

RULES STATE BAR *of* TEXAS
VOTE

APRIL 1 - 30, 2024

Texas lawyers have been called upon to exercise their right of self-governance by voting on proposed amendments to the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure. The ballot includes 12 separate rule proposals, each addressing a specific subject. Voting will take place from April 1 to April 30, 2024, by paper and electronic ballot.

To be eligible to vote on the proposed amendments, an attorney must be an active member of the bar and in good standing. Questions about voting can be emailed to rulesvote@texasbar.com.

The following pages include the Supreme Court of Texas order approving the 2024 rules vote, the approved ballot format, and a copy of the proposed amendments to the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure. Clean and redline versions of the proposed amendments, as well as other information about the 2024 rules vote, are available at texasbar.com/rulesvote.

Summary of Proposed Amendments

Please note that current rules may be renumbered and/or retitled.¹

Ballot Item A: Terminology

Proposed Rule 1.00 creates a new rule and adopts the current Terminology of the Texas Disciplinary Rules of Professional Conduct, defines five new terms, and clarifies the definition of one existing term. The new terms include: “Confirmed in writing”; “Informed consent”; “Represent,” “Represents,” or “Representation”; “Screened”; and “Writing” or “written.” The proposed rule clarifies the definition of “Fraud” or “Fraudulent” regarding negligent conduct.

Ballot Item B: Conflict of Interest: Prohibited Transactions

Proposed Rule 1.08(a) of the Texas Disciplinary Rules of Professional Conduct amends the existing rule and enumerates the requirements with which a lawyer must comply before acquiring an ownership, possessory, security, or other pecuniary interest adverse to a client. The proposed rule specifies that a lawyer must, in writing, disclose and transmit the terms of the transaction to the client, advise the client to seek the advice of an independent lawyer, and obtain informed consent² to the terms of the transaction and the lawyer’s role in it.

Ballot Item C: Conflict of Interest: Former Client

Proposed Rule 1.09 of the Texas Disciplinary Rules of Professional Conduct replaces current Rule 1.09 and prohibits a lawyer from representing another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of a former client. The proposed rule prohibits a lawyer from knowingly representing a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired confidential information. The proposed rule prohibits a lawyer who has formerly represented, or whose present or former firm has formerly represented, a client in a matter from using information relating to the representation to the disadvantage of the former client or revealing information relating to the representation except as the disciplinary rules would permit or require. The proposed rule permits a lawyer to obtain informed consent from a former client to represent another person with conflicting interests.

Ballot Item D: Imputation of Conflicts of Interest: General Rule

Proposed Rule 1.10³ of the Texas Disciplinary Rules of Professional Conduct creates a new rule and permits the use of screening⁴ to manage conflicts of interest, including those regarding former clients. In accordance with disciplinary rules that prohibit certain conflicts, a lawyer in a firm may represent a client if the prohibition is based on a personal interest of a disqualified lawyer and does not materially limit

the representation of the client by other lawyers in the firm. When a prohibition arises from a disqualified lawyer’s association with a prior firm, representation is permissible if the disqualified lawyer is timely screened from participation in the matter and an affected former client is notified of the firm’s screening procedures, compliance, and agreement to respond to inquiries and objections. A firm may represent a person with interests materially adverse to those of a client represented by the formerly associated lawyer unless the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any lawyer in the firm has confidential information material to the matter.

Ballot Item E: Duties to Prospective Client

Proposed Rule 1.18 of the Texas Disciplinary Rules of Professional Conduct creates a new rule and defines a “prospective client” as a person who consults with a lawyer in good faith about the possibility of forming a client-lawyer relationship, whereas a person who communicates without a good-faith intention to seek representation is not a “prospective client.” The proposed rule prohibits a lawyer from using or revealing information learned from a prospective client, except as the disciplinary rules permit or require, or if the information has become generally known or would not significantly harm the former prospective client. A lawyer is prohibited from representing a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could significantly harm the prospective client. If a lawyer is disqualified from representation, no lawyer in the firm with which the disqualified lawyer is associated may represent the client with adverse interests. Representation is permissible if: the affected client and prospective client give informed consent, the lawyer who received the information took reasonable measures to avoid receiving more disqualifying information, the disqualified lawyer is timely screened from participation, and written notice is promptly given to the prospective client.

