

MEETING OF THE COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

June 10, 2021
By Teleconference

MINUTES

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

State Bar of Texas Staff Present: Seana Willing, Chief Disciplinary Counsel; Cory Squires, Staff Liaison; and Anne Davis.

CALL TO ORDER and ROLL CALL

Mr. Kinard called the meeting to order at 10:31 a.m. Mr. Squires called the roll and a quorum was present.

COMMENTS FROM THE CHAIR

Chair Kinard reported that the Supreme Court issued its order adopting each of the proposed rules that was approved by Bar members in the 2021 rules vote. Mr. Kinard explained that the Court's order also adopts interpretive comments. The amendments to the Texas Disciplinary Rules of Professional Conduct (TDRPC) and the Texas Rules of Disciplinary Procedure (TRDP) will take effect on July 1, 2021. He commended the Committee for its work and the Supreme Court, the Board, and the Bar for a successful process.

PUBLIC HEARING ON PROPOSED RULE 1.00. TERMINOLOGY, TDRPC

Chair Kinard called the public hearing on proposed Rule 1.00 to order and explained the public hearing procedures. The following members of the public addressed the Committee during the public hearing: Jerry Hall and Steven Earl.

The Committee discussed the proposed rule and members made suggestions and recommendations for amendments. No formal action was taken.

Chair Kinard announced that public comments on the proposed rule will be received through July 13th and that the Committee can further discuss whether to recommend the proposal to the State Bar Board of Directors, as well as possible amendments to the proposed rule, at its future scheduled meetings. The deadline to vote on proposed Rule 1.00 is September 13, 2021.

APPROVAL OF THE MINUTES OF THE LAST MEETING

Upon consideration and a correction on the adjournment time, the following motion was made by Mr. Ducloux and seconded by Mr. Jordan: to approve the minutes of the May 5, 2021, meeting with

the correction of the adjournment time from 12:00 a.m. to 12:00 p.m. The Committee unanimously voted in favor of the motion.

PROPOSED COMMENT CHANGES RELATED TO THE RECENT SUPREME COURT OF TEXAS DELIBERATIONS ON THE PROPOSED AMENDMENTS TO THE TDRPC AND THE TRDP, OR OTHERWISE RELATED TO THE PROPOSED AMENDMENTS TO THE TDRPC AND THE TRDP

Chair Kinard reported that no discussion or action on this item is needed.

PROPOSED RULE 1.17 (SALE OF LAW PRACTICE), TDRPC

Chair Kinard opened up for discussion and consideration possible amendments to the proposed rule and comment, and recommendation of the proposed rule to the State Bar of Texas Board of Directors. He advised that this is the last scheduled meeting before the deadline to vote on whether to recommend proposed Rule 1.17 to the State Bar Board of Directors. He further advised the Committee on its options to vote to recommend the proposed comment language and to vote to amend the proposed rule and proposed comment.

Professor Johnson addressed the Committee on this item and summarized his clarifying language amendments to proposed Rule 1.17 and comments. A discussion was held with respect to the proposed rule, comments, clarifying language amendments, and enforceability of the rule.

Mr. Hagen made a motion to table the matter, seconded by Carl Jordan. The motion failed.

Professor Johnson made a motion to approve proposed Rule 1.17 as written, with an amendment to proposed Comment paragraph 16 as stated. Justice Garcia seconded the motion. Upon a vote of 4 ayes and 5 nays, the motion failed.

Karen Nicholson left the meeting at 12:31 p.m.

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

Chair Kinard opened up for discussion and consideration a recommendation of proposed comment changes to Rules 1.01 and 2.01 for submission to the Supreme Court of Texas.

Ms. Bresnen asked whether the Committee could table this item. Chair Kinard responded with comments.

Chair Kinard appointed Ms. Bresnen, Mr. Belton, and Justice Garcia to a subcommittee to further study this item.

MEETING SCHEDULE FOR JULY, AUGUST, AND SEPTEMBER 2021

Chair Kinard addressed the Committee on this item. Upon consideration, the following motion was made by Mr. Hagen and seconded by Justice Garcia: to cancel the July 2021 meeting. The motion unanimously passed.

AGENDA ITEMS FOR NEXT MEETINGS

Chair Kinard asked whether anyone had any agenda items to add for the August meeting. No agenda items were suggested by Committee members.

ADJOURNMENT

Mr. Ducloux made a motion to adjourn. Justice Garcia seconded the motion. The Committee unanimously voted in favor of the motion. The meeting adjourned at 12:38 p.m.