

MEETING OF THE COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

July 23, 2019
Texas Law Center, Room 101
Austin, Texas
And by Teleconference

MINUTES

Members Present: Chairman M. Lewis Kinard; Timothy Belton; Amy Bresnen; Claude Ducloux; Rick Hagen; Dean Vincent Johnson; W. Carl Jordan.

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

State Bar of Texas Staff Present: Trey Apffel, Executive Director; Seana Willing, Chief Disciplinary Counsel; Royce LeMoine, Deputy Counsel for Administration and Regional Counsel (Office of the Chief Disciplinary Counsel); KaLyn Laney, Deputy Executive Director; Ray Cantu, Deputy Executive Director; Brad Johnson, Disciplinary Rules and Referenda Attorney; Cory Squires, Staff Liaison; Lowell Brown, Communications Division Director; Gene Major, Attorney Compliance Division Director.

A. CALL TO ORDER; ROLL CALL

Ms. Bresnen called the meeting to order at 10:01 a.m. Mr. Squires called the roll and a quorum was present. Ms. Bresnen thanked those in attendance.

B. PUBLIC HEARING ON REVISED PROPOSAL ON LAWYER ADVERTISING RULES – PART VII. INFORMATION ABOUT LEGAL SERVICES, TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT (TDRPC)

Ms. Bresnen addressed the Committee regarding the public hearing on the revised proposal on the lawyer advertising rules and explained the procedure for the public hearing. Ms. Bresnen reminded those listening that the Committee will continue to accept public comments on the proposed advertising rules through August 6, 2019. Mr. Ducloux thanked those in attendance and those who have provided feedback in the rule proposal process. Two speakers addressed the Committee during the public hearing and the Committee responded with comments.

C. COMMENTS FROM THE CHAIR

Mr. Kinard thanked those in attendance and those who have participated in the rule proposal process. Mr. Kinard recognized Mr. Ducloux, who recently received the Texas Bar Foundation's Dan Rugeley Price Memorial Award.

D. APPROVAL OF THE MINUTES OF THE LAST MEETING

Mr. Kinard addressed the Committee on this agenda item. Mr. Ducloux made a motion that the Committee approve the minutes from the June 6, 2019, meeting. Ms. Bresnen seconded the motion.

The Committee voted in favor of the motion.

E. DISCUSSION: REVISED PROPOSAL ON LAWYER ADVERTISING RULES (PART VII. INFORMATION ABOUT LEGAL SERVICES, TDRPC)

Mr. Kinard explained that the Committee will continue to accept public comments on the proposed advertising rules through August 6, 2019. Dean Johnson addressed the Committee regarding suggested changes to the proposed advertising rules based on his review of recent public comments received. The Committee further discussed the proposed advertising rules, including possible changes to the proposed rules and draft proposed comments to the proposed rules. The Committee will further discuss the proposed advertising rules at its August 7, 2019, meeting and can vote at that meeting or its September 3, 2019, meeting on whether to recommend the proposed rules to the State Bar of Texas Board of Directors.

F. DISCUSSION AND POSSIBLE ACTION: PROPOSED RULE 6.05. CONFLICT OF INTEREST EXCEPTIONS FOR NONPROFIT AND LIMITED PRO BONO LEGAL SERVICES, TDRPC

Mr. Kinard addressed the Committee on proposed Rule 6.05, TDRPC. Mr. Ducloux made a motion that the Committee recommend proposed Rule 6.05, TDRPC, to the State Bar of Texas Board of Directors. Ms. Bresnen seconded the motion. The Committee voted in favor of the motion.