Ballot Item F: Special Responsibilities of a Prosecutor

Proposed Rule 3.09(f)-(h) of the Texas Disciplinary Rules of Professional Conduct amends the existing rule and imposes a duty on a prosecutor who obtains new and credible information creating a reasonable likelihood that a defendant did not commit an offense for which the defendant was convicted. The proposed rule requires the prosecutor to disclose information to the defendant, defense counsel, the tribunal, and an entity that examines claims of actual innocence, move the court to determine whether the defendant is entitled to court-appointed counsel, and cooperate with defense counsel. If the conviction was

obtained in another jurisdiction, the prosecutor has a duty to disclose the information to the appropriate prosecutor in that jurisdiction. A prosecutor who concludes in good faith that information is not subject to disclosure would not violate the proposed rule.

Ballot Item G: Dealing With Unrepresented Persons

Proposed Rule 4.03 of the Texas Disciplinary Rules of Professional Conduct amends the existing rule and expressly prohibits a lawyer from giving legal advice to an unrepresented person, other than to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or may be in conflict with the interests of the lawyer's client. The proposed rule does not change the existing prohibition on stating or implying that the lawyer is disinterested or the existing duty to make reasonable efforts to correct any misunderstanding about the lawyer's role when dealing on behalf of a client with a person who is not represented by counsel.

Ballot Item H: Responsibilities of a Partner or Supervisory Lawyer

Proposed Rule 5.01 of the Texas Disciplinary Rules of Professional Conduct replaces current Rule 5.01 and imposes a duty on lawyers in firm management to implement measures to ensure that all lawyers in the firm comply with the disciplinary rules. The proposed rule imposes a duty on a supervising lawyer with direct authority over another lawyer to make reasonable efforts to ensure the other lawyer complies with the disciplinary rules. A lawyer is responsible for another lawyer's violation of the disciplinary rules if the lawyer orders or ratifies the conduct. The responsibility extends to a lawyer with direct supervisory authority over another lawyer or a lawyer with managerial authority in the firm who fails to remedy the consequences of the conduct.

Ballot Item I: Unauthorized Practice of Law; Remote Practice of Law

Proposed Rule 5.05 of the Texas Disciplinary Rules of Professional Conduct amends the current rule and addresses the multijurisdictional and remote practice of law. The proposed rule permits a lawyer who is admitted to practice law in a jurisdiction outside of Texas to provide legal services in Texas if the services are solely for the lawyer's employer when pro hac vice admission is not required. The proposed rule permits a lawyer admitted in another jurisdiction to practice from a location in Texas if the lawyer does not hold out that the lawyer is authorized to practice in Texas or has an office in Texas for the practice of law, does not accept clients on matters that the lawyer knows primarily require advice on the state or local law of Texas, and makes diligent efforts to correct that misunderstanding if a person mistakenly believes the lawyer is authorized to practice in Texas.

Ballot Item J: Jurisdiction

Proposed Rule 8.05 of the Texas Disciplinary Rules of Professional Conduct replaces current Rule 8.05 and states that a lawyer admitted to practice law in Texas is subject to the disciplinary authority of Texas regardless of where the conduct occurred. A lawyer who is not admitted to practice in Texas is subject to the disciplinary authority of Texas if the lawyer offers legal services in Texas. A lawyer may be subject

to the disciplinary authority of both Texas and another jurisdiction for the same conduct.

Ballot Item K: Choice of Law

Proposed Rule 8.06 of the Texas Disciplinary Rules of Professional Conduct creates a new rule and explains how the Texas disciplinary authority applies the rules of professional conduct. For conduct in a matter pending before a tribunal in Texas, the Texas rules apply. For any other conduct, the rules of the jurisdiction where the conduct occurred apply, except if the conduct had its predominant effect in a different jurisdiction, in which case the rules of that jurisdiction apply. A lawyer is subject to the Texas disciplinary authority for advertising that is intended to be received by prospective clients and to secure employment in Texas, even if the lawyer broadcasts or disseminates the advertisement in another jurisdiction and complies with the disciplinary rules in that jurisdiction. A lawyer is subject to the Texas disciplinary authority for a written solicitation mailed to an addressee in Texas or to secure employment to be performed in Texas, even if the communication complies with the disciplinary rules governing lawyers in that jurisdiction.

