



What to Know BEFORE YOU VOTE, PART 1

STARTING NEXT MONTH, MEMBERS OF THE STATE BAR OF TEXAS will put their self-governance to work and vote on proposed amendments to the disciplinary rules. The 2021 rules vote will be the first in 10 years and the first opportunity for nearly 25,000 Texas lawyers to vote on proposed disciplinary rule changes.

The proposals were drafted in accordance with a new process required by the State Bar Act that maximizes transparency and provides lawyers and the public with significant opportunities for input. The next step in the process is for you to vote. All members of the State Bar of Texas who are active and in good standing are eligible to vote by paper or electronic ballot from February 2 to March 4.

What's on the ballot? I will be devoting this space in the January and February issues of the *Texas Bar Journal* to summarize the eight proposed amendments. You'll find other information on the 2021 rules vote throughout this issue, including a helpful overview of the proposals by Brad Johnson, the disciplinary rules attorney at the State Bar, on page 50.

The State Bar also invites you to a series of public forum webinars in January and February that will feature a free, one-hour ethics CLE on the proposed rule changes and a live forum where you can ask questions and offer comments. Register now at texasbar.com/rulesvote.

The first four ballot items are summarized below.

- **Ballot Item A: Scope and Objectives of Representation; Clients with Diminished Capacity:** This proposal would delete Rule 1.02(g) of the Texas Disciplinary Rules of Professional Conduct and add 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 would permit a lawyer to take reasonably necessary protective action when the lawyer reasonably believes 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 would provide a non-exhaustive list of actions a lawyer may be authorized to take, including informal consultations that current rules may prohibit.
- **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 would provide that a lawyer may 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 would permit a lawyer to disclose confidential information when the lawyer has reason to believe doing so is necessary to prevent a client from dying by suicide.
- **Ballot Item D: Conflict of Interest Exceptions for Nonprofit and Limited Pro Bono Legal Services:** To facilitate the provision of pro bono legal services, Proposed Rule 6.05 of the Texas Disciplinary Rules of Professional Conduct would create narrow exceptions to certain conflict of interest rules when a lawyer provides limited advice and brief assistance on a pro bono basis. Forty-eight other states and the District of Columbia have adopted this provision in various forms.

My February column will cover the other four ballot items, including Item E, which would simplify and modernize the lawyer advertising and solicitation rules. I encourage you to take some time to learn about these issues and to cast your ballot starting February 2.

LARRY McDOUGAL

President, 2020-2021
State Bar of Texas

RULES VOTE PUBLIC FORUMS

Public forums for the 2021 rules vote will take place via webinar at 1 p.m. CST on the following dates:

- January 5 (Registration Full)
- January 14 (Registration Full)
- January 26
- February 9

Each event will include a free, one-hour presentation (approved for one hour of MCLE ethics credit) featuring members of the Committee on Disciplinary Rules and Referenda, followed by a live forum where attendees can ask questions and provide comments on the proposed disciplinary rule amendments. Additional dates will be added if necessary.

Register now and find more information at texasbar.com/rulesvote.



What to Know BEFORE YOU VOTE, PART 2

THE 2021 RULES VOTE IS UPON US—do you know what's on the ballot?

All members of the State Bar of Texas who are active and in good standing are eligible to vote on eight proposed changes to the lawyer disciplinary rules. I encourage you to learn about the proposals and cast your vote by paper or electronic ballot anytime from February 2 to March 4 at 5 p.m. CST.

Last month my President's Page featured summaries of the first four ballot items. The remaining ballot items are the focus of this column.

If you're just now learning about the rules vote, you can find all of this information and more at texasbar.com/rulesvote. While you're there, you can also sign up to attend the State Bar's remaining public forum webinar on February 9, which will include a one-hour ethics CLE on the proposals and a live forum where you can ask questions and offer comments.

The final four ballot items are summarized below.

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

This comprehensive proposal would simplify and modernize lawyer advertising and solicitation rules by amending Part VII of the Texas Disciplinary Rules of Professional Conduct. The proposal would reduce Part VII from seven to six rules (numbered 7.01 to 7.06). Among other changes, the proposal would:

- 1) permit a lawyer to practice law under a trade name that is not false or misleading (bringing Texas in line with the vast majority of other states);
- 2) define "advertisement" and "solicitation communication";
- 3) simplify disclaimer and filing requirements;
- 4) add 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) expand exemptions to filing requirements; and
- 6) expressly address social media communications.

The proposal would maintain the prohibition on false or misleading communications about a lawyer's or law firm's qualifications and services. The proposal would also continue the requirement that an advertisement include the name of a lawyer responsible for its content.

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

This proposal would amend 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 to extend existing self-reporting and reciprocal-discipline provisions to cover certain professional discipline by a federal court or federal agency. The proposal 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 would simplify the assignment of judges and 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.

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

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

One of the many benefits of membership in Texas' unified, mandatory bar is the right to vote on disciplinary rule changes. Please join me in exercising that right starting February 2.

LARRY McDOUGAL

President, 2020-2021

State Bar of Texas