

Understanding the Pending Changes to the Texas Disciplinary Rules

*Rules Vote Referendum 2021: **Passed!***

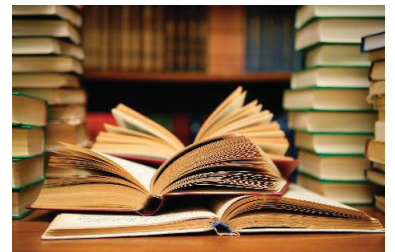
A look at the Process
What are the Next Steps?
How Will Law Practice Change in Texas?

Presenters:

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Member, Committee on Disciplinary Rules and Referenda
and Scott Rothenberg, Houston



Purpose of the Changes



- 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.

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 The CDRR was Created



- **HISTORICAL FAIL:** 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 Board for possible approval.
 - Ultimately, each proposal approved by the SBOT Board 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 from many sources, 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 Lawyers 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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