Ballot Item L: Termination of Custodianship

Proposed Rule 13.05 of the Texas Rules of Disciplinary Procedure creates a new rule and sets forth the events that terminate custodianship. Termination occurs upon the transfer of all active client files and property in possession of the custodian to attorneys assuming responsibility or to the client or client's representative, an order of a court, or the return to practice of the attorney who appointed the custodian prior to completion of the custodianship and resumption of representation of active client matters. If the appointing attorney and the appointed custodian disagree on the appointing attorney's competence, either party may petition a court for a determination. The custodian may seek a court order concerning the disposition of closed client files, distribution of active files for which a client is nonresponsive or cannot be located, and distribution of any client property held pursuant to a representation by the appointing attorney, including funds held in an IOLTA account.

Note: The State Bar of Texas staff has provided this document as a general summary of the proposed amendments to the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure. It does not address every aspect of the proposed amendments, and reasonable minds may differ on the characterization of the proposed amendments. Voters are strongly encouraged to directly review the proposed amendments, which are available at texasbar.com/rulesvote.

texasbar.com/rulesvote

Notes

1. State Bar members will vote only on the proposed rules, not on proposed interpretive comments.
2. Proposed Rule 1.00(f) defines "Informed consent."
3. Proposed Rule 1.10 references proposed Rule 1.09 (see Ballot Item C), which replaces current Rule 1.09. Proposed Rule 1.10 also references Rule 1.11, which is current Rule 1.10 (Successive Government and Private Employment) after proposed renumbering.
4. Proposed Rule 1.00(s) defines "Screened."

FORM OF BALLOT

A. Terminology

Do you favor the adoption of Proposed Rule 1.00 of the Texas Disciplinary Rules of Professional Conduct, as published in the March 2024 issue of the *Texas Bar Journal*?

YES NO

B. Conflict of Interest: Prohibited Transactions

Do you favor the adoption of the proposed amendments to Rule 1.08(a) of the Texas Disciplinary Rules of Professional Conduct, as published in the March 2024 issue of the *Texas Bar Journal*?

YES NO

C. Conflict of Interest: Former Client

Do you favor the adoption of the proposed amendments to Rule 1.09 of the Texas Disciplinary Rules of Professional Conduct, as published in the March 2024 issue of the *Texas Bar Journal*?

YES NO

D. Imputation of Conflicts of Interest: General Rule

Do you favor the adoption of proposed Rule 1.10 of the Texas Disciplinary Rules of Professional Conduct, as published in the March 2024 issue of the *Texas Bar Journal*?

YES NO

E. Duties to Prospective Client

Do you favor the adoption of Proposed Rule 1.18 of the Texas Disciplinary Rules of Professional Conduct, as published in the March 2024 issue of the *Texas Bar Journal*?

YES NO

F. Special Responsibilities of a Prosecutor

Do you favor the adoption of the proposed amendments to Rule 3.09 of the Texas Disciplinary Rules of Professional Conduct, as published in the March 2024 issue of the *Texas Bar Journal*?

YES NO

G. Dealing With Unrepresented Persons

Do you favor the adoption of the proposed amendments to Rule 4.03 of the Texas Disciplinary Rules of Professional Conduct, as published in the March 2024 issue of the *Texas Bar Journal*?

YES NO

H. Responsibilities of a Partner or Supervisory Lawyer

Do you favor the adoption of the proposed amendments to Rule 5.01 of the Texas Disciplinary Rules of Professional Conduct, as published in the March 2024 issue of the *Texas Bar Journal*?

YES NO

I. Unauthorized Practice of Law; Remote Practice of Law

Do you favor the adoption of the proposed amendments to Rule 5.05 of the Texas Disciplinary Rules of Professional Conduct, as published in the March 2024 issue of the *Texas Bar Journal*?

YES NO

J. Jurisdiction

Do you favor the adoption of the proposed amendments to Rule 8.05 of the Texas Disciplinary Rules of Professional Conduct, as published in the March 2024 issue of the *Texas Bar Journal*?

YES NO

K. Choice of Law

Do you favor the adoption of proposed Rule 8.06 of the Texas Disciplinary Rules of Professional Conduct, as published in the March 2024 issue of the *Texas Bar Journal*?

YES NO

L. Termination of Custodianship

Do you favor the adoption of Proposed Rule 13.05 of the Texas Rules of Disciplinary Procedure, as published in the March 2024 issue of the *Texas Bar Journal*?

