

COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

2018 Annual Report



CDRR

COMMITTEE MEMBERS

M. Lewis Kinard - Chair

Timothy Belton

Amy Enlow Bresnen

Claude Ducloux

Hon. Dennise Garcia

Harold Frederick (Rick) Hagen

Vincent Johnson

W. Carl Jordan

Jane Anderson King

ABOUT

The Committee on Disciplinary Rules and Referenda (CDRR) was created by the 2017 Texas Legislature in Section 81.0872 of the State Bar Act. The committee consists of nine members. Seven attorney members and two non-attorney public members. The committee's charge is to:

1. Regularly review the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure
2. At least annually issue to the Supreme Court and the board of directors a report on the adequacy of the rules
3. Oversee the initial process for proposing a disciplinary rule

Representing a broad range of perspective, the Committee consists of:

- Three attorneys appointed by the president of the State Bar;
- One non-attorney public member appointed by the president of the State Bar;
- Four attorneys appointed by the Supreme Court; and
- One non-attorney public member appointed by the Supreme Court.

The president of the State Bar and the chief justice of the Supreme Court alternate designating an attorney member of the committee to serve as the presiding officer of the committee for a term of one year.

TERM EXPIRING DECEMBER 31, 2020

M. Lewis Kinard, Chair - Dallas
Claude Ducloux - Austin
Vincent Johnson - San Antonio

TERM EXPIRING DECEMBER 31, 2019

Timothy Belton (Public Member) - Bellaire
Amy Enlow Bresnen - Austin
Harold Frederick "Rick" Hagen - Denton

TERM EXPIRING DECEMBER 31, 2018

Hon. Dennise Garcia - Dallas
W. Carl Jordan - Houston
Jane Anderson King (Public Member) - Canyon

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Hon. Dennise Garcia (Dallas) serves as presiding Judge for the 303rd Judicial District Court. She became Board Certified in Family Law by the Texas Board of Legal Specialization in 2000, and received her certification in Family Jurisprudence by the Texas College for Judicial Studies in 2012. She is a member of the State Bar of Texas' Texas Pattern Jury Charge Committee (Family and Probate), and Texas Academy of Family Law Specialists. She is also a Judicial Professor of family law at SMU's Dedman School of Law. The Texas chapter of the American Academy of Matrimonial Lawyers awarded Judge Garcia their Jurist of the Year award for 2016. Southern Methodist University's Women's Symposium has awarded her its Profiles in Leadership award, and Dallas' Volunteer Attorney Program awarded her the Merrill Hartman pro bono service award. Judge Garcia earned her B.S., B.A. in 1990 from Southern Methodist University and her J.D. in 1993 from the SMU Dedman School of Law. She is trained in Family Mediation and Civil Disputes and in Collaborative Law Procedures.



W. Carl Jordan (Houston) Carl Jordan has been with the law firm of Vinson & Elkins LLP his entire career. For approximately 40 years, he practiced in the field of employment and labor law, while also serving in various leadership roles of the firm, including as a member of its management committee. He currently serves as the firm's general counsel. Carl has been recognized as a leading employment and labor practitioner. Chambers USA has described Carl as being held "in high esteem for his knowledge of all facets of labor and employment work", as "equally comfortable in big-ticket litigation or in the boardroom" and as continuing to "carve out a place for himself at the leading edge." Human Resource Executive and LawDragon have described him as "one of the most powerful employment attorneys in America."



Jane Anderson King - Public Member (Canyon) Jane Anderson King recently retired after leading the Juvenile Justice programs in Randall County, Texas for 41 years as their Chief Juvenile Probation Officer. She was instrumental in developing treatment programs that have successfully been replicated in other states. A Licensed Clinical Social Worker, Jane has a Masters of Arts degree from West Texas State University. She currently volunteers at her local church doing pastoral care as well as teaching classes on discipleship. Jane served on the local grievance panel for six years and also served for six years on the Commission for Lawyer Discipline. Jane also currently serves on the Board of Cal Farley's Boys Ranch. She was appointed as an inaugural member of the Texas Juvenile Justice Department.

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Timothy Belton - Public Member (Bellaire) is a retained executive search consultant with Preng & Associates and Chairman of ZeoGas LLC. His search practice focuses on group hires in support of large transactions, to which he brings a “client perspective” where search is part of the investment to drive an organization’s growth in value. Mr. Belton began his career at Andersen Consulting Strategic Services (Accenture) where he led major change, acquisition strategy and growth agendas for billion-dollar revenue companies, culminating in his leadership of the firm’s post-merger integration practice in Texas. He later served as the restructuring officer and then COO of TRC Companies (NYSE: TRR, now private) leading the creation of a national management team to integrate the portfolio of 30+ acquired companies, as well as the Chairman and CEO of TDECU Holdings, the for-profit subsidiary of the related \$3 billion credit union. He serves as a Trustee and Finance Committee Chair of The Texas Center of Legal Ethics and President of the Business Ethics Forum. Mr. Belton holds a BBA in Business and Technology Management from the University of Texas McCombs School of Business and an MBA from the Harvard Business School.



