

Committee on Disciplinary Rules and Referenda

Agenda

Date and Time: Thursday, June 18, 2020 – 10:30 a.m. CDT
By Teleconference

Join by Meeting Link: <https://texasbar.zoom.us/j/92331980573>

Or Join by Telephone: 888-788-0099 (Toll Free); Meeting ID: 923 3198 0573

View Meeting Agenda and Materials: <https://www.texasbar.com/cdrr/participate>

1. Call to Order; Roll Call
2. Comments from the Chair
3. Public Hearings
 - A. Public Hearing and Discussion: Proposed Rule 13.05, Texas Rules of Disciplinary Procedure (TRDP) – Relating to the Voluntary Appointment of a Custodian Attorney to Act During a Disability (Page 3)
 - B. Public Hearing and Discussion: Proposed Changes to Rule 1.05, Texas Disciplinary Rules of Professional Conduct (TDRPC) – Relating to the Disclosure of Confidential Information and Clients Contemplating Suicide (Pages 4 – 18)
 - C. Public Hearing and Discussion: Proposed Changes to Rule 8.03, TDRPC, and Rules 1.06 and 9.01, TRDP – Relating to Reporting Professional Misconduct and Reciprocal Discipline for Federal Court or Federal Agency Discipline (Pages 19 – 33)
4. Approval of the Minutes of the Last Meeting (Pages 34 – 37)
5. Update on Proposed Changes to Part VII. Information About Legal Services, TDRPC, and Proposed Rule 13.04. Voluntary Appointment of Custodian Attorney for Cessation of Practice, TRDP
6. Discussion and Possible Action: Duties Owed to Prospective Clients
Consider Initiation of the Rule Proposal Process
7. Discussion and Possible Action: Closure, Sale, and/or Succession of a Law Practice
Consider Initiation of the Rule Proposal Process

8. Update on Possible Timeline for a Rules Vote by Bar Membership

9. Proposed Rule Timelines (Pages 38 – 40)

10. Agenda Items for Next Meetings

11. Adjourn

Under the Americans with Disabilities Act, an individual with a disability is entitled to have an equal opportunity for effective communication and participation in public meetings. Reasonable modifications and equal access to communications will be provided upon request. An individual with a disability who may need an accommodation is requested to notify Chelsey Barber at (800) 204-2222 or (512) 427-1463 at least two days before the scheduled meeting so that appropriate arrangements can be made; TTY users route through RELAY Texas at 7-1-1.

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**

Committee on Disciplinary Rules and Referenda Proposed Rule Changes

Texas Disciplinary Rules of Professional Conduct Rule 1.05. Confidentiality of Information

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 June 20, 2020. Comments can be submitted at texasbar.com/CDRR or by email to CDRR@texasbar.com. A public hearing on the proposed rule will be held at 10:30 a.m. on June 18, 2020, in Room 101 of the Texas Law Center (1414 Colorado St., Austin, Texas, 78701).

Proposed Rule (Redline Version)

1.05. Confidentiality of Information

(c) A lawyer may reveal confidential information:

(7) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from committing a criminal or fraudulent act, or from committing suicide.

Proposed Rule (Clean Version)

1.05. Confidentiality of Information

(c) A lawyer may reveal confidential information:

(7) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from committing a criminal or fraudulent act, or from committing suicide.

*** TBJ

GROW YOUR PRACTICE!

Visit texasbar.com/knowledgecenter

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

To: Committee on Disciplinary Rules and Referenda (CDRR)

From: CDRR Subcommittee on Proposed Changes to Rule 1.05, Texas Disciplinary Rules of Professional Conduct (Timothy Belton, Amy Bresnen, Claude Ducloux)

Date: April 2, 2020

Re: Proposed Amendment

To meet the recommendations of the mental health community, the Subcommittee recommends the following amendment to the proposed changes to Rule 1.05, Texas Disciplinary Rules of Professional Conduct. (Proposed amendment in red.)

Proposed Rule

1.05. Confidentiality of Information

(c) A lawyer may reveal confidential information:

(7) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from committing a criminal or fraudulent act, or from ~~committing~~ dying by suicide.

**Committee on Disciplinary Rules and Referenda
Proposed Rule Changes**

**Texas Disciplinary Rules of Professional Conduct
Rule 1.05. Confidentiality of Information
(Confidentiality and Clients Contemplating Suicide)**

**Public Comments Received
Through June 10, 2020**

From: [Ken Horwitz](#)
To: [cdrr](#)
Subject: RE: New Proposed Rule Changes Published and Public Hearing Update
Date: Wednesday, April 1, 2020 9:21:56 AM

*** State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments**

The country is shut down and you are holding a public hearing?

Kenneth M. Horwitz
Glast, Phillips & Murray, P.C.
14801 Quorum Drive, Suite 500
Dallas, Texas 75254
(972) 419-8383 (phone)
(469) 206-5031 (fax)

This communication is not a "written opinion" within the meaning of Treasury Circular 230.

CONFIDENTIALITY NOTICE: This e-mail and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute, or take action in reliance upon this message. If you have received this in error, please notify us immediately by return e-mail and promptly delete this message and its attachments from your computer system. We do not waive client-attorney or work product privilege by the transmission of this message

From: State Bar of Texas - CDRR [mailto:cdrr@texasbar.com]
Sent: Wednesday, April 01, 2020 9:08 AM
To: Ken Horwitz
Subject: New Proposed Rule Changes Published and Public Hearing Update

State Bar of Texas



Proposed Rule Changes

**New Proposed Rule Changes Published
April 7, 2020, Public Hearing Update**

New Proposed Rule Changes Published for Public Comment

The Committee on Disciplinary Rules and Referenda has published [proposed changes to Rule 1.05](#).

[Texas Disciplinary Rules of Professional Conduct](#), in the April issue of the *Texas Bar Journal* and the March 27 issue of the *Texas Register*. The proposed rule changes relate to the disclosure of confidential information with regard to a client contemplating suicide.

The Committee has also published [proposed changes to Rule 8.03, Texas Disciplinary Rules of Professional Conduct, and Rules 1.06 and 9.01, Texas Rules of Disciplinary Procedure](#), in the April issue of the *Texas Bar Journal* and the March 27 issue of the *Texas Register*. The proposed rule changes relate to the reporting of professional misconduct and reciprocal discipline for federal court or federal agency discipline.

The Committee will accept comments concerning the above-referenced proposed rule changes through June 20, 2020. Comments on the proposed rule changes can be submitted [here](#).

Public hearings on the above-referenced proposed rule changes will be held at 10:30 a.m. on June 18, 2020. (Any updates to the public hearings will be posted at texasbar.com/cdrr/participate.)

