history.” Of course, any statements that imply that the lawyer can improperly influence a court or judge are likewise prohibited.

3. Prohibited Direct Solicitation

Rule 7.03 addresses “Prohibited Solicitation and Payments.” Rule 7.03 prohibits in-person and telephone solicitation of any person involving a particular occurrence or event unless that person is a former client or a family member. In addition, an attorney cannot pay a non-attorney for soliciting clients, including payment of a “signing bonus” or any other item or service of value to the non-attorney.

94. See id. Rule 7.02(a)(1)-(2).
95. See id. Rule 7.02(a)(1)-(2) & cmt. 2. This statement is based on author Winick’s experience as a committee member.
96. See Top 10 Violations, supra note 15, at 598.
98. See id. Rule 7.07(d)(1)(iii).
99. See id. Rule 7.02 cmt. 2.
100. See id. See also Interpretive Comments, supra note 15, at 1046 (providing examples of appropriate disclaimers and required information in Comment 3).
102. See id. Rule 7.02 cmt. 2.
103. See id. Rule 7.02(a)(2)-(4) & cmt. 2; Interpretive Comments, supra note 15, at 1046.
105. See id. Rule 7.03(a).
106. See id. Rule 7.03(b).
However, a lawyer may advance actual litigation expenses, medical expenses or financial assistance in accordance with Rule 1.08(d).107

4. Communications Not Required to be Filed

Rule 7.04 addresses “Advertisements in the Public Media.”108 The Advertising Review Committee has defined public media as any advertisement broadcasted or made available to the general public, such as Yellow Pages advertisements, newspapers, magazines, billboards, radio, television, and home pages on the Internet.109 Publications or other communications intended for dissemination primarily to other lawyers are not considered to be public media and do not require a filing.110 This would include advertisements in the Texas Bar Journal, the Texas Lawyer, or local bar association printed publications.

5. Board Certifications and Disclaimers

Under Rule 7.04, a lawyer must not advertise as a “specialist” without appropriate certification by either the Texas Board of Legal Specialization (“TBLS”) or an organization accredited by TBLS to grant certifications.111 Examples of certifications that are not appropriate for advertisement under the current rules are those granted by the the American Bankruptcy Board and the National Board of Trial Advocacy. The rules do not prohibit advertisement of membership in these organizations, however, no designation of “certification” is allowed.112 TBLS is the only entity authorized to certify that other organization’s names may be mentioned in advertising in Texas.113

Fields of practice may be identified without the designation “specialist,” as long as the disclaimer “Not Certified by the Texas Board of Legal Specialization” is included in the advertisement.114 The disclaimer statement must be separate and apart from any other content.115 All certification and non-certification statements must be in the exact language quoted in the rules and must not contain any changes, abbreviations, or additions.116 If an attorney advertises in an area of law that is not designated as a specialty by the TBLS, in addition to the “Not certified . . . ” disclaimer, the attorney may include

107. See id. Rule 1.08(d), 7.03(c). A lawyer may also include a statement about such advancements in an advertisement or letter as long as a specific sum or amount is not mentioned. See id. Rule 7.03(c).
108. Id. Rule 7.04.
111. See id. Rule 7.04(b)(2)(ii); Interpretive Comments, supra note 15, at 1048.
113. See id.
115. See id. Rule 7.04(c); Interpretive Comments, supra note 15, at 1048.
116. See Interpretive Comments, supra note 15, at 1048.
the statement “No designation has been made by the Texas Board of Legal Specialization of a certificate of special competence in this area." However, before using such a statement, the attorney should confer with TBLS to verify that her specialty area is not included in an existing TBLS specialty category.

In addition, certification and non-certification statements must be conspicuously displayed and located completely apart from all other statements. In television and video advertisements, a display of five seconds duration is considered “conspicuous” under Committee guidelines.

Rule 7.04 requires a lawyer to publish or broadcast the name of the lawyer responsible for the advertisement, but the rule does not require a specific format or statement; the lawyer’s name or firm name in the advertisement is considered sufficient.

6. Using Actors or Narrators

Under Rule 7.04(g), actors may not portray lawyers or provide narration that creates the impression that they are lawyers in television and radio advertisements. In determining whether or not there is a portrayal violation, the Committee will consider the advertisement as a whole, including the surrounding setting, the specific language used, and any other characteristics that may imply that the person in the advertisement is one of the lawyers whose services are being advertised. The inclusion of a disclaimer stating that the person is an actor does not cure this violation. Actual clients and client testimonials may be included in an advertisement, however, if actors are used to portray clients, then a disclaimer such as “DRAMATIZA-

118. “The Texas Board of Legal Specialization was created in 1974. It was designed to provide certification of attorneys in selected fields of law. The attorney program was certified the first group in 1975 and includes: Administrative Law, Bankruptcy Law (Business & Consumer), Civil Appellate Law, Civil Trial Law, Consumer Law, Criminal Law, Labor and Employment Law, Oil, Gas and Mineral Law, Personal Injury Trial Law, Real Estate Law (Residential, Commercial, and Farm & Ranch), and Tax Law.” State Bar of Texas and Texas Young Lawyers Association Desk Reference and Directory, 285 (1996). TBLS is located in Austin, Texas at P.O. Box 12487, Austin, Texas 78711-2487, (800) 204-2222.
120. See Interpretive Comments, supra note 15, at 1048.
122. See Tex. Disciplinary R. Prof. Conduct 7.04(g) & cmt. 12 (1995); Interpretive Comments, supra note 15, at 1048.
123. See Interpretive Comments, supra note 15, at 1048.
124. See id.
125. See id. at 1046.
SION” must be included in the advertisement.\textsuperscript{126} Guidelines for client testimonials are included in Interpretive Comment 2.\textsuperscript{127}

7. Contingency Fee Statements

Rule 7.04(h) addresses contingent fees.\textsuperscript{128} If an advertisement or letter states or implies that the lawyer is willing to render services on a contingent fee basis, the advertisement must clearly disclose whether or not the client may be liable for other costs or expenses.\textsuperscript{129} Statements such as “No fee if no recovery” or “You don’t pay unless we win” are considered contingency fee offers.\textsuperscript{130} In a contingency fee advertisement, the content must identify which party will be responsible for expenses such as court costs and litigation expenses.\textsuperscript{131} A disclaimer must make it clear what happens in cases where there is a recovery and in cases where there is no recovery.\textsuperscript{132} In addition, if a specific percentage or range of fees is disclosed, the rule requires that the advertisement state whether the percentage is computed before or after costs and expenses are deducted from the recovery.\textsuperscript{133} Also, a lawyer must conform to any fees stated for the period during which the advertisement can be expected to be disseminated, unless the advertisement states a shorter period.\textsuperscript{134} In no case is a lawyer required to adhere to advertised fees for more than one year from the date of publication of an advertisement.\textsuperscript{135} Interpretive Comment 10 provides sample contingent fee disclaimers.\textsuperscript{136}

8. Location of Principal Office and City or Town of Office(s)

Rule 7.04(j) addresses the location of Attorneys’ Principal Offices by City or Town.\textsuperscript{137} This rule requires that the location of a principal office by city or town must be identified in all attorney advertisements.\textsuperscript{138} The rule makes no mention of a street address, but specifically requires that the city or town name be included.\textsuperscript{139} Interpretive Comment 16 was issued to clarify much of the initial confusion over

\textsuperscript{126} Id.
\textsuperscript{127} See id.
\textsuperscript{128} See \textsc{Tex. Disciplinary R. Prof. Conduct} 7.04(h) (1995).
\textsuperscript{129} See id. Rule 7.04(h) & cmt. 13; Interpretive Comments, supra note 15, at 1048-49.
\textsuperscript{130} See \textsc{Tex. Disciplinary R. Prof. Conduct} 7.04(h) & cmt. 13 (1995).
\textsuperscript{131} See id. Rule 7.04(h).
\textsuperscript{132} See id.; Interpretive Comments, supra note 15, at 1048-49.
\textsuperscript{133} See \textsc{Tex. Disciplinary R. Prof. Conduct} 7.04(h) (1995).
\textsuperscript{134} See id. Rule 7.04(i).
\textsuperscript{135} See id.
\textsuperscript{136} See Interpretive Comments, supra note 15, at 1049.
\textsuperscript{137} See \textsc{Tex. Disciplinary R. Prof. Conduct} 7.04(j) (1995).
\textsuperscript{138} See id.
\textsuperscript{139} See id.
this rule. Other office locations may only be advertised if they are
staffed by a lawyer at least three days per week or the advertisement
states the days and times a lawyer is present.

9. Referring Cases to Other Lawyers

Rule 7.04 also states that one lawyer or firm cannot pay for another
lawyer's advertisements unless the advertisement discloses the name
and address of the financing lawyer, the relationship between the law-
yers, and whether the advertising lawyer is likely to refer cases to the
financing lawyer. Regardless of advertisement financing, if by past
experience or practice, the advertising lawyer routinely or frequently
refers certain types of cases to other lawyers, the likelihood of referral
must be disclosed in the advertisement. If it is likely that a case will
be referred to another lawyer if it requires litigation, then that fact
must also be disclosed.

10. Written Solicitations

Rule 7.05 addresses "Prohibited Written Solicitations." Written
solicitations must comply with Rules 7.02 and 7.04(a)-(c) and (h)-
(o), dealing with false, misleading, and deceptive statements, dis-
claimers, and content. In addition, a written solicitation must not
involve "coercion, duress, fraud, overreaching, intimidation, undue in-
fluence, or harassment." The written solicitation must be plainly
marked "ADVERTISEMENT" in capital letters on the first page of
the communication and on the face of the envelope. If self-mailing
brochures are used, the word ADVERTISEMENT must be "at least
3/8 [inches] vertically or 3 times the vertical height of the letters used
in the body, ... whichever is larger." A written solicitation cannot
resemble legal pleadings or documents and cannot reveal the nature
of the prospective client's legal problem on the face of the enve-

140. State Bar of Texas, Comm. on Lawyer Advertisement and Solicitation, Meet-
ing Report on Additional Interpretive Comments to Part 7 (May 1996) (copy on file
with author Winick). "A lawyer or firm with more than one office, regardless of the
staffing of the other office(s), must designate in all advertising which city or town is
the location of its principal office." Id. Interpretive Comment No. 18: 7.04(j).
141. See id.
143. See id. Rule 7.04(l).
144. See id.; Interpretive Comments, supra note 15, at 1049.
146. See id. Rule 7.02.
147. See id. Rule 7.04(a)-(c), (h)-(o).
148. See id. Rule 7.02, 7.04(a)-(c), (h)-(o).
149. Id. Rule 7.03(a)(1).
150. Id. Rule 7.05(b)(2).
151. Id. Rule 7.05(b)(2)(ii).
A written solicitation must adequately disclose how and where the lawyer obtained the information about the prospective client.\(^\text{153}\) Statements such as "Public Information," or "Court Records," are not sufficient to meet the requirements of the rule.\(^\text{154}\) Rule 7.05(e) addresses solicitation exclusions.\(^\text{155}\) Written communication to family members, prior or current clients, or in response to requested information is not defined as a written solicitation under the rules.\(^\text{156}\) In addition, if the communication is not motivated by a particular occurrence or event or knowledge of an existing legal problem, it is not considered a solicitation under the rules.\(^\text{157}\) Many, if not most, firm brochures and newsletters will be excluded from the definition of written solicitation under this exemption.

