

MEETING OF THE COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

April 7, 2020
By Teleconference

MINUTES

Members Present: Chair M. Lewis Kinard; Timothy Belton; Amy Bresnen; Claude Ducloux; Hon. Dennise Garcia; Rick Hagen; Dean Vincent Johnson; W. Carl Jordan; Karen Nicholson.

State Bar of Texas Staff Present: Trey Apffel, Executive Director; KaLyn Laney, Deputy Executive Director; Ray Cantu, Deputy Executive Director; Seana Willing, Chief Disciplinary Counsel; Brad Johnson, Disciplinary Rules and Referenda Attorney; Cory Squires, Staff Liaison; Dean Shaffer, Succession Planning Program Administrator; Craig Chapman, Information Technology Division Director; Lowell Brown, Communications Division Director; Gene Major, Attorney Compliance Division Director.

A. CALL TO ORDER; ROLL CALL

Mr. Kinard called the meeting to order at 10:37 a.m. Mr. Squires called the roll and a quorum was present.

B. COMMENTS FROM THE CHAIR

Mr. Kinard noted this was the first teleconference-only quarterly meeting and public hearing for the Committee. Mr. Kinard discussed the process for the meeting and hearings.

Mr. Kinard congratulated Mr. Ducloux on his receipt of the St. Mary's University School of Law St. Thomas More Award.

Mr. Kinard congratulated Mr. Belton on his receipt of the Houston Young Lawyers Association Liberty Bell Award.

Mr. Kinard addressed public comments received regarding the rule proposal process. Mr. Kinard thanked those who have submitted public comments on proposed rules.

C. PUBLIC HEARING ON PROPOSED CHANGES TO PART VII. INFORMATION ABOUT LEGAL SERVICES (LAWYER ADVERTISING AND SOLICITATION RULES), TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT (TDRPC)

Mr. Kinard called to order the public hearing on the proposed changes to Part VII, TDRPC. Mr. Kinard explained that the Committee will consider all public comments received on all versions of the proposed lawyer advertising and solicitation rules as it moves closer to making a recommendation to the State Bar Board of Directors. Mr. Kinard explained the procedures for the public hearing. Six members of the public addressed the committee regarding the proposed changes to Part VII and the Committee responded with questions and comments. Mr. Kinard explained that the Committee will continue to accept public comments on the proposed changes to Part VII through

April 10, 2020. Mr. Kinard thanked those who have provided comments on the proposed changes and encouraged members of the public and Bar membership to continue submitting feedback. Mr. Kinard explained that a vote by the Committee on whether to recommend the proposed advertising rules, as well as on any amendments, will have to take place at the Committee's May 6, 2020, meeting.

D. PUBLIC HEARING ON PROPOSED RULE 13.04. VOLUNTARY APPOINTMENT OF CUSTODIAN ATTORNEY FOR CESSATION OF PRACTICE, TEXAS RULES OF DISCIPLINARY PROCEDURE (TRDP)

Mr. Kinard called to order the public hearing on proposed Rule 13.04, TRDP. Mr. Kinard explained the procedures for the public hearing. Laura Gibson and Greg Sampson, co-chairs of a succession planning task force appointed by State Bar President Randy Sorrels, addressed the Committee in support of proposed Rule 13.04, which addresses the voluntary appointment of a custodian attorney to assist with the final resolution and closure of an attorney's practice. Ms. Gibson and Mr. Sampson also addressed the Committee regarding a draft proposed Rule 13.05, which was prepared and submitted by members of the task force to address the voluntary appointment of a custodian attorney to assist during a disabling circumstance. Mr. Ducloux responded with comments and thanked Ms. Gibson and Mr. Sampson for their feedback. Ms. Bresnen asked questions on the subject and Ms. Gibson responded with comments. Mr. Kinard responded with comments. Mr. Ducloux and Mr. Sampson thanked Mr. Shaffer for his help on this subject. Ms. Gibson recognized the members of the succession planning taskforce. Mr. Kinard explained that the Committee will continue to accept public comments on proposed Rule 13.04 through April 10, 2020. Mr. Kinard thanked those who have provided comments on the proposed rule and encouraged members of the public and Bar membership to continue submitting feedback. Mr. Kinard explained that a vote by the Committee on whether to recommend proposed Rule 13.04 to the State Bar Board of Directors will have to take place at the Committee's May 6, 2020, meeting.

E. OTHER COMMUNICATIONS TO THE COMMITTEE FROM THE PUBLIC

Mr. Kinard asked whether anyone would like to address the Committee. No one indicated they wanted to address the Committee at this time.

F. APPROVAL OF THE MINUTES OF THE LAST MEETING

Mr. Kinard addressed the Committee on this agenda item. Mr. Ducloux responded with comments. Mr. Ducloux made a motion to approve the minutes from the March 4, 2020, meeting. Ms. Bresnen seconded the motion. The Committee voted in favor of the motion.

