

MEETING OF THE COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

February 3, 2021
By Teleconference

MINUTES

Members Present: Chair M. Lewis Kinard; Timothy D. Belton; Amy Bresnen; Claude Ducloux; Professor Vincent Johnson; W. Carl Jordan.

Members Not Present: Hon. Dennise Garcia; Rick Hagen; Karen Nicholson.

State Bar of Texas Staff Present: Ray Cantu, Deputy Executive Director; Seana Willing, Chief Disciplinary Counsel; Brad Johnson, Disciplinary Rules and Referenda Attorney; Cory Squires, Staff Liaison.

A. CALL TO ORDER; ROLL CALL

Mr. Kinard called the meeting to order at 10:02 a.m. Mr. Squires called the roll and a quorum was present.

B. COMMENTS FROM THE CHAIR

Mr. Kinard thanked State Bar membership and the general public for their feedback during the rule proposal process and encouraged their continued involvement moving forward. Mr. Kinard explained that those listening can go to texasbar.com/cdrr to learn more about the Committee, to sign up for email updates, to stay connected, and to participate. Mr. Kinard congratulated Justice Garcia, who is now serving on the Court of Appeals for the Fifth District of Texas. Mr. Kinard provided an update on proposed Rule 1.18 of the Texas Disciplinary Rules of Professional Conduct (TDRPC) and proposed Rule 13.05 of the Texas Rules of Disciplinary Procedure, which the Committee previously voted to recommend to the State Bar Board of Directors. Mr. Kinard addressed the Committee's annual report, which was submitted to the Board and to the Supreme Court of Texas in January 2021. Mr. Kinard discussed his presentation to the Board at its January 22, 2021, meeting.

C. UPDATE ON 2021 RULES VOTE

Mr. Kinard addressed the rules vote by State Bar membership, which started on February 2, 2021, and will end on March 4, 2021, at 5:00 p.m. CST. Mr. Kinard explained that many of the proposed changes were requested by members of the Bar. Mr. Kinard encouraged those listening to take the time to learn about the proposals and to vote. At Mr. Kinard's request, Mr. Brad Johnson addressed the Committee on the total number of votes received on the first day of voting. Mr. Kinard noted that those listening can go to texasbar.com/rulesvote to learn more about the proposals. Mr. Kinard explained that active Texas lawyers can vote electronically or by mail, and emphasized that mailed ballots must be received by the deadline, which is 5:00 p.m. CST on March 4, 2021. Mr. Kinard explained that Committee members have taken part in 22 presentations on the proposed rules so far, as well as one podcast. This includes presentations to local bar associations, as well as three State

Bar public forum webinars. Mr. Kinard stated that a fourth public forum webinar was scheduled for February 9. Mr. Kinard noted that two additional presentations were scheduled for Committee members. Mr. Kinard stated that Committee members contributed three articles on the rules vote that were included in the February 2021 issue of the *Texas Bar Journal*. Mr. Kinard discussed additional articles by Mr. Ducloux, Professor Vincent Johnson, and Mr. Brad Johnson. Mr. Kinard thanked Professor Vincent Johnson, Mr. Ducloux, and Ms. Bresnen for their help in taking part in presentations. Mr. Kinard explained that any proposed rules that are approved by Bar membership then go to the Supreme Court of Texas for final approval or rejection.

D. 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 December 2, 2020, meeting. Ms. Bresnen seconded the motion. The Committee voted in favor of the motion.

E. PROPOSED COMMENT TO PROPOSED RULE 1.16, TDRPC

Mr. Kinard and Mr. Ducloux addressed this agenda item. Mr. Kinard explained that Professor Vincent Johnson identified some places where additional language might be useful in the proposed comment to proposed Rule 1.16. Mr. Kinard addressed the process of recommending interpretive comments, which are ultimately promulgated by the Supreme Court of Texas. Professor Vincent Johnson briefed the Committee on possible amendments to the proposed comment to proposed Rule 1.16. The Committee further discussed the subject. Mr. Kinard explained that the Committee could revisit the subject at its next meeting and potentially amend or supplement its previous comment recommendation. The Committee did not take formal action on the agenda item.

F. PROPOSED RULE 1.00. TERMINOLOGY, TDRPC

Mr. Kinard explained that the Committee previously published a version of proposed Rule 1.00, but after considering potential revisions, decided to revisit the subject at this meeting. Mr. Kinard discussed the updated draft of the proposed rule. Professor Vincent Johnson briefed the Committee on the possible changes to the proposal. The Committee further discussed the subject. The Committee did not take formal action on the agenda item and will revisit the subject at its next meeting. Mr. Kinard noted that the Committee could vote to initiate and publish the proposal at the next meeting.

G. PROPOSED RULE 1.17. SALE OF LAW PRACTICE, TDRPC

Mr. Kinard addressed the Committee on this agenda item. The Committee previously initiated the rule proposal process on the subject but did not publish a proposed rule within the six-month statutory timeframe. The Committee discussed the subject. Professor Vincent Johnson made a motion to initiate the rule proposal process and to publish the proposed rule. Mr. Ducloux seconded the motion. The Committee voted in favor of the motion. The proposed rule will be published in the March 2021 issue of the *Texas Bar Journal* and the March 5, 2021, issue of the *Texas Register*. The Committee will hold a public hearing on the proposed rule at its April 7, 2021, meeting and will accept public comments through May 4, 2021.

H. RULES 5.08 (PROHIBITED DISCRIMINATORY ACTIVITIES) AND 8.04 (MISCONDUCT), TDRPC

Mr. Kinard addressed the Committee on this agenda item. At Mr. Kinard's request, Mr. Cantu provided the Committee with an update on the State Bar Board of Directors' consideration of American Bar Association (ABA) Model Rule 8.4(g) and Rule 5.08, TDRPC. Mr. Cantu explained that the Board referred the rules to its Discipline and Client Attorney Assistance Program Committee (DCAAP) for study to determine whether any recommendation should be made to the Board on those items. Mr. Cantu explained that DCAAP recommended no further action by the Board on ABA Model Rule 8.4(g) and that DCAAP is still reviewing Texas Rule 5.08. The Committee further discussed the subject. The Committee did not take formal action on this agenda item.

I. PROPOSED RULE TIMELINES

At Mr. Kinard's request, Mr. Brad Johnson addressed the Committee on proposed rule timelines. The Committee will hold a public hearing on proposed Rule 1.17, TDRPC, at its April 7, 2021, meeting.

J. AGENDA ITEMS FOR NEXT MEETINGS

Mr. Kinard addressed the Committee on this agenda item. The Committee will take up the proposed comment to proposed Rule 1.16, TDRPC, and proposed Rule 1.00, TDRPC, at its March 3, 2021, meeting.

K. COMMUNICATIONS TO THE COMMITTEE FROM THE PUBLIC

No members of the public addressed the Committee.

L. ADJOURNMENT

Mr. Ducloux made a motion to adjourn. Ms. Bresnen seconded the motion. The Committee voted in favor of the motion. The meeting adjourned at 11:16 a.m.