

Committee on Disciplinary Rules and Referenda Proposed Rule Changes

Texas Rules of Disciplinary Procedure

Rule 3.01. Disciplinary Petition Rule 3.02. Assignment of Judge Rule 3.03. Filing, Service and Venue

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 rules. The Committee will accept comments concerning the proposed rules through January 31, 2020. Comments can be submitted at texasbar.com/CDRR. A public hearing on the proposed rules will be held at 10:30 a.m. on January 16, 2020, in Room 101 of the Texas Law Center (1414 Colorado St., Austin, Texas, 78701).

Proposed Rules (Redline Version)

3.01. Disciplinary Petition: If the Respondent timely elects to have the Complaint heard by a district court, with or without a jury, in accordance with Rule 2.15, the Chief Disciplinary Counsel shall, not more than sixty days after receipt of Respondent's election to proceed in district court, notify the ~~Supreme Court of Texas~~ Presiding Judge of the administrative judicial region covering the county of appropriate venue of the Respondent's election by transmitting a copy of the Disciplinary Petition in the name of the Commission to the ~~Clerk of the Supreme Court of Texas~~ Presiding Judge. The petition must contain:

- A. Notice that the action is brought by the Commission for Lawyer Discipline, a committee of the State Bar.
- B. The name of the Respondent and the fact that he or she is an attorney licensed to practice law in the State of Texas.
- C. A request for assignment of an active district judge from within the administrative judicial region whose district does not include the county of appropriate venue to preside in the case.
- D. Allegations necessary to establish proper venue.
- E. A description of the acts and conduct that gave rise to the alleged Professional Misconduct in detail sufficient to give fair notice to Respondent of the claims made, which factual allegations may be grouped in one or more counts based upon one or more Complaints.
- F. A listing of the specific rules of the Texas Disciplinary Rules of Professional Conduct allegedly violated by the acts or conduct, or other grounds for seeking Sanctions.

G. A demand for judgment that the Respondent be disciplined as warranted by the facts and for any other appropriate relief.

H. Any other matter that is required or may be permitted by law or by these rules.

3.02. Assignment of Judge:

A. Assignment Generally: Upon receipt of a Disciplinary Petition, the ~~Clerk of the Supreme Court of Texas shall promptly bring the Petition to the attention of the Supreme Court.~~ The Supreme Court Presiding Judge shall promptly appoint assign an active district judge who does not reside in the Administrative Judicial District in which the Respondent resides from within the administrative judicial region whose district does not include the county of appropriate venue to preside in the case. ~~The Presiding Judge and the Clerk of the Supreme Court shall transmit a copy of the Supreme Court's appointing Presiding Judge's assignment order to the Chief Disciplinary Counsel. Should the judge so appointed assigned be unable to fulfill the appointment assignment, he or she shall immediately notify the Clerk of the Supreme Court Presiding Judge, and the Supreme Court Presiding Judge shall appoint assign a replacement judge pursuant to the same geographic limitations. The A judge appointed assigned under this Rule shall be subject to objection, recusal or disqualification as provided by law the Texas Rules of Civil Procedure and the laws of this state.~~ The objection, motion seeking recusal or motion to disqualify must be filed by either party not later than sixty days from the date the Respondent is served with the Supreme Court's order appointing the judge within the time provided by Rule 18a, Texas Rules of Civil Procedure. In the event of ~~objection~~, recusal or disqualification, the

~~Supreme Court~~ Presiding Judge shall ~~appoint~~ assign a replacement judge, ~~within thirty days~~ who shall be subject to the same geographic limitations. If an active district judge assigned to a disciplinary case becomes a retired, senior, or former judge, he or she may be assigned by the Presiding Judge to continue to preside in the case, provided the judge has been placed on a visiting judge list, and the geographic limitations for the original assignment no longer apply to the judge. If the Presiding Judge decides not to assign the retired, senior, or former judge to continue to preside in the case, the Presiding Judge shall assign an active district judge subject to the geographic limitations for the original assignment. A visiting judge may only be assigned if he or she was originally assigned to preside in the case while an active judge. Any judge assigned under this Rule is not subject to objection under Chapter 74, Government Code.

- B. Transfer of Case: If the county of alleged venue is successfully challenged, the case shall be transferred to the county of proper venue. If the case is transferred to a county in the assigned judge's district, the judge must recuse himself or herself, unless the parties waive the recusal on the record. In the event of recusal, the Presiding Judge of the administrative judicial region shall assign a replacement judge from within the administrative judicial region whose district does not include the county of appropriate venue. If the case is transferred to a county outside the administrative judicial region of the Presiding Judge who made the assignment, the Presiding Judge of the administrative judicial region where the case is transferred shall oversee assignment for the case and the previously assigned judge shall continue to preside in the case unless he or she makes a good cause objection to continued assignment, in which case the Presiding Judge shall assign a replacement judge from within the administrative judicial region whose district does not include the county of appropriate venue.

