



STATE BAR of TEXAS

## Solicitation and Barratry

**Under the Texas Disciplinary Rules of Professional Conduct, can I be disciplined if I telephone or visit in person with someone that I know has been arrested or involved in a car accident to solicit them as a client?**

- With certain limited exceptions, the answer is yes. See [Rule 7.03\(a\)](#) concerning telephone and in person solicitations. Also it would be a Rule violation for a lawyer to have someone else, including a non-lawyer, solicit clients in this manner for them. See [Rule 8.04\(a\)\(1\)](#).

**Under the Texas Disciplinary Rules of Professional Conduct, can I be disciplined if I send a letter to someone that I know has been arrested or involved in a car accident to solicit them as a client?**

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- Generally, no, if you follow [Rule 7.05](#) concerning written solicitations and [Rule 7.07](#) concerning filing requirements of written solicitations. However, also see [Rule 8.04\(a\)\(9\)](#) which prohibits lawyers from engaging in conduct that constitutes barratry as defined by the law of this state. Please note that [Penal Code section 38.12\(d\)\(2\)](#) no longer prohibits written communications to persons who have been arrested or issued a summons or to those persons' family members.

**Under the Texas Disciplinary Rules of Professional Conduct, can I be disciplined if I pay someone not licensed to practice law to solicit clients for me or to refer clients to me?**

- With certain very limited exceptions, the answer is yes. See [Rule 7.03\(b\)](#). Also, see [Rule 7.03\(c\)](#) which prohibits payments to clients or anyone else in order to solicit employment. Additionally, accepting referrals from certain Lawyer Referral Services is also prohibited. See [7.03\(e\)](#).

**Are there other Texas Disciplinary Rules of Professional Conduct that I should be aware of concerning solicitation of clients?**

- Yes, see [Rule 7.06](#) concerning prohibited employment and [Rule 7.03 \(d\)](#) concerning prohibited fee collection. Lawyers should also be familiar with all of Section VII of the Texas Disciplinary Rules of Professional Conduct which deals with Information about Legal Services.

#### **Isn't there also a section in the Penal Code that deals with barratry?**

- Yes, see [Penal Code section 38.12](#) Barratry and Solicitation of Professional Employment.

#### **I've heard something about Penal Code section 38.12(d)(2)(C), which deals with direct-mail solicitation of criminal defendants, being held unconstitutional. What information can you provide me on that issue?**

- Fortunately a recitation of precedent is no longer necessary to answer this question. Effective September 1, 2013, the criminal barratry statute was amended and removed the unconstitutional provision regarding arrestees and persons issued a summons (and their family members) from [Penal Code section 38.12\(d\)\(2\)](#). As a result, criminal defense attorneys who send direct mail to prospective clients who are arrestees or persons issued a summons, including those persons' family members, no longer need to worry about violating the criminal barratry statute as long as their written communications comply with Rules 7.05 and 7.07. The same is true of the two civil barratry statutes which were also amended and are discussed in the next section. However, other written communications sent by lawyers, such as personal injury solicitation, need to comply with Penal Code 38.12(d)(2) and the proper waiting period.

#### **Can you provide me with more information on the new civil laws regarding barratry that went into effect on September 1, 2011?**

- [Government Code section 82.065](#) has provisions that deal with the voidability of legal services contracts when barratry is involved. [Government Code section 82.0651](#) creates civil liability with substantial monetary penalties for lawyers who engage in barratry. These two statutes are commonly referred to as the civil barratry statutes. Both statutes were amended on September 1, 2013 to remove references to written communications to prospective clients under Penal Code 38.12(d). However, please be aware that Penal Code 38.12(d)(2) still regulates some types of written solicitations by lawyers to prospective clients. Consequently, a lawyer could violate Penal Code 38.12(d)(2), but not incur liability under Government Code sections 82.065 and 82.0651 or Part VII of the Texas Disciplinary Rules of Professional Conduct. Although Rule 8.04(a)(9) prohibits a lawyer from engaging in barratry as defined by Texas law, lawyers should be familiar with these three areas of liability: criminal barratry, civil barratry and disciplinary rules. But thanks to the recent amendments mentioned above, these provisions affecting criminal defense lawyers, in particular, have become easier to apply.

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