11. Filing Applications for Home Pages on the Internet

Texas attorneys with a home page on the Web or other permanent URL address\(^\text{158}\) on the Internet have a mandatory requirement to file an application with the Advertising Review Committee and include a hard copy of the first screen shown when their URL address is accessed.\(^\text{159}\) A fee must be paid for the initial filing.\(^\text{160}\) If material changes are made to the home page, the attorney must submit a subsequent filing with a hard copy showing the changes, and pay an additional fee.\(^\text{161}\)

F. Barratry and Direct Solicitation

Recent changes by the Texas Legislature to section 47 ("Accident Reports") of the Uniform Act Regulating Traffic on Highways\(^\text{162}\) have limited direct solicitation in cases of accidents or injury.\(^\text{163}\) Access to accident reports now requires at least two of three pertinent pieces of information: (1) the date of the accident, (2) the name of any person

\(^{152}\) See id. Rule 7.05(b)(6). This limitation rules out the use of postcards for direct solicitation.

\(^{153}\) See id. Rule 7.05(b)(7).

\(^{154}\) See id.

\(^{155}\) See id. Rule 7.05(e).

\(^{156}\) See id. Rule 7.05(e)(1), 7.05(e)(4).

\(^{157}\) See id. Rule 7.05(e)(2).

\(^{158}\) See Todd H. Flaming, Internet and the World Wide Web, 83 ILL. B.J. 429, 429 (1995). Most Internet addresses follow a common form known as a Uniform Resource Locator ("URL") with the following format: http://www.__.COM. The first part (http://) indicates the document is in hypertext language. The second part (www.__.COM) indicates the computer where the document is stored. See id.

\(^{159}\) See Internet, supra note 15, at 256.

\(^{160}\) See Internal Operating Rules, supra note 4, Rule 6(c).

\(^{161}\) See Internet, supra note 15, at 256.


involved in the accident, or (3) the specific location of the accident.\textsuperscript{164} These changes eliminate global requests for accident reports. In addition, direct solicitation of accident victims or their families within thirty days following the date of the accident is prohibited by the Texas Penal Code.\textsuperscript{165} In other words, it is a violation of section 38.12(d) of the Texas Penal Code\textsuperscript{166} and Rule 8.04(a)(9) of the Disciplinary Rules\textsuperscript{167} to send a letter before the 31st day following the accident. Furthermore, the legislation also provided for the inclusion of a “check-off” on all accident reports where an individual may indicate that no contact with an attorney is desired regarding the accident.\textsuperscript{168} In these cases, it is a violation of the barratry statute to send a letter at any time, even after the thirty day period has expired.\textsuperscript{169} It is important to note that the thirty-day ban does not apply to other types of solicitation letters, such as those sent to criminal defendants or to people on published foreclosure lists.\textsuperscript{170}

III. CONSTITUTIONAL CASE LAW - HISTORY AND UPDATE

This section reviews the contentious history of attorney advertising and solicitation, analyzing how the law has evolved—from the English common law through the early 1977 U.S. Supreme Court decision in Bates v. State Bar of Arizona,\textsuperscript{171} to the recent resolution of Moore v. Morales\textsuperscript{172} in May 1996.

A. In the Beginning There Was English Common Law

The American view of attorney advertising as unethical and degrading has its roots in English common law tradition.\textsuperscript{173} English etiquette dictated that clients sought solicitors for assistance with legal matters, and solicitors sought barristers.\textsuperscript{174} This system purported to preserve

\textsuperscript{164} See id.
\textsuperscript{165} See Tex. Penal Code Ann. § 38.12(d) (West 1994).
\textsuperscript{166} See id. § 38.12(d)(1), (2)(A).
\textsuperscript{169} See id. § 38.12(d)-(e).
\textsuperscript{170} In Moore v. Morales, 843 F. Supp. 1124 (S.D. Tex. 1994), the court found the 1993 amendments to the Barratry Statute and the Uniform Traffic Act unconstitutional. On appeal, the court only reversed the holding on the solicitation ban on attorneys regarding contact with accident victims and their families. See Moore v. Morales, 63 F.3d 358, 360 (5th Cir. 1995), cert. denied sub nom. Ventura v. Morales, 116 S. Ct. 917 (1996). The lower court’s decision overturning the ban on solicitation to criminal and civil defendants within thirty days was not challenged. See id.
\textsuperscript{171} 433 U.S. 350 (1977).
\textsuperscript{172} 63 F.3d 358 (5th Cir. 1995), cert. denied sub nom. Ventura v. Morales, 116 S. Ct. 917 (1996).
the dignity of the profession by promoting its altruistic service aspects while downplaying the profit motives that would equate law with characteristics of businesses in the goods market.\(^{175}\) English etiquette also disdained solicitors seeking clients by advertising, although the Attorneys and Solicitors Act, passed by Parliament in 1843, failed to address the issue.\(^{176}\) As a result, a breach of etiquette brought condemnation by peers, but no formal punishment.\(^{177}\)

B. Early America and the American Bar Association Canons of Ethics

Attorney advertising was commonplace during America’s development and westward expansion.\(^{178}\) At that time, admission into the legal profession was relatively easy:

Untrained lawyers seeking their fortunes in newly settled lands and lawyers attempting to compete with one another in established, eastern cities resorted to practices that were nationally condemned . . . . A result of the very unstructured and open American legal system was an ‘undifferentiated mass’ of attorneys who ‘were members of one vast sprawling profession,’ a profession wherein even so-called leaders of the bar were practitioners of blatant advertising and in-person solicitation. Indeed these acts were tools ‘not just of the pettifoggers of the era, but of leaders of the bar as well,’ including the epitome of the ideal early-American lawyers, Abraham Lincoln.\(^{179}\)

In response to this sprawling system, Americans began to integrate a prohibitive view toward attorney advertising.\(^{180}\) Reform began with the transition of local bar associations from social entities to centralized, strongly regulated professional organizations.\(^{181}\) Reform continued through a series of “axiomatic norms” published in 1908.\(^{182}\) Professional criticism of attorney advertising became widespread once the American Bar Association (“ABA”) began to formulate guidelines that state bars and supreme courts could implement.\(^{183}\) In 1908, the ABA adopted thirty-two Canons of Professional Ethics.\(^{184}\) As amended in 1937, two of the Canons explicitly addressed attorney ad-

\(^{175}\) See Bowers & Stephens, supra note 173, at 223-24.
\(^{176}\) See id. at 224.
\(^{177}\) See id. at 224-25.
\(^{178}\) See id. at 226-27.
\(^{179}\) See id. at 228 (footnotes omitted) (citing Lawrence M. Friedman, A History of American Law 276 (1973); Robert F. Boden, Five Years After Bates: Lawyer Advertising in Legal and Ethical Perspective, 65 Marq. L. Rev. 547, 547-49 (1981)).
\(^{180}\) See Bowers & Stephens, supra note 173, at 226.
\(^{181}\) See id. at 228.
\(^{182}\) See id. at 226.
\(^{183}\) See id. at 228.
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vertising. Canon 27 forbade solicitation through circulars, advertisements, and in-person communications not warranted by existing personal relations.185 Cannon 46 forbade advertising specialized legal services directly to other local attorneys in an attempt to associate them with particular areas of the law.186

C. Emergence of Case Law Supporting Advertising Prohibition

A series of lower court cases supported prohibitions on attorney advertising.187 In 1942, the U.S. Supreme Court collaterally supported prohibitions on advertising.188 In Valentine v. Chrestensen,189 the Court held that written commercial speech was not protected by the First Amendment.190 Nine years later, the Court reaffirmed its Valentine decision in Breard v. Alexandra.191 In Breard, the Court noted, "The First and Fourteenth Amendments have never been treated as absolutes. Freedom of speech or press does not mean that one can talk or distribute where, when and how one chooses."192 This view remained in place until the mid-1970s when the Court gradually began to provide limited First Amendment protection to commercial speech.193

In Bigelow v. Virginia,194 the Court reinstated limited First Amendment protection for commercial speech.195 In Bigelow, the Court reversed the conviction of the editor of a Virginia newspaper that advertised the availability of legal abortions in New York.196 The Court struck down the Virginia statute that criminalized abortion advertisements, noting that the public interest in the information advertised outweighed the state interest in regulation.197 In establishing this balancing test, the Court noted, "Advertising is not thereby stripped of all First Amendment protection. The relationship of speech to the marketplace of products or of services does not make it valueless in the marketplace of ideas."198

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185. See id. at 356.
186. See id. at 362.
187. See, e.g., People v. MacCabe, 32 P. 280, 280 (Colo. 1893) (ruling that the ethics of the legal profession forbid advertising); In re Cohen, 159 N.E. 495 (Mass. 1928) (concluding that a bar against newspaper advertising does not infringe upon an attorney's constitutional rights).
188. See Valentine v. Chrestensen, 316 U.S. 52 (1942).
189. 316 U.S. 52 (1942).
190. See id. at 54.
192. Id. at 642.
193. See Bowers & Stephens, supra note 173, at 235.
195. See id.
196. See id. at 829.
197. See id. at 826-29.
198. Id. at 826.
In the 1975 Supreme Court case of Goldfarb v. Virginia State Bar, the Court ruled that fee schedules published by local bar associations imposing minimum rates that increased over time, amounted to price fixing in violation of the Sherman Antitrust Act. This ruling had the effect of promoting competition among lawyers, particularly in the area of legal fees.

The first case to grant professionals a qualified privilege to advertise the prices of standardized products and services under the First and Fourteenth Amendments was Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council. In Virginia Pharmacy, the Supreme Court held that a statute prohibiting pharmacists from advertising the prices of standard prescription drugs violates the First Amendment. The Court reasoned that the public interest in receiving information to enable it to make informed decisions about pharmaceutical products outweighed the State's interest in protecting the image of licensed pharmacists.

D. The Impact of Bates v. State Bar of Arizona

The rationale in Virginia Pharmacy inspired two Arizona attorneys to challenge the Arizona Disciplinary Rules of Professional Conduct that prohibited lawyers from publicizing their services. In Bates v. State Bar of Arizona, two attorneys, John R. Bates and Van O'Steen, placed an advertisement in the Arizona Republic, a daily Phoenix newspaper in which they listed fees for certain "routine" services. Striking the ban on attorney advertising for "routine" legal services, the Bates Court held that certain commercial speech is entitled to limited First Amendment protection.

In deciding Bates, the Court considered two key issues. The first issue concerned the attorneys' claim that the Arizona disciplinary rule barring attorney advertising violated the Sherman Act by limiting

200. See id. at 780-82.
201. See Bowers & Stephens, supra note 173, at 235-36.
203. Virginia Pharmacy, 425 U.S. at 770. The State, however, retained the power to regulate the time, place, and manner of prescription drug price advertising. See id. at 771.
204. See id. at 766-68.
205. 433 U.S. 350, 355 (1977). The Disciplinary Rule at issue in Bates "provides in part: '(B) A lawyer shall not publicize himself ... as a lawyer through newspaper or magazine advertisements, radio or television announcements, display advertisements in the city or telephone directories or other means of commercial publicity ...." Id. at 355 (quoting ARIZ. REV. STAT. §17A (1976)).
206. See Bates, 433 U.S. at 354.
207. See id. at 364 (citing Virginia Pharmacy, 425 U.S. at 761-65).
competition. The Court held that this claim was improper because "the Sherman Act was not intended to apply against certain state action." Second, the Court considered the attorneys' claim that the Arizona disciplinary rule violated their First Amendment rights. The Court held that attorney advertising for routine legal services deserves limited First Amendment protection when it "serves individual and societal interests in assuring informed and reliable decisionmaking."