April 7, 2020, Public Hearing Update

Lawyer Advertising and Solicitation Rules

Voluntary Appointment of Custodian Attorney for Cessation of Practice

The Committee on Disciplinary Rules and Referenda will hold a public hearing on [proposed changes to Part VII, Texas Disciplinary Rules of Professional Conduct](#), and [proposed Rule 13.04, Texas Rules of Disciplinary Procedure](#), at 10:30 a.m. on April 7, 2020. The Committee will continue to accept comments on these proposed rule changes through April 10, 2020. Comments can be submitted [here](#).

UPDATE: As a safety precaution related to the coronavirus, the Committee will hold the April 7 public hearings by teleconference only. The updated participation information is as follows and replaces the previous number provided:

Join from PC, Mac, iOS or Android Device:

Meeting URL: <https://texasbar.zoom.us/j/265275523>

Meeting ID: 265 275 523

Telephone Audio or Audio-Only:

888-788-0099 (Toll Free)

Meeting ID: 265 275 523

(Bridge will open at 10:00 a.m. Meeting will begin at 10:30 a.m.)

If you plan to participate in either public hearing on April 7, it is requested that you email CDRR@texasbar.com in advance of the hearing with your name and the public hearing item you wish to speak on so the Committee can group speakers by topic during the hearings. To allow enough time for all who wish to be heard during the hearings, the Committee may limit initial comments from each speaker to three minutes, and extend that time if the Committee needs further discussion with the speaker.

Additional Information

The Committee is responsible for overseeing the initial process for proposing a change or addition to the disciplinary rules (Gov't Code § 81.0873). For more information, go to texasbar.com/cdrr.

To subscribe to email updates, including notices of public hearings and published rules for comment, click [here](#).

Sincerely,
Committee on Disciplinary Rules and Referenda

Committee on Disciplinary Rules and Referenda

State Bar of Texas | 1414 Colorado | Austin, Texas 78701 | 800.204.2222

[Unsubscribe](#)



From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Proposed Change in Rule 1.05
Date: Wednesday, April 1, 2020 10:14:33 AM

* State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments	
Contact	
First Name	Searcy
Last Name	Simpson
Email	[REDACTED]
Member	Yes
Barcard	18408800

Feedback	
Subject	Proposed Change in Rule 1.05
Comments	
<p>The proposed change is excellent with one necessary change needed. For a number of years the word "committing" is no longer used. The phrase which needs to be used is "dying by suicide." I am on the board of directors for the American Association of Suicidology or I would not have been in the know about this important distinction. See https://suicidology.org/ I am pleased to see this change. I frequently speak to lawyers across the country about preventing suicide. The subject of "confidentiality" was always in the mix. For Texas, at least, the problem will be fixed. (c) A lawyer may reveal confidential information: *** (7) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from committing a criminal or fraudulent act, or from committing suicide.</p>	

From: [REDACTED]
To: [CDRR](#)
Subject: CDRR Comment: Proposed Rules Regarding "Competency Attorneys" and Similiar Proposals
Date: Wednesday, April 1, 2020 1:09:14 PM

* State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments	
Contact	
First Name	Richard
Last Name	Edgell
Email	[REDACTED]
Member	Yes
Barcard	6420900

Feedback	
Subject	Proposed Rules Regarding "Competency Attorneys" and Similiar Proposals
Comments	
<p>1. Better Law already exists. 2. The Law has been Improved and "tweaked" for centuries. 3. The Law already provides a very high standard of "utmost good faith and fair dealing" under equitable and trust law to protect attorneys and everyone else. 4. The Texas Supreme Court is elected. 5. It is the Supreme Court for the Constitution, Laws, Statutes, and other laws of the State of the State of Texas, not the State Bar of Texas, which is or should be the attorneys who having fulfilled the requirements of the law and having been approved by the State Board of Law Examiners are entitled to license as an Attorney and Counselor at Law and having taken the oath provided by law are authorized to practice as Attorney and Counselor at Law in all the Courts of the State of Texas, and the Clerk of the Supreme Court of the Texas may affix the Seal of the Supreme Court of the Supreme Court, at Austin, or apparently has done so, for example, "this 5th day of November AD 1982" for Richard Baxter Edgell. 6. The State Bar of Texas is not an administrative agency. 7. The Texas Legislature cannot delegate judicial power it does not have to the State Bar of Texas or any other person or thing, because the Texas Constitution uses principles such as separation of powers and checks and balances between legislative, executive, and judicial branches and this is consistent with Federal law including the Constitution, Laws, and Statues of the United States. 8. Prior to entry into the Union or union with the Union, the Republic of Texas provided higher standards than the Constitution, Laws, and Statutes of the United States, including the "Rule" and "Open Courts." There is a Baylor Law School Law Review article which you can find which discusses this in detail. 9 Texas insisted, and the United States agreed, that Texas could have higher standards than the United States in the Texas judicial system. 10. The "Open courts" were not vigilante groups or the so-called "Klan." People have lied or been misinformed about this. 11. Concluding, rely on existing law, including trust law, which includes the utmost good faith and fair dealing standard, to avoid losing the work of all Texas ethnic groups who suffered, fought, and died to maintain high standards including Texas trust law and the utmost good faith and fair dealing standard in 1. previously stated. I strongly recommend that the proposed rules not be adopted because they are unconstitutional; violative of statutory law; arbitrary and capricious; not supported by substantial evidence as to their necessity or quality; not supported by subject matter jurisdiction, or notice jurisdiction because no one's life, liberty, or property are safe while the Legislature, a governmental entity purporting to be like the Legislature, or other such entity, are in session (and the judicial power is different from the legislative power, and because of this we have the Open Courts of the State of Texas which are always to be in session), and further with regard to Texas jurisdiction generally, there are legal limits on any particular group of persons or people to change the laws of the State of Texas, especially those that have provided a higher standard than the Federal standard since the time of the Republic of Texas and before the Republic of the State of Texas; and for the other reasons stated in Government Code 2002 (which may have been amended; but which may be found and researched, unless perhaps you, for example, forge books, alter books, fail to return books, or engage in other such activity; in which case, the Open Records Act may provide you copies of certain records, subject to exceptions and restrictions for such things as privacy, health, and safety, if you provide</p>	

reasonable payment, for example for copying costs; and the Texas Open Records Act is similar to Federal Congressional legislation and meets Federal standards, most likely), I waive none of my rights. Respectfully submitted, Richard B. Edgell, Attorney at Law, SBOT 06420900 today when I checked by computer. I do not give my current address or residence in Mexico, to protect myself and others, including responsible police and judiciary, and I can do that, under Texas law, in Rio Rancho, this 1st day of April, AD 2002 Regardless of whom I am or hwe I identify myself, the arguments are still the same and can be judged on their merits..

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Proposed Change to Rules Regarding Suicide
Date: Tuesday, April 7, 2020 4:09:49 PM

* State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments	
Contact	
First Name	Kee
Last Name	Ables
Email	[REDACTED]
Member	Yes
Barcard	24009854

Feedback	
Subject	Proposed Change to Rules Regarding Suicide
Comments	
I agree to the proposed change.	

