ETHICS IN ATTORNEY ADVERTISING

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V. ETHICS IN ATTORNEY ADVERTISING

Attorney advertising and solicitation is highly regulated due to the complexity of the industry, the abilities of attorneys, and the vulnerability of potential clients. Indeed, the Supreme Court has said:

[T]he potential for overreaching is significantly greater when a lawyer, a professional trained in the art of persuasion, personally solicits an unsophisticated, injured, or distressed lay person. Such an individual may place his trust in a lawyer, regardless of the latter’s qualifications or the individual’s actual need for legal representation, simply in response to persuasion under circumstances conducive to uninformed acquiescence. Although it is argued that personal solicitation is valuable because it may apprise a victim of misfortune of his legal rights, the very plight of that person not only makes him more vulnerable to influence but also may make advice all the more intrusive.


To allay the concerns raised by attorney overreaching, the State Bar of Texas has developed rules and procedures to govern advertising and solicitation of potential clients by attorneys. These rules are found in Part VII of the Texas Disciplinary Rules of Professional Conduct (the “Rules” or “TDRPC”).¹ The Rules represent a balance between protecting the public from being confused or misled and giving attorneys the ability to attract and retain clients. The comments to the Rules indicate that they are aimed only at communications made for the purpose of obtaining professional employment. TDRPC 7.02 cmt. 1. Thus, an attorney may still participate in public debate and political commentary as long as his speech is not made in an effort to gain employment. *Id.*

This paper will focus primarily on highlighting the important aspects of the Rules; it is not, however, a comprehensive recitation of cover every rule or regulation that governs attorney advertising or solicitation. As is always the case, it is important that

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¹ The Rules were challenged on free speech grounds and, with few exceptions, were found to be constitutional. *See Texans Against Censorship, Inc. v. State Bar of Tex.*, 888 F. Supp. 1328 (E.D. Tex. 1995). The few sections that were found to be unconstitutional have either been deleted or modified.
each attorney carefully read the Rules and examine applicable law before engaging in advertisement or solicitation.

A. What You Can and Cannot Say in Advertising

The December 2002 Southwestern Bell Yellow Pages for Greater Dallas had 109 pages dedicated to attorney advertising, not to mention the multitude of attorney advertisements cluttering the front and back cover. Any fan of daytime television can probably tell you which attorney to see for car wrecks, medical malpractice, asbestos exposure, and more. Attorney advertising is quite common. Some advertisements are tasteful, and some remind us why attorneys have the reputation that they do. If done properly, however, all attorney advertisements should, at a minimum, convey accurate and truthful information.

The Fundamental Rule

“A lawyer shall not make a false or misleading communication about the qualifications or the services of any lawyer or firm.” TDRPC 7.02(a).

This is the most important rule when it comes to advertising by attorneys. All other advertising rules expand on this basic principle of truth and accuracy. Not only are affirmative misrepresentations of fact or law prohibited, but an attorney may not omit any fact necessary to make an advertisement as a whole not materially misleading. TDRPC 7.02(a)(1). The TDRPC goes beyond a blanket ban on false and misleading statements and includes detailed examples of what is considered to be false and misleading, as will be discussed below.

The Consequence

“A lawyer shall not accept or continue employment when the lawyer knows or reasonably should know that the person who seeks the lawyer’s services does so as a result of conduct prohibited by these rules.” TDRPC 7.06.

Besides possible disciplinary sanctions for violating the advertising rules, an attorney must forego any employment gained as a result of a violation. Rule 7.06 contains no defense or exception if the client was not harmed by the violation. Further, Rule 7.06 applies if the attorney ultimately hired merely knows of the violation,
regardless of whether or not he was responsible for it. TDRPC 7.06 cmt. 1. Thus, it is extremely important for a profitable practice of law that an attorney know the Rules and be able to advertise ethically and accurately.

1. Advertising WHO you are

Attorneys want the name of their practice to say something about who they are and what they do. If an attorney has a good reputation, he wants to be able to use the credibility associated with his name to attract clients. The state, however, has a competing interest in preventing the public from being misled by attorneys who may attempt to capitalize on the fame or reputation of others with whom they have no connection.

