

# Understanding the Proposed Changes to the Texas Disciplinary Rules of Professional Conduct

## *Rules Vote Referendum 2021*

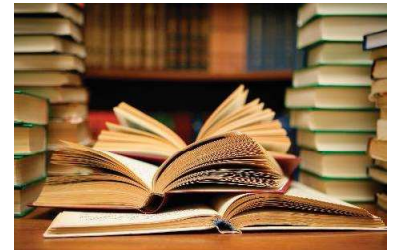
A presentation by Members of the  
Committee on Disciplinary Rules and Referenda (“CDRR”)

**Claude E. Ducloux (Austin)**

**Prof. Vincent Johnson (San Antonio)**

**Lewis Kinard, Chair (Dallas)**

## Purpose of the Changes to Rules



- Modernize the ethics rules for the Digital Age.
- Review ethics-reform proposals from all sources:
  - Lawyers, the public, sections of the bar, the courts, and the SBOT.
- Improve, clarify, and simplify the ethics rules applicable to all Texas lawyers.
- Protect the interests of the public.
- Replace or eliminate provisions that are not working.
- Address the needs and issues faced by aging lawyers and clients.

# Background: Objectivity and Perspectives



- Makeup of the Committee: lawyers and non-lawyers.
- Multiple perspectives and opinions on proposed changes.
- Each proposed rule is reviewed from the perspective of a busy practicing attorney:
  - Do I understand the rule?
  - Does this change make sense for the profession and the public?
  - Will the proposed rule unnecessarily complicate law practice?
  - And ... finally ... can we teach others what the rule means and how it applies?

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# Process: How Did We Arrive Here?



- The 2011 referendum required an “up or down” vote on several complex packages of amendments.
- The entire referendum failed.
- As part of the Sunset review process for the SBOT, the Legislature in 2017 passed Senate Bill 302, which created the CDRR.
- The CDRR is tasked with considering all ethics-reform proposals, and moving good proposals forward through an open process that welcomes comments from lawyers and members of the public.
  - CDRR proposals are submitted to the SBOT for possible approval.
  - Ultimately, each proposal approved by the Supreme Court is submitted to the lawyers of Texas through a referendum.

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# Robust Input From Texas Lawyers



The CDRR has benefited from:

- Extremely thoughtful input from the lawyers of Texas.
- Hundreds of comments received from the public.
- Detailed advice and insight offered by law professors and private practitioners.
- Numerous proposed edits, many of which have been implemented to improve the drafts.
- Valuable guidance from staff counsel, Brad Johnson, who provides legal and ethical expertise to the CDRR.

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## Eight Ballot Items Will Be Voted On



- **A: Scope and Objectives of Representation**
  - Clients with Diminished Capacity.
- **B: Confidentiality of Information**
  - Exception to Permit Disclosure to Secure Legal Ethics Advice.
- **C: Confidentiality of Information**
  - Exception to Permit Disclosure to Prevent Client Death by Suicide.
- **D: Conflict of Interest**
  - Exceptions for Nonprofit and Limited Pro Bono Legal Services.

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Also available as part of the eCourse

[First Friday Ethics \(January 2021\)](#)

First appeared as part of the conference materials for the 2021 First Friday Ethics (January 2021) session

"Understanding the Proposed Changes to the Texas Disciplinary Rules of Professional Conduct, Referendum 2021"