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Proposed Changes to Rule 1.05
Date: Monday, June 1, 2020 4:17:53 PM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Eric
Last Name	Bayne
Email	[REDACTED]
Member	Yes
Barcard	00792947

Feedback

Subject	Proposed Changes to Rule 1.05
----------------	-------------------------------

Comments

I oppose the change because, although it is uncomfortable to contemplate, there is no consensus that suicide is inherently irrational. We keep client confidences every day about conduct that we may find extreme, morally reprehensible, or that has irreversible consequences, but is not criminal or fraudulent.

From: [REDACTED]
To: [CDRR](#)
Subject: CDRR Comment: Proposed Change to Disciplinary Rule 1.05
Date: Wednesday, June 10, 2020 9:49:58 AM

* State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments	
Contact	
First Name	Richard
Last Name	Wilson
Email	[REDACTED]
Member	Yes
Barcard	00794967

Feedback	
Subject	Proposed Change to Disciplinary Rule 1.05
Comments	
As a defender of attorneys against malpractice claims and grievances, I am concerned about and opposed to the proposed change to DR 1.05 to permit the disclosure of confidential information when an attorney BELIEVES the client will commit suicide. What education and understanding do attorneys have to make this subjective determination? We are educated on crime and fraud, and on every other exception in subpart c. We are not doctors educated on depression and suicidal thoughts. Do not create an exception for subjective beliefs outside our area of expertise.	

From: [REDACTED]
To: [CDRR](#)
Subject: CDRR Comment: Proposed Change to Rule 1.05(c)(7)
Date: Wednesday, June 10, 2020 10:12:59 AM

* State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments	
Contact	
First Name	Millie
Last Name	Thompson
Email	[REDACTED]
Member	Yes
Barcard	24067974

Feedback	
Subject	Proposed Change to Rule 1.05(c)(7)
Comments	
<p>I disagree with the proposed change that adds that an attorney may reveal attorney-client privileged information when the client might commit suicide. People who tell others they are suicidal are asking for help. Those who intend to commit suicide, and don't want interference, don't tell anyone their plans. Based on experience with Veterans with PTSD, when someone expresses suicidal thoughts, they are seeking help to prevent the suicide. Those folks are typically open to the recipient of the information contacting people that can help. Meaning, the clients that tell lawyers they are suicidal will also typically waive confidentiality - they want help. There's no need for an ethical-out when the clients will likely waive privilege, anyway. Further, most people (including lawyers) don't realize that the police cannot help people experiencing mental illness, mental health crises, etc. The police simply lack the tools to productively help. All they can do is arrest (and use force to effectuate the arrest). Giving lawyers a way to call the police on clients for something like this will lead to unfortunate situations where police pull their weapons on vulnerable people. Perhaps, the rule or notes could say something to the effect of "a lawyer may disclose *to an entity or person whose mission is to help those experiencing mental health crises, like psychiatrists, the Veterans Administration, or similar. Peace officers are not considered to be appropriate people to whom the lawyer may report such information." We don't need more law enforcement contact with the public. Police can't fix everything. Let's stop digging that hole.</p>	

From: [john kiraly](#)
To: [cdrr](#)
Subject: Proposed Rule Change 1.05
Date: Wednesday, June 10, 2020 12:41:36 PM

*** State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments**

Good afternoon.

When I look at this rule as it was and as it is proposed, I take issue with the fact that it is discretionary because of the use of the word "may."

I believe that we need to take a stand as a State Bar and make this a mandate for attorneys by ensuring that all attorneys always act responsibly in the face of potential: crime, fraud, or self-harm of a client. By not taking a stand, we have watered down the very essence of our responsibilities and the trust that the public has put in us.

Replace the word "may" with the word "shall" or we have accomplished nothing by this change.

Proposed Rule (Redline Version)

1.05. Confidentiality of Information

(c) A lawyer may reveal confidential information:

(7) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from committing a criminal or fraudulent act, or from committing suicide.

--

Kind Regards,

John M. Kiraly, Esq.
Attorney at Law


Texas Bar Lic # 24103169

CONFIDENTIALITY STATEMENT

This message, as well as any attached document, contains information from John M. Kiraly, Esq. that is confidential and/or privileged, or may contain attorney work product. If you have received this message in error, please delete all electronic copies of this message and its attachments, if any, without disclosing the contents, and notify the sender immediately.

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Rule 1.05 Confidentiality of Information
Date: Wednesday, June 10, 2020 3:45:56 PM

* State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments	
Contact	
First Name	Clint
Last Name	Blackman III
Email	[REDACTED]
Member	Yes
Barcard	00789977

Feedback	
Subject	Rule 1.05 Confidentiality of Information
Comments	
<p> To the Committee on Disciplinary Rules and Referenda: In reference to your public hearing slated for June 18, 2020, I state the following concerns in opposition to the proposed changes to Rule 1.05 regarding confidential information: The proposed change to Rule 1.05 regarding suicide would force legal counsel to make mental illness decisions. It is a known fact that trained and licensed mental illness professionals often times cannot accurately determine if a patient is serious about suicide or not. As lawyers we are not trained to make these decisions. Clients ask what happens at their death in the process of estate planning. Will we now be required to evaluate each and every client as to if they are suicidal? Say we have personal fears or concerns for a client, but they are wrong, will we cause the client to suffer trauma or damages because of a "suicide whistle" blown in error? Should we be liable for "I thought he might suicide" errors? Is it ethical to subject all of our clients to a new suicide scrutiny rule? How would we make such a suicide determination? The proposed rule does not answer any of these concerns or give us guidance on how to make these important determinations. If we decide a client has thoughts of suicide, who do we report this to? The proposed rule change does not tell us. If we report a client's confidential thoughts and their medical reasons, would we not violate the Federal HIPAA laws preventing disclosure of confidential medical information to persons the client has not authorized such disclosures? Is there some exemption in the HIPAA law that allows a state bar to create an exception to Federal law? I have not seen such an exemption. Lastly, if such a "suicide notice" ethical rule is created that allows a lawyer to notify authorities or someone that a client is considering suicide, is the lawyer liable to a decedent's family because the suicide was carried out and the lawyer didn't issue a notification to authorities? What if the client merely jokes about suicide? How many times do we hear: "I'll kill myself if _____ gets elected." Is that a real threat or is it a joke? The proposed rule does not give us any guidance on how to deal with these important nuances to understanding an ethical rule. Rules created to answer "heartache" issues rarely are good rules for every situation. Sincerely, Clint C. Blackman III Dallas, Texas </p>	

Committee on Disciplinary Rules and Referenda Proposed Rule Changes

Texas Disciplinary Rules of Professional Conduct Rule 8.03. Reporting Professional Misconduct

Texas Rules of Disciplinary Procedure Rule 1.06. Definitions

Rule 9.01. Orders From Other Jurisdictions (Reciprocal Discipline)

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 June 20, 2020. Comments can be submitted at texasbar.com/CDRR or by email to CDRR@texasbar.com. A public hearing on the proposed rules will be held at 10:30 a.m. on June 18, 2020, in Room 101 of the Texas Law Center (1414 Colorado St., Austin, Texas, 78701).