Harold Frederick "Rick" Hagen (Denton) Rick Hagen is a Past President of the Texas Criminal Defense Lawyers Association and is board certified in criminal law by the Texas Board of Legal Specialization. He obtained his undergraduate degree from Austin College and worked as the Legislative Assistant for State Representative Jim Horn. Hagen graduated law school from the University of Oklahoma in 1990, where he received the American Jurisprudence Award for Trial Techniques. He was hired by the Honorable Rusty Duncan as a briefing attorney on the Texas Court of Criminal Appeals and then served two years as a felony prosecutor. His practice is in Denton and is limited to criminal law.



Amy Enlow Bresnen (Austin) Amy Bresnen is an attorney and lobbyist at Bresnen Associates, Inc. Ms. Bresnen's private sector representation of clients has included major corporate and small businesses, local governments and non-profits, with such diverse issues as ethics, civil justice, family law, public education, human rights, water, telecommunications, mental health care, regulation of various professions, eminent domain, the judiciary, gaming, pension systems, taxes and fees, technology, transportation, state appropriations, electric regulation, and issues affecting public safety personnel. She has recently published an article in the Journal of the National Association of Administrative Law Judiciary ("Ethical Choices: Contested Case Procedures and Judicial Review Applicable to Politicians Versus Other Regulated Actors"). Ms. Bresnen also serves as a member of the Board of the St. Mary's University School of Law Alumni Association.

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Claude E. Ducloux (Austin) is Board Certified in both Civil Trial (1984) and Civil Appellate Law (1987), licensed in Texas, Colorado and California who speaks regularly on Legal Ethics, Law Office Management, and Trial-Related topics. He is a former President of the Austin Bar, and Chair of The Texas Board of Legal Specialization, The Texas Bar Foundation, the State Bar College and the Texas Center for Legal Ethics. Mr. Ducloux has written extensively on various legal education and disciplinary issues, and is a US Army Veteran.



Vincent R. Johnson (San Antonio) is the South Texas Professor of Law at St. Mary's University. He teaches and writes in the areas of torts, professional responsibility, legal malpractice law, government ethics, international law, and comparative law. Professor Johnson has served as a Fulbright Scholar in Burma, China, and Romania. His articles have been cited in more than 200 law reviews and 40 federal and state court decisions. Professor Johnson is an elected member of the American Law Institute. He received his J.D. from the University of Notre Dame, an LL.M. from Yale University, and a second LL.M. from the London School of Economics.



M. Lewis Kinard, Chair (Dallas) is Executive Vice President, General Counsel and Assistant Corporate Secretary for the American Heart Association in Dallas, Texas. He was the last chair of the State Bar's Committee on Disciplinary Rules and Professional Responsibility, and served on that committee for seven years. Kinard has over 30 years of legal practice in a wide range of substantive areas, is licensed to practice law in Texas and Arkansas and formerly held a "single client" license in Colorado. At the AHA, he has focused on international commercial agreements, ground-breaking collaborative research programs, and growing the AHA's legal department to keep pace with the organization's evolving global legal needs. Kinard earned a bachelor's degree at the University of Arkansas and J.D. at SMU's Dedman School of Law.

RULE PROPOSAL PROCESS

RULE PROPOSAL A request to initiate the rule proposal process may be made by: (1) A resolution of the State Bar of Texas Board of Directors; (2) a request by the Texas Supreme Court; (3) a request by the Commission for Lawyer Discipline; (4) a petition signed by at least 10% of registered members of the State Bar; (5) a concurrent resolution of the legislature; or (6) a petition signed by at least 20,000 people, of which at least 51% or 10,200 or more are Texas residents. In addition, the Committee can initiate the process for proposing a rule.

INITIATION The Committee must vote to initiate the rule process or decline in writing within 60 days

PUBLICATION A proposed rule must be published in (1) the Texas Register and (2) the Texas Bar Journal within six months after the proposal process is initiated.

COMMENT PERIOD Once initiated the proposal process shall include a period of at least 30 days for interested parties to submit comments on the rule to the Committee. (Note: The Committee has extended the comment period to 60 days to provide more for public feedback.)