Relying on Virginia Pharmacy, the Court rejected a number of arguments advanced by the Arizona State Bar. The Bar argued that advertising would tarnish the professional image of attorneys and would erode client trust. The Court responded that other professions regularly advertise without experiencing the erosion of their professionalism. The Court also noted that the Bar's argument was weak because it was based on the presumption that attorneys must conceal the fact that they actually earn a living by providing legal services. The Bar also argued that: (1) Attorney advertising is inherently misleading and thus should be regulated; (2) Attorney advertising is an inadequate method for selecting skilled, professional representation; and (3) Attorney advertising would stir up litigation, increase the costs, and reduce the quality of legal services. While the Court recognized some validity in these arguments, it concluded that they were not sufficiently meritorious to justify the complete suppression of attorney advertising.

The Bates decision immediately impacted the legal community. Within months of the decision, the American Bar Association revised the Code of Professional Responsibility, the number of legal clinics tripled, and growing numbers of American lawyers began advertising. The qualified extension of protection to commercial speech in Bates opened the door for other professionals to advertise their services.

208. See id. at 353.
209. Id. at 359 (citing Parker v. Brown, 317 U.S. 341 (1943)).
210. See id. at 363-82.
211. Id. at 364 (citing Virginia Pharmacy, 425 U.S. at 761-65).
212. See id. at 368-79.
213. See id. at 368.
214. See id. at 368-70.
215. See id.
216. See id. at 372.
217. See id. at 374.
218. See id. at 375.
219. See id. at 377-78.
220. See id. at 379.
221. See Bowers & Stephens, supra note 173, at 246.
222. See id. at 260-61.
223. See id. at 262.
E. Limitation of Direct Solicitation: Ohralk v. Ohio State Bar Ass’n

One year after the Bates decision, in Ohralk v. Ohio State Bar Ass’n, the Court unanimously concluded that States may constitutionally discipline an attorney for in-person solicitation. The Ohralk Court declined to extend the First Amendment protection granted to attorney advertising in Bates to in-person attorney solicitation. Even though the Court acknowledged that attorney solicitation offers some of the same benefits as commercial advertising, such as informing persons of their legal rights, the Court ignored these benefits and adopted the view that solicitation is “inconsistent with the profession’s ideal of the attorney-client relationship [and thus poses] a significant potential for harm to the prospective client.”

In deciding Ohralk, the Court reasoned that active, in-person solicitation differs significantly from passive advertising of routine legal services, and that states have a stronger interest in prohibiting pressure-laden, in-person solicitation than they do in prohibiting passive advertising of routine legal services. Unlike public advertisements, the Court reasoned, in-person solicitation pressures the recipient to make an immediate decision about representation without time to compare the “availability, nature and prices” of other legal providers. In addition, the Court characterized solicitation as one-sided because it affords an attorney, trained in persuasion, the opportunity to manipulate an unwary lay person. The Court reasoned that because in-person attorney solicitation is usually done in private, it is not subject to the public scrutiny that advertising receives. Further, the Court found that the level of privacy also prevents the State or the Bar from intervening or counter-educating an individual about his rights.

The Ohralk Court determined that no actual harm needs to be found in order for a state to regulate in-person solicitation. The Court concluded that the states have a strong interest in protecting consumers which warrants “prophylactic” measures to prevent

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225. See id. at 468.
226. See id. at 455.
227. See id. at 457.
229. See id.
231. See id. at 455.
233. See id. at 465.
234. See id. at 466.
235. See id. at 466-67.
236. See id. at 468.
harm. The Court reasoned that State solicitation regulations are preventative measures because they “reduce the likelihood of over-reaching and the exertion of undue influence on lay persons ... protect the privacy of individuals, and ... avoid situations where the lawyer's exercise of judgment on behalf of the client will be clouded by his own pecuniary self-interest.” The Court also noted that states have a significant interest in maintaining high standards for licensed attorneys. Finally, the Court determined that it would be inefficient to require states to demonstrate actual harm in order to prevent solicitation. Because there are generally no witnesses to in-person solicitation, the Court reasoned that without state regulations, in-person attorney solicitation “would be virtually immune to effective oversight and regulation by the State or by the legal profession,” which is contrary to the State's interest of maintaining high standards for their attorneys.

Between 1976 and 1994, the Supreme Court handed down a series of decisions addressing First Amendment protection for professional speech. During this 18 year span, only the Ohralik Court declined to extend First Amendment protection to professional speech.

On the same day Ohralik was decided, the Court decided In re Primus. In Primus, the Court held that a letter was not solicitation when sent by an attorney working for the American Civil Liberties Union to a prospective client. The Court reasoned that the ACLU "engages in litigation as a vehicle for effective political expression and association" and therefore is protected by the First Amendment. The Court also reasoned that the letter, though solicitation, was mailed by a non-profit organization that was not seeking pecuniary gain and deserved different treatment than solicitations mailed by attorneys seeking pecuniary gain.

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237. Id. at 464.
238. Id. at 461.
239. See id. at 460.
240. See id. at 467-68.
241. Id. at 466-67.
242. See id. at 467.
244. See Ohralik, 436 U.S. 466-68. See also, Levy, supra note 228, at 276-77.
246. See id. at 439.
247. Id. at 431.
248. See id. at 422.
F. The Four-Part Test of Commercial Speech: Central Hudson Gas & Electric Corp. v. Public Service Commission of New York

In Central Hudson Gas & Electric Corp. v. Public Service Commission of New York, the Court announced a four-part test for determining whether state restrictions on commercial speech violate First Amendment rights. The Central Hudson test serves to balance the limited rights afforded to commercial speech under the First Amendment against the State’s substantial interests in regulating advertising.

Under the test, the Court first examined the commercial speech at issue to determine whether or not it was protected by the First Amendment. To receive First Amendment protection, the commercial speech “at least must concern lawful activity and not be misleading.” Second, the Court evaluated whether the state asserted a substantial interest in regulating the commercial speech. Third, if the commercial speech was not illegal or misleading and the state asserted a substantial interest in regulating the speech, the Court then assessed whether or not the state regulation prohibiting the commercial speech directly advanced the asserted state interest. Finally, the Court evaluated whether the regulation was “more extensive than is necessary to serve” the asserted state interest. Rather than an overbreadth or least-restrictive-means analysis, the Court assessed whether a more limited form of the regulation could adequately serve the asserted state interest. The Central Hudson test has become the

249. 447 U.S. 557 (1980). Central Hudson was an eight-to-one decision with only Justice Rehnquist dissenting. Three justices filed concurring opinions. See id. at 572-83. Justice Blackmun argued that the four part test should extend to time, place, and manner restrictions to “provide adequate protection for truthful, non-misleading, noncoercive commercial speech.” Id. at 573. (Blackmun, J., concurring). Justice Stevens noted that the two definitions the Court used for “commercial speech” were inadequate because one was too broad and the other too narrow. See id. at 579 (Stevens, J., concurring).

250. See id. at 566.


252. See Central Hudson, 447 U.S. at 566.

253. Id. States may ban commercial speech that is “more likely to deceive the public than to inform it.” Id. at 563. See also Friedman v. Rogers, 440 U.S. 1, 15-16 (1979); Ohralik v. Ohio State Bar Ass’n, 436 U.S. 447, 464-65 (1978).

254. See Central Hudson, 447 U.S. at 566.

255. See id.; Wallace & McKelvey, supra note 251, at 777. A state’s interest in “preserving the dignity of a profession, preventing potentially misleading advertising, protecting the administration of justice, or protecting the quality of legal services rendered” is not furthered by a total prohibition of non-misleading advertising. Id. (citing Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626, 647-49 (1985); Bates v. State Bar of Ariz., 433 U.S. 350, 372, 378-79 (1977)).

256. Central Hudson, 447 U.S. at 566.

257. See Wallace & McKelvey, supra note 251, at 777 (discussing Central Hudson, 447 U.S. at 565 n.8).
standard for determining the constitutionality of regulations prohibiting commercial speech.

Two years after Central Hudson, the Court in In re R.M.J. applied the four-part commercial speech test to attorney advertising. The Court decided that three Missouri restrictions on attorney advertising could not be sustained. The Court found that the restrictions failed the fourth prong of the Central Hudson test in that they were more extensive than reasonably necessary to further the State’s interest in regulating potentially misleading commercial speech.

In R.M.J., a practitioner mailed professional announcement cards to a select group of people and placed advertisements in several local newspapers and in the Yellow Pages. The advertisements stated that the attorney was licensed to practice in Missouri and Illinois, that he was “Admitted to Practice Before THE UNITED STATES SUPREME COURT,” and listed twenty-three areas of law in which he was qualified to practice. The Advisory Committee of the Supreme Court of Missouri filed an information against the attorney for violating Rule 4 of the Missouri Supreme Court. The pertinent parts of Rule 4 stated that (1) “a lawyer may ‘publish . . . in newspapers, periodicals and the yellow pages of telephone directories’ 10 categories of information,” (2) a lawyer may only advertise the areas of law in which he or she practices by using “one of three general descriptive terms” or by using “one or more of a list of 23 areas of practice” that are specifically found in the rule, and (3) a lawyer is permitted to send “dignified” professional announcement cards to “lawyers, clients, former clients, personal friends and relatives.”

