



Reopening Courts Means **CAREFULLY BALANCING PRIORITIES**

AS A CRIMINAL DEFENSE LAWYER, I am mindful of the need to resume criminal court proceedings in a way that balances public health and safety with the constitutional rights of the accused. In June, the State Bar Board of Directors approved my request to form the 17-member Presidential Task Force on Criminal Court Proceedings to support the judiciary's plans to resume operations in light of the COVID-19 pandemic. I'm pleased to report the task force has released a set of recommendations that will help ensure our courts strike that balance.

Following nine weeks of remote meetings, the task force produced an interim report on August 26 containing 14 recommendations. The members included judges, prosecutors, and defense lawyers from across Texas. All agreed that no trial should proceed unless the safety of all participants and the constitutional rights of the accused are adequately protected, and their recommendations guide the way to achieving those goals.

One example of the balancing act is face coverings. The task force supported requiring face coverings (shields and masks) in court, but said witnesses should remove their masks while testifying so practitioners have an unobstructed view of their faces. Another example is the issue of how to safely handle physical evidence. The task force supports the creation of protocols in advance of a trial for the safe handling of evidence—which could include digitizing evidence—but would not limit the right of any party to safely publish admitted physical evidence to a jury. I encourage you to read the task force report at texasbar.com/president, under the “Initiatives” heading.

The recommendations have been well received by the Texas Supreme Court and the Office of Court Administration. The OCA's subsequent recommendations to the court regarding jury proceedings reflect the task force's input. “The work of the task force was extremely beneficial to OCA as we prepared our report and recommendations to the Supreme Court,” said David Slayton, OCA administrative director. “Almost all of the recommendations of the task force were incorporated in our recommendations and will be helpful to courts as they plan to resume jury trial proceedings.”

I want to thank the task force co-chairs—124th State District Judge Alfonso Charles, Texas District & County Attorneys Association President Kenda Culpepper, and Texas Criminal Defense Lawyers Association President Grant Scheiner—and all task force members for their work. This is a great example of lawyer self-governance in action and of the good that comes when various segments of our bar bring their expertise to bear to solve big problems.

Eviction Resources for Attorneys and the Public

As mentioned in my email message on September 3, the State Bar has gathered resources related to the potential eviction crisis for attorneys around the state to access and share with those in need. These resources include free informational videos about COVID-19 and tenant-landlord legal issues, links to social service and legal aid agencies, and information on how to volunteer to take pro bono cases. You can find these resources at texasbar.com/renterinfo.

LARRY MCDOUGAL

President, 2020-2021
State Bar of Texas



Promises **KEPT**

AT THE SEPTEMBER QUARTERLY MEETING of the State Bar of Texas Board of Directors, I announced my action plan on issues of diversity, equity, and inclusion. Central to my plan is a series of virtual community conversations on race relations to be held for each of the 17 State Bar director districts across the state.

My goal is that every Texas lawyer will receive an email invitation to participate in at least one of these free events before my term as president ends in June 2021. The concept is based on Together We Dine, a successful project started in 2017 by the Dallas-based Project Unity initiative in partnership with the Dallas Bar Association that brings together diverse groups for facilitated conversations about race over dinner.

This is a non-confrontational listening exercise, and it allows people to openly discuss racism in a way some of us never have before. Count me in that category: For years I've regularly gone hunting or fishing or played golf with Black friends. They have stayed at my home and shared meals at my dinner table, but we never discussed racism. When I attended a virtual Together We Dine event recently, I found a safe place for everyone to discuss racism.

State Bar District Director Rob Crain, who helped launch Together We Dine as Dallas Bar Association president in 2017, is helping me spearhead this statewide initiative. Project Unity has graciously agreed to provide facilitators and run the programs for the bar.

Also as part of my plan, I want to work to increase minority representation on boards and committees by updating appointment interest forms so applicants can indicate their race/ethnicity, sex, gender identity, and sexual orientation. As president-elect last year, I was responsible for making appointments to various boards and committees, and I spent considerable time researching applicants to make sure my appointments were diverse. We should make it easier on future presidents-elect to pursue diversity by changing these forms to provide more information upfront.

I also plan to produce new implicit bias CLE courses—possibly including a free non-mandatory course—to be made available to all Texas lawyers.

Update on Presidential Task Forces

I focused my October column on the great work of the Presidential Task Force on Criminal Court Proceedings and its 14 recommendations to help ensure our courts balance public health and safety with the constitutional rights of the accused when resuming operations. The Office of Court Administration included almost all of the task force's suggestions in its recommendations to the Texas Supreme Court.

At its September 25 meeting, the State Bar board approved my requests to create a grievance review task force and a work group on courthouse access badges for Texas lawyers.

Chaired by former Judge Michael Fields, of Houston, the 21-member Task Force on Public Protection, Grievance Review, and the Client Security Fund will study the grievance process and the Office of Chief Disciplinary Counsel with the mindset of ensuring the grievance process remains fair to the lawyers of Texas while ensuring the public is protected from lawyers who may take advantage of them. A recommendation will then be presented to the board of directors, hopefully by the April 2021 board meeting. The board can then take action to implement procedural issues and to refer any rule changes to its Discipline and Client-Attorney Assistance Program Committee and the Committee on Disciplinary Rules and Referenda. Please send any concerns or recommended changes to larry.mcdougal@texasbar.com.

The 14-member Courthouse Access Badge Workgroup is chaired by State Bar District Director David Sergi, of San Marcos. The goal of this group is to work with state and county officials to seek a mutual agreement on the courthouse access issue.

At the January 22 board of directors meeting, I will ask the board to approve another work group. This group will focus on lawyer advertising and the changes necessary to make it more user friendly and to recommend any rule changes to the State Bar board.

