

# STATE BAR OF TEXAS

**JERRY C. ALEXANDER**  
2019-20 CHAIR OF THE BOARD



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April 30, 2020

Lewis Kinard, Chair  
Committee on Disciplinary Rules and Referenda  
c/o Brad Johnson  
1414 Colorado St.  
Austin, TX 78701

Re: State Bar of Texas Board action requesting initiation of rule review process on proposed Rule 13.05

Dear Mr. Kinard:

This letter is to inform you that on April 17, 2020, the State Bar of Texas Board of Directors unanimously approved the attached resolution requesting the CDRR to initiate the rule review process on proposed Rule 13.05, Voluntary Appointment of a Custodian Attorney to Act During a Disabling Circumstance.

Thank you for your attention to this matter. As always we greatly appreciate your and the Committee's thorough and thoughtful work on improvements to the Texas disciplinary rules.

Please do not hesitate to contact me if you need more information.

Best regards,



Jerry Alexander  
Chair of the Board

cc: Randall O. Sorrels, President, State Bar of Texas  
Larry P. McDougal, President-elect, State Bar of Texas  
Joe K. Longley, Immediate Past President, State Bar of Texas  
Laura Gibson, Immediate Past Chair of the Board, State Bar of Texas  
Trey Apffel, Executive Director, State Bar of Texas  
John Sirman, Associate Executive Director/Legal Counsel, State Bar of Texas  
Seana Willing, Chief Disciplinary Counsel, State Bar of Texas  
Ross Fischer, General Counsel, State Bar of Texas



## STATE BAR OF TEXAS BOARD OF DIRECTORS

### RESOLUTION

WHEREAS, when an attorney dies or becomes incapacitated, Part XIII of the Texas Rules of Disciplinary Procedure (TRDP) provides for court appointment of a custodian attorney to assist in winding down the attorney's practice. Part XIII also limits the court-appointed custodian attorney's liability and extends the attorney-client privilege to the court-appointed custodian attorney.

WHEREAS, on June 12, 2019, the State Bar of Texas Board of Directors adopted a resolution asking the Supreme Court of Texas to consider adopting a comment to Part XIII to extend the limitation of liability and attorney-client privilege to attorney-designated custodian attorneys, who are acting independently of court supervision, when the attorney-designated custodian attorney is assisting with the cessation of the designating-attorney's practice of law and the designating attorney's clients have been notified. The Board believes this will encourage succession planning, which in turn better protects the interests of clients and mitigates the burden on the courts.

WHEREAS, on September 20, 2019, the Supreme Court asked the Committee on Disciplinary Rules and Referenda to study and make recommendations on a comment to Part XIII, Texas Rules of Disciplinary Procedure.

WHEREAS, in lieu of a comment, the Committee on Disciplinary Rules and Referenda initiated and published proposed Rule 13.04, TRDP, to address the voluntary appointment of custodian attorneys to assist in the final resolution and closure of an attorney's practice.

WHEREAS, the Board believes an additional rule is needed to address the voluntary appointment of custodian attorneys to assist with the temporary cessation of practice due to a disabling circumstance, and to extend the same protections provided under proposed Rule 13.04 to such custodian attorneys.

BE IT RESOLVED, that the Board of Directors requests that the Committee on Disciplinary Rules and Referenda initiate the rule review process on proposed rule 13.05 Voluntary Appointment of a Custodian Attorney to Act During a Disabling Circumstance.

RESOLVED and adopted by the State Bar of Texas Board of Directors this 17<sup>th</sup> day of April, 2020.

Jerry Alexander, Chair