

PROPOSED CHANGES TO THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

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The State Bar is currently holding an election on proposed changes to the Disciplinary Rules of Professional Conduct, with voting conducted during the period from February 2nd to March 4th. A summary of the proposed amendments is available [here](#); more detail is available [here](#); and you can register [here](#) for a free public forum webinar on February 9th about the proposed amendments. The public forum includes a one-hour CLE presentation by members of the Committee on Disciplinary Rules and Referenda, which also counts as legal ethics credit. It will be followed by a live forum at which attendees can ask questions and provide comments. If you cannot attend the live forum, videos of earlier public forums are available for self-study credit [here](#).

The Tax Section's Pro Bono Committee wants to bring to your attention [ballot item D](#), concerning exceptions to conflict of interest rules for nonprofit and limited pro bono legal services. That item adds a new Rule 6.05, which may impact section members who volunteer for our Tax Court calendar call program. Our volunteers show up at Tax Court trial sessions and offer free consultations to unrepresented taxpayers who come to court. That may involve evaluating the strength of their case and any settlement offers from the IRS, explaining court procedures, or helping them prepare for trial. These taxpayers are usually unable to hire private practitioners to represent them. Alternatively, a case may involve a deficiency that would pose a significant burden to the taxpayer but is too small to justify the cost of hiring an attorney. Without free assistance, the taxpayers cannot effectively navigate their way through the complications of a Tax Court trial.

Conflicts of interest requirements can be a problem for our volunteers. When volunteers first meet and identify the taxpayer at the calendar call, there is little time to perform a conflicts check. Although these representations may be unlikely to create a conflict, proceeding with representation without a conflicts check is a risk that could inhibit section members from volunteering.

The ABA Model Rules of Professional Conduct have long had a provision addressing the problem and providing relief from stringent conflicts of interest requirements. [Model Rule 6.5](#) applies to lawyers who provide short-term limited legal services under the auspices of a program sponsored by a nonprofit organization or court. It provides that volunteer is subject to conflicts of interest rules only if he/she actually knows that the representation involves a conflict of interest. The imputation of conflicts by other members of the same firm also does not apply unless the volunteer actually knows that another lawyer in the firm would be disqualified with respect to that representation. However, the Texas Disciplinary Rules of Professional Conduct do not have a comparable provision.

Proposed Rule 6.05 is carefully crafted to provide a narrow exception to the conflicts of interest requirements. We urge your support for ballot item D.