

IN THE SUPREME COURT

OF

TEXAS

MISC. DOCKET NO. 94- 9076

ORDER OF PROMULGATION

OF

STATE BAR REFERENDUM RESULTS *

The Petition of the State Bar of Texas requesting an Order for the Promulgation of the results of the Referendum held April 14, 1994 through May 16, 1994 has been considered by the Court, together with the votes certified by the Clerk of the Court and the Executive Director of the State Bar of Texas.

The Court finds that, pursuant to Section 81.024 of the Texas Government Code, at least 51% of the registered members of the State Bar voted in this referendum election. The Court further finds that all issues submitted to the lawyers of Texas in this referendum were approved by a majority vote.

Therefore, it is **ORDERED** by the Court that:

1. The proposed revision of the Minimum Continuing Legal Education Rules, as published in the March 1994 issue of the Texas Bar Journal, shall be effective as of October 1, 1994.

2. The proposed amendments to Rules 3.07, 3.08(a), 5.05, 6.01, 8.03, and 8.04 of the Texas Disciplinary Rules of

Professional Conduct, as published in the March 1994 issue of the Texas Bar Journal, shall be effective as of October 1, 1994.

3. The adoption of proposed Rule 5.08 of the Texas Disciplinary Rules of Professional Conduct, as published in the March 1994 issue of the Texas Bar Journal, shall be effective as of October 1, 1994.

4. The proposed amendments to Parts I, II, III, IV, V, VI, VIII, XI, XII, and XVI of the Texas Rules of Disciplinary Procedure, as published in the March 1994 issue of the Texas Bar Journal, shall be effective as of October 1, 1994.

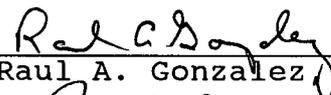
5. The proposed amendments to Part VII of the Texas Rules of Disciplinary Procedure, as published in the March 1994 issue of the Texas Bar Journal, shall be effective as of October 1, 1994.

6. The adoption of proposed Rule 15.13 of the Texas Rules of Disciplinary Procedure, as published in the March 1994 issue of the Texas Bar Journal, shall be effective as of October 1, 1994.

SIGNED this 15th day of June, 1994.



Thomas R. Phillips, Chief Justice



Raul A. Gonzalez, Justice



Jack Hightower, Justice



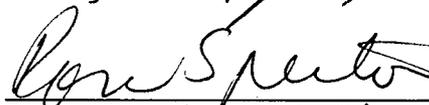
Nathan L. Hecht, Justice


Lloyd Doggett, Justice


John Cornyn, Justice


Bob Gammage, Justice


Craig Enoch, Justice


Rose Spector, Justice

*

The proposed amendments to Part VII and VIII and the adoption of Part IX of the Texas Disciplinary Rules of Professional Conduct and the proposed Rule 7.07 of the Texas Disciplinary Rules of Professional Conduct are under consideration and are not promulgated by this Order.

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 94-_____

PETITION FOR ORDER OF PROMULGATION

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF SAID COURT:

The State Bar of Texas (the "Petitioner") respectfully hereby petitions this Honorable Court for an Order of Promulgation. In support hereof, the Petitioner would respectfully show the Court as follows:

I

In accordance with this Court's Order of February 3, 1994, a ballot was sent to each registered member of the State Bar of Texas concerning the adoption by referendum of the following measures, to wit:

- A. **Lawyer Advertising:** Do you favor the proposed amendment, as published in the March 1994 issue of the *Texas Bar Journal*, of Parts VII and VIII, and the adoption of Part IX, of the Texas Disciplinary Rules of Professional Conduct limiting certain advertisements and direct mail solicitation practices of lawyers?
- B. **Filing of Advertisements:** Do you favor the adoption of proposed Rule 7.07 of the Texas Disciplinary Rules of Professional Conduct, as published in the March 1994 issue of the *Texas Bar Journal*, requiring the filing of certain advertisements and written solicitation

communications with the State Bar of Texas for review and enforcement?