258. 455 U.S. 191, 204 (1982).
259. See id. at 206.
260. See id. at 206-07.
261. See id. at 196.
262. Id. at 197. The attorney had been admitted to both the Missouri and the Illinois Bars. See id. at 196.
263. See id. at 197 n.8.
264. “The Advisory Committee is a standing committee of the Missouri Supreme Court and is responsible for prosecuting disciplinary proceedings and for giving formal and informal opinions on the Canons of Professional Responsibility.” Id. at 194 n.5.
265. See id. at 191, 204 (noting announcement cards and advertisements violated a rule of the Missouri Supreme Court restricting information regarding qualifications, categories of personal and professional information, general and specific areas of practice and prohibiting a general mailing of announcement cards). See id. at 194-96 & n.3 (list of the 10 permissible categories of information). See id. at 195 (listing of the types of law that a lawyer could list in an advertisement as well as the three general descriptive terms).
266. Id. at 194 (quoting Mo. Rev. Stat., Sup. Ct. Rule 4, DR 2-101(B) (1978) (Index Vol.).
268. Id..
According to Rule 4, an attorney could not deviate from the precise wording stated in the Rule.270 In addition, an attorney could not advertise that his practice was limited but was required to include a disclaimer if the advertisement denoted a specific area of practice included in Rule 4.271

The In re R.M.J. Court recognized that attorney advertising poses a special risk of deception that is within the power of the State Bars to correct, respecting misleading information.272 Although the Court found some of the advertisements in “bad taste,”273 the court held that they were protected by the First Amendment because the record did not indicate that the advertisements were misleading.274 Additionally, the Advisory Committee failed to identify any substantial interest in prohibiting an attorney from listing the jurisdiction in which he is licensed or in restricting the areas of practice to those enumerated in Rule 4.275

Additionally, when the Court applied the third prong of the Central Hudson test, it did not find a direct link between restrictions on whom an attorney could mail professional announcements and the regulation.276 The Court struck the restrictions because they were more extensive than reasonably necessary to advance the State’s interest.277

G. Targeted Written Solicitations: Zauderer v. Office of Disciplinary Counsel and Shapero v. Kentucky Bar Ass’n

Though the Supreme Court was slow to initiate protection of commercial speech, printed forms of advertisement came to enjoy increasing protection under the First Amendment rather rapidly.278 Furthermore, the Court never distinguished among the variety of possible forms of written advertising.279 In fact, the Court opened new frontiers for attorney advertising as it analogized newspaper and telev

271. See id.
272. See id. at 200-01 (citing Bates v. State Bar of Ariz., 433 U.S. 350, 375 (1977) (explaining that professional advertising has the potential of deceiving the public because the general public lacks sophistication concerning legal services to determine when information is false).
273. Id. at 205 (referring to the appellant’s assertion: “Admitted to Practice Before: THE UNITED STATES SUPREME COURT.”). The Court was troubled by this listing, which was in large capital letters. See id. at 201. The Court dismissed it, however, because the emphasis was on a “relatively uninformative fact” and because there was no finding by the Missouri Supreme Court that it was misleading to the general public. Id.
274. See id. at 205-06.
275. See id. at 205.
276. See id. at 204, 206.
277. See id. at 205-07.
phone directory advertisements and applied the *Central Hudson* test
to treat mailed announcement cards the same as other forms of print
advertising.\textsuperscript{280}

In *Zauderer v. Office of Disciplinary Counsel*,\textsuperscript{281} the Supreme Court
considered the constitutionality of targeted attorney advertising.\textsuperscript{282}
Applying *Bates* and the *Central Hudson* test, the *Zauderer* Court up-
held an attorney's right to target specific groups with non-deceptive
advertisements and accompanying illustrations.\textsuperscript{283}

The *Zauderer* Court reasoned that the printed advertisements
presented less risk of overreaching and undue influence than in-per-
son solicitation.\textsuperscript{284} The *Zauderer* Court also found that "the free flow
of commercial information is valuable enough to justify imposing on
would-be regulators the costs of distinguishing the truthful from the
false, the helpful from the misleading, and the harmless from the
harmful."\textsuperscript{285} However, the Court specifically declined to address
whether a prophylactic rule is ever permissible.\textsuperscript{286} Moreover, the
Court noted that "material differences [exist] between disclosure re-
quirements and outright prohibitions on speech."\textsuperscript{287} Although the
Court approved prior holdings that a compulsion to speak may violate
First Amendment freedom of speech guarantees, it found that requir-
ing an attorney to include factual information about the terms and
conditions of the offered services is not violative.\textsuperscript{288} The Court there-
fore held that disciplinary action was sustainable with respect to the
advertised contingent-fee basis because it was misleading in its failure
to disclose potential costs that unsuccessful litigants might face.\textsuperscript{289}
Citing prior decisions, the Court reiterated its position that disclosure
and disclaimer requirements are less restrictive means of dissipating
the possibility of deception than are flat prohibitions.\textsuperscript{290} The Court
added a caveat that unjustified or unduly burdensome disclosure re-
quirements might not be permissible if their application chilled pro-

(addressing newspaper advertisements); *In re R.M.J.*, 455 U.S. 191 (1982) (addressing
mailed announcement cards).

\textsuperscript{281} 471 U.S. 626 (1985).

\textsuperscript{282} See *id.* at 638-41.

\textsuperscript{283} See *id.* at 647-49.

\textsuperscript{284} See *id.* at 642.

\textsuperscript{285} *Id.* at 646.

\textsuperscript{286} See *id.* at 644.

\textsuperscript{287} *Id.* at 650.

\textsuperscript{288} See *id.* at 650-53.

\textsuperscript{289} See *id.* at 652-53.

\textsuperscript{290} See *id.* at 651 (citing *In re R.M.J.*, 455 U.S. 191, 201 (1982); Central *Hudson*
State Bar of Ariz.*, 433 U.S. 350, 384 (1977); Virginia State Bd. of Pharmacy v. Virginia
tected commercial speech. However, the Court failed to identify how commercial speech might be chilled by such requirements.

While the Supreme Court continues to categorize written forms of advertising as constitutionally indistinguishable, it distinguished advertising from solicitation. However, in Shapero v. Kentucky Bar Ass’n this distinction fell by the wayside. Before Shapero, whether First Amendment protection should be provided for targeted, direct-mail solicitation was an issue on which federal and state courts were split. In Shapero, the Court resolved this split of authority by declining an opportunity to distinguish direct-mail solicitation from the uniform treatment of the Central Hudson test. The Court found that a blanket rule prohibiting targeted, direct-mail solicitation by attorneys “without a particularized finding that the solicitation is false or misleading” violated the First and Fourteenth Amendments.

In assessing targeted direct-mail, the Court concluded that “the First Amendment does not permit a ban on certain speech merely because it is more efficient; the State may not constitutionally ban a particular letter on the theory that to mail it only to those whom it would most interest is somehow inherently objectionable.”

The Shapero Court found that the comparison of direct-mail solicitation to in-person solicitation “mis[ed] the mark” because it failed to consider the proper issue. The relevant inquiry, the Court reasoned, was not whether potential clients feel overwhelmed by their legal problems and thus susceptible to undue influence, but whether the method of communication creates a danger of attorneys exploiting such susceptibility.

Relying on Zauderer, the Court affirmed that the mode of communication distinguishes written communications from face-to-face solic-

291. See Zauderer, 471 U.S. at 651.
293. See Weber, supra note 278, at 206-10.
295. See Ralph J. Mauro, Note, Constitutional Regulation of “Targeted Direct-Mail Solicitation” by Attorneys After Shapero—A Proposed Rule of Conduct, 34 VILL. L. REV. 281, 314 (1989). A generalization may be made that advertising has traditionally been permitted while solicitation has not. See id. However, some view these labels as artificial and unworkable in the context of targeted direct-mail because it possesses attributes of both. See id. at 314-15.
297. See Shapero, 486 U.S. at 473. The defendants argued that the blanket ban on attorney direct-mail solicitation letters was permissible because the potential for abuse was analogous to that of face-to-face solicitation. See id.
298. Id. at 471.
299. See id. at 471, 478-80.
300. Id. at 473-74.
301. See id. at 474-75.
302. See id.
ATION because written communication does not involve either "the coercive force of the personal presence of a trained advocate" or the pressure for an immediate answer.\footnote{Id. at 475 (quoting Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626, 642 (1985)).} Therefore, written communications pose "much less risk of overreaching or undue influence" than do in-person solicitations.\footnote{Id. (quoting Zauderer, 471 U.S. at 462).} The Court noted, unlike a direct conversation with a lawyer, a letter is like a printed advertisement because it can be postponed for later consideration, ignored or discarded.\footnote{See id. at 475-76.} Written solicitations do not pose a regulatory difficulty because they are visibly open to scrutiny for abuses.\footnote{See id. at 475, 476.} To regulate written advertisements, the Court suggested that states may require attorneys to file proposed solicitation letters for supervisory review, in addition to requiring that an attorney (1) prove the truth of any statements of fact, (2) explain how the fact was discovered and how its accuracy was verified, (3) label the letter as an advertisement, and (4) direct the recipient how to report complaints about misleading advertisements.\footnote{See id. at 476-78.}

The Shapero Court considered two issues to determine the applicability of First Amendment protection. The first issue was whether the liberal use of underlined words in all capital letters was the equivalent of shouting commands to the targeted recipient and therefore, subject to proscription.\footnote{See id. at 478.} Justice Brennan summarily responded that a truthful and non-deceptive letter can never "shout at the recipient" no matter how large the type.\footnote{Id. at 479.} The second issue was whether the assertions made by Shapero in the letter were properly classified as "puffery."\footnote{Id. at 478.} The State claimed that phrases were violative where they served to entice the unsophisticated reader, while neither stating affirmative facts nor committing the attorney to specifics.\footnote{See id. (quoting Shapero's statement that, "It may surprise you what I may be able to do for you.").} Cases that warrant state action may include those placing undue emphasis on trivial or uninformative facts,\footnote{See In re R.M.J., 455 U.S. 191, 205 (1982) (involving a lawyer's statement, "in large capital letters, that he was a member of the Bar of the Supreme Court of the United States").} those offering overblown assurances of client satisfaction,\footnote{See In re Von Wiegen, 470 N.E.2d 838, 847 (N.Y. 1984), cert. denied, 472 U.S. 1007 (1985) (regarding a solicitation letter to victims of a massive disaster informing them that "it is [the lawyer's] opinion that the liability of the defendants is clear").}
and advertising claims as to the quality of legal services. The Court reasoned that the State failed to assert any of these established bases nor did the State contend that the letter was false or misleading in any other respect; therefore, the letter was protected by the First Amendment.

H. Distinguishing Direct Solicitation: Florida Bar v. Went For It, Inc.

The Court's next decision concerning attorney advertising was somewhat of a retrenchment signalling a return of deference given state regulation of attorney advertising. In Florida Bar v. Went For It, Inc., the Supreme Court upheld a thirty-day restriction on targeted direct-mail solicitation of accident victims and their families. Arguing for a return of some regulatory power to the states, the Florida State Bar asserted a compelling interest "in protecting injured Floridians from invasive conduct by lawyers and in preventing the erosion of confidence in the profession that such repeated invasions have engendered."

The Court noted that the Florida Bar established that a compelling interest exists in regulating professionals as a means to protect valid interests of the public. In particular, the Court recognized that the State has a compelling interest in protecting the privacy of its citizens by enabling them to avoid intrusions into their homes.

314. See Bates v. State Bar of Ariz., 433 U.S. 350, 383-84 (1977) ("[A]dvertising claims as to the quality of legal services . . . may be so likely to be misleading as to warrant restriction.").
317. See id. at 2381.
318. Id.
319. See id. at 2376.
320. See id. at 2376 n.1. The Bar asserted that its objective is to curb lawyer advertisements that "[n]egatively affec[t] the administration of justice." Id. at 2376 (alteration in original) (quoting The Florida Bar: Petition to Amend the Rules Regulating the Florida Bar Advertising Issues, 571 So. 2d 451, 455 (Fla. 1991)). The Bar argued that because the public perceives direct-mail solicitation following accidents as intrusive, the reputation of the legal profession is harmed in the eyes of the public by these solicitations. See id. Regulation, according to the Bar, serves "to protect the flagging reputations of Florida lawyers by preventing them from engaging in conduct . . . universally regarded as deplorable and beneath common decency because of its intrusion upon the special vulnerability and private grief of victims or their families." Id. (quoting Brief for Petitioner at 28, McHenry v. Florida Bar, 21 F.3d 1038 (11th Cir. 1994) (No. 93-2069) rev'd sub nom. Florida Bar v. Went For It, Inc., 115 S. Ct. 2371 (1995) (quoting In re Anis, 599 A.2d 1265, 1270 (N.J. 1992))). The Bar previously had asserted an additional interest in protecting citizens from undue influence and overreaching. See id. at 2376 n.1. However, the Bar did not raise this issue in its argument before the Supreme Court and so the Court decided the issue solely on the basis that it was the Bar's assertion of protecting the image of the profession by prohibiting behavior that the public considers intrusive. See id. at 2376.
The Florida Bar employed statistical and anecdotal evidence to demonstrate that the challenged prohibition directly advanced the State's interest. The Bar submitted a 106-page summary supporting its assertion that the public viewed direct-mail solicitations received immediately after an accident as intrusive. According to the Court, this evidence distinguished Florida Bar from Shapero because the State in Shapero failed to establish that targeted direct mail actually caused harm.