3.03. Filing, Service and Venue: After the trial judge has been ~~appointed~~ assigned, the Chief Disciplinary Counsel shall promptly file the Disciplinary Petition and a copy of the ~~Supreme Court's appointing Order~~ Presiding Judge's assignment order with the district clerk of the county of alleged venue. The Respondent shall then be served as in civil cases generally with a copy of the Disciplinary Petition and a copy of the ~~Supreme Court's appointing Order~~ Presiding Judge's assignment order. In a Disciplinary Action, venue shall be in the county of Respondent's principal place of practice; or if the Respondent does not maintain a place of practice within the State of Texas, in the county of Respondent's residence; or if the Respondent maintains neither a residence nor a place of practice within the State of Texas, then in the county where the alleged Professional Misconduct occurred, in whole or in part. In all other instances, venue is in Travis County, Texas.

Proposed Rules (Clean Version)

3.01. Disciplinary Petition: If the Respondent timely elects to have the Complaint heard by a district court, with or without a jury, in accordance with Rule 2.15, the Chief Disciplinary Counsel shall, not more than sixty days after receipt of Respondent's election to proceed in district court, notify the Presiding Judge of the administrative judicial region covering the county of appropriate venue of the Respondent's election by transmitting a copy of the Disciplinary Petition in the name of the Commission to the Presiding Judge. The petition must contain:

- A. Notice that the action is brought by the Commission for Lawyer Discipline, a committee of the State Bar.
- B. The name of the Respondent and the fact that he or she is an attorney licensed to practice law in the State of Texas.
- C. A request for assignment of an active district judge from within the administrative judicial region whose district does not include the county of appropriate venue to preside in the case.
- D. Allegations necessary to establish proper venue.
- E. A description of the acts and conduct that gave rise to the alleged Professional Misconduct in detail sufficient to give fair notice to Respondent of the claims made, which factual allegations may be grouped in one or more counts based upon one or more Complaints.
- F. A listing of the specific rules of the Texas Disciplinary Rules of Professional Conduct allegedly violated by the acts or conduct, or other grounds for seeking Sanctions.
- G. A demand for judgment that the Respondent be disciplined as warranted by the facts and for any other appropriate relief.
- H. Any other matter that is required or may be permitted by law or by these rules.

3.02. Assignment of Judge:

- A. **Assignment Generally:** Upon receipt of a Disciplinary Petition, the Presiding Judge shall assign an active district judge from within the administrative judicial region whose district does not include the county of appropriate venue to preside in the case. The Presiding Judge shall transmit a copy of the Presiding Judge's assignment order to the Chief Disciplinary Counsel. Should the judge so assigned be unable to fulfill the assignment, he or she shall immediately notify the Presiding Judge, and the Presiding Judge shall assign a replacement judge pursuant to the same geographic limitations. A judge assigned under this Rule shall be subject to recusal or disqualification as provided by the Texas Rules of Civil Procedure and the laws of this state. The motion seeking recusal or motion to disqualify must be filed by either party within the time provided by Rule 18a, Texas Rules of

Civil Procedure. In the event of recusal or disqualification, the Presiding Judge shall assign a replacement judge, who shall be subject to the same geographic limitations. If an active district judge assigned to a disciplinary case becomes a retired, senior, or former judge, he or she may be assigned by the Presiding Judge to continue to preside in the case, provided the judge has been placed on a visiting judge list, and the geographic limitations for the original assignment no longer apply to the judge. If the Presiding Judge decides not to assign the retired, senior, or former judge to continue to preside in the case, the Presiding Judge shall assign an active district judge subject to the geographic limitations for the original assignment. A visiting judge may only be assigned if he or she was originally assigned to preside in the case while an active judge. Any judge assigned under this Rule is not subject to objection under Chapter 74, Government Code.

- B. **Transfer of Case:** If the county of alleged venue is successfully challenged, the case shall be transferred to the county of proper venue. If the case is transferred to a county in the assigned judge's district, the judge must recuse himself or herself, unless the parties waive the recusal on the record. In the event of recusal, the Presiding Judge of the administrative judicial region shall assign a replacement judge from within the administrative judicial region whose district does not

include the county of appropriate venue. If the case is transferred to a county outside the administrative judicial region of the Presiding Judge who made the assignment, the Presiding Judge of the administrative judicial region where the case is transferred shall oversee assignment for the case and the previously assigned judge shall continue to preside in the case unless he or she makes a good cause objection to continued assignment, in which case the Presiding Judge shall assign a replacement judge from within the administrative judicial region whose district does not include the county of appropriate venue.

3.03. Filing, Service and Venue: After the trial judge has been assigned, the Chief Disciplinary Counsel shall promptly file the Disciplinary Petition and a copy of the Presiding Judge's assignment order with the district clerk of the county of alleged venue. The Respondent shall then be served as in civil cases generally with a copy of the Disciplinary Petition and a copy of the Presiding Judge's assignment order. In a Disciplinary Action, venue shall be in the county of Respondent's principal place of practice; or if the Respondent does not maintain a place of practice within the State of Texas, in the county of Respondent's residence; or if the Respondent maintains neither a residence nor a place of practice within the State of Texas, then in the county where the alleged Professional Misconduct occurred, in whole or in part. In all other instances, venue is in Travis County, Texas. **TBJ**

GROW YOUR PRACTICE!

Visit texasbar.com/knowledgecenter

Contact Susan Brennan at 512-427-1523 or susan.brennan@texasbar.com