Proposed Rules (Redline Version)

Texas Disciplinary Rules of Professional Conduct Rule 8.03. Reporting Professional Misconduct

(f) A lawyer who has been disciplined by the attorney-regulatory agency of another jurisdiction, or by a federal court or federal agency, must notify the chief disciplinary counsel within 30 days of the date of the order or judgment. The notice must include a copy of the order or judgment. For purposes of this paragraph, "discipline" by a federal court or federal agency includes any action affecting the lawyer's ability to practice before that court or agency or any public reprimand; the term does not include a letter of "warning" or "admonishment" or a similar advisory by a federal court or federal agency.

Texas Rules of Disciplinary Procedure

1.06. Definitions:

CC. "Professional Misconduct" includes:

2. Attorney conduct that occurs in another ~~state or in the District of Columbia~~ jurisdiction, including before any federal court or federal agency, and results in the disciplining of an attorney in that other jurisdiction, if the conduct is Professional Misconduct under the Texas Disciplinary Rules of Professional Conduct.

9.01. Orders From Other Jurisdictions: Upon receipt of information indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction, including by any federal court or federal agency, the Chief Disciplinary Counsel shall diligently seek to obtain a certified copy of the order or judgment of discipline from the other jurisdiction, and file it with the Board of Disciplinary Appeals along with a petition requesting that the attorney be disciplined in Texas. A certified copy of the order or judgment is prima facie evidence of the matters contained therein, and a final adjudication in another jurisdiction that an attorney licensed to practice law in Texas has committed Professional Misconduct is conclusive for the purposes of a Disciplinary Action under this Part, subject to the defenses set forth in Rule 9.04 below. For purposes of this Part, "discipline" by a federal court or federal agency includes any action affecting the lawyer's ability to practice before that court or agency or any public reprimand; the term does not include a letter of "warning" or "admonishment" or a similar advisory by a federal court or federal agency.

Proposed Rules (Clean Version)

Texas Disciplinary Rules of Professional Conduct Rule 8.03. Reporting Professional Misconduct

(f) A lawyer who has been disciplined by the attorney-regulatory agency of another jurisdiction, or by a federal court or federal agency, must notify the chief disciplinary counsel within 30 days of the date of the order or judgment. The notice must include a copy of the order or judgment. For purposes of this paragraph, "discipline" by a federal court or federal agency includes any action affecting the lawyer's ability to practice before that court or agency or any public reprimand; the term does not include a letter of "warning" or "admonishment" or a similar advisory by a federal court or federal agency.

Texas Rules of Disciplinary Procedure

1.06. Definitions:

CC. "Professional Misconduct" includes:

2. Attorney conduct that occurs in another jurisdiction, including before any federal court or federal agency, and results in the disciplining of an attorney in that other jurisdiction, if the conduct is Professional Misconduct under the Texas Disciplinary Rules of Professional Conduct.

9.01. Orders From Other Jurisdictions: Upon receipt of information indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction, including by any federal court or federal agency, the Chief Disciplinary Counsel shall diligently seek to obtain a certified copy of the order or judgment of discipline from the other jurisdiction, and file it with the Board of Disciplinary Appeals along with a petition requesting that the attorney be disciplined in Texas. A certified copy of the order or judgment is prima facie evidence of the matters contained therein, and a final adjudication in another jurisdiction that an attorney licensed to practice law in Texas has committed Professional Misconduct is conclusive for the purposes of a Disciplinary Action under this Part, subject to the defenses set forth in Rule 9.04 below. For purposes of this Part, "discipline" by a federal court or federal agency includes any action affecting the lawyer's ability to practice before that court or agency or any public reprimand; the term does not include a letter of "warning" or "admonishment" or a similar advisory by a federal court or federal agency.

*** TBJ

**Committee on Disciplinary Rules and Referenda
Proposed Rule Changes**

**Texas Disciplinary Rules of Professional Conduct
Rule 8.03. Reporting Professional Misconduct**

**Texas Rules of Disciplinary Procedure
Rule 1.06. Definitions
Rule 9.01. Orders From Other Jurisdictions**

**Public Comments Received
Through June 10, 2020**

From: [Ken Horwitz](#)
To: [cdrr](#)
Subject: RE: New Proposed Rule Changes Published and Public Hearing Update
Date: Wednesday, April 1, 2020 9:21:56 AM

*** State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments**

The country is shut down and you are holding a public hearing?

Kenneth M. Horwitz
Glast, Phillips & Murray, P.C.
14801 Quorum Drive, Suite 500
Dallas, Texas 75254
(972) 419-8383 (phone)
(469) 206-5031 (fax)

This communication is not a "written opinion" within the meaning of Treasury Circular 230.

CONFIDENTIALITY NOTICE: This e-mail and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute, or take action in reliance upon this message. If you have received this in error, please notify us immediately by return e-mail and promptly delete this message and its attachments from your computer system. We do not waive client-attorney or work product privilege by the transmission of this message

From: State Bar of Texas - CDRR [mailto:cdrr@texasbar.com]
Sent: Wednesday, April 01, 2020 9:08 AM
To: Ken Horwitz
Subject: New Proposed Rule Changes Published and Public Hearing Update

State Bar of Texas



Proposed Rule Changes

**New Proposed Rule Changes Published
April 7, 2020, Public Hearing Update**

New Proposed Rule Changes Published for Public Comment

The Committee on Disciplinary Rules and Referenda has published [proposed changes to Rule 1.05](#).

[Texas Disciplinary Rules of Professional Conduct](#), in the April issue of the *Texas Bar Journal* and the March 27 issue of the *Texas Register*. The proposed rule changes relate to the disclosure of confidential information with regard to a client contemplating suicide.

The Committee has also published [proposed changes to Rule 8.03, Texas Disciplinary Rules of Professional Conduct, and Rules 1.06 and 9.01, Texas Rules of Disciplinary Procedure](#), in the April issue of the *Texas Bar Journal* and the March 27 issue of the *Texas Register*. The proposed rule changes relate to the reporting of professional misconduct and reciprocal discipline for federal court or federal agency discipline.

The Committee will accept comments concerning the above-referenced proposed rule changes through June 20, 2020. Comments on the proposed rule changes can be submitted [here](#).

Public hearings on the above-referenced proposed rule changes will be held at 10:30 a.m. on June 18, 2020. (Any updates to the public hearings will be posted at texasbar.com/cdrr/participate.)

