

Committee on Disciplinary Rules and Referenda

Second Supplement for April 7, 2020, Meeting

- Public Comment Received on April 6, 2020
- Draft Proposal Submission (Draft Proposed Rule 13.05, Texas Rules of Disciplinary Procedure)

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Proposed changes re: use of Trade Names
Date: Monday, April 6, 2020 2:28:24 PM

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Feedback

Subject	Proposed changes re: use of Trade Names
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Comments

I support changing the Texas Disciplinary Rules of Professional Conduct to eliminate the blanket ban on the use of Trade Names. I have no comment regarding the other proposed changes, not as to the specific changes implemented to remove the blanket ban on Trade Names. The blanket ban on Trade Names is a significant limitation on at least one subset of Texas law firms, namely those firms who practice in Intellectual Property law. Texas is home to many boutique firms whose practice primarily or exclusive in the area of patent preparation and prosecution before the U.S. Patent and Trademark Office. This a practice at a federal level and generally clients are drawn from the entire U.S. and even abroad. Prohibiting Texas firms from indicating, in their firm name, that they practice patent law or intellectual property makes it much harder for potential clients to find these firms, especially when other states have not such prohibition.

13.05 Voluntary Appointment of a Custodian Attorney to Act During a Disabling Circumstance.

In lieu of the procedures set forth in Rules 13.02 and 13.03, and in addition to the appointment of a custodian to close an attorney's practice as provided in Rule 13.04, an appointing attorney ceasing practice or planning for a circumstance when the appointing attorney might later experience a the temporary cessation of practice ("appointing attorney" for purposes of this Rule) may voluntarily designate a Texas attorney licensed and in good standing to act as custodian attorney ("custodian attorney" for purposes of this Rule) to assist in the final resolution and closure of the attorney's practice 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 disabling circumstance, and (2) the custodian attorney has a reasonable expectation the appointing attorney will resume the practice of law when the disabling circumstance ceases. A "disabling circumstance" for purposes of this Rule occurs when an appointing attorney has disappeared, become inactive, been suspended or becomes physically, mentally or emotionally disabled and cannot provide legal services necessary to protect the interests of the appointing attorney's clients. 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 disabling circumstance:

- 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 assumption 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.

In the event that: (1) the appointing attorney's disabling circumstance does not cease before the end of the [120] day period, or (2) the appointing attorney does not return to the practice fully enabled competent to provide the legal services necessary to protect the interests of the appointing attorney's clients, then the custodian shall proceed to assist thereafter only in the final resolution and closure of the 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 under this Rule for a specified period of time 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

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of this Rule. Except for intentional misconduct or gross negligence, no person acting as custodian attorney under this Rule may 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.