

Committee on Disciplinary Rules and Referenda Proposed Rule Changes

Texas Rules of Disciplinary Procedure Rule 13.05. Termination of Custodianship

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 October 6, 2020. Comments can be submitted at texasbar.com/cdrr 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 September 17, 2020. For teleconference participation information, please go to texasbar.com/cdrr/participate.

Proposed Rule (Redline Version)

13.05. Termination of Custodianship: A custodianship conducted by an appointed custodian under Rule 13.04 shall terminate upon one or more of the following events:

- A. The transfer of all active files and other client property in the possession of the custodian in accordance with the Texas Disciplinary Rules of Professional Conduct, in one or more of the following means:
 - 1. To attorneys assuming the responsibility for ongoing matters; or
 - 2. To the client or client's authorized representative, to the extent that the client is lawfully entitled to such materials.
- B. Entry of an order terminating the custodianship from a court with jurisdiction over the practice under Rules 13.02 and 13.03.
- C. The return of the appointing attorney to his or her practice prior to completion of the custodianship and resumption of representation of active client matters with the competence to conduct such representation.

In the event there is disagreement about whether the appointing attorney is competent to resume representation of a client matter upon return to the practice, either the appointed custodian or the appointing attorney may petition for a determination and order of a court under Rules 13.02 and 13.03 concerning the resumption of the practice by the appointing attorney and termination of the custodianship. An appointed custodian may also petition the court for an order concerning the proper disposition of dormant or closed client files, distribution of active files for which a client is nonresponsive or cannot be located, and for proper distribution of any client property or other property being held pursuant to a representation by the appointing attorney, including client funds held in an IOLTA account.

Proposed Rule (Clean Version)

13.05. Termination of Custodianship: A custodianship conducted by an appointed custodian under Rule 13.04 shall terminate upon one or more of the following events:

- A. The transfer of all active files and other client property in the possession of the custodian in accordance with the Texas Disciplinary Rules of Professional Conduct, in one or more of the following means:
 - 1. To attorneys assuming the responsibility for ongoing matters; or
 - 2. To the client or client's authorized representative, to the extent that the client is lawfully entitled to such materials.
- B. Entry of an order terminating the custodianship from a court with jurisdiction over the practice under Rules 13.02 and 13.03.
- C. The return of the appointing attorney to his or her practice prior to completion of the custodianship and resumption of representation of active client matters with the competence to conduct such representation.

In the event there is disagreement about whether the appointing attorney is competent to resume representation of a client matter upon return to the practice, either the appointed custodian or the appointing attorney may petition for a determination and order of a court under Rules 13.02 and 13.03 concerning the resumption of the practice by the appointing attorney and termination of the custodianship. An appointed custodian may also petition the court for an order concerning the proper disposition of dormant or closed client files, distribution of active files for which a client is nonresponsive or cannot be located, and for proper distribution of any client property or other property being held pursuant to a representation by the appointing attorney, including client funds held in an IOLTA account. **TBJ**