Turning to the third prong of the Central Hudson test, the Florida Bar Court examined the relationship between the Bar's, and thus the State's, interests and the ban. The Court determined that the regulatory means chosen must be reasonable or narrowly tailored to the State's objective. Using this standard, the Court reasoned that it would be too difficult to draft regulations based on subjective lines, so as to distinguish severe injuries which are appropriate for the ban, from non-severe injuries that are not appropriate for the ban. The Court rejected an argument that the ban prevented citizens from obtaining useful information regarding legal options during a time when they are willing to utilize such information. In rejecting this argument, the Court cited the brevity of the time period involved in the ban, the availability of such information from other less intrusive sources, and the lack of other less burdensome alternatives. Thus, the Court concluded that the Florida Bar's rule is "reasonably well-tailored to its stated objective of eliminating targeted mailings whose type and timing are a source of distress to Floridians, distress that has caused many of them to lose respect for the legal profession."

I. Impact in Texas: Moore v. Morales

The impact of the majority opinion in Florida Bar was immediate. One month after the United States Supreme Court decided Florida Bar, the Court of Appeals for the Fifth Circuit decided the

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321. See Florida Bar, 115 S. Ct. at 2376.
322. See id. at 2377.
323. See id. at 2378. Two other factors distinguished Florida Bar from Shapero. First, the prohibition in Shapero constituted a broad ban on all direct-mail solicitations, as distinguished from Florida Bar, where the ban was narrower and of limited duration. See id. Second, Shapero did not focus on the issue of privacy because the State in Shapero did not attempt to justify its regulation as a means to prevent invasion of privacy. See id.
324. See id. at 2380.
325. See id.
326. See id.
327. See id.
328. See id. at 2380-81.
329. Id. at 2380.
Texas version of essentially the same case. In Moore v. Morales, attorneys and commercial entities similar to the parties in Florida Bar, challenged the constitutionality of a Texas statute criminalizing direct-mail solicitation to accident victims or their families within thirty days following an accident. The Moore court stated that the Texas Penal Code similarly restricts access to accident reports for 180 days after an accident and prohibited direct-mail solicitation of criminal and civil defendants for thirty days following initiation of legal proceedings. Pursuant to the Supreme Court’s ruling in Florida Bar, the Fifth Circuit in Moore evaluated the constitutionality of the statute under the four prongs of the Central Hudson test.

The Fifth Circuit found that Texas’ stated interest was substantial, the evidence of invasion of privacy sufficient, and the relief offered by the ban substantial. Furthermore, the Fifth Circuit turned aside the claim that a means-ends analysis would show that the thirty-day ban was not sufficiently narrowly tailored to protect citizens from unwanted intrusion by direct-mail solicitation. Specifically, the appellees pointed to a Texas provision that allowed accident victims to indicate on the accident report that they do not wish to receive direct-mail solicitation. Appellees argued that this system already provided adequate protection of privacy. The court responded that the State is not legally required to utilize the least restrictive means in achieving its objective. The court reasoned that it is often the accident victim’s family, not the victim, that must be protected, and that in those instances where the victim dies or is unable to sign the accident report, the lesser provision offers no protection to victims or their families. Apparently assuming a fact-specific application of Florida Bar, the Fifth Circuit upheld the Texas statute as it applied to attorneys and remanded the case to consider the issue in terms of the other professional groups. On remand, the lower court dismissed the matter because no plaintiff indicated a desire to contest the constitu-

332. See id. at 360. The Texas Penal Code prohibits attorneys, chiropractors, physicians, surgeons and private investigators licensed or certified to practice in Texas, from direct-mail solicitation within the thirty-day period following an accident. See TEX. PENAL CODE ANN. § 38.12(d)(2) (West 1994).
333. Moore, 63 F.3d at 360 (citing TEX. PENAL CODE ANN. § 38.12).
334. See id. at 361.
335. See id. at 363.
336. See id.
337. See id.
338. See id.
339. See id.
340. See id.
341. See DeVore, supra note 315, at 33.
342. See Moore, 63 F.3d at 363-64.
tionality of the Texas statute as applied to other professional groups. 343

In Moore, the Fifth Circuit addressed legislative restrictions that pertain to the use of acquired data. 344 The district court also turned its attention to legislative restrictions that pertain to access to data in Direct Mail Marketing, Inc. v. Morales. 345 In Direct Mail Marketing, the court denied a preliminary injunction seeking to prohibit enforcement of a Texas amendment limiting access to motor vehicle accident reports maintained by the Texas Department of Public Safety. 346 Citing Moore, the court determined that the State has a reasonable interest in protecting its citizens' privacy from abuse of access from a solicitor trying to discover an individual's legal affairs. 347 The court reasoned that the legislative restrictions materially advance the State's interest in protecting its citizens from uninvited solicitation letters associated with accident reports. 348 The court noted that the restriction does not serve to completely suppress access to information because persons involved in the accident or its reporting and those with a legal interest in the matter have direct access. 349 Therefore, the court determined the legislation does not conflict with individual First Amendment rights to communicate with accident victims or with commercial speech rights. 350

J. Case History Conclusion: The Future

Since Bates, the Supreme Court has exhibited a "persistent dissent" from the proposition that the Constitution affords the same protection to attorney advertising as it does to other forms of commercial speech. 351 Florida Bar indicates a significant shift toward reasserting the State's right to regulate commercial speech. 352 Despite this shift, the Central Hudson test clearly continues to carry the support of both conservative and liberal wings of the Court. 353 Therefore, future rules

344. See Moore, 63 F.3d at 360 n.1.
347. See id. at 11.
348. See id. at 12.
349. See id.
350. See id. at 14.
352. See id. at 216.
353. See Florida Bar v. Went For It, Inc., 115 S. Ct. 2371 (1995). Justice O'Connor delivered the majority opinion in which Justices Rehnquist, Scalia, Thomas, and Breyer joined, holding the Central Hudson test was controlling. See id. at 2373, 2375-76. Justice Kennedy wrote the dissent in which Justices Stevens, Souter, and Ginsburg joined in agreeing that the Central Hudson test was controlling but disagreed on its application. See id. at 2381-82.
attending to regulate attorney advertising will likely be examined under the four prongs of Central Hudson. State regulations, such as those at issue in Moore and Direct Mail Marketing that meet the Central Hudson analysis, will likely withstand First and Fourteenth Amendment challenges. The bulk of the current Texas attorney advertising rules passed judicial scrutiny by the U.S. District Court, Eastern District of Texas, in Texans Against Censorship, Inc. v. State Bar of Texas. Furthermore, as a part of implementation, the Advertising Review Committee has issued Interpretive Comments that define the scope of the rules to include attorney communications in all traditional media and in the new communication environment of the Internet and the World Wide Web.

**CONCLUSION**

Supreme Court cases in the area of attorney advertising appear to assess the validity of state regulations by balancing the benefits of informed consumerism against the possibilities for deception. The Supreme Court appears to broadly categorize commercial speech as consisting of either factually verifiable information, such as price quotations, illustrations, and letters but also includes subjective, non-verifiable information and in-person solicitations that pressure choice without comparison shopping. The Court emphasized fewer restrictions may be imposed on factually verifiable information, but has also upheld prophylactic rules regulating commercial subjective, non-verifiable speech.

Since Bates, the Court has distinguished the constitutional protection granted attorney advertising from other forms of commercial speech. The Court has held that states have a right to regulate attorney advertising that may be misleading or that conflicts with substantial state interests. However, the First and Fourteenth Amendments dictate that the regulations not be more extensive than reasonably necessary to further substantial state interests. Though the Supreme Court was slow to initiate protection of commercial speech, printed forms of advertisement came to enjoy increasing pro-

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355. See Interpretive Comments, supra note 15, at 1046. See also Internet, supra note 15, at 256.
360. See Zauderer, 471 U.S. at 626.
362. See Miragliotta, supra note 356, at 609-10.
363. See Van Patten, supra note 351, at 215-16.
365. See id. at 207.
tion under the First Amendment rather rapidly.\textsuperscript{366} The Court never distinguished among the variety of possible forms of written advertising.\textsuperscript{367} In fact, the Court opened new frontiers for attorney advertising as it analogized newspaper and telephone directory advertisements and applied the \textit{Central Hudson} test to treat mailed announcement cards the same as other forms of print advertising.\textsuperscript{368} It would be difficult to predict the outcome of any future attorney advertising cases heard before the Supreme Court. The absence of specific guidelines for regulating attorney advertising on electronic media amplifies the tenuous nature of any attempt at prediction. However, the \textit{Central Hudson} test is clearly supported by both conservative and liberal wings of the Court.\textsuperscript{369} Therefore, future rules attempting to regulate attorney advertising in all media will likely be examined under the four prongs of \textit{Central Hudson}.

The bulk of the current Texas attorney advertising rules have passed judicial scrutiny by the U.S. District Court, Eastern District of Texas.\textsuperscript{370} The Texas rules, as defined by the Official Comments to the rules, and the Interpretive Comments issued by the Advertising Review Committee, regulate attorney communication in all traditional media and in the new communication environment of the Internet and the World Wide Web.\textsuperscript{371} The rules have been published, discussed, and implemented by the Advertising Review Committee.\textsuperscript{372} Texas attorneys who fail to comply with the rules are in violation of the Texas Disciplinary Rules of Professional Conduct. Subject to a finding of just cause under the Texas Rules of Disciplinary Procedure, violation of the advertising rules could result in a sanction ranging from a private reprimand to disbarment.\textsuperscript{373} Therefore, all Texas attorneys, and particularly those participating in any form of advertising or solicitation, need to be aware of the requirements under the advertising rules and the potential for serious sanctions being imposed for noncompliance.

\begin{thebibliography}{99}
\bibitem{366} See Weber, \textit{supra} note 278, at 207.
\bibitem{371} See \textit{generally}, Winick, \textit{et al.}, \textit{supra} note 330.
\bibitem{372} See discussion \textit{supra} Part I and accompanying notes.
\bibitem{373} See discussion \textit{supra} pp. 2-4 and accompanying notes.
\end{thebibliography}
APPENDIX A: ADVERTISING REVIEW COMMITTEE
INTERPRETATIVE COMMENTS

INTERPRETATIVE COMMENTS
Part 7
Information About Legal Services

To assist lawyers advertising in the public media or soliciting prospective clients by written communications, the Advertising Review Committee has adopted Internal Interpretive Comments to be used by staff. The Interpretive Comments are designed to establish objective means for staff members to review advertisements or writings and to determine whether they comply with Part 7 of the Texas Disciplinary Rules of Professional Conduct. If the statements and representations contained in advertisements or writings comply with the Interpretive Comments, staff is authorized to approve them.