YES NO

A copy of the proposed changes to the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure can be found at www.texasbar.com/rulesvote.

**PROPOSED AMENDMENTS TO THE TEXAS
DISCIPLINARY RULES OF PROFESSIONAL
CONDUCT AND TEXAS RULES OF DISCIPLINARY
PROCEDURE**

Terminology

Texas Disciplinary Rules of Professional Conduct

Rule 1.00. Terminology

- (a) “Adjudicatory Official” denotes a person who serves on a Tribunal.
- (b) “Adjudicatory Proceeding” denotes the consideration of a matter by a Tribunal.
- (c) “Belief” or “Believes” denotes that the person involved actually supposed the fact in question to be true. A person’s belief may be inferred from circumstances.
- (d) “Competent” or “Competence” denotes possession or the ability to timely acquire the legal knowledge, skill, and training reasonably necessary for the representation of the client.
- (e) “Consult” or “Consultation” denotes communication of information and advice reasonably sufficient to permit the client to appreciate the significance of the matter in question.
- (f) “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (j) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.
- (g) “Firm” or “Law firm” denotes a lawyer or lawyers in a private firm; or a lawyer or lawyers employed in the legal department of a corporation, legal services organization, or other organization, or in a unit of government.
- (h) “Fitness” denotes those qualities of physical, mental and psychological health that enable a person to discharge a lawyer’s responsibilities to clients in conformity with the Texas Disciplinary Rules of Professional Conduct. Normally a lack of fitness is indicated most clearly by a persistent inability to discharge, or unreliability in carrying out, significant obligations.
- (i) “Fraud” or “Fraudulent” denotes conduct having a purpose to deceive and not merely negligent misrepresentation or negligent failure to apprise another of relevant information.
- (j) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about material risks of and reasonably available alternatives to the proposed course of conduct. If a rule calling for informed consent requires specific disclosures (see, e.g., Rule 1.06(c)(2)), consent is not informed unless those disclosures have been made.
- (k) “Knowingly,” “Known,” or “Knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.
- (l) “Law firm”: see “Firm.”
- (m) “Partner” denotes an individual or corporate member of a partnership or a shareholder in a law firm organized as a professional corporation.
- (n) “Person” includes a legal entity as well as an individual.
- (o) “Reasonable” or “Reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.
- (p) “Reasonable belief” or “Reasonably believes” when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.
- (q) “Represent,” “Represents,” or “Representation.” A lawyer represents a person if the person is a client of the lawyer. If the relationship of client and lawyer terminates, the lawyer’s representation of the client terminates.
- (r) “Should know” when used in reference to a lawyer denotes that a reasonable lawyer under the same or similar circumstances would know the matter in question.
- (s) “Screened” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.
- (t) “Substantial” when used in reference to degree or

extent denotes a matter of meaningful significance or involvement.

(u) “Tribunal” denotes any governmental body or official or any other person engaged in a process of resolving a particular dispute or controversy. “Tribunal” includes such institutions as courts and administrative agencies when engaging in adjudicatory or licensing activities as defined by applicable law or rules of practice or procedure, as well as judges, magistrates, special masters, referees, arbitrators, mediators, hearing officers and comparable persons empowered to resolve or to recommend a resolution of a particular matter; but it does not include jurors, prospective jurors, legislative bodies or their committees, members or staffs, nor does it include other governmental bodies when acting in a legislative or rule-making capacity.

(v) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording, and electronic communications. A “signed” writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Conflict of Interest: Prohibited Transactions

Texas Disciplinary Rules of Professional Conduct

Rule 1.08. Conflict of Interest: Prohibited Transactions

(a) A lawyer shall not enter into a business transaction with a client, or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client, unless:

(1) the transaction and terms on which the lawyer acquires the interest the terms of the transaction or acquisition are fair and reasonable to the client, and are fully disclosed and transmitted to the client in a manner which writing that can be reasonably understood by the client;

(2) the client either is represented in the transaction or acquisition by an independent lawyer of the client’s choice or the client is advised in writing to seek the advice of an independent lawyer of the client’s choice and is given a reasonable opportunity to seek the that advice of independent

counsel in the transaction; and

(3) the client consents in writing thereto thereafter provides informed consent in writing to the terms of the transaction or acquisition, and to the lawyer’s role in it, including whether the lawyer is representing the client in the transaction.