April 7, 2020, Public Hearing Update

Lawyer Advertising and Solicitation Rules

Voluntary Appointment of Custodian Attorney for Cessation of Practice

The Committee on Disciplinary Rules and Referenda will hold a public hearing on [proposed changes to Part VII, Texas Disciplinary Rules of Professional Conduct](#), and [proposed Rule 13.04, Texas Rules of Disciplinary Procedure](#), at 10:30 a.m. on April 7, 2020. The Committee will continue to accept comments on these proposed rule changes through April 10, 2020. Comments can be submitted [here](#).

UPDATE: As a safety precaution related to the coronavirus, the Committee will hold the April 7 public hearings by teleconference only. The updated participation information is as follows and replaces the previous number provided:

Join from PC, Mac, iOS or Android Device:

Meeting URL: <https://texasbar.zoom.us/j/265275523>

Meeting ID: 265 275 523

Telephone Audio or Audio-Only:

888-788-0099 (Toll Free)

Meeting ID: 265 275 523

(Bridge will open at 10:00 a.m. Meeting will begin at 10:30 a.m.)

If you plan to participate in either public hearing on April 7, it is requested that you email CDRR@texasbar.com in advance of the hearing with your name and the public hearing item you wish to speak on so the Committee can group speakers by topic during the hearings. To allow enough time for all who wish to be heard during the hearings, the Committee may limit initial comments from each speaker to three minutes, and extend that time if the Committee needs further discussion with the speaker.

Additional Information

The Committee is responsible for overseeing the initial process for proposing a change or addition to the disciplinary rules (Gov't Code § 81.0873). For more information, go to texasbar.com/cdrr.

To subscribe to email updates, including notices of public hearings and published rules for comment, click [here](#).

Sincerely,
Committee on Disciplinary Rules and Referenda

Committee on Disciplinary Rules and Referenda

State Bar of Texas | 1414 Colorado | Austin, Texas 78701 | 800.204.2222

[Unsubscribe](#)



From: [REDACTED]
To: [cdrr](#)
Subject: CDOR Comment: Comment on Rule Changes (Rules 1.06, 8.03, & 9.01)
Date: Wednesday, April 1, 2020 9:28:31 AM

* State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments	
Contact	
First Name	Shea
Last Name	Palavan
Email	[REDACTED]
Member	Yes
Barcard	24083616

Feedback	
Subject	Comment on Rule Changes (Rules 1.06, 8.03, & 9.01)
Comments	
Just an efficiency idea: Since it appears the changes to this are just the inclusion of federal courts/agencies under "jurisdiction," wouldn't it be less cumbersome to just add an overall definition in the Rules for "jurisdiction" that states it indicates the term includes a federal court or federal agency. Similarly, could just add an overall definition in the Rules for "discipline" which includes the added language.	

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Comments to Proposed Changes to TDRPC Rules 8.03 and 9.01
Date: Wednesday, April 1, 2020 10:26:23 AM

* State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments	
Contact	
First Name	Jessica
Last Name	Lewis
Email	[REDACTED]
Member	Yes
Barcard	24060956

Feedback	
Subject	Comments to Proposed Changes to TDRPC Rules 8.03 and 9.01
Comments	
<p>The proposed changes to Rules 8.03 and 9.01 are broad and ambiguous in their plain language meaning and, therefore, inappropriate and overreaching. For example, "any action affecting the lawyer's ability to practice before that court . . ." could be read to include virtually anything. If the focus is to require reporting of actions taken to "limit" a lawyer's ability to practice before a federal court due to some misconduct, then it should be stated in that way, such as "any action limiting the lawyer's ability to practice before that court due to that lawyer's misconduct . . ." Further, the inclusion of "any public reprimand" is equally broad and concerning, as under that plain language, a lawyer who was "publicly reprimanded" by a federal judge for an inconveniently late filing, for example, would have to notify the disciplinary counsel of that rebuke. I don't think the following sentence of clarification truly addresses this ambiguity as to a public reprimand, as it focuses on written warnings/admonishments. For the purpose of reporting, I think it makes sense to limit it to issues significant enough to warrant some formal written reprimand. We as attorneys who deal with statutory language frequently know the importance of clear language and the need for a clear expectation to be set when disciplinary measures are involved. While language often doesn't provide us the ability to communicate with sufficient precision to survive all challenges, the language pointed out here falls far short of the more basic standards of providing adequate notice and setting reasonably clear expectations for the bar. Further, it leaves too much room for interpretation and discretion by those enforcing the rules. Thanks for your time and efforts in this work. Feel free to reach out, if needed. Jessica Lewis</p>	

From: [REDACTED]
To: [CDRR](#)
Subject: CDRR Comment: Proposed Rules Regarding "Competency Attorneys" and Similiar Proposals
Date: Wednesday, April 1, 2020 1:09:14 PM

* State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments	
Contact	
First Name	Richard
Last Name	Edgell
Email	[REDACTED]
Member	Yes
Barcard	6420900

Feedback	
Subject	Proposed Rules Regarding "Competency Attorneys" and Similiar Proposals
Comments	
<p>1. Better Law already exists. 2. The Law has been Improved and "tweaked" for centuries. 3. The Law already provides a very high standard of "utmost good faith and fair dealing" under equitable and trust law to protect attorneys and everyone else. 4. The Texas Supreme Court is elected. 5. It is the Supreme Court for the Constitution, Laws, Statutes, and other laws of the State of the State of Texas, not the State Bar of Texas, which is or should be the attorneys who having fulfilled the requirements of the law and having been approved by the State Board of Law Examiners are entitled to license as an Attorney and Counselor at Law and having taken the oath provided by law are authorized to practice as Attorney and Counselor at Law in all the Courts of the State of Texas, and the Clerk of the Supreme Court of the Texas may affix the Seal of the Supreme Court of the Supreme Court, at Austin, or apparently has done so, for example, "this 5th day of November AD 1982" for Richard Baxter Edgell. 6. The State Bar of Texas is not an administrative agency. 7. The Texas Legislature cannot delegate judicial power it does not have to the State Bar of Texas or any other person or thing, because the Texas Constitution uses principles such as separation of powers and checks and balances between legislative, executive, and judicial branches and this is consistent with Federal law including the Constitution, Laws, and Statues of the United States. 8. Prior to entry into the Union or union with the Union, the Republic of Texas provided higher standards than the Constitution, Laws, and Statutes of the United States, including the "Rule" and "Open Courts." There is a Baylor Law School Law Review article which you can find which discusses this in detail. 9 Texas insisted, and the United States agreed, that Texas could have higher standards than the United States in the Texas judicial system. 10. The "Open courts" were not vigilante groups or the so-called "Klan." People have lied or been misinformed about this. 11. Concluding, rely on existing law, including trust law, which includes the utmost good faith and fair dealing standard, to avoid losing the work of all Texas ethnic groups who suffered, fought, and died to maintain high standards including Texas trust law and the utmost good faith and fair dealing standard in 1. previously stated. I strongly recommend that the proposed rules not be adopted because they are unconstitutional; violative of statutory law; arbitrary and capricious; not supported by substantial evidence as to their necessity or quality; not supported by subject matter jurisdiction, or notice jurisdiction because no one's life, liberty, or property are safe while the Legislature, a governmental entity purporting to be like the Legislature, or other such entity, are in session (and the judicial power is different from the legislative power, and because of this we have the Open Courts of the State of Texas which are always to be in session), and further with regard to Texas jurisdiction generally, there are legal limits on any particular group of persons or people to change the laws of the State of Texas, especially those that have provided a higher standard than the Federal standard since the time of the Republic of Texas and before the Republic of the State of Texas; and for the other reasons stated in Government Code 2002 (which may have been amended; but which may be found and researched, unless perhaps you, for example, forge books, alter books, fail to return books, or engage in other such activity; in which case, the Open Records Act may provide you copies of certain records, subject to exceptions and restrictions for such things as privacy, health, and safety, if you provide</p>	

