



## What to Know BEFORE YOU VOTE, PART 1

**STARTING NEXT MONTH, MEMBERS OF THE STATE BAR OF TEXAS** will put their self-governance to work and vote on proposed amendments to the disciplinary rules. The 2021 rules vote will be the first in 10 years and the first opportunity for nearly 25,000 Texas lawyers to vote on proposed disciplinary rule changes.

The proposals were drafted in accordance with a new process required by the State Bar Act that maximizes transparency and provides lawyers and the public with significant opportunities for input. The next step in the process is for you to vote. All members of the State Bar of Texas who are active and in good standing are eligible to vote by paper or electronic ballot from February 2 to March 4.

What's on the ballot? I will be devoting this space in the January and February issues of the *Texas Bar Journal* to summarize the eight proposed amendments. You'll find other information on the 2021 rules vote throughout this issue, including a helpful overview of the proposals by Brad Johnson, the disciplinary rules attorney at the State Bar, on page 50.

The State Bar also invites you to a series of public forum webinars in January and February that will feature a free, one-hour ethics CLE on the proposed rule changes and a live forum where you can ask questions and offer comments. Register now at [texasbar.com/rulesvote](https://texasbar.com/rulesvote).

The first four ballot items are summarized below.

- **Ballot Item A: Scope and Objectives of Representation; Clients with Diminished Capacity:** This proposal would delete Rule 1.02(g) of the Texas Disciplinary Rules of Professional Conduct and add Proposed Rule 1.16 of the Texas Disciplinary Rules of Professional Conduct. Proposed Rule 1.16 is intended to provide improved guidance when a lawyer represents a client with diminished capacity. Among its provisions, Proposed Rule 1.16 would permit a lawyer to take reasonably necessary protective action when the lawyer reasonably believes a client has diminished capacity; is at risk of substantial physical, financial, or other harm unless action is taken; and cannot adequately act in the client's own interest. Proposed Rule 1.16 would provide a non-exhaustive list of actions a lawyer may be authorized to take, including informal consultations that current rules may prohibit.
- **Ballot Item B: Confidentiality of Information—Exception to Permit Disclosure to Secure Legal Ethics Advice:** Proposed Rule 1.05(c)(9) of the Texas Disciplinary Rules of Professional Conduct would provide that a lawyer may disclose confidential information to secure legal advice about the lawyer's compliance with the Texas Disciplinary Rules of Professional Conduct.
- **Ballot Item C: Confidentiality of Information—Exception to Permit Disclosure to Prevent Client Death by Suicide:** Proposed Rule 1.05(c)(10) of the Texas Disciplinary Rules of Professional Conduct would permit a lawyer to disclose confidential information when the lawyer has reason to believe doing so is necessary to prevent a client from dying by suicide.
- **Ballot Item D: Conflict of Interest Exceptions for Nonprofit and Limited Pro Bono Legal Services:** To facilitate the provision of pro bono legal services, Proposed Rule 6.05 of the Texas Disciplinary Rules of Professional Conduct would create narrow exceptions to certain conflict of interest rules when a lawyer provides limited advice and brief assistance on a pro bono basis. Forty-eight other states and the District of Columbia have adopted this provision in various forms.

My February column will cover the other four ballot items, including Item E, which would simplify and modernize the lawyer advertising and solicitation rules. I encourage you to take some time to learn about these issues and to cast your ballot starting February 2.

### LARRY McDOUGAL

President, 2020-2021  
State Bar of Texas

#### RULES VOTE PUBLIC FORUMS

Public forums for the 2021 rules vote will take place via webinar at 1 p.m. CST on the following dates:

- January 5 (Registration Full)
- January 14 (Registration Full)
- January 26
- February 9

Each event will include a free, one-hour presentation (approved for one hour of MCLE ethics credit) featuring members of the Committee on Disciplinary Rules and Referenda, followed by a live forum where attendees can ask questions and provide comments on the proposed disciplinary rule amendments. Additional dates will be added if necessary.

Register now and find more information at [texasbar.com/rulesvote](https://texasbar.com/rulesvote).