

Committee on Disciplinary Rules and Referenda Proposed Rule Changes

Texas Rules of Disciplinary Procedure

Rule 13.05. Voluntary Appointment of Custodian Attorney to Act During Disability

The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the Committee publishes the following proposed rule. The Committee will accept comments concerning the proposed rule through July 6, 2020. Comments can be submitted at texasbar.com/cdr or by email to cdrr@texasbar.com. The Committee will hold a public hearing on the proposed rule by teleconference at 10:30 a.m. CDT on June 18, 2020. For teleconference participation information, please go to texasbar.com/cdr/participate.

Proposed Rule (Redline Version)

13.05. Voluntary Appointment of Custodian Attorney to Act During Disability:

In lieu of the procedures set forth in Rules 13.02 and 13.03, and in addition to the appointment of a custodian attorney to assist with the closure of an attorney's practice as provided in Rule 13.04, an appointing attorney planning for a possible temporary cessation of practice may voluntarily designate a Texas attorney licensed and in good standing to act as custodian attorney to assist in the disposition of active client matters for a period of time not to exceed 120 days without closing the appointing attorney's practice, but only: (1) when the appointing attorney experiences a Disability, as defined in Rule 1.06; and (2) if the custodian attorney has a reasonable expectation the appointing attorney will resume the practice of law when the Disability ceases. The terms of the appointing documents, which shall be signed and acknowledged by the appointing attorney and custodian attorney, may include any of the following duties assumed by the custodian attorney during the period of the Disability:

- A. Examine the client matters, including files and records of the appointing attorney's practice, and obtain information about any matters that may require attention.
- B. Notify persons and entities that appear to be clients of the appointing attorney of the cessation of the law practice, and suggest that they obtain other legal counsel.
- C. Apply for extension of time before any court or any administrative body pending the client's employment of other legal counsel.
- D. With the prior consent of the client, file such motions and pleadings on behalf of the client as are required to prevent prejudice to the client's rights.
- E. Give appropriate notice to persons or entities that may be affected other than the client.
- F. Arrange for surrender or delivery to the client of the client's papers, files, or other property.

If the appointing attorney's Disability does not cease before the end of the 120-day period, or if the appointing attorney otherwise does not return to the practice fully competent to provide the legal services necessary to protect the interests of the appointing attorney's clients before the end of the 120-day period, then the custodian attorney shall proceed to assist thereafter only in the final resolution and closure of the appointing attorney's practice in accordance with Rule 13.04, unless the custodian attorney seeks and obtains a court order extending the period under which the custodian attorney can continue to act as custodian for a specified duration under this Rule.

The custodian attorney shall observe the attorney-client relationship and privilege as if the custodian were the attorney of the client and may make only such disclosures as are necessary to carry out the purposes of this Rule. Except for intentional misconduct or gross negligence, no person acting as custodian attorney under this Rule shall incur any liability by reason of the actions taken pursuant to this Rule.

The privileges and limitations of liability contained herein shall not apply to any legal representation taken over by the custodian attorney.

Proposed Rule (Clean Version)

13.05. Voluntary Appointment of Custodian Attorney to Act During Disability:

In lieu of the procedures set forth in Rules 13.02 and 13.03, and in addition to the appointment of a custodian attorney to assist with the closure of an attorney's practice as provided in Rule 13.04, an appointing attorney planning for a possible temporary cessation of practice may voluntarily designate a Texas attorney licensed and in good standing to act as custodian attorney to assist in the disposition of active client matters for a period of time not to exceed 120 days without closing the appointing attorney's practice, but only: (1) when the appointing attorney experiences a Disability, as defined in Rule 1.06; and (2) if the custodian attorney has a reasonable expectation the appointing attorney will resume the practice of law when the Disability ceases. The terms of the appointing documents, which shall be signed and acknowledged by the appointing attorney and custodian attorney, may include any of the following duties assumed by the custodian attorney during the period of the Disability:

- A. Examine the client matters, including files and records of the appointing attorney's practice, and obtain information about any matters that may require attention.
- B. Notify persons and entities that appear to be clients of the appointing attorney of the cessation of the law practice, and suggest that they obtain other legal counsel.
- C. Apply for extension of time before any court or any administrative body pending the client's employment of other legal counsel.
- D. With the prior consent of the client, file such motions and pleadings on behalf of the client as are required to prevent prejudice to the client's rights.
- E. Give appropriate notice to persons or entities that may be affected other than the client.
- F. Arrange for surrender or delivery to the client of the client's papers, files, or other property.

If the appointing attorney's Disability does not cease before the end of the 120-day period, or if the appointing attorney otherwise does not return to the practice fully competent to provide the legal services necessary to protect the interests of the appointing attorney's clients before the end of the 120-day period, then the custodian attorney shall proceed to assist thereafter only in the final resolution and closure of the appointing attorney's practice in accordance with Rule 13.04, unless the custodian attorney seeks and obtains a court order extending the period under which the custodian attorney can continue to act as custodian for a specified duration under this Rule.

The custodian attorney shall observe the attorney-client relationship and privilege as if the custodian were the attorney of the client and may make only such disclosures as are necessary to carry out the purposes of this Rule. Except for intentional misconduct or gross negligence, no person acting as custodian attorney under this Rule shall incur any liability by reason of the actions taken pursuant to this Rule.

The privileges and limitations of liability contained herein shall not apply to any legal representation taken over by the custodian attorney. **TBJ**