reasonable payment, for example for copying costs; and the Texas Open Records Act is similar to Federal Congressional legislation and meets Federal standards, most likely), I waive none of my rights. Respectfully submitted, Richard B. Edgell, Attorney at Law, SBOT 06420900 today when I checked by computer. I do not give my current address or residence in Mexico, to protect myself and others, including responsible police and judiciary, and I can do that, under Texas law, in Rio Rancho, this 1st day of April, AD 2002 Regardless of whom I am or hwe I identify myself, the arguments are still the same and can be judged on their merits..

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Proposed changes to Rule 8.03
Date: Wednesday, April 1, 2020 2:03:09 PM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	Richard
Last Name	Schafer
Email	[REDACTED]
Member	Yes
Barcard	24007988

Feedback

Subject	Proposed changes to Rule 8.03
----------------	-------------------------------

Comments

I recommend clarifying the rule to make clear that "any action affecting the lawyer's ability to practice before that court or agency" does not include a order disqualifying the attorney in a particular case.

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Proposed changes 8.03, 1.06 and 9.01
Date: Wednesday, April 1, 2020 5:31:43 PM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

First Name	James
Last Name	Roberts
Email	[REDACTED]
Member	Yes
Barcard	17008500

Feedback

Subject	Proposed changes 8.03, 1.06 and 9.01
----------------	--------------------------------------

Comments

I would suggest that adding "final and not subject to appeal" to the references to "order or judgment." I think the reasons should be obvious.

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Proposed rule change 8.03
Date: Monday, June 1, 2020 10:38:52 AM

* State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments	
Contact	
First Name	Eddie
Last Name	Gomez
Email	[REDACTED]
Member	Yes
Barcard	24055562

Feedback	
Subject	Proposed rule change 8.03
Comments	
My concern with this rule change is that the definition of a disciplinary matter is written broadly enough that it includes an attorney failing to pay federal court admission renewal dues since that "affects the attorney's ability to practice in federal court." This situation is clearly not disciplinary and should not trigger a reporting obligation for the attorney. Thank you.	

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Proposed changes to Rule 1.05 and 8.03 Texas Disciplinary Rules of Professional Conduct,
Date: Friday, June 5, 2020 1:33:17 PM

* State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments	
Contact	
First Name	Allan
Last Name	Goldstein
Email	[REDACTED]
Member	Yes
Barcard	080907950

Feedback	
Subject	Proposed changes to Rule 1.05 and 8.03 Texas Disciplinary Rules of Professional Conduct,
Comments	
Reporting from a Federal Court "any action affecting the lawyer's ability to practice before that court or agency or any public reprimand" seems too broad. Would that include if the lawyer did not renew his license to practice in federal court.? I doubt that is the intent but it seems it might be included. Also, if a Judge is critical of a lawyer's performance and expresses it somehow in writing would that require a report of a reprimand; or is there some definition of "public reprimand." Just think the proposed language is too broad and could have unintended consequences.	

From: [Dorothea](#)
To: [cdrr](#)
Subject: Proposed rule change - Opposed
Date: Friday, June 5, 2020 3:26:49 PM

* State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments

Hello:

I oppose the addition of the language to rule 8.03 “or federal agency”. I have the same opposition to the proposed changes to rules 1.06 and 9.01. I think it’s too vague. I have no idea how I would be disciplined by a federal agency (other than a federal court) that would have bearing on my ability or fitness to practice law in the state of Texas. I think it is grossly over broad and it is going to scoop up some activity that is unintended. I do not oppose the reference to “any federal court” clearly that is relevant. I don’t know what it means to be disciplined by a federal agency. What if I am given a ticket by the National Park service for camping without a license, or not properly putting out my campfire, or having my dog walk on a trail that’s not authorized for pets, or not appropriately securing my food so that bears won’t get into it, or not properly discarding my trash from my campsite, is that something that I need to report to the Texas bar? It seems absurd. That concludes my comments in opposition.

Thank you,

Dorothea Laster
SBN: 11970400

Sent from my iPhone

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Proposed changes to TDRPC 8.03, 1.06 & 9.01
Date: Wednesday, June 10, 2020 11:17:13 AM

* State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments	
Contact	
First Name	Wesley
Last Name	Hill
Email	[REDACTED]
Member	Yes
Barcard	24032294

Feedback	
Subject	Proposed changes to TDRPC 8.03, 1.06 & 9.01
Comments	
Respectfully, federal agency should be dropped from the proposed amendments. Federal agency decisions do not always provide the same procedural due process and guarantees of fairness that federal courts or attorney-regulatory agencies of other jurisdictions provide, and thus should not be entitled to the to the reciprocal discipline system's typical deference.	

MEETING OF THE COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

May 6, 2020
By Teleconference

MINUTES

Members Present: Chair M. Lewis Kinard; Timothy Belton; Amy Bresnen; Claude Ducloux; Hon. Dennise Garcia; Rick Hagen; Dean Vincent Johnson; W. Carl Jordan; Karen Nicholson.

State Bar of Texas Staff Present: Ray Cantu, Deputy Executive Director; Seana Willing, Chief Disciplinary Counsel; Brad Johnson, Disciplinary Rules and Referenda Attorney

A. CALL TO ORDER; ROLL CALL

Mr. Kinard called the meeting to order at 10:04 a.m. Brad Johnson called the roll and a quorum was present. (Mr. Hagen joined the meeting later.)

B. COMMENTS FROM THE CHAIR

Mr. Kinard thanked those who joined the meeting and those who have continued to provide feedback on the rule proposals the Committee is working on. Mr. Kinard emphasized the importance of feedback from State Bar members and the general public. Mr. Kinard emphasized that the Committee reads every public comment, listens to every public speaker at the Committee's public hearings, and does all it can to ensure all issues raised are adequately addressed. Mr. Kinard explained that he thought the Committee's April quarterly meeting and two public hearings via Zoom were a success and allowed for more public participation for those outside of Austin. Mr. Kinard thanked those who participated and attended the April meeting.

