



4 TIPS FOR IMPROVING STATE BAR OF TEXAS SOCIAL MEDIA AND MASS COMMUNICATIONS

All proposed social media or other mass communications should be submitted to the State Bar of Texas communications review process by email to commreview@texasbar.com.

Boudreaux v. Louisiana State Bar Association, et al., 86 F.4th 620 (5th Cir. 2023), requires that mandatory bar communications be germane to improving the quality of legal services, the regulation of lawyers, or the functioning of the state’s courts or legal system, **and that they be clearly connected to the practice of law**. We recognize that the activities and communications of the State Bar and its numerous sections, committees, and divisions have been compliant with these requirements for years, but we want to note a few pointers for how we are making that compliance clear:

1. Express the legal connection up front.

Some articles in newsletters or social media posts discuss subjects that might raise a question to a casual reader about how it relates to the practice of law. Suppose, for example, an article entitled “Getting Your Mind Right” that discusses anxiety information explains late in the article how lawyers may be impaired in the courtroom by unmanaged anxiety and what to do about it. By either titling this article “Anxiety in the Practice of Law” and/or including the connection to lawyers in the first few sentences, we are more likely to avoid confusion.

2. Avoid descriptions of events or activities that might create confusion.

We know how important it is for lawyers to connect with each other to better serve their clients. If a client has legal needs outside of our area of expertise, knowing lawyers in those areas is critical to our legal services. That said, sometimes legal social events or even pro bono service efforts can be characterized in a way that may leave someone, who is not familiar with the event, confused at how it could improve legal services or be related to the practice of law. For example, a “happy hour” or “Third Thursday Service Day” may not convey a relation to the practice of law on its face. For these reasons, we encourage the use of language that makes clearer the event’s connection to the practice of law, such as describing them as “legal networking” or “pro bono legal services” events. There are endless ways that this can be done, but connecting the dots about the way things relate to the practice of law is important.

3. Avoid the appearance of taking a position outside of Board policy.

Boudreaux notes that “compulsory bar membership is unconstitutional if a bar’s speech is not germane to regulating lawyers or improving the quality of legal services in the state,” citing the Supreme Court’s opinion in *Keller v. State Bar of Cal.*, 496 U.S. 1, 13-14 (1990). *Boudreaux* also notes that in the State Bar of Texas case of *McDonald v. Longley*, the Fifth Circuit prohibited “non-germane political advocacy.” *McDonald v. Longley*, 4 F.4th 229, 237, 245, 252 (5th Cir. 2021) (Smith, J.), *cert. denied*, 142 S. Ct.1442 (2022). For many years, it has been the policy that State Bar-related entities are prohibited from taking a formal position regarding legislative, judicial, or executive action except for sections who have obtained approval of the State Bar Board of Directors. See State Bar Board of Directors Policy Manual Section 8.01.10. For these reasons, instead of using a title or phrase in a communication that may imply a bias or a possible position on such an issue, we urge that communications be mindful of this risk and use language that is appropriate to avoid the appearance of bias or taking a position (unless that is a section position that has been approved by the Board).

4. Seek guidance if you have any questions.

The State Bar’s Office of Legal Counsel is here to help and discuss any questions you may have:
Phone: (512) 427-1550 (Chris Ritter or Amanda Engle) Email: legal@texasbar.com
You may also reach out to Communications via commreview@texasbar.com.