- C. **MCLE Reporting:** Do you favor the proposed amendment, as published in the March 1994 issue of the *Texas Bar Journal*, of MCLE rules to eliminate the mandatory return of the Annual Verification Report where there is no disagreement between the lawyer and State Bar records as to CLE credits?
- D. **Trial Publicity, etc.:** Do you favor the proposed amendment, as published in the March 1994 issue of the *Texas Bar Journal*, of Rule Nos. 3.07, 3.08(a), 5.05, 6.01, 8.03, and 8.04 of the Texas Disciplinary Rules of Professional Conduct?
- E. **Prohibited Discriminatory Activities:** Do you favor the adoption of proposed Rule 5.08 of the Texas Disciplinary Rules of Professional Conduct, as published in the March 1994 issue of the *Texas Bar Journal*, prohibiting certain discriminating activities in connection with adjudicatory proceedings?
- F. **Disciplinary Procedures:** Do you favor the proposed amendment, as published in the March 1994 issue of the *Texas Bar Journal*, of Parts I, II, III, IV, V, VI, VIII, XI, XII and XVI of the Texas Rules of Disciplinary Procedure?
- G. **Board of Disciplinary Appeals:** Do you favor the proposed amendment, as published in the March 1994 issue of the *Texas Bar*

Journal, of Part VII of the Texas Rules of Disciplinary Procedure pertaining to the Board of Disciplinary Appeals?

- H. **Availability of Sanctions:** Do you favor the adoption of proposed Rule 15.13 of the Texas Rules of Disciplinary Procedure, as published in the March 1994 issue of the *Texas Bar Journal*, establishing restrictions on the availability of certain sanctions?

II

The ballots were mailed on April 14, 1994, and balloting remained open, pursuant to this Court's Order, until 5:00 p.m. on Monday, May 16, 1994. On the date of mailing, there were 58,178 registered active members of the State Bar of Texas. More than 51% of the eligible members (i.e., 29,671 members) participated by voting on one or more measures submitted in the referendum. Although not required by applicable law, several measures (viz, A, B, C and E) each received, independently of all other measures, votes from more than 51% of the eligible voters. All measures submitted were adopted by a majority of those voting.

III

The referendum ballots were counted beginning at 5:00 p.m. on Monday, May 16, 1994. The vote count was as follows:

Proposition Measure	"Yes" Votes (%)	"No" Votes (%)	Total Votes Cast
A	27,161 (88.46%)	3,544 (11.54%)	30,705
B	22,908 (74.89%)	7,679 (25.11%)	30,587

C	29,509 (95.74%)	1,313 (04.26%)	30,822
D	25,435 (86.02%)	4,132 (13.98%)	29,567
E	19,742 (66.17%)	10,092 (33.83%)	29,834
F	21,061 (72.23%)	8,097 (27.77%)	29,158
G	23,603 (80.73%)	5,635 (19.27%)	29,238
H	22,865 (77.55%)	6,621 (22.45%)	29,486

IV

The submission of the foregoing measures by referendum did not include a predetermination by this Court of any legal question. Likewise, it would be inappropriate for this Court, at this time, to make a determination of any legal question which has or might be raised in connection with these measures. If a legal question should arise, such issue should be decided when it is properly presented to this Court, in an actual case or controversy, not hypothetically. Any other procedure would violate the mandate of Section 81.024, Texas Government Code, which specifically provides, relative to State Bar referendums, that the Court "... shall promulgate each rule and amendment that receives a majority of the votes cast in an election."

V

The State Bar of Texas moves the Court to implement the rules adopted by referendum, as follows:

(a) The amendments to Parts VII and VIII and the adoption of Part IX of the Texas Disciplinary Rules of Professional Conduct, as published in the March 1994 issue of the *Texas Bar Journal*, to be made effective as of October 1, 1994.

(b) Proposed Rule 7.07 of the Texas Disciplinary Rules of Professional Conduct, as published in the March 1994 issue of the *Texas Bar Journal*, to be made effective January 1, 1995.

(c) The proposed revision of the MCLE rules, as published in the March 1994 issue of the *Texas Bar Journal*, to be made effective October 1, 1994.

