STATE BAR of TEXAS

RULES VOTE

FEBRUARY 2 - MARCH 4 **2021**

Summary *of* Proposed Amendments

Ballot Item A: Scope and Objectives of Representation; Clients with Diminished Capacity

The proposal deletes Rule 1.02(g) of the Texas Disciplinary Rules of Professional Conduct and adds Proposed Rule 1.16 of the Texas Disciplinary Rules of Professional Conduct. Proposed Rule 1.16 is intended to provide improved guidance when a lawyer represents a client with diminished capacity. Among its provisions, Proposed Rule 1.16 permits a lawyer to take reasonably necessary protective action when the lawyer reasonably believes that a client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken, and cannot adequately act in the client's own interest. Proposed Rule 1.16 provides a non-exhaustive list of actions a lawyer may be authorized to take, including informal consultations that may be prohibited under the current Rules.

Ballot Item B: Confidentiality of Information – Exception to Permit Disclosure to Secure Legal Ethics Advice

Proposed Rule 1.05(c)(9) of the Texas Disciplinary Rules of Professional Conduct specifically clarifies that a lawyer is permitted to disclose confidential information to secure legal advice about the lawyer's compliance with the Texas Disciplinary Rules of Professional Conduct.

Ballot Item C: Confidentiality of Information – Exception to Permit Disclosure to Prevent Client Death by Suicide

Proposed Rule 1.05(c)(10) of the Texas Disciplinary Rules of Professional Conduct permits a lawyer to disclose confidential information when the lawyer has reason to believe it is necessary to do so in order to prevent a client from dying by suicide.

Ballot Item D: Conflict of Interest Exceptions for Nonprofit and Limited Pro Bono Legal Services

In order to facilitate the provision of pro bono legal services, Proposed Rule 6.05 of the Texas Disciplinary Rules of Professional Conduct creates narrow exceptions to certain conflict of interest rules when a lawyer provides limited advice and brief assistance on a pro bono basis. For purposes of Proposed Rule 6.05, "'limited pro bono legal services' means legal services that are: (1) provided through a pro bono or assisted pro se program sponsored by a court, bar association, accredited law school, or nonprofit legal services program; (2) short-term services such as legal advice or other brief assistance with pro se documents or transactions, provided either in person or by phone, hotline, internet, or video conferencing; and (3) provided without any expectation of extended representation of the limited assistance client or of receiving any legal fees in that matter." This provision, in various forms, has previously been adopted by 48 other states and the District of Columbia.

Ballot Item E: Information About Legal Services (Lawyer Advertising and Solicitation)

This comprehensive proposal amends Part VII of the Texas Disciplinary Rules of Professional Conduct by simplifying and modernizing lawyer advertising and solicitation rules. The proposal reduces Part VII from seven rules to six rules (numbered 7.01 to 7.06). Among other changes, the proposal: 1) permits a lawyer to practice law under a trade name that is not false or misleading; 2) defines "advertisement" and "solicitation communication"; 3) simplifies disclaimer and filing requirements; 4) adds exemptions to certain solicitation restrictions for communications directed to lawyers, persons with whom the lawyer has a close personal or prior business or professional relationship, and persons known by the lawyer to be experienced users of the type of legal services involved for business matters; 5) expands exemptions to filing requirements; and 6) expressly addresses social media communications. The proposal maintains the prohibition on false or misleading communications about the qualifications or services of a lawyer or law firm.

Ballot Item F: Reporting Professional Misconduct and Reciprocal Discipline for Federal Court or Federal Agency Discipline

The proposal amends Rule 8.03 of the Texas Disciplinary Rules of Professional Conduct and Rules 1.06 and 9.01 of the Texas Rules of Disciplinary Procedure by extending existing self-reporting and reciprocal-discipline provisions to cover certain professional discipline by a federal court or federal agency. The proposal specifically limits "'discipline' by a federal court or federal agency" to mean a public reprimand, suspension, or disbarment. The proposal clarifies that the term does not include a letter of "warning" or "admonishment" or a similar advisory by a federal court or federal agency. The provisions also do not apply to mere procedural disqualification in a particular case.

Ballot Item G: Assignment of Judges in Disciplinary Complaints and Related Provisions

These proposed rule changes simplify the assignment of judges, as well as address inconsistencies between current Rule 3.02 of the Texas Rules of Disciplinary Procedure and other statutes and rules already in place, whenever a respondent attorney in a disciplinary case chooses to have the matter heard by a district court. The proposal amends Rules 3.01, 3.02, and 3.03 of the Texas Rules of Disciplinary Procedure by: 1) transferring judicial assignment duties from the Supreme Court of Texas to the Presiding Judges of the Administrative Judicial Regions when a respondent in a disciplinary complaint elects to proceed in district court; 2) relaxing geographic restrictions on judicial assignments in disciplinary complaints; and 3) clarifying and updating various procedures involved in the assignment of judges in disciplinary complaints.

