

APPENDIX A

PROPOSED RULE 8a, TEXAS RULES OF CIVIL PROCEDURE

8a. REFERRAL FEES

8a.1 Referral Fee Defined. A referral fee is a payment of money or anything of value:

- (a) made by any person in consideration of:
 - (1) the referral of a client or case, or
 - (2) the solicitation of a client or a case by any means that does not include the name of lead counsel or lead counsel's law firm; and
- (b) made to an attorney who does not, and is not reasonably expected to, provide professional services in the case:
 - (1) that are substantial; and
 - (2) for which the payment would be a reasonable fee apart from the referral.

8a.2 Disclosure. The attorney in charge for a party must file with the court a notice disclosing every referral fee paid or agreed to be paid with respect to the party. The notice must:

- (a) state the amount and date of each payment made or agreed to be made;
- (b) state the name, address, telephone number, and state bar identification number of each attorney to whom a payment has been made or is to be made; and
- (c) state that the client has approved each such payment or agreement.

8a.3 Time for Disclosure. An attorney in charge must make the disclosure required by Rule 8a.2 within 30 days of the attorney's first appearance as attorney in charge. Thereafter, an attorney in charge must disclose any previously undisclosed payment of a referral fee or agreement to pay a referral within 30 days of the date the payment or agreement is made.

8a.4 Sanctions.

(a) *Grounds for sanctions.* The court must impose just sanctions on an attorney if the court finds that:

- (1) the attorney intentionally failed to make the disclosure required by Rule 8a.2; or
- (2) the attorney divided or agreed to divide a fee in violation of Rule 1.04 of the Texas Disciplinary Rules of Professional Conduct.

(b) *Unconscionable referral fee.* A referral fee is unconscionable within the meaning of Rule 1.04 of the Texas Disciplinary Rules of Professional Conduct if it exceeds \$50,000 or 15% of the attorney fees for the party in the case, whichever is less. A lesser referral fee may also be determined to be unconscionable in the circumstances in which it is paid.

(c) *Sanctions imposed.* If the court finds that grounds for imposing sanctions on an attorney exist, the court:

- (1) must disqualify the attorney from representing the party in the case unless disqualification would unfairly prejudice the party;
- (2) may permit the party to void the party's agreement to retain the attorney;
- (3) may order the forfeiture of all fees for the attorney in the case; and
- (4) may impose other appropriate sanctions in addition.

8a.5 Hearing. The court must, on a party's motion, and may, on its own initiative, conduct an evidentiary hearing to determine whether there has been a violation of this rule.