1. Public Media Advertisements

A public media advertisement is an advertisement broadcasted or made available to the general public, such as Yellow Pages, newspapers or other periodicals, outdoor display, the Internet, radio or television. Publications or information disseminated primarily to lawyers, such as legal newspapers, legal directories, firm brochures mailed to other lawyers, and on-line services provided to lawyers are not considered to be in the public media.

2. Client Testimonials

A radio or television advertisement that has persons speaking as though they are clients of the advertising lawyer is potentially misleading and may create unjustified expectations in violation of Rules 7.02(a)(1) and (2). Any person who portrays a client of a lawyer or law firm whose services are being advertised or who narrates an advertisement as if he or she were a client, shall either: (1) be an actual client of the lawyer or law firm whose services are being advertised; (2) if an actor is used to portray a client in a television advertisement, then that fact must be disclosed by a predominant, on-screen display of the following: “DRAMATIZATION”; (3) or if an actor is used to portray a client in a radio advertisement, then that fact must be disclosed with one of the two following statements to be spoken clearly and distinctly so as to be readily understood: “The preceding was a dramatization” or “The following is a dramatization.”

If the person who portrays a client of a lawyer or law firm is an actual client of such lawyer or law firm whose services are being advertised, the lawyer shall identify to the Committee the name, address, and telephone number of the client. A place shall be provided on the advertising application whereby this information can be supplied, and
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until the application form is modified to include a request for such information, a supplemental form will be sent to lawyers or law firms whose radio or television advertisements contain persons portraying clients.

3. Unjustified Expectations

Advertisements or writings that include statements about results obtained on behalf of clients, such as the amount of a damage award or the lawyer’s record in obtaining favorable settlements or verdicts or client endorsements, create an unjustified expectation in violation of Rule 7.02(a)(2) unless accompanied by a prominent disclaimer and information. An advertisement or writing which includes one of the following disclaimers and all of the following information meets the requirements of Rule 7.02(a)(2):

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DISCLAIMER

"RESULTS OBTAINED DEPEND ON THE FACTS OF EACH CASE." "EVERY CASE IS DIFFERENT. SIMILAR RESULTS MAY NOT BE OBTAINED IN YOUR CASE." "PAST PERFORMANCE IS NO GUARANTEE OF FUTURE RESULTS."

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INFORMATION

1. Nature of the case or matter.
2. Nature of the injuries or damages or the amount of the transaction.
3. Actual amount recovered if such amount is less than the judgment. If the judgment or settlement includes amounts to be paid in the future, the present value of all future payments an/or an accurate description of the schedule and amount of future payments.

4. Client Advances

An advertisement that contains statements or representations that the lawyer or law firm will loan or advance specific sums of monies to prospective clients is misleading and creates unjustified expectations in violation of Rule 7.02(a)(1) and (2).

Example: We will advance or loan up to $2,000 to clients.

A lawyer may, however, include a statement in an advertisement or writing that actual litigation expenses, court costs, and other financial assistance may be advanced to a client.
5. **Lawyer Announcements or Advertisements in Legal Directories Need not Include 7.04(a) or (b) Disclaimers or Statements**

An announcement stating new or changed associations, offices, or other matters relating to a lawyer or law firm, or an advertisement by a lawyer or law firm in a legal directory or legal newspaper containing information about the name, location, telephone number and general availability of lawyers to work on particular legal matters or listing various areas of practice, need not include a disclaimer or statement required by Section 7.04(a) or (b). See Rule 7.04(a)(3).

6. **Lawyer Responsible for Content of Advertising**

It is presumed that a lawyer or law firm whose name is published in an advertisement is responsible for the content of the advertisement and therefore meets the requirements of Section 7.04(b)(1). It is not necessary that the advertisement include a specific statement or tag line identifying a particular lawyer as having reviewed the content of the advertisement.

7. **Organizations Certifying Lawyers as Possessing Special Competence**

No lawyer shall advertise that he has been certified by an organization which implies that its members possess special competence, as no organization has yet applied for and obtained accreditation by the Texas Board of Legal Specialization as required by Rule 7.04(b)(2)(ii).

8. **Disclaimers and Statements must be Separate and Apart**

A disclaimer or statement required by Rule 7.04(a) or (b) is “separate and apart” if it is separated by at least one blank line from other statements. If an advertisement identifies areas of practice which require that the lawyer include more than one statement or disclaimer concerning board certification, such statements may be included in a single paragraph. The paragraph, however, may not include statements concerning licensing or other matters.

*Example:* John Doe — Board Certified, Personal Injury Trial Law — Texas Board of Legal Specialization. Not certified by the Texas Board of Legal Specialization in any other areas of practice.

*Example:* John Doe — Board Certified, Consumer Law — Texas Board of Legal Specialization. Frank Smith — Not certified by the Texas Board of Legal Specialization.

In a television advertisement, the disclaimer or statements required by Rule 7.04 may be in the printed text on the screen at the same time as other information, such as the lawyer’s or law firm’s name, address, phone number, provided it is separate and apart from such information. The disclaimer or statement cannot be included with other state-
ments or disclaimers concerning referral fees and/or contingent fees. To be "displayed conspicuously" the text of any disclaimer or statement required by Rule 7.04(b) must be of sufficient height and location to be easily read by the average consumer. In a television advertisement, a disclaimer in writing, which is superimposed on the screen and which airs for at least five (5) seconds, generally will meet this requirement. If the size of the printed text is such that the average consumer can read the disclaimer in less than five (5) seconds, this is acceptable. The disclaimer or statement may also be in the spoken text and if so, a written text superimposed on the screen is not necessary.

9. *Portraying a Lawyer in an Advertisement*

The person who portrays a lawyer whose services or whose firm's services are being advertised shall be one or more of the lawyers whose services are being advertised. The inclusion of a disclaimer stating that the person is an actor does not cure the deficiency and still violates Rule 7.04(g).

In determining whether a person is portraying a lawyer whose services or whose firm's services are being advertised, the advertisement as a whole, including the surrounding setting of the video; i.e., if the setting is in a law library, courtroom, or office, as well as the statements, and whether they are in the third person versus first person, and any other matters which may imply to the consumer that the person in an advertisement is a lawyer whose services are being advertised will be considered.

10. *Contingent Fees*

An advertisement which discloses the willingness or potential willingness of a lawyer to render services on a contingent fee basis must comply with Rule 7.04(h). The advertisement must disclose whether the client will be obligated to pay all or a portion of court costs and whether a client may be liable for other expenses.

*Example:* "No fee if no recovery. Client is obligated for payment of court costs and expenses, regardless of recovery."

*Example:* "No attorney's fees unless you recover. Court costs, litigation expenses, and medical bills are paid from your share of the recovery. If there is no recovery, you will not be responsible for any court costs or litigation expenses, except for unpaid medical bills."

*Example:* "No attorney's fees, court costs, or expenses unless you recover."

*If this last statement is used, a lawyer may be obligated to pay court costs, litigation expenses and any medical expenses that might be incurred by the plaintiff.*
11. Brokering Cases — Referral of Cases

If by past experience or practice the advertising lawyer routinely or frequently refers to other lawyers certain types of cases advertised for, then the advertising lawyer is required to disclose such fact in accordance with 7.04(l). If an advertising lawyer who by past experience or practice knows or should know that the case is likely to be referred to another lawyer should the case go into litigation, be set for trial, or need to be tried, then the advertising lawyer should disclose the fact of anticipated referral pursuant to 7.04(l).

12. Written Solicitation Communications and Self-Mailing Pamphlets or Brochures

The statement, ‘ADVERTISEMENT’ need not be at least 3/8ths of an inch vertical on an envelope or the first page of a written solicitation letters. ‘ADVERTISEMENT’ must be in all caps, bold type, and plainly displayed on the envelope and in the first page of the letter. If ‘ADVERTISEMENT’ is at least 1/4th of an inch in height vertically on the envelope and first page of the written communication solicitation letter, it meets the requirements of this Rule provided it is separate and apart from other text. If a self-mailing pamphlet or brochure is mailed, the statement ‘ADVERTISEMENT’ must be at least 3/8ths of an inch vertically or three (3) times the vertical height of the letter in the body of the communication and in a color that is in sharp contrast to background color. See Rule 7.05(b)(2).

13. Brochures and Pamphlets

A brochure or pamphlet which is enclosed with a written solicitation letters need not be plainly marked ‘ADVERTISEMENT’ provided the first page of the letter and the face of the envelope are plainly marked ‘ADVERTISEMENT’ in compliance with the above-referenced rule.

If a brochure or pamphlet is the only item included in an envelope mailed to a prospective client, the brochure or pamphlet and the envelope must be plainly marked ‘ADVERTISEMENT.’

14. Filing Requirements

A letter or brochure that is disseminated to a person or entity identified in Rule 7.05(e)(1)-(4) does not have to:

a. contain the disclaimer or statement in Rule 7.04(a)-(c);

b. be plainly marked ‘ADVERTISEMENT’; or

c. disclose how the lawyer obtained the information concerning the recipient's name.
If the written solicitation or brochure is disseminated to the public or entities or persons not exempt under Rule 7.05(e), the provision of Rule 7.04(b) must be met.

15. **Advertisements Referring to Other Information or Recordings**

If a public media advertisement or writing refers to additional information which may be available to prospective clients, such as taped messages or printed pamphlets that provide information concerning a person’s or entity’s legal rights, the additional information should not be submitted for pre-approval or filed with the Advertising Review Committee. However, if the information contains matters designed primarily to solicit prospective clients by the lawyer or firm, then this information must be filed in accordance with Rule 7.07. A lawyer who responds to a request for information by a prospective client with an individualized letter is not subject to the Rule 7.05 governing written solicitation communications and is not required to file such letter.

16. **Spanish Translation of Disclaimer**

The Texas Board of Legal Specialization has developed a standardized translation for the disclaimer “Not certified by the Texas Board of Legal Specialization” which is required by 7.04(b). The following will now be the acceptable form of this disclaimer in Spanish language advertisements and written solicitations: “No esta(n) certificado(s) por la Mesa Directiva de Especializaciones Legales del Estado de Texas”.

17. **The Internet and Similar Services Including Home Pages**

A. The Home Page First Screen

Certain publications on the Internet or similar services are public media advertisements and are subject to the provisions of Part 7 of the Texas Disciplinary Rules of Professional Conduct. Unless the home page would otherwise be exempt from the filing requirements under Rule 7.07(d), a lawyer or firm publishing a home page on the Internet must file a hard copy, including the URL address of: (1) the first screen which is sent to the computer of an accessing person when the home page location (URL) is accessed; and (2) any material changes in format that vary from the first screen of the original home page. Pre-approval for the first screen of the home page is available.

B. Information Linked to the First Screen of the Home Page

Generally, additional information that the lawyer or law firm publishes on the Internet or other similar services beyond the first screen of the home page should not be submitted for pre-approval or filed with the Advertising Review Committee.
However, additional information beyond the first screen that is primarily concerned with solicitation of prospective clients by a lawyer or law firm is considered public media advertisement that must comply with Part 7 of the Texas Disciplinary Rules of Professional Conduct, including the filing requirements of 7.07. The following examples are generally not considered to be primarily concerned with solicitation of prospective clients: newsletters; news articles; legal articles; editorial opinions; illustrations; questionnaires; fact or opinion survey forms; announcement of office openings and relocations; request for proposals or information from the public; legal product specifications; E-mail and E-mail response forms; attorney biographical information; announcement or personnel changes; attorney and support staff recruiting; job openings; legal development and events, including verdicts, judgments, court rulings, administrative rulings, and/or legislation; announcement of seminars and events, including on-line registration forms therefor; links to other Internet sites (legal or otherwise); and entertainment/amusement devices.

