

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

## *Rules Vote Referendum 2021*

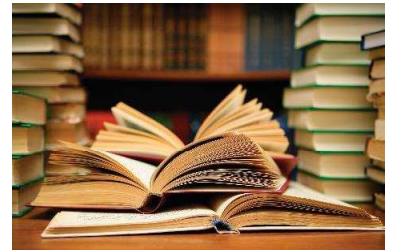
A presentation by Members of the  
Committee on Disciplinary Rules and Referenda (“CDRR”)

**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?

3

3

# 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.

4

4

# 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.

5

# 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.

6

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