Ballot Item H: Voluntary Appointment of Custodian Attorney for Cessation of Practice

Proposed Rule 13.04 of the Texas Rules of Disciplinary Procedure authorizes a lawyer to voluntarily designate a custodian attorney to assist with the designating attorney's cessation of practice and provides limited liability protection for the custodian attorney.

Note: *The State Bar of Texas staff has provided this document as a general summary of the Proposed Amendments to the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure. It does not address every aspect of the Proposed Amendments, and reasonable minds may differ on the characterization of the Proposed Amendments. Voters are strongly encouraged to directly review the Proposed Amendments, which are available at* ***texasbar.com/rulesvote****.*

Don't forget to check your spam filter and junk mail for email ballots!

RULES STATE BAR of TEXAS VOTE

FEBRUARY 2 - MARCH 4 **2021**

CAST YOUR BALLOT IN THE STATE BAR RULES VOTE

For the first time in a decade, Texas attorneys will be called on to put their self-governance to work by voting on proposed changes to the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure. Attorneys can vote online or by paper ballot from February 2 to March 4, 2021.

1. On February 2, 2021, attorneys eligible to vote will be mailed a paper ballot along with instructions on how to cast their vote. An email will also be sent to attorneys giving them instructions on how to vote online. **BE SURE TO CHECK YOUR SPAM FILTER AND JUNK MAIL.** Election emails are sent from the State Bar's election provider, Election Services Corporation, and will be sent from **statebaroftexas@electionservicescorp.com**.

2. The paper ballot and email will contain a voter authorization number (VAN) with instructions on how to vote online. Attorneys may use this VAN and their bar card number to log on to the election website to cast their ballot. If attorneys do not have their VAN, they can also go to the State Bar website, **texasbar.com**, to obtain their VAN and cast their vote.

3. Attorneys may either submit their paper ballot via mail or vote online using the information provided. The secure election system will not allow duplicate votes.

Detailed information about the proposed rules can be found at texasbar.com/rulesvote.

THE DEADLINE TO CAST BALLOTS IS 5 P.M. CST MARCH 4, 2021

2021 Rules Vote Presentation
Speaker Biographies

M. Lewis Kinard – Chair of the Committee on Disciplinary Rules and Referenda

M. Lewis Kinard is executive vice president, general counsel, and assistant corporate secretary for the American Heart Association in Dallas. He was the last chair of the State Bar's Committee on Disciplinary Rules and Professional Responsibility and served on that committee for seven years. Kinard has over 30 years of legal practice in a range of substantive areas, is licensed to practice law in Texas and Arkansas, and formerly held a "single client" license in Colorado. At the AHA, he has focused on international commercial agreements, ground-breaking collaborative research programs, and growing the AHA's legal department to keep pace with the organization's evolving global legal needs. Kinard earned a bachelor's degree from the University of Arkansas and a J.D. from SMU Dedman School of Law.

Claude E. Ducloux – Member of the Committee on Disciplinary Rules and Referenda

Claude E. Ducloux is certified in both civil trial (1984) and civil appellate law (1987) by the Texas Board of Legal Specialization; licensed in Texas, Colorado, and California; and speaks regularly on legal ethics, law office management, and trial-related topics. He is a former president of the Austin Bar and former chair of the Texas Board of Legal Specialization, the Texas Bar Foundation, the Texas Bar College, and the Texas Center for Legal Ethics. Ducloux has written extensively on various legal education and disciplinary issues and is a U.S. Army Veteran.

Vincent R. Johnson – Member of the Committee on Disciplinary Rules and Referenda

Vincent R. Johnson is the South Texas Distinguished Professor of law at St. Mary's University. He teaches and writes in the areas of torts, professional responsibility, legal malpractice law, government ethics, international law, and comparative law. Johnson has served as a Fulbright Scholar in Burma, China, and Romania. His articles have been cited in more than 210 law reviews and 60 federal and state court decisions. Johnson is an elected member of the American Law Institute. He received his J.D. from the University of Notre Dame, an LL.M. from Yale University, and a second LL.M. from the London School of Economics.

Brad Johnson – Disciplinary Rules and Referenda Attorney, State Bar of Texas

Brad Johnson is the disciplinary rules and referenda attorney at the State Bar of Texas, where he serves as staff counsel to the Committee on Disciplinary Rules and Referenda. He previously served as an ethics attorney at the State Bar of Texas, and his professional background also includes work as an attorney at the Texas Ethics Commission, at the Texas Commission on Environmental Quality, and in private practice. Johnson has practiced law for more than 12 years, with a focus on the areas of legal and governmental ethics and employment law. He received his Bachelor of Arts from the University of Texas at Austin and his Doctor of Jurisprudence from Texas Tech University School of Law.