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New Disciplinary Committee Members Appointed by SCOTX and State Bar

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By **Angela Morris** | January 09, 2018

The new year has brought a new procedure for changing attorney disciplinary rules and the referendum process that gives lawyers the vote on rule changes.

The Texas Supreme Court and State Bar of Texas have appointed members to the new Committee on Disciplinary Rules and Referenda, which the Texas Legislature created last year in Senate Bill 302. That legislation—the bar’s [sunset review bill](#)

(<https://www.law.com/texaslawyer/almID/1202787948691/state-bar-of-texas-bill->



Texas Supreme Court building.

[approved-by-legislature/?back=law](#))—also spelled out a new way for the committee to draft rule changes, take feedback from lawyers and seek approval from the state bar and supreme court.

The chairman of the committee, appointed by the state bar, is M. Lewis Kinard, the executive vice president, general counsel and assistant corporate secretary of the American Heart Association in Dallas. Next year, the supreme court will appoint the chairperson. The high court and state bar each appoint half of the remaining eight committee members.

Just before the new year, the [supreme court appointed](#) (<http://www.txcourts.gov/media/1439527/179165.pdf>) five committee members: 303rd District Judge Dennise Garcia of Dallas; W. Carl Jordan, a labor and employment partner in Vinson & Elkins in Houston; Claude Ducloux, an ethics and legal malpractice solo practitioner in Austin; Vincent Johnson, an ethics and legal malpractice professor at St. Mary's University School of Law in San Antonio; and Timothy Belton, a nonlawyer who is president and CEO of ZeoGas in Houston.

State Bar President Tom Vick has appointed: Amy Bresnen, attorney and lobbyist at Bresnen Associates in Austin; Jane Anderson King, an Amarillo nonlawyer and former Randall County chief juvenile probation officer; and Rick Hagen, a criminal law and constitutional law partner in Jackson & Hagen in Denton.

The bar in October 2017 hired a part-time staff attorney to serve the committee, a job that the sunset bill authorized. The position will probably turn full time in the upcoming bar year, according to bar spokeswoman Amy Starnes. She said the committee's first meeting hasn't been set.

New rule-making process

The law that created the committee also [spelled out its duties](#) (<http://www.capitol.state.tx.us/tlodocs/85R/billtext/html/SB00302F.htm>). It must review the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary

Procedure, and issue an annual report to the supreme court and state bar about the adequacy of the rules.

The committee oversees the process of proposing a new disciplinary rule. Any time that the committee, the bar's board or the supreme court want to deliberate a rule, it must provide public notice, keep the meeting open to the public, and make any type of vote public.

The idea for a rule could come from within the committee. An idea could come also from an outside request from the state bar's board of directors, the supreme court, the legislature, or from a petition signed by 10 percent of Texas lawyers or a petition signed by 20,000 people—half of whom must be Texas residents.

The committee is allowed to decline to make rule changes based on such outside requests. However, if the committee takes up an issue, it must follow a set procedure that includes studying the change, holding a public hearing, drafting the rule and making efforts to seek feedback from all over Texas. The public can submit written comments, and under certain circumstances, the committee might have to hold another public hearing. Next, the committee can amend a rule if needed, based on the feedback, and then the committee must vote on whether to recommend the new rule to the state bar board.

In the next stage of the process, the bar's board votes for or against a proposed rule, or to send it back to the committee. If the board does approve the proposal, it then asks the supreme court to call a referendum so that lawyers can vote on the new rule.

At that step, the supreme court sends the rule on a ballot to Texas lawyers and publishes the rule in the Texas Register and Texas Bar Journal. There can be multiple rules on one ballot, however, a lawyer votes on each individual rule.

According to the law, the state bar must allow supporters and opponents to have "an equal opportunity to present their views at any bar-sponsored forum" discussing the rule.

At the very end, the supreme court has the power to approve or reject any rule change entirely— but it can't approve or reject just part of the rule.

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