



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