I look forward to providing additional updates as the work of these groups continues.

LARRY MCDOUGAL

President, 2020-2021
State Bar of Texas



Handling the **HOLIDAYS**

WE'VE COME TO THE END OF A MOST UNUSUAL AND CHALLENGING YEAR. Even as I extend a hearty “Happy Holidays” to all Texas lawyers, I know this season can be unhappy for many of us—even when we’re not facing a pandemic and a recession.

During my time as a police officer, I found the highest rates (and some of the most violent cases) of domestic violence occurred during the holiday season. My time as a criminal defense attorney has confirmed that for many, the holidays add additional stress to our already stressful lives. When we add in the stresses that we as lawyers are already facing in 2020, the Texas Lawyers’ Assistance Program provides a lifeline.

TLAP offers confidential help for Texas lawyers, judges, and law students with stress and anxiety, depression, substance use, and other mental health issues. You can contact TLAP 24/7 by text or phone at 800-343-TLAP (8527)—or find a wealth of online well-being resources at tlaphelps.org.

I want to highlight a few TLAP resources that are especially timely:

- For people feeling isolated, struggling with a mental health issue, or in need of recovery support, TLAP maintains a list of Well-Being Resources for Remote Living at texasbar.com/tlaphelps/remote-well-being.
- TLAP’s Remote Well-Being Wednesday program in November focused on “How Lawyers Can Handle the Holidays.” You can watch the program at the link immediately above.
- TLAP now has a video counterpart to its “Stories of Recovery” series featured on the Texas Bar Blog. These monthly videos include candid accounts of the path to recovery. Follow TLAP on Facebook (@TLAPhelps) for the latest event updates, including Zoom login information.

The Year Ahead

I have updated you in recent columns on the work of my various presidential task forces and work groups, and I expect the months ahead will include even more activity. The State Bar Board of Directors will meet virtually at 9 a.m. CST on January 22 for its quarterly meeting, and you are all invited to watch the meeting, sign up to speak, and submit written comments about the items before the board. We are here to serve you and want your input.

I look forward to reporting more progress in 2021 as we work to support Texas lawyers and the legal profession. Until then, take care of yourselves and enjoy the holidays.

LARRY MCDUGAL

President, 2020-2021
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What to Know BEFORE YOU VOTE, PART 2

THE 2021 RULES VOTE IS UPON US—do you know what's on the ballot?

All members of the State Bar of Texas who are active and in good standing are eligible to vote on eight proposed changes to the lawyer disciplinary rules. I encourage you to learn about the proposals and cast your vote by paper or electronic ballot anytime from February 2 to March 4 at 5 p.m. CST.

Last month my President's Page featured summaries of the first four ballot items. The remaining ballot items are the focus of this column.

If you're just now learning about the rules vote, you can find all of this information and more at texasbar.com/rulesvote. While you're there, you can also sign up to attend the State Bar's remaining public forum webinar on February 9, which will include a one-hour ethics CLE on the proposals and a live forum where you can ask questions and offer comments.

The final four ballot items are summarized below.

- **Ballot Item E: Information About Legal Services (Lawyer Advertising and Solicitation):**

This comprehensive proposal would simplify and modernize lawyer advertising and solicitation rules by amending Part VII of the Texas Disciplinary Rules of Professional Conduct. The proposal would reduce Part VII from seven to six rules (numbered 7.01 to 7.06). Among other changes, the proposal would:

- 1) permit a lawyer to practice law under a trade name that is not false or misleading (bringing Texas in line with the vast majority of other states);
- 2) define "advertisement" and "solicitation communication";
- 3) simplify disclaimer and filing requirements;
- 4) add exemptions to certain solicitation restrictions for communications directed to lawyers, persons with whom the lawyer has a close personal or prior business or professional relationship, and persons known by the lawyer to be experienced users of the type of legal services involved for business matters;
- 5) expand exemptions to filing requirements; and
- 6) expressly address social media communications.

The proposal would maintain the prohibition on false or misleading communications about a lawyer's or law firm's qualifications and services. The proposal would also continue the requirement that an advertisement include the name of a lawyer responsible for its content.

- **Ballot Item F: Reporting Professional Misconduct and Reciprocal Discipline for Federal Court or Federal Agency Discipline:**

This proposal would amend Rule 8.03 of the Texas Disciplinary Rules of Professional Conduct and Rules 1.06 and 9.01 of the Texas Rules of Disciplinary Procedure to extend existing self-reporting and reciprocal-discipline provisions to cover certain professional discipline by a federal court or federal agency. The proposal limits "discipline" by a federal court or federal agency" to mean a public reprimand, suspension, or disbarment. The proposal clarifies that the term does not include a letter of "warning" or "admonishment" or a similar advisory by a federal court or federal agency. The provisions also do not apply to mere procedural disqualification in a particular case.

- **Ballot Item G: Assignment of Judges in Disciplinary Complaints and Related Provisions:**

These proposed rule changes would simplify the assignment of judges and address inconsistencies between current Rule 3.02 of the Texas Rules of Disciplinary Procedure and other statutes and rules already in place, whenever a respondent attorney in a disciplinary case chooses to have the matter heard by a district court.

- **Ballot Item H: Voluntary Appointment of Custodian Attorney for Cessation of Practice:**

Proposed Rule 13.04 of the Texas Rules of Disciplinary Procedure would authorize a lawyer to voluntarily designate a custodian attorney to assist with the designating attorney's cessation of practice and provide limited liability protection for the custodian attorney.

One of the many benefits of membership in Texas' unified, mandatory bar is the right to vote on disciplinary rule changes. Please join me in exercising that right starting February 2.

LARRY McDOUGAL

President, 2020-2021

State Bar of Texas