PUBLIC HEARING During the comment period, the Committee shall hold a public hearing on a proposed rule at the Committee's discretion or if requested by (1) at least 25 people; a state agency or political subdivision of this state, or (3) an association with at least 25 members.

COMMITTEE VOTE The Committee shall vote whether to recommend a proposed rule to the Board of Directors not later than the 60th day after the comment period.

BOD VOTE The board of directors shall vote on each proposed disciplinary rule recommended by the committee not later than the 120th day after the date the rule is received from the committee. The board shall vote for or against the rule or return the rule to the committee for additional consideration. Approved rules shall be submitted to the Supreme Court.

REFERENDUM On receipt of a petition filed by the board of directors under Section 81.0877(b), the supreme court shall: (1) distribute a copy of the rule in ballot form to each member of the state bar and order a vote on the rule; and (2) publish the rule in: (A) the Texas Register; and (B) the Texas Bar Journal. (b) The supreme court shall give state bar members: (1) at least 30 days to consider a proposed disciplinary rule before voting begins; and (2) 30 days to vote on the proposed disciplinary rule following the period for considering the proposed rule under Subdivision (1).

ADOPTION The supreme court by majority vote may approve or reject a proposed disciplinary rule in its entirety, but may not approve or reject only part of the rule. If the supreme court does not vote on the rule on or before the 120th day after the date the rule is approved by bar members under Section 81.0878, the rule is considered approved by the supreme court.

YEAR ONE



Much of the first year was spent developing the committee's organizational process and procedures to ensure compliance with the statute. The CDRR paid particular attention to statutory deadlines, and developed a schedule for reviewing each rule proposal. The Committee adopted drafting rules based in large part on commentary by former UT Law School Dean John Sutton to help others when proposing a rule change.

The CDRR is committed to creating a transparent process. A website was developed for the committee to communicate and gather feedback from the public. The website contains a schedule of the committee meetings, agendas, minutes and meeting materials for each meeting. Additionally, members of the public may submit comments on any of the proposed rules through the website. To learn more, visit texasbar.com/CDRR.

On October 3, 2018, the CDRR conducted its first public hearing on proposed rules changes to Rule 1.05, 1.02(g), and 1.16 of the Texas Disciplinary Rules of Professional Conduct (TDRPC) pertaining to confidentiality and diminished capacity. The CDRR conducted its second public hearing on January 9, 2019 pertaining the Lawyer Advertising Rules (Part VII, Texas Disciplinary Rules of Professional Conduct.). The CDRR received valuable feedback at these public hearings, and received written commentary as well.

RULE REVIEW

CONFIDENTIALITY

Rule 1.05 Confidentiality

The Committee addressed a proposed change to TDRPC Rule 1.05 by drafting an additional exception for when a lawyer may divulge client confidential information. To be added as Rule 1.05(c)(9), the exception permits a lawyer to reveal client confidential information to secure legal advice about the lawyer's compliance with the rules of professional conduct.



DIMINISHED CAPACITY

Rule 1.02(g) Scope and Objectives of Representation and Rule 1.16 Diminished Capacity

The Committee addressed a proposed deletion of TDRPC Rule 1.02(g) dealing with a lawyer's duties to a client who may lack competency. It was proposed that this Rule be replaced with a new Rule 1.16, dealing with a lawyer's duties to a client with diminished capacity. Proposed Rule 1.16 is designed to give more guidance to lawyers than Rule 1.02(g) and to be more detailed in what a lawyer is permitted to do when a client's mental capacity significantly diminishes.



RULE REVIEW - CONTINUED

ADVERTISING RULES

TDRPC Section VII - Information About Legal Services

The State Bar of Texas Board of Directors requested the initiation of the rule proposal process from the Committee with regards to all of the TDRPC Section VII Rules, more commonly referred to as the advertising and solicitation rules.

The Committee was provided with a report and proposed rule modifications of the Section VII rules that was prepared by the State Bar of Texas Advertising Review Committee. CDRR reviewed the Advertising Review Committee materials and made revised proposals for rule changes.

PRO BONO

Rule 6.05 Pro Bono Legal Services Programs

The Committee addressed a proposed new Rule 6.05. This is a proposed rule that would provide to lawyers exceptions to the conflict of interest rules when the lawyer is engaged in practicing law in situations involving limited pro bono legal services, such as participating in a disaster relief clinic.



MOVING FORWARD

The Committee looks forward to its ongoing review of the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure.

CDRR will remain committed to a transparent process and will continue working closely with interested parties throughout each review.

Please submit any comment or questions to cdr@texasbar.com.