**Individual names** – Attorneys may use their own names to advertise. Law firms may always use the names of attorneys currently practicing with the firm, as well as the names of deceased or retired partners in the firm’s name. TDRPC 7.01(a). If a lawyer at the firm holds a judicial, legislative, public executive or administrative position, the firm may not use that lawyer’s name unless that lawyer actively and regularly practices with the firm. TDRPC 7.01(c). Married women, whether practicing solo or otherwise, may practice under their maiden names. TDRPC 7.01(a).

**Trade names** – Attorneys in private practice are prohibited from practicing under a trade name. TDRPC 7.01(a). This prohibition includes names such as:

- The Legal Clinic of John Doe,
- Jane Doe Trial Lawyers,
- Discount Legal Services of John Doe and
- Doe & Jones Lawmart.

(Ethics Opinion No. 529.)

Internet domain names or URLs are also subject to this Rule. Interpretive Comments to the TDRPC 17 (“Int. Cmt.”). Web addresses using reasonable variations of the law firm or lawyer’s name may be acceptable. *Id.*
Trade names do not include designations such as P.C., P.A., L.L.P., P.L.L.C., and other similar symbols indicating the nature of the organization, which may be used as part of a firm’s name. TDRPC 7.01(a).

**Associations with other attorneys** – An attorney may not hold himself out as a partner, shareholder, or associate with one or more other lawyers unless they are in fact so associated. TDRPC 7.01(d); see also Curtis v. Comm’n for Lawyer Discipline, 20 S.W.3d 227, 233 (Tex. App.—Houston[14th Dist.] 2000, no pet.)(finding contract that specified “the Law Office of Mary Curtis and Joanne Chadderdon” violated TDRPC 7.01(d) when two attorneys were not partners). Further, if an attorney knows at the time he is advertising that the matter will likely be referred to another attorney, the advertisement must say so. TDRPC 7.04(l).

Attorneys may join together for advertising cooperatives or ventures as long as the advertisements meet certain requirements. An advertisement between two unassociated attorneys must:

- State that the advertisement is paid for by the cooperating attorneys,
- List the names of the cooperating attorneys,
- Set forth conspicuously the requirements of TDRPC 7.04(b) (discussed in Section A.3, infra),
- Not state or imply that the attorneys possess professional superiority and
- Not otherwise violate the TDRPC.

TDRPC 7.04(o).

**Multiple Offices** – If a firm practices in more than one jurisdiction, the firm may use the same name in each jurisdiction. TDRPC 7.01(b). However, any identification of lawyers in an office at the firm must indicate the jurisdictional limitations of those not licensed to practice in the jurisdiction where the office is located. Id.

**Important!** – Every advertisement must contain the name of at least one attorney who is responsible for the content of the advertisement.
2. Advertising HOW you perform

With the multitude of attorney advertisements bombarding the general public, attorneys are hard-pressed to make themselves stand out. They want the public to know that they provide quality services that surpass competing attorneys. Once again, this desire to stand out can lead to exaggerations, misstatements, and, worse, complete falsehoods that can harm clients who rely on those representations. Thus, the TDRPC carefully regulates how far an attorney can go to set herself above her peers.

**Unjustified expectations** – An attorney may not advertise in a way that is likely to create an unjustified expectation about the results he can achieve. TDRPC 7.02(a)(2). Examples of improper statements range from guaranteeing victory to simply displaying images of cash or checks in the advertisement. Int. Cmt. 3.

Attorneys may, with the client’s consent, discuss the results obtained on behalf of a client in an advertisement. Typically, inclusion of previous results in an advertisement must be accompanied by a prominent disclaimer. The Interpretive Comments to the TDRPC suggest the following disclaimers:

- 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;

**Comparison to other attorneys** – A lawyer cannot compare her services with those of another lawyer unless the comparison can be substantiated by verifiable, objective data. TDRPC 7.02(a)(3). Thus, statements such as “We are the toughest lawyers in town,” “We are the best law firm in Texas if you want a large recovery,” and “We will get money for you when other lawyers can’t” are prohibited. TDRPC 7.02 cmt. 2.