C. UPDATE ON STATE BAR BOARD OF DIRECTORS ACTION ON PROPOSED CHANGES TO RULES 3.01 TO 3.03, TEXAS RULES OF DISCIPLINARY PROCEDURE (TRDP) – RELATING TO THE ASSIGNMENT OF JUDGES AND RELATED PROCEDURES WHEN A RESPONDENT IN A DISCIPLINARY COMPLAINT ELECTS TO PROCEED IN DISTRICT COURT

Mr. Kinard explained that the State Bar Board of Directors unanimously voted at its last meeting to approve the proposed changes to Rules 3.01 to 3.03, TRDP, which were recently recommended by the Committee. Mr. Kinard explained that the Board decided to wait until a future date to petition the Supreme Court for a referendum on these and other proposed rule changes. Mr. Kinard explained that his expectation is the Board could potentially vote to petition the Supreme Court at its September 2020 meeting, which would make early 2021 a tentative timeline for a vote by Bar membership.

D. APPROVAL OF THE MINUTES OF THE LAST MEETING

Mr. Kinard addressed the Committee on this agenda item. Mr. Ducloux made a motion to approve the minutes from the April 7, 2020, meeting. Ms. Bresnen seconded the motion. The Committee voted in favor of the motion.

E. PROPOSED CHANGES TO PART VII. INFORMATION ABOUT LEGAL SERVICES (LAWYER ADVERTISING AND SOLICITATION RULES), TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT (TDRPC)

Mr. Kinard addressed the Committee on this agenda item. Mr. Kinard explained that this is the last scheduled meeting before the deadline to vote on whether to recommend the proposed rules. Mr. Kinard explained that the subcommittee on the advertising rules (Dean Johnson, Ms. Bresnen, and Mr. Ducloux) submitted proposed amendments to the proposed rules and proposed comments. Dean Johnson briefed the Committee on the proposed amendments recommended by the subcommittee. Mr. Ducloux responded with comments, including to emphasize the subcommittee's attention to the public comments received and to recognize Dean Johnson's efforts on the proposed rules and proposed comments. Mr. Ducloux made a motion to approve the proposed amendments to the proposed rules and proposed comments as recommended by the subcommittee. Judge Garcia seconded the motion. The Committee voted in favor of the motion. Ms. Bresnen made a motion to recommend the proposed rules and proposed comments, as amended, to the Board of Directors. Ms. Nicholson seconded the motion. The Committee voted in favor of the motion. Mr. Kinard responded with comments. Brad Johnson noted that the Board will meet in late June. Mr. Kinard expressed that the Board will hopefully take the matter up at that meeting.

F. PROPOSED RULE 13.04. VOLUNTARY APPOINTMENT OF CUSTODIAN ATTORNEY FOR CESSATION OF PRACTICE, TRDP

Mr. Kinard addressed the Committee on this agenda item. Mr. Kinard explained that this is the last scheduled meeting before the deadline to vote on whether to recommend the proposed rule to the Board of Directors. Mr. Kinard noted a proposed one-word amendment to the proposed rule, which was previously discussed by the Committee. Mr. Ducloux made a motion to approve the amendment. Ms. Bresnen seconded the motion. The Committee voted in favor of the motion. Mr. Belton made a motion to recommend the proposed rule, as amended, to the Board of Directors. Mr. Ducloux seconded the motion. The Committee voted in favor of the motion. Mr. Ducloux and Mr. Kinard thanked Ms. Willing for her help on the subject.

G. PROPOSED RULE 13.05, TRDP – RELATING TO THE VOLUNTARY APPOINTMENT OF A CUSTODIAN ATTORNEY TO ACT DURING A DISABLING CIRCUMSTANCE

Mr. Kinard addressed the Committee on this agenda item. As background, Mr. Kinard noted that just prior to the Committee's April meeting, Greg Sampson and Laura Gibson, co-chairs of a succession planning task force, submitted a draft proposed rule for consideration by the Committee, and that they also spoke about their concerns regarding temporary cessations of practice due to a disabling circumstance at the April public hearing. Mr. Kinard stated that the Committee appreciated Mr. Sampson and Ms. Gibson's help. Mr. Kinard explained that on April 17, 2020, the Board of Directors adopted a resolution asking the Committee to initiate a proposal for Rule 13.05, TRDP. Mr. Kinard explained that Mr. Ducloux worked with Brad Johnson and Mr. Belton on a revised draft of proposed Rule 13.05. Mr. Ducloux made a motion to initiate the rule proposal process. Judge Garcia seconded the motion. Mr. Kinard responded with comments. The Committee voted in favor of the motion. Mr. Ducloux discussed the background of the subject and briefed the Committee regarding the revised

draft of proposed Rule 13.05. Brad Johnson responded with comments. The Committee further discussed the subject. Brad Johnson and Ms. Willing responded with comments. The Committee discussed whether to publish a draft for public comment at this time. Mr. Ducloux made a motion to publish the revised draft of proposed Rule 13.05. Mr. Belton seconded the motion. The Committee voted in favor of the motion. The proposal will be published in the June issue of the *Texas Bar Journal* and in the *Texas Register*. Mr. Kinard addressed the Committee regarding the date for a public hearing on the proposal. Mr. Ducloux made a motion that the Committee hold the public hearing at the Committee's June 18, 2020, meeting. Judge Garcia seconded the motion. The Committee voted in favor of the motion. The Committee will accept public comments on the proposal through July 6, 2020.

H. PROPOSED CHANGES TO RULE 1.05, CONFIDENTIALITY OF INFORMATION, TDRPC – RELATING TO THE DISCLOSURE OF CONFIDENTIAL INFORMATION AND CLIENTS CONTEMPLATING SUICIDE

Mr. Kinard addressed the Committee on this agenda item. Mr. Kinard noted that the Committee will hold a public hearing on the proposed changes to Rule 1.05, TDRPC, at its June 18, 2020, meeting, and will accept comments on the proposed changes through June 20, 2020. Mr. Kinard discussed a proposed amendment to the proposed rule changes, which was previously recommended by the subcommittee on the subject (Mr. Belton, Ms. Bresnen, and Mr. Ducloux). Mr. Kinard explained that the Committee could vote on the proposed amendment at a later date. Mr. Kinard and Ms. Bresnen discussed public comments received on the proposed changes. Brad Johnson responded with comments. Mr. Kinard explained that the Committee will hold the June 18 public hearings via teleconference.

