

Committee on Disciplinary Rules and Referenda
Transcript of Public Hearing on
Proposed Rule 13.05 (Termination of Custodianship), Texas Rules of Disciplinary Procedure
September 17, 2020 – By Zoom Teleconference

Video of the full Committee meeting, including the public hearings, is available at texasbar.com/CDRR.

Lewis Kinard:

All right, this will conclude our public hearing on 1.18 and we'll now move on to, uh, the public hearing on proposed Rule 13.05 of the Texas Rules of Disciplinary Procedure. I'll call this public hearing to order. Uh, that proposed rule change addresses the termination of voluntary custodianship conducted under proposed Rule 13.04, also to the Texas Rules of Disciplinary Procedure. Now this version of proposed 13.05 was recently published in the Texas Bar Journal and Texas Register. And like the others, uh, we have... we will accept public comments throughout October 6th, uh, we have this, um, through on the October 7th agenda to take final action if we want to at that point, we have until December 5th to do so.

Lewis Kinard:

Is there anyone signed up to speak on this one, Brad?

Brad Johnson:

Yes, Chair, we have, um, Laura Gibson who signed up and I believe she is on, and then, um, tentatively Greg Sampson was also signed up. So if you'd like I can-

Lewis Kinard:

Okay.

Brad Johnson:

... go ahead and, um, [crosstalk].

Lewis Kinard:

All right, let's invite Ms. Gibson.

Brad Johnson:

Okay. Ms. Gibson, give me one second and then you will show up as a panelist here.

Lewis Kinard:

And while they're doing that, anyone else that wants to speak on this item please, uh, raise your hand in Zoom or do star 9 in the telephone conference system and that will, uh, flag you also as wanting to speak.

Claude Ducloux:

Hi, Laura!

Laura Gibson:

Good morning! Y'all s-, y'all are seeing my loteria, uh, decorations from the Texas Access for Justice, uh, event last night that I haven't taken down yet.

Lewis Kinard:

That's okay. Continue celebrating.

Laura Gibson:

Yes (laughs). Uh, uh-

Lewis Kinard:

All right, thank you for coming today and, and we welcome your comments here.

Laura Gibson:

Thank you. I'm sorry I missed your August 5th meeting where y'all voted to publish the new, um, Rule 13.05. I know Greg Sampson, the co-chair of the succession planning committee with me, was able to attend and I'm delighted that y'all voted to publish them. I don't really have anything to add, um, I know that we struggled with the concepts in this termination of custodianship concept and, uh, went back to the drawing board on this rule with the, the old 13.05 that the Committee had issues with. And came up with what I think is a much better rule, I think it's a lot simpler and clearer and easier to follow. So I'm delighted that, um, great minds, took a lot of energy and time, but we ultimately came up with a resolution that I think is a very good one.

Laura Gibson:

Uh, so I don't have anything to add but I have, um, am here to answer any questions that you have or anything you need from me.

Lewis Kinard:

All right, thank you. Anyone on the committee have questions for Ms. Gibson?

Claude Ducloux:

Yes.

Lewis Kinard:

Claude.

Claude Ducloux:

Let me just say since, thank you Laura very much, since, w-, I participated in this, for those of you in the public who are listening to this, um, this started out... Forgive me but give me 30 seconds of background. We already had in the Rules of Disciplinary Procedure, uh, Procedure when a lawyer was lost or, you know, became disabled where you could go to the court basically and establish what would be equivalent or conco- comparable to a receivership, where somebody, one or more attorneys were appointed to take over his or her practice and, and, um, you know, get rid of those files and pass them on to other attorneys, etc.

Claude Ducloux:

And, uh, so the first change in that was well, if you have to do that with a court why can't you do it voluntarily, um, and so we came up with a rule for that, and then they were thinking but what about if you're not really... 'Cause the rule that we came up with was just really to, to end the practice, but what if, uh, a attorney was just disabled or had a stroke or something like that and there was a possibility that he or she would come back, and that was the genesis of this rule.

Claude Ducloux:

And this is, as Laura said, for probably a fourth generation of this rule that, the iss- issue that we had with the earlier generations of this rule was that if there is no distinct plan to terminate the practice then it's the practice of law and it's, we didn't think it really belonged here. But what we've done with this in, in remodeling this, is that is directing the party, if there is any dispute, just to basically go back to 13.02 and ask the court, "What should I do?" Uh.

[Break in Recording]

Lewis Kinard:

... not on this one.

Tim Belton:

No, I would just, I would just add that the process worked, it was a sausage grinder but I think we have, uh, a good solution and appreciate Laura and Greg investing their time to make sure that, uh, we have the opportunity to address the concerns.

Lewis Kinard:

Okay, anyone else on the Committee? All right, we will conclude the public hearing on proposed Rule 13.05. And again, thanks everyone for listening, for sending in comments, uh, for joining, those who- who did, uh, speak today.