**Improperly obtaining results** – Finally, a lawyer may not state or imply that he can achieve results by means that violate the Rules or the law. TDRPC 7.02(a)(2). Further, a lawyer may not state or imply that she may improperly influence any tribunal, legislative body, or public official. TDRPC 7.02(a)(4).
3. Advertising WHAT you do

Many attorneys specialize in a specific practice area of the law. The Rules permit attorneys to advertise for clients in those specific areas as long as the attorney is competent to do so. TDRPC 7.02(a)(5). The Rules, however, are very precise about what disclaimers must be included in any advertisement that declares a lawyer’s ability to practice in that area.

Certification – An attorney who wishes to advertise that he has received a Certificate of Special Competence from the Texas Board of Legal Specialization may include “Board Certified [area of specialization] – Texas Board of Legal Specialization” in his advertisements. TDRPC 7.04(b)(2)(i).

The Rules also permit an attorney to advertise if he is a member of an organization whose name implies special competence in an area of law as long as the organization has been accredited by the Texas Board of Legal Specialization. TDRPC 7.04(b)(2)(ii). If the organization is accredited, the attorney may include “Certified [area of specialization] [name of certifying organization]” in his advertisements. Id.

The following are areas the Texas Board of Legal Specialization currently allows attorneys to specialize in:

- Administrative Law
- Business Bankruptcy Law
- Civil Appellate Law
- Civil Trial Law
- Commercial Real Estate Law
- Consumer and Commercial Law
- Consumer Bankruptcy Law
- Criminal Law
- Estate Planning and Probate Law
- Family Law
- Farm and Ranch Real Estate Law
- Health Law
- Immigration and Nationality Law
- Juvenile Law
- Labor and Employment Law
- Oil, Gas and Mineral Law
- Personal Injury Trial Law
- Residential Real Estate Law
- Tax Law

Important! – The Rules require the above statements to be “displayed conspicuously with no abbreviations, changes, or additions” to the language given and “separate and apart” from any other statements. TDRPC 7.04(c). So, even if it is not aesthetically pleasing, do not stray from the language specified in the Rules.
**Specialization without Certification** – If an attorney wants to advertise a specialized area, but is not board certified in that area, the advertisement must contain the disclaimer “Not Certified by the Texas Board of Legal Specialization.” TDRPC 7.04(b)(3); see also State Bar of Tex. v. Faubion, 821 S.W.2d 203, 205-06 (Tex. App.—Houston[14th Dist.] 1991, writ denied)(finding violation when attorney continued to use letterhead stating “Certified Civil Trial Specialist” after certification had lapsed). If the advertisement is on television, the disclaimer must be clearly displayed for at least five seconds or spoken aloud. Int. Cmt. 8.

If an attorney wishes to advertise in an area of law that the Texas Board of Legal Specialization does not currently award Certificates in, the advertisement may state “No designation has been made by the Texas Board of Legal Specialization for a Certificate of Special Competence in this area” as opposed to the “Not Certified” disclaimer mentioned above. TDRPC 7.04(b)(3).

In publications to other attorneys, such as legal directories and legal newspapers, an attorney may announce his or her availability to practice in a particular area of law without a disclaimer. TDRPC 7.04(a)(3).