I. PROPOSED CHANGES TO RULE 8.03, TDRPC, AND RULES 1.06 AND 9.01, TRDP – RELATING TO REPORTING PROFESSIONAL MISCONDUCT AND RECIPROCAL DISCIPLINE FOR FEDERAL COURT OR FEDERAL AGENCY DISCIPLINE

Mr. Kinard addressed the Committee on this agenda item. Mr. Kinard noted that the Committee received public comments on the proposed changes, and that the Committee will hold a public hearing on the proposed changes at its June 18, 2020, meeting. Mr. Ducloux responded with comments.

J. PROPOSED RULE TIMELINES

Mr. Kinard asked Brad Johnson whether there were any timeline or other outstanding issues to discuss. Mr. Johnson responded that the Committee had covered the relevant timelines. Mr. Johnson noted that proposed Rule 13.05, TRDP, should be able to make the deadline for the June issue of the *Texas Bar Journal*.

K. AGENDA ITEMS FOR NEXT MEETINGS

Mr. Kinard asked whether anyone had suggestions or requests for items to add to the next meeting agenda. Dean Johnson suggested the subject of duties owed to prospective clients, as well as the sale of a law practice, for future consideration. Dean Johnson suggested that he, Mr. Ducloux, and Ms. Bresnen could look at the relevant provisions of the American Bar Association Model Rules of Professional Conduct and determine what changes might be needed for incorporation into the Texas

rules. Mr. Ducloux responded with comments regarding the closure of a law practice. Mr. Kinard discussed the considerations of the previous disciplinary rules committee with regard to the sale of a law practice. Mr. Kinard expressed that both items would be good for discussion at the next meeting. With regard to duties to prospective clients, Mr. Kinard discussed also looking at what was proposed in 2011. Ms. Bresnen, Dean Johnson, and Mr. Ducloux responded with comments.

L. SCHEDULE SEPTEMBER 2020 COMMITTEE QUARTERLY MEETING

Mr. Kinard addressed the Committee on this agenda item. Mr. Kinard explained that September 17, 2020, is the tentative date for the Committee's September quarterly meeting. The Committee discussed possibly holding the meeting via teleconference. Brad Johnson responded with comments. The Committee will decide later on whether to hold the meeting via teleconference. Mr. Kinard thanked staff for their work.

M. ADJOURNMENT

Ms. Bresnen made a motion to adjourn. Judge Garcia seconded the motion. The Committee voted in favor of the motion. Mr. Kinard thanked all those who participated in the meeting. The meeting adjourned at 11:11 a.m.

COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

Texas Disciplinary Rules of Professional Conduct

Rule 1.05. Confidentiality of Information (Confidentiality and Clients Contemplating Suicide)

Below is the timeline for proposed changes to Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct, relating to the disclosure of confidential information and clients contemplating suicide.

INITIATED – January 16, 2020

PUBLICATION – A proposed rule is withdrawn if it is not published in (1) the Texas Register and (2) the Texas Bar Journal within six months of initiation of the rule proposal process.

- **Texas Register – March 27, 2020 (Complete)**
- **Texas Bar Journal – April 2020 (Complete)**

NOTE: Publications will include details on dates and participation methods for the comment period and the public hearing.

COMMENT PERIOD – The Committee shall give interested parties at least 30 days from the date a proposed rule is published to submit comments on the rule to the Committee.

The Committee will accept public comments through **June 20, 2020**.

PUBLIC HEARING – The Committee will hold a public hearing at 10:30 a.m. CDT on **June 18, 2020**. (**UPDATE:** The Committee will hold the public hearing by teleconference only. For teleconference participation information, please go to texasbar.com/cdrr/participate.)

FINAL VOTE BY COMMITTEE – The Committee shall vote on whether to recommend a proposed rule to the Board of Directors not later than the 60th day after the final day of the comment period. This vote must be held at a meeting open to the public and with notice to the public.

The deadline to vote is **August 19, 2020**. Therefore, the Committee must vote at its **July 8, 2020, or August 5, 2020**, meeting.

COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

Texas Disciplinary Rules of Professional Conduct Rule 8.03. Reporting Professional Misconduct

Texas Rules of Disciplinary Procedure

Rule 1.06. Definitions

Rule 9.01 Orders From Other Jurisdictions (Reciprocal Discipline)

Below is the timeline for proposed changes to Rule 8.03 of the Texas Disciplinary Rules of Professional Conduct, and to Rules 1.06 and 9.01 of the Texas Rules of Disciplinary Procedure, relating to reporting professional misconduct and reciprocal discipline.

INITIATED – February 5, 2020

PUBLICATION – A proposed rule is withdrawn if it is not published in (1) the Texas Register and (2) the Texas Bar Journal within six months of initiation of the rule proposal process.

- **Texas Register – March 27, 2020 (Complete)**
- **Texas Bar Journal – April 2020 (Complete)**

NOTE: Publications will include details on dates and participation methods for the comment period and the public hearing.

COMMENT PERIOD – The Committee shall give interested parties at least 30 days from the date a proposed rule is published to submit comments on the rule to the Committee.

The Committee will accept public comments through **June 20, 2020**.

PUBLIC HEARING – The Committee will hold a public hearing at 10:30 a.m. CDT on **June 18, 2020**. (**UPDATE:** The Committee will hold the public hearing by teleconference only. For teleconference participation information, go to texasbar.com/cdrr/participate.)

FINAL VOTE BY COMMITTEE – The Committee shall vote on whether to recommend a proposed rule to the Board of Directors not later than the 60th day after the final day of the comment period. This vote must be held at a meeting open to the public and with notice to the public.

The deadline to vote is **August 19, 2020**. Therefore, the Committee must vote at its **July 8, 2020, or August 5, 2020**, meeting.

COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

Texas Rules of Disciplinary Procedure

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

Below is the timeline for proposed Rule 13.05 of the Texas Rules of Disciplinary Procedure, pertaining to the voluntary appointment of a custodian attorney to assist during a temporary cessation of practice related to a disability.

INITIATED – May 6, 2020

PUBLICATION – A proposed rule is withdrawn if it is not published in (1) the Texas Register and (2) the Texas Bar Journal within six months of initiation of the rule proposal process.

- **Texas Register – May 22, 2020 (Complete)**
- **Texas Bar Journal – June 2020 (Complete)**

NOTE: Publications will include details on dates and participation methods for the comment period and the public hearing.

COMMENT PERIOD – The Committee shall give interested parties at least 30 days from the date a proposed rule is published to submit comments on the rule to the Committee.

The Committee will accept public comments through **July 6, 2020**.

PUBLIC HEARING – The Committee will hold a public hearing by teleconference at 10:30 a.m. CDT on **June 18, 2020**. For teleconference participation information, please go to texasbar.com/cdrr/participate.

FINAL VOTE BY COMMITTEE – The Committee shall vote on whether to recommend a proposed rule to the Board of Directors not later than the 60th day after the final day of the comment period. This vote must be held at a meeting open to the public and with notice to the public.

The deadline to vote is **September 4, 2020**. Therefore, the Committee must vote at its **July 8, 2020, or August 5, 2020**, meeting.