(d) The proposed amendments to Rules 3.07, 3.08(a), 5.05, 6.01, 8.03, and 8.04 of the Texas Disciplinary Rules of Professional Conduct, as published in the March 1994 issue of the *Texas Bar Journal*, to be made effective October 1, 1994.

(e) The adoption of proposed Rule 5.08 of the Texas Disciplinary Rules of Professional Conduct, as published in the March 1994 issue of the *Texas Bar Journal*, to be made effective October 1, 1994.

(f) The proposed amendments to Parts I, II, III, IV, V, VI, VIII, XI, XII and XVI of the Texas Rules of Disciplinary Procedure, as published in the March 1994 issue of the *Texas Bar Journal*, to be made effective October 1, 1994.

(g) The proposed amendments to Part VII of the Texas Rules of Disciplinary Procedure, as published in the March 1994 issue of the *Texas Bar Journal*, to be made effective October 1, 1994.

(h) The adoption of proposed Rule 15.13 of the Texas Rules of Disciplinary Procedure, as published in the March 1994 issue of the *Texas Bar Journal*, to be made effective October 1, 1994.

VI

Rule 7.04(r)(2), as published in the March 1994 issue of the *Texas Bar Journal*, reads as follows:

(2) complying with the filing requirements of Rule 7.06.

Such reference to Rule 7.06 is erroneous. It should have read as follows:

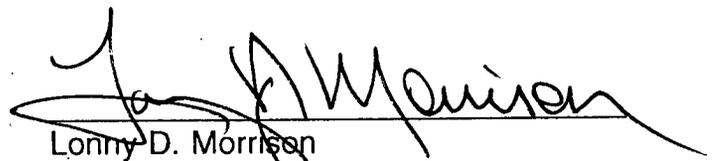
(2) complying with the filing requirements of Rule 7.07.

This Court should, in the exercise of its inherent power, correct such reference by amending the said Rule 7.04(r)(2) to read as last above set forth.

Requested Action

The State Bar of Texas respectfully moves the Court to promptly enter its order promulgating each of the foregoing measures, adopted by referendum as hereinabove set forth; to exercise its inherent power to correct the error in Rule 7.04(r)(2) as set forth above; and to grant to the Petitioner such other and further relief as to which it may be entitled.

Respectfully submitted,

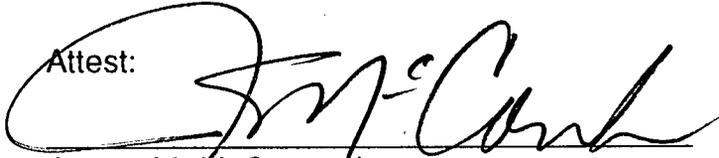


Lonny D. Morrison
President, State Bar of Texas
State Bar No. 00000068
P. O. Drawer 5008
Wichita Falls, Texas 76307



Karen Johnson
Executive Director, State Bar of Texas
State Bar No. 10759000
P. O. Box 12487
Austin, Texas 78711

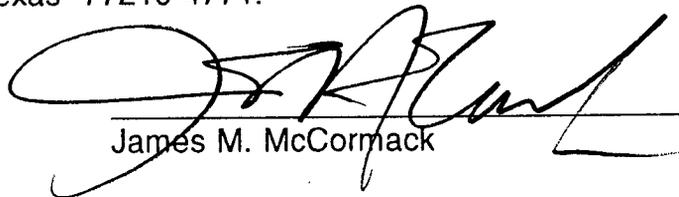
Attest:



James M. McCormack
General Counsel, State Bar of Texas
State Bar No. 13455500
P.O. Box 12487
Austin, Texas 78711

CERTIFICATE OF SERVICE

I hereby certify that, as a professional courtesy, a true and correct copy of the foregoing petition has been forwarded on this 27th day of May, 1994, by overnight delivery to Charles L. Babcock, counsel for the "Texans Against Censorship," at Jackson & Walker, P. O. Box 4771, Houston, Texas 77210-4771.



James M. McCormack