4. **Advertising the COST of your service**

In an effort to convince potential clients to hire them, some attorneys will advertise the costs and fees for the legal work to be done. The Supreme Court has approved of this practice; however, it is still regulated to ensure that potential clients are not misled by legal terms of art regarding fees.
**Contingent fees** – An attorney may advertise that he will accept cases on a contingent fee basis. TDRPC 7.04 (h). Such an advertisement must inform the client whether she will be obligated to pay any or a portion of the court costs. *Id.* If a client may be liable for other expenses, the advertisement must disclose that as well. *Id.* Examples of advertising on a contingent basis include:

- No fee if no recovery
- Fees in the event of recovery only

If an attorney advertises contingent fees at a specific percentage, the advertisement must also include whether the percentage is computed before or after expenses are deducted from the recovery. *Id.*

**Flat fees** – If an attorney advertises a specific fee or range of fees for a particular service, the attorney must conform to those fees during the time the advertisement is reasonably expected to be in circulation or otherwise effective in attracting clients, unless the advertisement specifies a shorter period. TDRPC 7.04 (i). An attorney is not, however, required to conform to the fees in the advertisement more than one year after the date of publication. *Id.*

5. **HOW you may advertise**

The goal of advertising is to reach as many people as possible; thus, some of the more common venues for attorney advertisements are television, radio, and the Internet. There are no restrictions on where an attorney may advertise, but once again, the Rules do provide guidelines for the manner in which an attorney may advertise in each medium.

**Public media** – The Rules apply to all advertisements in the “public media.” Public media advertising is advertising that is broadcasted or made available to the general (non-attorney) public. Int. Cmt. 1. This includes the Yellow Pages, newspapers, outdoor displays, the Internet, radio, and television. *Id.* Publications made primarily to lawyers, such as legal newspapers, legal directories, firm brochures sent to other attorneys, and online services provided to lawyers are not considered public media. *Id.*

**Actors** – In any advertisement using visual images, such as outdoor displays or television, any person identified as an attorney must actually be the attorney whose
services are being advertised. TDRPC 7.04(g). In other words, actors may not portray attorneys. As one court has put it, “[I]t is not truthful to show a Cadillac and say it is a Pinto.” Texans Against Censorship, Inc. v. State Bar of Tex., 888 F. Supp. 1328, 1356 (E.D. Tex. 1995). The same holds true for any advertisement narrated by an attorney. It must be the attorney’s voice – not that of an actor. TDRPC 7.04(g).

Clients, however, may be portrayed by actors. If an actor is used for a client, the word “DRAMATIZATION” must be prominently displayed. Int. Cmt. 2. If the advertisement is for the radio, it must include either “The preceding was a dramatization” or “The following is a dramatization.” Id.

**Internet** – Websites accessible by the general public are considered advertisements in the public media. Int. Cmt. 17. The intended initial access page of a firm or attorney’s website must include the following:

- the name of the lawyer or law firm responsible for the content of the site;
- the disclaimers from Rule 7.04, if areas of law are advertised or claims of special competence made anywhere on the site (see supra Text at Part A.3.) and
- the geographic location where the lawyer or law firm’s principal office is located

*Id.* The rest of the website must comply with the TDRPC, as well. *Id.*

**Languages** – An attorney may advertise that she speaks a foreign language. TDRPC 7.02(d). If, however, the advertisement includes any statements in a foreign language, other than the attorney’s ability to speak it, the statements and disclaimers required by the TDRPC must also be given in that language. *Id.*

6. **WHO must APPROVE your advertisements**

To assist attorneys and ensure compliance with the Rules, the State Bar has created the Advertising Review Committee (“ARC”). The ARC reviews all advertisements and written solicitations by attorneys. Attorneys are required to seek approval from the ARC for most advertisements.

**Responsibilities of the attorney** – Before advertising in the public media, an attorney is required to review all her advertisements and approve them in writing.
TDRPC 7.04(e). The attorney must keep a copy or recording of the advertisement, the approval thereof, and a record of when and where it was used for four years after its last dissemination. TDRPC 7.04(f).

**Requesting approval** – All advertisements in the public media and written solicitations must be approved by the ARC. TDRPC 7.07(a). It is the attorney’s responsibility to request approval from the ARC. *Id.* The request for approval can be done either before the advertisement is disseminated or concurrently with dissemination. *Id.* Applications for approval can be found online and mailed to:

Advertising Review Committee  
c/o State Bar of Texas  
P.O. Box 12487  
Austin, TX 78711-2487

Failure to request approval from the ARC can result in a fine of $225, plus another $75 for the filing fee.

