



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.*