

MEETING OF THE COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

May 5, 2021
By Teleconference

MINUTES

Members Present: Chair M. Lewis Kinard; Timothy D. Belton; Claude Ducloux; Justice Dennise Garcia; Professor Vincent Johnson; W. Carl Jordan; Karen Nicholson.

Members Not Present: Amy Bresnen; Rick Hagen.

State Bar of Texas Staff Present: Ray Cantu, Deputy Executive Director; Seana Willing, Chief Disciplinary Counsel; Brad Johnson, In-House Legal Counsel; Cory Squires, Staff Liaison.

A. CALL TO ORDER; ROLL CALL

Mr. Kinard called the meeting to order at 10:03 a.m. Mr. Squires called the roll and a quorum was present. (Justice Garcia joined the meeting at 10:06 a.m.)

B. COMMENTS FROM THE CHAIR

Update on the Deliberations by the Supreme Court of Texas on the Proposed Amendments to the Texas Disciplinary Rules of Professional Conduct (TDRPC) and the Texas Rules of Disciplinary Procedure (TRDP)

Mr. Kinard provided an update on the May 4, 2021, public deliberations by the Supreme Court of Texas on the proposed disciplinary rule amendments that were recently approved by State Bar members. Mr. Kinard thanked the Supreme Court for its consideration of the proposals.

C. APPROVAL OF THE MINUTES OF THE LAST MEETING

Mr. Kinard addressed the Committee on this agenda item. Mr. Ducloux made a motion to approve the minutes of the April 7, 2021, meeting. Mr. Belton seconded the motion. The Committee voted in favor of the motion.

D. PROPOSED CHANGES TO COMMENTS TO RULES 1.03 (COMMUNICATION), 1.05 (CONFIDENTIALITY OF INFORMATION), 1.15 (DECLINING OR TERMINATING REPRESENTATION), 4.02 (COMMUNICATION WITH ONE REPRESENTED BY COUNSEL), AND/OR 5.04 (PROFESSIONAL INDEPENDENCE OF A LAWYER), TDRPC, AND OTHER PROPOSED CHANGES TO RULE COMMENTS IDENTIFIED AS NEEDED AS A RESULT OF THE RECENT RULES VOTE AND SUPREME COURT OF TEXAS DELIBERATIONS

Mr. Kinard addressed the Committee on this agenda item.

Mr. Ducloux made a motion to approve proposed changes to the proposed comment to proposed Rule 1.16, TDRPC, as well as proposed changes to comments to Rules 1.03, 1.05, and 1.15, TDRPC.

Justice Garcia seconded the motion. The Committee voted in favor of the motion. The Committee's recommendation will be submitted to the Supreme Court of Texas for consideration.

Mr. Ducloux made a motion to recommend proposed comment changes related to proposed Rule 1.05(c)(9), TDRPC, to the Supreme Court of Texas. Ms. Nicholson seconded the motion. The Committee voted in favor of the motion. The Committee's recommendation will be submitted to the Supreme Court of Texas for consideration.

Justice Garcia made a motion to accept proposed changes to the proposed comment to proposed Rule 6.05, TDRPC. Mr. Ducloux seconded the motion. The Committee voted in favor of the motion. The Committee's recommendation will be submitted to the Supreme Court of Texas for consideration.

Mr. Belton left the meeting.

The Committee discussed proposed comments related to the proposed advertising rules (the proposed amendments to Part VII, TDRPC).

Mr. Ducloux made a motion to approve proposed changes to the comment to Rule 4.02, TDRPC. Justice Garcia seconded the motion. The Committee voted in favor of the motion. The Committee's recommendation will be submitted to the Supreme Court of Texas for consideration.

Mr. Ducloux made a motion to approve the proposed comment to proposed Rule 13.04, TRDP. Ms. Nicholson seconded the motion. The Committee voted in favor of the motion. The Committee's recommendation will be submitted to the Supreme Court of Texas for consideration.

Mr. Ducloux made a motion to approve additional proposed changes to the proposed comment to proposed Rule 1.16, TDRPC. Justice Garcia seconded the motion. The Committee voted in favor of the motion. The Committee's recommendation will be submitted to the Supreme Court of Texas for consideration.

E. PROPOSED RULE 1.17 (SALE OF LAW PRACTICE), TDRPC

Mr. Kinard and Professor Vincent Johnson addressed the Committee on this agenda item. Professor Vincent Johnson made a motion to table the subject until the Committee's June 2021 meeting. Ms. Nicholson seconded the motion. The Committee voted in favor of the motion.

F. PROPOSED RULE 1.00 (TERMINOLOGY), TDRPC

Mr. Kinard addressed the Committee on this agenda item. The Committee previously scheduled a public hearing on proposed Rule 1.00 for June 10, 2021.

G. SUPREME COURT OF TEXAS REQUEST TO STUDY AND MAKE RECOMMENDATIONS ON PROPOSED COMMENTS TO RULES 1.01 (COMPETENT AND DILIGENT REPRESENTATION) AND 2.01 (ADVISOR), TDRPC

Mr. Kinard addressed the Committee on this agenda item. Mr. Jordan left the meeting. Mr. Ducloux made a motion to table the subject until the Committee's next meeting. Ms. Nicholson seconded the

motion. The Committee did not vote on the motion. Justice Garcia will serve on a subcommittee on this request. Mr. Kinard will coordinate with Committee members to determine who may be interested in serving on the subcommittee.

H. SCHEDULE SEPTEMBER 2021 COMMITTEE MEETING

Mr. Kinard addressed the Committee on this agenda item. The Committee scheduled its September meeting for September 1, 2021, at 10:00 a.m.

I. PROPOSED RULE TIMELINES

Mr. Kinard addressed this agenda item. Mr. Brad Johnson responded to a question from Mr. Kinard on the subject.

J. AGENDA ITEMS FOR NEXT MEETINGS

Mr. Kinard addressed the Committee on this agenda item. The Committee will include an action item on the next meeting agenda for proposed comment changes related to the proposed disciplinary rule amendments recently deliberated upon by the Supreme Court of Texas.

K. ADJOURNMENT

Mr. Ducloux made a motion to adjourn. Justice Garcia seconded the motion. The Committee voted in favor of the motion. The meeting adjourned at 12:00 p.m.