**What to submit to the ARC** – Along with the application, the attorney must send the ARC the advertisement in the form in which it will be disseminated. TDRPC 7.07(b). Along with the advertisement, be sure to submit the following:

- Mailing – submit the envelope in which any advertisement is mailed
- Television/radio – submit the script setting out all the words and describing in detail and actions, events, scenes and background sounds as well as a listing of the names and addresses of the persons portray or heard to speak.

TDRPC 7.07(b), cmt. 3.

If the attorney is seeking pre-approval for a video, the attorney does not need to send in the completed video, but may make the video after receiving approval, as long as the rest of the information is submitted. TDRPC 7.07(c).

The attorney must also include a statement of when and where the advertisement has been or will be used. *Id.* Finally, the attorney must include a check or money order for $75. *Id.*

**Advisory opinions** – An attorney may seek pre-approval of his advertisement or solicitation by sending it to the ARC 30 days before publication (or in the case of
advertisements such as the Yellow Pages, 30 days prior to the last day to make changes). TDRPC 7.07(c); Int. Cmt. 20. The ARC will review the advertisement and issue its opinion within 25 days. Int. Cmt. 20. A finding of noncompliance is not binding in any subsequent disciplinary proceeding; however, a finding of compliance is binding, as long as the information is not false or misleading. TDRPC 7.07(c). The advantage to seeking pre-approval for an advertisement is it gives the attorney the opportunity to correct any Rule violations before incurring the cost of and possible penalties for disseminating the advertisement to the public.

**ARC review** – As noted above, if pre-approval is sought, the ARC will respond within 25 days. If, however, approval is sought concurrent with dissemination, the ARC will typically respond within 45 days. Int. Cmt. 20. The ARC is permitted to require an attorney to submit any information needed to substantiate the statements and representations included in the advertisement. TDRPC 7.07(e)

**Exceptions** – Rule 7.07(d) exempts the following public media advertisements from approval by the ARC:

- Any combination of: name, address, phone and fax numbers, office hours, fields of law (with appropriate disclaimers), admission to State Bar of Texas, admission to federal courts and other state bars, technical and professional licenses, foreign language ability, prepaid group plans in which the attorney participates, credit cards accepted, initial consultation fee, sponsorship of any civic or charitable event, and any other disclosures or statement required by the Rules;
- Advertisements identifying one or more attorneys as contributors to a charity or sponsors of a charitable, community or public interest event, with no information other than the name and location of the attorney’s offices;
- Listings in a regularly published law list;
- Announcement cards regarding changed associations or new offices and
- Newsletter mailed to: existing or former clients, other attorneys, members of certain nonprofit organizations.
B. Solicitation – When and Where

While subject to the same rules as advertising by attorneys, solicitation by attorneys is treated more strictly by the State Bar and courts. With solicitation, an attorney can target a specific individual with a specific problem instead of making a broad appeal to the general public. Solicitation is difficult to monitor because it occurs privately. Further, solicitation often occurs immediately after a traumatic event in the prospective client’s life, making the client more vulnerable to persuasion, confusion, and undue pressure. Thus, the state’s interest in protecting the public is much greater with respect to solicitation.

That being said, not all solicitation is prohibited. As with advertising, the Rules describe particular circumstances in which solicitation is allowed. Done properly, solicitation can benefit both the attorney and the potential client.

1. Application of the TDRPC

Many of the Rules applicable to advertisements by attorneys also apply to solicitations by attorneys. Thus, the fundamental principle remains: “A lawyer shall not make a false or misleading communication about the qualifications or the services of any lawyer or firm.” TDRPC 7.02(a). Given that some solicitations occur orally, not all of the Rules can be applied in the telephone or in-person solicitation context, such as including disclaimers. The best practice, however, is for an attorney to comply with all the Rules, whether the communication is made orally or in writing.