G. PROPOSED CHANGES TO RULE 1.05. CONFIDENTIALITY OF INFORMATION, TDRPC – RELATING TO THE DISCLOSURE OF CONFIDENTIAL INFORMATION AND CLIENTS CONTEMPLATING SUICIDE

Mr. Kinard addressed the Committee on this agenda item. Mr. Kinard explained that the proposed changes to Rule 1.05, TDRPC, were published in the April issue of the *Texas Bar Journal* and the March 27 issue of the *Texas Register*. Mr. Kinard noted that public comments were starting to come in. Mr. Kinard thanked those who have provided public comments. Mr. Kinard summarized the

proposed changes to Rule 1.05(c)(7). Mr. Kinard explained that the Committee will accept public comments through June 18, 2020, and will hold a public hearing on June 20, 2020. Mr. Ducloux explained that, based on the recommendation of the mental health community, the subcommittee on the subject (Mr. Ducloux, Mr. Belton, and Ms. Bresnen) recommended changing the phrase “committing suicide” to “dying by suicide” in the proposal. Mr. Kinard explained that the Committee could vote on the subcommittee’s recommended amendment at a future date. Mr. Belton asked a question about the rule proposal process and Mr. Kinard responded with comments.

H. PROPOSED CHANGES TO RULE 8.03, TDRPC, AND RULES 1.06 AND 9.01, TRDP – RELATING TO REPORTING PROFESSIONAL MISCONDUCT AND RECIPROCAL DISCIPLINE FOR FEDERAL COURT OR FEDERAL AGENCY DISCIPLINE

Mr. Kinard addressed the Committee on this agenda item. Mr. Kinard explained that the proposed changes to Rule 8.03, TDRPC, and Rules 1.06 and 9.01, TRDP, were published in the April issue of the *Texas Bar Journal* and the March 27 issue of the *Texas Register*. Mr. Kinard noted that public comments were coming in and thanked those who have provided public comments. Mr. Kinard summarized the proposed changes. Mr. Ducloux responded with comments about the proposal and its background. Mr. Kinard explained that the Committee will accept public comments through June 18, 2020, and will hold a public hearing on June 20, 2020.

I. UPDATE ON SUBMISSION OF PROPOSED CHANGES TO BOARD OF DIRECTORS: PROPOSED RULES 3.01 TO 3.03, TRDP – RELATING TO THE ASSIGNMENT OF JUDGES AND RELATED PROCEDURES WHEN A RESPONDENT IN A DISCIPLINARY COMPLAINT ELECTS TO PROCEED IN DISTRICT COURT

Mr. Kinard addressed the Committee on this agenda item. Mr. Kinard explained that the proposed changes to Rules 3.01 to 3.03, TRDP, were submitted to the State Bar Board of Directors and that Mr. Ducloux participated in a meeting with the Board’s Discipline and Client-Attorney Assistance Subcommittee (DCAAP) regarding the proposed changes. Mr. Ducloux briefed the Committee on the DCAAP meeting. Mr. Ducloux noted that DCAAP voted to approve the proposed changes and thanked those who took part in the meeting. Mr. Kinard thanked Mr. Ducloux for participating in the meeting. The Board of Directors is expected to consider and possibly take action regarding the proposed changes at its April 17, 2020, meeting.

J. PROPOSED RULE TIMELINES

Mr. Kinard asked Brad Johnson whether there were any rule timeline issues to address or to provide a reminder on. Brad Johnson briefed the Committee on the proposed rule timelines previously discussed during the meeting.

K. AGENDA ITEMS FOR NEXT MEETINGS

Mr. Kinard asked whether anyone had anything else to add for the May 6, 2020, meeting agenda. Mr. Kinard proposed addition of suggested Rule 13.05, TRDP, which was submitted by Ms. Gibson and Mr. Sampson, for possible initiation at the next meeting. Ms. Bresnen asked a question about proposed Rule 13.04, TRDP, and Mr. Kinard responded with comments. Mr. Sampson addressed the Committee regarding the rule proposal process and encouraged moving suggested Rule 13.05 toward

a referendum as quickly as possible. Mr. Kinard responded with comments, including that the Committee will put the item on its next agenda for possible initiation. Mr. Sampson responded with comments. Brad Johnson responded with comments about the rule proposal process.

Dean Johnson stated that the subcommittee on the proposed advertising rules needs to review the current draft of proposed comments to the proposed advertising rules and come back to the Committee with a recommendation regarding possible modification of the proposed comments. Dean Johnson suggested including this on the agenda for the next meeting and Mr. Kinard agreed. Mr. Ducloux responded regarding the proposed comments to proposed Rule 7.02, TDRPC.

L. ADJOURNMENT

Mr. Belton made a motion to adjourn. Ms. Nicholson seconded the motion. The Committee voted in favor of the motion. Mr. Kinard thanked all those who participated in the meeting. The meeting adjourned at 12:08 p.m.