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Ethics and the Law: Faster Than a Speeding Bullet - By Robert Pelton

[\[1\]Features](#)

[\[2\]Robert Pelton](#)

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All the rules and information in this article require some careful study, as there may be some duplication. The bottom line: Follow the rules before you put your Superman ad on TV, the internet, Facebook, or other social media. An ad picturing you stopping an 18-wheeler or jumping on cars or trucks may be something only Superman could do, but even Superman may not be able to save you from a grievance if you don't get it approved by the State Bar.

Narrator: Faster than a speeding bullet. More powerful than a locomotive. Able to leap tall buildings in a single bound.

Man 1: Look! Up in the sky! It's a bird.

Woman: It's a plane!

Man 2: It's Superman!

Narrator: Yes, it's Superman, strange visitor from another planet who came to earth with powers and abilities far beyond those of mortal men. Superman, who can change the course of mighty rivers, bend steel in his bare hands. And who, disguised as Clark Kent, mild-mannered reporter for a great metropolitan newspaper, fights a never-ending battle for truth, justice, and the American way.

When you put up a website or do any type of advertising, you need to be aware of a few things. Get it cleared by the SBOT advertising review department for starters. And, read Tex. Disciplinary Rule Prof. Cond. 7.07 ([\[3\]www.texasbar.com/Content/NavigationMenu/ForLawyers/GrievanceandEthics/Ad...](http://www.texasbar.com/Content/NavigationMenu/ForLawyers/GrievanceandEthics/Ad...)).

Deciphering the State Bar of Texas Advertising Rules with Gene Major

Bruce Vincent

For more than 20 years, the State Bar of Texas advertising rules have governed lawyer advertising, including print and electronic ads, websites, brochures, and practically any communication about a lawyer's legal services that reaches the public. Despite two decades of regulation, Texas lawyers and law firms still have questions about exactly what is and isn't allowed, and the potential impact for violations.

That lack of familiarity can lead to a firm or an individual lawyer having their ad, website, etc., labeled as "noncompliant" by the State Bar of Texas Advertising Review Department, which reviews lawyer advertising for violations under the Texas Disciplinary Rules of Professional Conduct. Those who fail to remedy noncompliant communications may be the subject of an official complaint filed with the Bar's Chief Disciplinary Counsel.

The prospect of defending a disciplinary complaint—not to mention the possibility of coming out on the losing end—undoubtedly contributes to the thinking of those who abide by the rules. However, whether based on ignorance or arrogance, some attorneys and firms continue to operate outside the lines even with the unenviable prospect of being caught looming on the horizon.

Gene Major on Texas' Ad Rules

I recently talked with Gene Major, Director of the State Bar Advertising Review Department and Director of the Bar's Attorney Compliance Division, about the state's lawyer advertising landscape and the common mistakes that can lead to violations.

Gene has been with the State Bar for nearly 20 years, and he's seen just about every type of lawyer advertising you can imagine, from loud-mouthed lawyers hawking their services during daytime TV to massive websites maintained by the state's largest law firms.

Following are the highlights from our conversation:

How many advertisements does your office review during the course of a year?

On average, the Advertising Review Department handles about 3,500 advertisements and solicitation communications per year. A lot of the submissions we receive have initial problems that we clearly identify. This provides the opportunity for individual attorneys and firms to make necessary changes so their ad or solicitation is compliant with the Texas Disciplinary Rules of Professional Conduct.

Roughly 80% of the ads and solicitation communications submitted to the State Bar of Texas are eventually approved for public dissemination.

What are some of the most common mistakes and/or violations that your office sees when determining whether an ad is compliant?

While we review each submission individually and no two are the same, there are several things that seem to appear over and over again.

Failing to file an advertisement or solicitation is a common problem that violates TDRPC Rule 7.07. Although the State Bar has been regulating lawyer advertising for more than two decades, we still see instances where a lawyer or firm simply fails to submit an ad as required under the rules.

Another issue we see regularly is the **use of trade names**, which is prohibited under TDRPC Rule 7.01. It's important to know that this rule is not applicable to descriptive URLs (for example, insurancecoveragelawyer.com, etc.). Many firms do not take the time to come up with a descriptive URL. Now that they are included on firm letterhead and business cards—provided they are not false, misleading, or deceptive—descriptive URLs can help people remember you.

We also see instances where ads and websites violate Rule 7.02(a)(2), which covers **past case successes and results**. If you list a dollar amount in your ad, on your website, or in any other public communication, then it must include the actual amount received by your client. If you list an overall recovery amount, the same rule requires that you also list the amount of attorney's fees and litigation expenses that were withheld from whatever your client received.

One final issue that appears is another violation of Rule 7.02 based on how **professional honors and accolades** are listed. If you have been selected to Texas Super Lawyers, Best Lawyers in America, or other similar recognition, then you must also include the name of the organization that is presenting the award and the year or years you were selected. Putting a Super Lawyers logo on your website or in an advertisement

without this information is a violation that we point out regularly.

What types of penalties are in place for those who fail to file their ads with the Ad Review Committee or those who produce ads that violate the ad rules?

The financial penalty for failing to file an ad or solicitation communication is essentially \$250 since the normal filing fee is \$100 and the non-filer fee is \$350. Those who fail to file will receive a non-filer letter from the ad review staff. If they don't respond to that letter as required, then they can be referred by the Advertising Review Committee to the State Bar's Chief Disciplinary Counsel, which conducts its own independent investigation before determining the next course of action.

There are other ways that you may be referred to the State Bar's Chief Disciplinary Counsel if your communication violates the TDRPC. While that doesn't happen very often, we have seen instances where it has been necessary.

Many lawyers market themselves by sending emails and newsletters to their own mailing lists or those purchased from third-party vendors. How can an attorney avoid running afoul of the ad rules when relying on mailing lists for marketing?

If a firm or individual lawyer is communicating with **current and former clients, others lawyers, or other professionals**, then they are not required to make an Ad Review submission so long as the communication is not false, misleading, or deceptive.

Using lists from third-party vendors is different since it is presumed that you do not have an attorney/client relationship with everyone on the list. In those instances, it is important to follow Rule 7.02 for advertisements and Rule 7.05 for solicitation communications.

For example, Rule 7.05 requires that you follow all the provisions of Rule 7.02 in addition to plainly marking all non-electronic communications with "ADVERTISEMENT" on the first page, and on the face of the envelope or other packaging that is used to transmit the communication. For such solicitations that are communicated electronically, "ADVERTISEMENT" must be included in the subject line and at the beginning of the communication itself.

Bruce Vincent is a writer and editor who was the only reporter to provide daily coverage of the federal trial that resulted in the Texas rules for attorney advertising. He regularly helps lawyers and law firms produce websites, advertisements, and other promotional pieces that comply with the State Bar rules. Contact him at bruce.vincent@musecommunicationsllc.com.

While the First Amendment guarantees freedom of speech, the courts limit commercial speech. If you want to keep your privilege to practice law in Texas, remember that many have had advertising grievances sustained by the State Bar because they were unaware of (or just disregarded) the Texas Disciplinary Rules of Professional Conduct. [\[4\]Relevant portions of the rules may be seen on voiceforthedefenseonline.com under the "Special" tab.](http://voiceforthedefenseonline.com)

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[3]

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