

Understanding the 2024 Changes to the Texas Disciplinary Rules

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Part 1: Purpose of the Changes

- Modernize ethics rules for the digital age
- Improve, clarify, and simplify the ethics rules applicable to all Texas lawyers
- Protect the public
- Replace or eliminate provisions that are not working
- Address issues surrounding aging lawyers and clients



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Part 2:

Overview of The Ballot Proposals

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The 12 Ballot Items that Lawyers Will Vote On

1. Terminology (Rule 1.00) – Approved 85.11%

- Improved explanations and definitions including
 - “informed consent” “screened” “writing” “substantial”

2. Conflict of Interest: Doing Business w/Client (Rule 1.08) – Approved 80.94%

- Better, clearer explanations concerning disclosure and agreements

3. Conflict of Interest: Former Client (Rule 1.09) – Approved 80.86%

- Clearer explanations of duties to former clients, defining “substantial relationships,” and duties of lawyers moving between firms

4. Imputation of Conflict of Interest (Rule 1.10) – Approved 80.36%

- Explanations improved defining when a lawyer is disqualified due to “substantial” relationship of another lawyer in firm

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5. Duties To Prospective Client (Rule 1.18) – Approved 78.21%

- Defines “prospective client” and when such prospective client’s disclosures must be protected. Also contains protections for lawyers against intentional attempts to disqualify firms.

6. Special Duties of a Prosecutor (Rule 3.09) – Approved 85.93%

- Duty to report “new and credible” evidence creating “reasonable likelihood” that convicted defendant did not commit the crime

7. Dealing with Unrepresented Persons (Rule 4.03) – Approved 77.48%

- Confirms duty not to give advice to unrepresented party which reasonably creates conflict with lawyer’s client

8. Responsibility of a Partner or Supervisory Lawyer (Rule 5.01) – Approved 75.66%

- Clarifies and confirms duties of managerial attorneys to make reasonable efforts that lawyers supervised comply with the disciplinary rules

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9. Unauthorized Practice of Law (Rule 5.05) – Approved 82.63%

- Defines which jurisdiction’s disciplinary rules prevail when misconduct is alleged in another jurisdiction against a Texas lawyer, and when a lawyer licensed elsewhere is alleged to have committed misconduct in Texas

10. Jurisdiction (Rule 8.05) – Approved 81.52%

- Confirms that a Texas lawyer is always subject to potential disciplinary action in Texas regardless of where the alleged misconduct occurs

11. Choice of Law (Rule 8.06) – Approved 82.55%

- Provides consideration of the “predominant effect” of a lawyer’s conduct when choosing which jurisdiction’s rules should be applied. But Texas lawyers advertising or soliciting from out of state seeking Texas employment are still subject to Texas Advertising Rules.

This last item is a **Rule of Disciplinary Procedure**

12. Termination of Custodianship (New Section 13.05) – Approved 85.89%

- Guides lawyers on how to terminate a custodianship created under 13.03 or 13.04

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First appeared as part of the conference materials for the
2024 First Friday Ethics (October 2024) session

"State Bar Election Results and New Disciplinary Rules"