C. Compliance with Part 7 of the Texas Disciplinary Rules of Professional Conduct Including Rule 7.04(a-c) and (h-o)

Information that may not be considered primarily concerned with solicitation of prospective clients must still comply with the applicable provisions of Part 7 of the Texas Disciplinary Rules of Professional Conduct, including Rule 7.04(a-c) and (h-o). Attorney biographical information must contain appropriate statements and/or disclaimers as required by 7.04(a-c).

References to a submitting lawyer's or law firm's accomplishments or record, including verdicts, judgments, court rulings, and administrative rulings, must be accompanied by an appropriate disclaimer as well as the information set forth in Interpretive Comment 3 regarding unjustified expectations. The home page first screen must also disclose the geographic location by city or town of the lawyer's or firm's principal office.

18. Principal Office Disclosure

A lawyer or firm with only one office will satisfy the requirement for disclosure of a principal office by including the name of the city or town in which the office is located. A lawyer or firm with more than one office, regardless of the staffing of the other office(s), must designate in all advertising which city or town is the location of its principal office.
19. Disclosure of Information Prompting a Written Solicitation Communication

When making a disclosure required pursuant to Rule 7.05(b)(7), the lawyer must disclose the specific information source on which the solicitation is based. For example:

(1) If the lawyer obtained the prospective client's name from police accident reports, the solicitation should state that the name was obtained from police accident reports rather than simply stating that it was obtained from "public records".

(2) If the prospective client's name is obtained from a jail inmates list or booking log, that too should be specifically disclosed.

(3) When the name of a prospective client is obtained from a foreclosure list in the Daily Commercial Recorder, foreclosure lists obtained from the Daily Commercial Recorder would be appropriate language to satisfy 7.05(b)(7).

20. Distinctions Between "Pre-approval" and "Filing"

A request for "PRE-APPROVAL" denotes a public media advertisement or written solicitation that has been submitted to the Advertising Review Committee pursuant to Rule 7.07(c) at least thirty (30) days prior to the date the lawyer or law firm plans to disseminate the advertisement or solicitation to the public. Pre-approval is an option for the advertising lawyer, but it is not required. The purpose of a request for pre-approval is to discover any violations of the advertising rules so that they may be corrected prior to dissemination. For example, in the case of advertisements in telephone and similar directories, the pre-approval request must be submitted at least thirty (30) days prior to the last date on which a change could be made to the advertisement before printing. Advertisements and solicitations submitted for pre-approval will be reviewed and returned to the advertising lawyer within twenty-five (25) days of the date of receipt with either (1) a pre-approval or (2) a request for corrections and/or additional information. A pre-approval of an advertisement or written solicitation is an "advisory opinion" of compliance under rule 7.07(c).

A "FILING" denotes any public media advertisement or written solicitation that has been submitted to the Advertising Review Committee for review pursuant to Rule 7.07(b) but has not been submitted to the Committee at least thirty (30) days prior to the initial dissemination of the advertisement or solicitation. Rule 7.07(d) exempts certain advertisements and solicitations from the filing requirements; however, filing of an advertisement or solicitation which is not exempted by Rule 7.07(d) is mandatory. If a filed advertisement or written solicitation contains no violations, the advertiser will be sent an approval, normally within forty-five (45) days of the date of receipt. However, if a filed advertisement or written solicitation contains vio-
lation(s) of the advertising rules, the Committee may refer the violation(s) to the office of the Chief Disciplinary Counsel without notification to the submitting lawyer.
### ADVERTISEMENT/Written Solicitation Review Checklist

**Lawyer Name:**

**File/Case No.:**

Resubmittal? (circle one) **YES**  **NO**

**Violations of the Rules:**

- ( ) Partner, shareholder or associate - 7.01(d)
- ( ) Trade or fictitious name - 7.01(a),(e)
- ( ) False and misleading - 7.02(a)(1), 7.05(a)(3)
- ( ) 'No designation... ', misleading - 7.02(a)(1), 7.05(a)(3)
- ( ) Unjustified expectation - 7.02(a)(2)
- ( ) Client testimonials - 7.02(a)(1), 7.02(a)(2)
- ( ) 'Specialist' - 7.02(c)
- ( ) In each language used - 7.02(d)
- ( ) Lawyer responsible - 7.04(b)(1)
- ( ) Certifying organization not accredited - 7.04(b)(2)
- ( ) Disclaimer not present - 7.04(b)(3)
- ( ) Abbreviations, changes, or additions - 7.04(c)
- ( ) Not separate and apart - 7.04(e)
- ( ) Not displayed conspicuously - 7.04(c)
- ( ) Portrays a lawyer - 7.04(g)
- ( ) Contingent fee - 7.04(h)
- ( ) Other Violations or Comments: ____________________________

( ) PRE-APPROVE  ( ) APPROVE  ( ) REQUEST INFO.  ( ) DISAPPROVE

( ) REFER TO GC

**Reviewed By:** __________________________  **Date:** __________________________
ADVERTISEMENT/Written Solicitation
Review Checklist — Key

Partner, Shareholder, or Associate
The lawyer holds himself or herself out as being a partner, shareholder, or associate with one or more other lawyers, but such lawyers are not in fact partners, shareholders, or associates as required by 7.01(d).

Trade or Fictitious Name
The lawyer is practicing, advertising in the public media, and/or seeking professional employment by written communication under a trade or fictitious name or a name that is misleading as to the identity of the lawyer or lawyers practicing under such name as prohibited by 7.01(a) or (e).

False and Misleading
The material indicated is false and misleading or contains a material misrepresentation as prohibited by either 7.02(a)(1) or 7.05(a)(3). (Please refer to attached advertisement, letter, or production script for specific material indicated.)

'no designation...' Misleading
The Texas Board of Legal Specialization has determined that the area(s) of practice referred to in the advertisement or written solicitation fall within areas of practice for which certificates of special competence are available; therefore, the statement ‘No designation has been made. . . .' is misleading in violation of 7.02(a)(1) or 7.05(a)(3).

Unjustified Expectation
The material indicated is likely to create an unjustified expectation concerning the results the lawyer can achieve as prohibited by 7.02(a)(2). (Please refer to attached advertisement, letter, or production script for specific material indicated.)

Client Testimonials
The advertisement includes client testimonials which may violate 7.02(a)(1) or (2). Either submit the names addresses, and phone numbers of the clients features in the ad or prominently display ‘Dramatization’ if the clients are actors.

'Specialist'
The lawyer advertises that he or she is a “specialist” in violation of the provisions of 7.04(b) as prohibited by 7.02(c).

In Each Language Used
A disclaimer or statement required by Part VII (the advertising rules) is not made in each language used in the advertisement or writing with respect to which such required statement or disclaimer relates as required by 7.02(d).
ATTORNEY ADVERTISING

LAWYER RESPONSIBLE
The name of the lawyer responsible for the content of the advertisement is not included in the ad in violation of 7.04(b)(1).

CERTIFYING ORGANIZATION NOT ACCREDITED
The advertisement includes a certification or designation of special competence from an organization that has not been accredited by the Texas Board of Legal Specialization as prohibited by 7.04(b)(2).

DISCLAIMER NOT PRESENT
The disclaimer required by 7.04(b)(3) is not present in the advertisement or writing.

ABBREVIATIONS CHANGES OR ADDITIONS
The disclaimer or statement required by 7.04(b)(2)(I) or (b)(3) contains abbreviations, changes, or additions in the quoted language as prohibited by 7.04(c).

NOT SEPARATE AND APART
The disclaimer or statement required by 7.04(b)(2)(I) or 7.04(b)(3) is not separate and apart from other statements as required by 7.04(c).

NOT DISPLAYED CONSPICUOUSLY
The disclaimer or statement required by 7.04(b)(2)(I) or 7.04(b)(3) is not displayed conspicuously as required by 7.04(c).

PORTRAITS A LAWYER
A person in the advertisement portrays a lawyer, but the person is not one of the lawyers whose services or whose firm's services are being advertised as required by 7.04(g).

CONTINGENT FEE
The advertisement or writing contains statements that disclose the willingness or potential willingness of the lawyer or firm to render services on a contingent fee basis and/or statements that disclose specific percentage fees or fee ranges for contingent fee work; however, the advertisement or writing fails to disclose whether the client will be obligated to pay all or any portion of the court costs or other expenses and, in the case of specific fees or percentages, whether such fees will be computed before or after expenses, all of which is required by 7.04(h).

CITY OR TOWN
The city or town in which the lawyer's or firm's principal office is located is not disclosed as required by 7.04(j).

OFFICE OTHER THAN THE PRINCIPAL
The existence of an office other than the lawyer’s or firm’s principal office is advertised. This office is not staffed an attorney at least three days per week, but the advertisement or writing fails to state
either the days and times a lawyer will be present at that office or that meetings with lawyers will be by appointment only as required by 7.04(j)(2).

**PAID FOR BY ANOTHER LAWYER**  
Directly or indirectly, the lawyer paid for part or all of the cost of an advertisement or writing for a lawyer who is not in the same firm. The advertisement fails to disclose the name and address of the financing lawyer, the relationship between the advertising and financing lawyer, and whether the advertising lawyer is likely to refer to the financing lawyer cases received through the advertisement or writing, all of which is required by 7.04(k).

**LIKELY TO BE REFERRED**  
The lawyer knows or should know at the time of the advertisement or writing that a case or matter will likely be referred to another lawyer or firm; however, a statement of such fact is not conspicuously included in the advertisement as required by 7.04(l).

**MOTTO, SLOGAN, OR JINGLE**  
The advertisement or writing contains a motto, slogan, or jingle that is false or misleading as prohibited by 7.04(m).

**LAWYER REFERRAL SERVICE**  
The lawyer includes in the advertisement or writing the lawyer's association with a lawyer referral service which does not meet the requirements of Article 320d, Revised Statues as prohibited by 7.04(n) (which requires that the lawyer must know or reasonably believe that such referral service meets the aforementioned requirements in order to include such association in his or her ad or writing).

**COOPERATIVE OR VENTURE**  
The lawyer is advertising as part of a cooperative or venture of two or more lawyers who are not in the same firm. The advertisement does not contain all of the following as required by 7.04(o): a statement that the ad is paid for by the cooperating lawyers, the names of the cooperating lawyers, and the special competency requirements of each attorney.

**ADVERTISEMENT**  
"ADVERTISEMENT" is not plainly marked and in capital letters on both the first page of the written solicitation and the face of the envelope as required by 7.05(b)(2). *-OR-* The written solicitation is in the form of a self-mailing pamphlet or brochure, but the word "ADVERTISEMENT" is not in a color that contrasts sharply with the background and is not in a size at least 3/8" vertically or three times the height of the letters used in the body of such communication, whichever is larger, as required by 7.05(b)(2)(i) and (ii).
ATTORNEY ADVERTISING

NATURE OF LEGAL PROBLEM REVEALED

The outside of the envelope, self-mailing brochure, or post card reveals the nature of the legal problem of the prospective client as prohibited by 7.05(b)(6).

INFO. PROMPTING THE COMMUNICATION

The written solicitation was prompted by a specific occurrence involving the recipient or a family member thereof, but it fails to adequately disclose how the lawyer obtained the information prompting such communication to solicit employment as required by 7.05(b)(7).

NO ENVELOPE

A copy of the envelope in which this writing is mailed was not included for review as required by 7.07(a)(1).

NON-EXEMPT, NOT FILED

The advertisement or written solicitation is not exempt from filing under 7.07(d); however, it has not been filed with the Advertising Review Committee as required by either 7.07(a) (written solicitations) or 7.07(b) (advertisements in the public media).

REQUIRES SUBSTANTIATION

The material indicated requires substantiation of representations made therein as required by 7.07(e). (Please refer to attached advertisement, letter, or production script for specific material indicated.)

MAILED BEFORE THE 31ST DAY

The lawyer with intent to obtain professional employment sent to an individual a written communication seeking employment concerning an action for personal injury or wrongful death that was mailed before the 31st day after the date that the accident or disaster occurred in violation of 8.04(a)(9) and the Texas Penal Code, Section 38.12(d)(2)(A).

NO CONTACT DESIRED

The lawyer with intent to obtain professional employment sent to an individual a written communication soliciting professional employment when such lawyer knew or should have known that the injured person or relative had indicated a desire not to be contacted or receive communications concerning such employment in violation of 8.04(a)(9) and the Texas Penal Code, Section 38.12(d)(2)(E)
APPENDIX C: COPY OF THE FILING FORM FOR SUBMITTING ADVERTISEMENTS AND SOLICITATION MATERIALS TO THE ADVERTISING REVIEW COMMITTEE

APPLICATION FORM
LAWYER ADVERTISING AND WRITTEN SOLICITATION

Effective July 29, 1995, Part VII of the Texas Rules of Disciplinary Procedure require that a lawyer file with the Advertising Review Committee a copy of all public media advertisements and written solicitations, except those exempt by Rule 7.07(d), contemporaneously with first dissemination or mailing. If desired, pre-approval may be obtained by submitting a copy of the advertisement or writing at least 30 days prior to its first dissemination or mailing. If pre-approval is requested for an advertisement that is to be placed in a telephone directory or similar publication, the ad must be submitted at least 30 days prior to the printing deadline of the publication rather than 30 days prior to dissemination date of the publication. If a pre-approval is requested, a response will be mailed within 20 days of the date of receipt of a completed application packet.

INSTRUCTIONS FOR SUBMISSION OF A COMPLETE APPLICATION PACKET

1. Complete Application in full. Please print or type. Application may be reproduced.

2. Attach advertisement or writing.
   - For a solicitation letter, attach a sample of the envelope in which it will be mailed.
   - For a television or radio ad, attach a detailed production script, including ad title or number, and an audio or video tape.
   - If requesting pre-approval of a TV or radio ad that has not yet been produced, a production script can be submitted without a video or audio tape.
   - For an ad or letter in any language other than English, attach a complete, accurate English translation.
   - For a website, include URL address of site on this form.

3. Enclose check in the amount of $50.00 payable to the State Bar of Texas for each ad or writing.

4. Mail original and one copy* of each completed application packet to:
   Advertising Review Committee
   State Bar of Texas
   P.O. Box 12487
   Austin, TX 78711-2487

   *Note exception: It is not necessary to include an additional copy of the video or audio tape submitted for TV or radio commercials.

   A separate application packet must be submitted for each advertisement or writing. If submitting more than one packet at a time, TV or radio commercials may be combined onto one tape. Filing fees may be combined into one check. Incomplete application packets will be returned. They will not be docketed for review.

For questions concerning filing requirements or to request a Lawyer Advertising Information Packet, call 1-800-566-4616.

Lawyer: ___________________________ Bar Card #: ___________________________

Firm: ______________________________

Firm's Principal Office Address: __________________________________________

Phone: ___________________________ Fax: _________________________________

Nature of advertisement or written solicitation:

A. Letter  C. Magazine/Newspaper  E. Brochure/Newsletter
B. Telephone Directory  D. Television/Radio  F. Other (billboards, websites, etc.)

It is extremely important that you review the explanation of the difference between filing and pre-approval at top of this page before answering the following question:

Does applicant seek pre-approval? Yes (pre-approval) ______ No (filing) ______

If you answered No, state the date the advertisement or writing was first disseminated or mailed.

This form (created 7-20-96) supersedes all prior forms. (page 1 of 2, form continued on back...)

https://scholarship.law.tamu.edu/txwes-lr/vol3/iss1/3
DOI: 10.37419/TWLR.V3.I1.1
Is it likely that a case or matter resulting from the advertisement or writing will be referred to another lawyer or law firm? Yes ______ No _______

Does the advertisement or writing disclose or allude to a specific fee, range of fees, or that the lawyer or law firm will render fees on a contingent fee basis? Yes ______ No _______

Does the advertisement or writing disclose the existence of an office other than the firm’s principal office? Yes ______ No _______
If you answered Yes, is the satellite office staffed by a lawyer at least three days per week? Yes ______ No _______

Does the advertisement or writing designate or allude to one or more specific areas of practice? Yes ______ No _______
If you answered Yes, is the lawyer board certified in the areas of practice advertised? Yes ______ No _______

Has another lawyer or law firm paid any part of the advertisement or writing? Yes ______ No _______
If you answered Yes, identify the lawyer or law firm. ________________________________

In what geographic location(s) will the advertisement be disseminated? ________________________________

Identify any lawyers depicted in the advertisement. ________________________________

Identify any actual clients depicted in the advertisement along with such clients’ addresses and phone numbers. ________________________________

______________________________

ATTEST: I HAVE REVIEWED THE ADVERTISEMENT OR WRITING SUBMITTED AS REQUIRED BY RULE 7.04(e) OR 7.05(c), TEX. DISCIPLINARY RULES OF PROFESSIONAL CONDUCT. THE REPRESENTATIONS CONTAINED THEREIN AND THE INFORMATION IN THIS APPLICATION ARE TRUE AND CORRECT.

Signed ________________________________ Date ________________________________

FOR COMMITTEE USE ONLY

PRE-APPROVED DATE

APPROVED DATE

ADD'L INFORMATION REQUESTED DATE

DISAPPROVED DATE

REFERRED TO CHIEF DISCIPLINARY COUNSEL DATE

BY ________________________________

This form (created 7-20-96) supersedes all prior forms.
ADDENDUM

LAWYER ADVERTISING APPLICATIONS FOR WRITTEN COMMUNICATION SUBMITTALS
(brochures, pamphlets, newsletters, etc.)

Applicant: __________________________ File/Case No: __________________________

The attached brochure, pamphlet, or other written solicitation communication will be used as follows.

(If yes, please complete the following:

_____ Mailed unsolicited to prospective clients because of a particular past occurrence or event

or a series

of past occurrences or events and a specific existing legal problem of which you are aware.

_____ Mailed as a self-mailing brochure;

_____ Mailed in an envelope alone;

_____ Mailed in an envelope along with a written solicitation letter that complies with Rule 7.05. Such letter must be currently attached to this brochure or pamphlet as part of this submission or must have been previously submitted and approved.

_____ Letter attached to this submission;

_____ Letter previously approved - give Advertising Review Department file no. __________________________.

_____ Mailed to other lawyers or law firms.

_____ Mailed to current clients or prospective clients who have requested the information.

_____ Mailed to prospective clients, but such mailing is not motivated by or concerned with a particular past occurrence or event or a series of past occurrences or events and is also not motivated by or concerned with a prospective client's specific existing legal problem of which you are aware.

_____ Made available or displayed in your law office.

_____ Made available or displayed in public places (other professional offices, businesses, etc.).

_____ Other use (please describe): __________________________

Signed by
Applicant: __________________________ Date: __________________________
APPENDIX D: ADVERTISING EXAMPLES WITH VIOLATIONS NOTED

Not In Compliance

JOHN DOE & ASSOCIATES
ATTORNEYS AT LAW
Wildwood Center
Houston, Texas 77777

May 1, 1995

Dear Mr. Smith:

Letter fails to disclose how recipients name obtained 7.05(b)(2)

* I am sorry to learn of your recent automobile accident, and I realize how very difficult it is to deal with injuries, a damaged car, and insurance claims. You have our deepest sympathy and best wishes for a speedy recovery.

Our firm emphasizes in personal injury cases, and we handle a broad spectrum of cases from minor injuries to multi-million dollar wrongful death claims. For these cases there is no legal fee whatsoever unless we win. We have obtained successful recoveries for over ninety-nine percent of our clients. These recoveries range from several thousand dollars to millions of dollars.

You may be entitled to compensation for damages such as mental anguish, pain and suffering, and future medical bills. We can refer you to a doctor who will treat you now with payment by the insurance company.

I am willing to advance up to $1,000.00 to my clients who have suffered financial hardships because of their accidents. You do not have to pay me back until I settle the case.

I am Board Certified in both Personal Injury and Civil Trial Law by the Texas Board of Legal Specialization.

Please call my office at 888-8888 for a free consultation. I only get paid if I get results! Ask about our written guarantee.

Very truly yours,

John Doe

Misleading

Letter fails to disclose how recipients name obtained 7.05(b)(2)

Can not advertise specialty except as permitted by 7.04

Must disclose basis for advance fee 7.06(c) Otherwise this is misleading

Contingent fee must include disclosure 7.04(d)

Unjustified expectation 7.02(a)(2)

Committee will require substantiation of this statement 7.07(e)

Unjustified expectation 7.02(a)(2)

Misleading

Fully licensed by the Supreme Court of Texas in all areas of law

Not, Cert. by Tex. Bd. of Leg. Specialization

Published by Texas A&M Law Scholarship, 2022
TEXAS WESLEYAN LAW REVIEW

Sample Advertisements

**TexaS Divorce Clinic**

ATTORNEYS AT LAW
1 Waterway Street
Houston, Texas

NO CHILDREN
NO PROPERTY

$45
Plus filing fees
Call Jane or John Doe at
555-1212
(Flexible terms for children, property, & contested cases)

Board Certified - Family Law
Texas Board of Legal Specialization

Violates 7.01 (a)

**Auto Injuries**

FEES
20 + Years Experience

Licensed in county, state & federal courts

Member: State Bar College; State & County Bar Association; ATLA

"We are the toughest attorneys in town"

555-1212
John Q. Doe, J.D.
Park Place Towers

Violates 7.04 (j)

**Get Debt Relief Now!**

555-1111
Over 12,000 Bankruptcies Filed

Jim Q. Public
Attorney at Law

If a second office is advertised - must comply with 7.04 (j)

Violates 7.04 (c)

**40 years of Satisfied Clients**

Most Legal Insurance Accepted

DIVORCE
Debt Relief Clinic
Criminal

NO PROPERTY - NO CHILDREN

$45
Plus Filing Fees

Financing Available
Flexible Terms For Children
Property & Contested Cases

Violates 7.01 (a)

This ad violates 7.04 (b)(1)

https://scholarship.law.tamu.edu/txwes-lr/vol3/iss1/3
DOI: 10.37419/TWLR.V3.I1.1