Conflict of Interest: Former Client

Texas Disciplinary Rules of Professional Conduct

Rule 1.09. Conflict of Interest: Former Client

~~(a) Without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client:~~

~~(1) in which such other person questions the validity of the lawyer’s services or work product for the former client;~~

~~(2) if the representation in reasonable probability will involve a violation of Rule 1.05; or~~

~~(3) if it is the same or a substantially related matter.~~

~~(b) Except to the extent authorized by Rule 1.10, when lawyers are or have become members of or associated with a firm, none of them shall knowingly represent a client if any one of them practicing alone would be prohibited from doing so by paragraph (a).~~

~~(c) When the association of a lawyer with a firm has terminated, the lawyers who were then associated with that lawyer shall not knowingly represent a client if the lawyer whose association with that firm has terminated would be prohibited from doing so by paragraph (a)(1) or if there presentation in reasonable probability will involve a violation of Rule 1.05.~~

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client.

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.05 and 1.09(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

***Imputation of Conflicts of Interest:
General Rule***

Texas Disciplinary Rules of Professional Conduct

**Rule 1.10. Imputation of Conflicts of Interest:
General Rule**

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.06 or 1.09, unless

(1) the prohibition is based on a personal interest of the disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; or

(2) the prohibition is based upon Rule 1.09(a) or (b), and arises out of the disqualified lawyer's association with a prior firm, and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures

employed; a statement of the firm's and of the screened lawyer's compliance with these Rules; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.05 and 1.09(c) that is material to the matter.

(c) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.06.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

Duties to Prospective Client

Texas Disciplinary Rules of Professional Conduct

Rule 1.18. Duties to Prospective Client

(a) A person who consults with a lawyer in good faith about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client. A person who communicates with a lawyer for the purpose of disqualifying the lawyer, or for some other purpose that does not include a good faith intention to seek representation by the lawyer, is not a "prospective client" within the meaning of this Rule.

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as these Rules would permit or require with respect to a client, or if the information has become generally known or would not be significantly harmful to the former prospective client.

(c) A lawyer subject to paragraph (b) shall not represent

a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is not directly apportioned any part of the fee therefrom; and

(ii) written notice is promptly given to the prospective client.

Special Responsibilities of a Prosecutor

Texas Disciplinary Rules of Professional Conduct

Rule 3.09. Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(a) refrain from prosecuting or threatening to prosecute a charge that the prosecutor knows is not supported by probable cause;

(b) refrain from conducting or assisting in a custodial interrogation of an accused unless the prosecutor has made reasonable efforts to be assured that the accused has been advised of any right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not initiate or encourage efforts to obtain from an unrepresented accused a waiver of important pre-trial,

trial or post-trial rights;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(e) exercise reasonable care to prevent persons employed or controlled by the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.07.

(f) When a prosecutor knows of new and credible information creating a reasonable likelihood that a convicted defendant did not commit an offense for which the defendant was convicted, the prosecutor shall, unless a court authorizes delay,

(1) if the conviction was obtained in the prosecutor's jurisdiction:

(i) promptly disclose that information to:

(A) the defendant;

(B) the defendant's counsel, or if there is none, the indigent defense appointing authority in the jurisdiction, if one exists;

(C) the tribunal in which the defendant's conviction was obtained; and

(D) a statewide entity that examines and litigates claims of actual innocence.

(ii) if the defendant is not represented by counsel, or if unable to determine whether the defendant is represented by counsel, move the court in which the defendant was convicted to determine whether the defendant is indigent and thus entitled to the appointment of counsel.

(iii) cooperate with the defendant's counsel by providing all new information known to the prosecutor as required by the relevant law governing criminal discovery.

(2) if the conviction was obtained in another jurisdiction, promptly disclose that information to the appropriate prosecutor in the jurisdiction where the conviction was obtained.

(g) A prosecutor who concludes in good faith that information is not subject to disclosure under paragraph (f) does not violate this rule even if the prosecutor's conclusion is subsequently determined to be erroneous.

(h) In paragraph (f), unless the context indicates otherwise, "jurisdiction" means the legal authority to represent the government in criminal matters before the tribunal in which the defendant was convicted.