G. DISCUSSION AND POSSIBLE ACTION: SUPREME COURT OF TEXAS REQUEST TO INITIATE RULE PROPOSAL PROCESS FOR RULE 3.02. ASSIGNMENT OF JUDGE, TEXAS RULES OF DISCIPLINARY PROCEDURE (TRDP)

Mr. Kinard addressed the Committee on this agenda item. Mr. Ducloux discussed Rule 3.02, TRDP, and requested that Ms. Willing address the Committee on the Rule. Ms. Willing addressed the Committee regarding different considerations related to potential amendments to the Rule. Ms. Willing explained that, as a result of the Supreme Court's 2018 amendments to the TRDP and the implementation of investigatory hearings in the process, the number of judicial assignments in disciplinary cases has significantly decreased. Mr. Ducloux responded with comments and questions, and Ms. Willing provided additional feedback related to possible amendments. Mr. Ducloux requested that the Office of the Chief Disciplinary Counsel provide additional input on the subject. Mr. Kinard encouraged additional feedback from interested parties, including defense practitioners in this area.

Mr. Ducloux made a motion to initiate the rule proposal process for Rule 3.02, TRDP. Mr. Hagen seconded the motion. The Committee voted in favor of the motion. The subcommittee on Rule 3.02 (Mr. Ducloux and Mr. Hagen) will provide future reports on the subject.

H. DISCUSSION AND POSSIBLE ACTION: SUPREME COURT OF TEXAS REQUEST FOR A RECOMMENDATION ON A COMMENT TO RULE 3.06. MAINTAINING INTEGRITY OF JURY SYSTEM, TDRPC (ADDRESSING LAWYER ACCESS TO JUROR SOCIAL MEDIA)

Mr. Kinard addressed the Committee on this agenda item. The subcommittee on juror access to social media (Ms. Bresnen, Mr. Belton, and Dean Johnson) does not yet have a recommendation on the subject. Ms. Bresnen briefed the Committee on the subject and explained her personal recommendation to the subcommittee. Ms. Bresnen noted that the subcommittee would provide the Committee with a memo on the subject for the next meeting. Mr. Hagen and Mr. Kinard provided additional feedback on the subject. No formal action was taken on this agenda item. The subject will be on the Committee's August 7, 2019, meeting agenda.

Mr. Hagen brought up the issue of post-trial communication with jurors under Rule 3.06, TDRPC, as a possible future agenda item. The Committee discussed soliciting additional feedback from interested parties on the subject. The subject of post-trial communication with jurors will be on the Committee's September 3, 2019, meeting agenda.

I. DISCUSSION AND POSSIBLE ACTION: ONLINE LAWYER REVIEWS AND A LAWYER'S DUTY UNDER RULE 1.05. CONFIDENTIALITY OF INFORMATION, TDRPC (BASED ON PUBLIC COMMENT RECEIVED)

Mr. Kinard addressed the Committee regarding this agenda item. The subject was placed on the meeting agenda based on a public comment received by the Committee. Mr. Ducloux addressed the Committee regarding a lawyer's duty of confidentiality as related to online reviews, including ethics opinions that have addressed the issue. Ms. Bresnen addressed the Committee on the subject. The Committee discussed the subject being more appropriate for a practice guide or professional education topic than a rule change or comment. Mr. Ducloux will communicate with the person who submitted the public comment regarding the subject. Mr. Kinard asked staff to look into methods to include certain subjects discussed by the Committee and responsive information on the CDRR's website. No formal action was taken on this agenda item.

J. PROPOSED RULE TIMELINES

Mr. Kinard and Mr. Ducloux addressed the Committee on this agenda item. Brad Johnson responded with comments.

K. AGENDA ITEMS FOR NEXT MEETINGS

Mr. Kinard addressed the Committee regarding agenda items for the next two meetings.

Mr. Hagen addressed the Committee regarding gender pronouns in rule comments. Mr. Kinard and Mr. Hagen discussed the preference for gender-neutral pronouns.

L. ADJOURNMENT

Mr. Ducloux made a motion to adjourn. Ms. Bresnen seconded the motion. The Committee voted in favor of the motion and the meeting adjourned at 11:37 a.m.