2. Telephone and In-person Solicitations

Telephone and in-person solicitations are treated differently than written solicitations because of the nature of the personal conversation with the potential client. An attorney in conversation with a potential client is able to respond to that person’s fears, concerns, and hesitations. There is little or no opportunity for oversight by the ARC, since conversations cannot be approved beforehand. Therefore, the Rules are stricter when dealing with telephone and in-person solicitations.

**General rule** – An attorney may not, by in-person or telephone contact, seek professional employment from a potential client or nonclient concerning a matter arising
out of a particular occurrence or event or series of occurrences or events when a significant motive for doing so is the attorney’s pecuniary gain. TDRPC 7.03(a)

**Exceptions** – An attorney may, however, contact the following individuals even in the above circumstances:

- family,
- a former or present client and
- a person who has sought the attorney’s advice.

*Id.* Attorneys for qualified non-profit organizations (*i.e.* legal aid agencies or unions) may also contact the organization’s members for the purpose of educating the members to understand the law, recognize legal problems, make intelligent selection of counsel, and use legal services. *Id.*

**Other rules** – When telephone or in-person contact is permitted under the above rules, the attorney still faces limitations on his conduct. The attorney is not to communicate with the prospective client if:

- the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment;
- the communication contains information prohibited by Rule 7.02(a)\(^2\) or;
- the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

TDRPC 7.03(a)(1)-(3).

3. **Written Solicitations**

Attorneys are given more freedom regarding written solicitations than in-person solicitations because written solicitations are easier for the potential client to ignore than a live attorney and give the client time to research and compare attorneys in order to make an informed decision about legal counsel. Since, however, most written solicitations are still aimed at the potential client’s current legal problems, they are still subject to rules designed to ensure the recipient is not misled.

\(^2\) TDRPC 7.02(a) prohibits false and misleading communications, as well as communications that create unjustified expectations, compares an attorney’s services without objective data, implies the ability to improperly influence a tribunal, and designates a practice area in which the attorney is not competent.
**General rule** – Attorneys may not send a written solicitation to a potential client in the following circumstances:

- When the solicitation involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment;
- When the solicitation violates TDRPC 7.02 and TDRPC 7.04(a)-(c) and (h)-(o)\(^3\) or
- When the solicitation contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

TDRPC 7.05(a). This rule not only applies to attorneys who send the solicitations, but also to attorneys who knowingly permit or cause another person to send or deliver the solicitation on the attorney’s behalf. *Id.*

Any written solicitation permitted by TDRPC 7.05 must conform to the following standards:

a. **Rule 7.04** – All written solicitations must meet the provisions of TDRPC 7.04(a) through (c). TDRPC 7.05(b)(1). This includes all the rules regarding specialties, certification, and disclaimers (discussed earlier). TDRPC 7.04.

b. **Advertisement** – Any written solicitation must be plainly marked “ADVERTISEMENT.” TDRPC 7.05(b)(2). If the solicitation is in the form of a letter, ADVERTISEMENT must appear both on the first page of the letter and the envelope. *Id.* If the solicitation is in the form of a self-mailing brochure, the written solicitation must:

- Be in a color that contrasts sharply with the background color and
- Be the larger of 3/8” tall or three times the height of the letters used in the body of the communication.

*Id.*

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\(^3\) TDRPC 7.04(a)-(c) deals with the disclaimers related to attorney certification and specialization. TDRPC 7.04(h)-(o) concerns the advertisement of attorneys’ fees, payment for the advertisement, referrals, and advertising cooperatives.
c. **Form of solicitation** – The written solicitation may not resemble legal pleadings or other legal documents, which may confuse the potential client into believing he must act on the information received. TDRPC 7.05(b)(3). Further, the solicitation may not reveal the nature of the potential client’s legal problem on the envelope or the outside of a self-mailing brochure. TDRPC 7.05(b)(6).

d. **Disclosure of information** – If the solicitation was prompted by an occurrence or event, the attorney must disclose how the attorney obtained the information that prompted the solicitation in the first place. TDRPC 7.05(b)(7). The Interpretive Comments to the TDRPC give the following examples:

- If the attorney obtained the potential client’s name from a police accident report, the attorney should state she obtained the information from a “police accident report” and not simply “public records;”
- If the potential client’s name was obtained from a jail inmates list or booking log, that information should be specifically disclosed or
- If the potential client’s name was obtained from a foreclosure list in the *Daily Commercial Recorder*, the attorney should state “foreclosure lists obtained from the *Daily Commercial Recorder*.”