Dealing With Unrepresented Persons

Texas Disciplinary Rules of Professional Conduct

Rule 4.03. Dealing With Unrepresented Persons

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

Responsibilities of a Partner or Supervisory Lawyer

Texas Disciplinary Rules of Professional Conduct

Rule 5.01. Responsibilities of a Partner or Supervisory Lawyer

~~A lawyer shall be subject to discipline because of another lawyer's violation of these rules of professional conduct if:~~

- ~~(a) The lawyer is a partner or supervising lawyer and orders, encourages, or knowingly permits the conduct involved; or~~
- ~~(b) The lawyer is a partner in the law firm in which the other lawyer practices, is the general counsel of a government agency's legal department in which the other lawyer is employed, or has direct supervisory authority over the other lawyer, and with knowledge of the other lawyer's violation of these rules~~

~~knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of the other lawyer's violation.~~

(a) A lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to these Rules.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer complies with these rules.

(c) A lawyer shall be responsible for another lawyer's violation of these rules if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer has managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Unauthorized Practice of Law; Remote Practice of Law

Texas Disciplinary Rules of Professional Conduct

Rule 5.05. Unauthorized Practice of Law; Remote Practice of Law

(a) A lawyer shall not:

(1) (a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(2) (b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

(b) Unless authorized by other law, only a lawyer who is admitted to practice in this jurisdiction may hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted to practice law in a jurisdiction outside this state, and not disbarred or suspended from practice or the equivalent thereof in any jurisdiction, may provide legal services solely to the

lawyer's employer or its organizational affiliates, provided that this jurisdiction does not require pro hac vice admission.

(d) A lawyer who is not admitted to practice in this State, but who is authorized to practice law in one or more jurisdictions, may practice law from a temporary or permanent residence or other location in this jurisdiction, provided that:

(1) The lawyer does not use advertising, oral representations, business letterhead, websites, signage, business cards, email signature blocks, or other communications to hold themselves out, publicly or privately, as authorized to practice law in this jurisdiction, or as having an office for the practice of law in this jurisdiction;

(2) The lawyer does not solicit or accept residents or citizens of Texas as clients on matters that the lawyer knows primarily require advice on the state or local law of Texas, except as permitted by Texas or federal law; and

(3) When the lawyer knows or reasonably should know that a person with whom the lawyer is dealing mistakenly believes that the lawyer is authorized to practice law in this jurisdiction, the lawyer shall make diligent efforts to correct that misunderstanding.

Jurisdiction

Texas Disciplinary Rules of Professional Conduct

Rule 8.05. Jurisdiction

(a) A lawyer is subject to the disciplinary authority of this state, if admitted to practice in this state or if specially admitted by a court of this state for a particular proceeding. In addition to being answerable for his or her conduct occurring in this state, any such lawyer also may be disciplined here for conduct occurring in another jurisdiction or resulting in lawyer discipline in another jurisdiction, if it is professional misconduct under Rule 8.04.

(b) A lawyer admitted to practice in this state is also subject to the disciplinary authority for:

(1) an advertisement in the public media that does not comply with these rules and that is broadcast or disseminated in another jurisdiction, even if the advertisement complies with the rules governing

lawyer advertisements in that jurisdiction, if the broadcast or dissemination of the advertisement is intended to be received by prospective clients in this state and is intended to secure employment to be performed in this state; and

(2) a written solicitation communication that does not comply with these rules and that is mailed in another jurisdiction, even if the communication complies with the rules governing written solicitation communications by lawyers in that jurisdiction, if the communication is mailed to an addressee in this state or is intended to secure employment to be performed in this state.

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

Choice of Law

Texas Disciplinary Rules of Professional Conduct

Rule 8.06. Choice of Law

(a) In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

(b) A lawyer admitted to practice in this state is subject to the disciplinary authority for:

(1) an advertisement in the public media that does

not comply with these rules and that is broadcast or disseminated in another jurisdiction, even if the advertisement complies with the rules governing lawyer advertisements in that jurisdiction, if the broadcast or dissemination of the advertisement is intended to be received by prospective clients in this state and is intended to secure employment to be performed in this state; and

(2) a written solicitation communication that does not comply with these rules and that is mailed in another jurisdiction, even if the communication complies with the rules governing written solicitation communications by lawyers in that jurisdiction, if the communication is mailed to an addressee in this state or is intended to secure employment to be performed in this state.

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.

Termination of Custodianship

Texas Rules of Disciplinary Procedure

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