Int. Cmt. 19.

**Exceptions** – Similar to in-person solicitations, the above rules regarding written solicitations do not apply in the following circumstances:

- Communications sent to current or former clients,
- Communications not prompted by a past occurrence or event and are not motivated by the potential client’s specific legal problem of which the attorney is aware,
- Communications not significantly motivated by the desire for or possibility of obtaining pecuniary gain, and
- Communications requested by the prospective client.

TDRPC 7.05(e).
4. Procedural Requirements

The procedural requirements applicable to advertisements, as discussed above in Section A.6, are equally applicable to written solicitations. All written solicitations must be submitted to and approved by the ARC. TDRPC 7.07. The exceptions for submitting written solicitations are:

- Solicitations not motivated by or concerned with a past occurrence or event and not motivated by or concerned with a particular legal problem of the prospective client of which the attorney is aware;
- Solicitations not significantly motivated by the desire for or possibility of obtaining pecuniary gain or
- Solicitations requested by the prospective client.

TDRPC 7.07(d).

Responsibilities of the attorney – An attorney must review and sign or approve in writing each written solicitation. TDRPC 7.05(c). An attorney must keep all solicitations, the approval thereof, a record of the date sent, the name and address to which each communication was sent, and the means sent for four years after its dissemination. TDRPC 7.04(d).

Payment for solicitation - An attorney is not permitted to pay, give, advance, or offer anything of value other than actual litigation expenses and other financial assistance to a prospective client in order to solicit professional employment. TDRPC 7.03(c). An attorney is not allowed to pay, give, or offer anything of value to a person who is not licensed to practice law for soliciting or referring clients. TDRPC 7.03(b). However, an attorney is allowed to pay reasonable fees for advertising and public relations services. Id.
5. **Barratry**

In addition to the TDRPC, the Texas Penal Code criminalizes barratry. **TEX. PENAL CODE. ANN. § 38.12 (Vernon 2003).** An attorney commits the crime of barratry when the attorney solicits someone in the following circumstances:

- the solicitation concerns personal injury, wrongful death, or an accident or disaster involving that person or a relative and was mailed before the 31st day after the accident or disaster occurred
- the solicitation concerns a specific matter and relates to legal representation and the attorney knows or reasonably should know the person has a lawyer in that matter
- the solicitation concerns the arrest of or issuance of summons to a person or relative that was mailed before the 31st day after the arrest or issuance of summons occurred
- the solicitation concerns a lawsuit of any kind, including divorce, and is mailed to the defendant or his relative and the lawsuit has not been on file more than 31 days
- the solicitation was sent or permitted to be sent by an attorney who knows or reasonably should know that the injured person or relative has indicated a desire not to be contacted about employment as an attorney
- the solicitation involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence
- the solicitation contains a false, fraudulent, misleading, deceptive or unfair statement or claim

An offense of barratry is a Class A misdemeanor, which can lead to one year in jail and up to $4,000 in fines. **TEX. PENAL CODE ANN. §§ 12.21, 38.12.** However, if it is an attorney’s second conviction for barratry, it is a third degree felony, which will result in 2-10 years in prison and up to $50,000 in fines. **TEX. PENAL CODE ANN. §§ 12.34, 38.12.** Thus, as well as violating the Rules and being subject to disciplinary sanction, an inappropriate solicitation may also be considered a crime.
C. **Resources for the Advertising Attorney**

The following is a list of resources for any attorney contemplating advertising or soliciting clients.

- Texas Disciplinary Rules of Professional Conduct
- State Bar website on attorney advertising:
- Advertising Review Committee – 1-800-566-4616
- Ethics opinions
- Case law – The following are some of the significant cases regarding attorney advertising: