

MEETING OF THE COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

September 3, 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; Karen Nicholson.

Members Not Present: Hon. Dennise Garcia.

State Bar of Texas Staff Present: Seana Willing, 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.

A. CALL TO ORDER; ROLL CALL

Mr. Kinard called the meeting to order at 10:32 a.m. Cory Squires called the roll and a quorum was present.

B. COMMENTS FROM THE CHAIR

Mr. Kinard thanked those who have participated in the rule proposal process and expressed that participation by members of the Bar and the public is one of the Committee's main objectives. Mr. Kinard asked that anyone planning to address the Committee complete a speaker card and turn it in to Mr. Squires.

C. 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 August 7, 2019, meeting. Ms. Bresnen seconded the motion. The Committee voted in favor of the motion.

D. COMMUNICATIONS TO THE COMMITTEE FROM THE PUBLIC

Mr. Kinard addressed the Committee on this agenda item. No members of the public signed up to speak.

E. DISCUSSION AND POSSIBLE ACTION: REVISED PROPOSAL ON LAWYER ADVERTISING RULES – PART VII. INFORMATION ABOUT LEGAL SERVICES, TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT (TDRPC)

Mr. Kinard and Mr. Ducloux addressed the Committee on this agenda item. Dean Johnson addressed

the Committee regarding possible changes to the proposed lawyer advertising rules. The Committee discussed the proposed rules and possible amendments to the proposed rules. Dean Johnson made a motion to amend a provision of proposed Rule 7.03, TDRPC, regarding communications misleadingly designed to resemble a legal pleading or other legal document. Mr. Hagen seconded the motion and the Committee voted in favor of the motion.

Dean Johnson addressed the Committee on proposed Rule 7.03, TDRPC, and communications relating to eligibility for government benefits. The Committee discussed the provision at issue. Dean Johnson made a motion to amend a proposed paragraph of proposed Rule 7.03. Ms. Bresnen seconded the motion. Mr. Kinard addressed the Committee on the subject and the Committee further discussed the matter. The Committee voted in favor of the motion.

Dean Johnson addressed the Committee on proposed Rule 7.06, TDRPC, and described a proposed change to correct a cross-reference. Mr. Ducloux made a motion to amend proposed Rule 7.06. Dean Johnson seconded the motion and the Committee voted in favor of the motion.

Mr. Kinard addressed the Committee regarding additional proposed changes to proposed Rule 7.03, TDRPC. The Committee discussed the suggested changes. Mr. Kinard made a motion to amend proposed Rule 7.03. Mr. Ducloux seconded the motion. The Committee further discussed the suggested changes. The Committee tabled the motion and the proposed advertising rules until later in the meeting. The Committee briefly discussed draft proposed comments to the proposed advertising rules.

F. DISCUSSION AND POSSIBLE ACTION: PROPOSED RULE 3.02. ASSIGNMENT OF JUDGE, TEXAS RULES OF DISCIPLINARY PROCEDURE (TRDP)

Mr. Ducloux addressed the Committee on the rule proposal process relating to Rule 3.02, TRDP, including feedback provided by the Office of the Chief Disciplinary Counsel. At Mr. Hagen's request, Ms. Willing addressed the Committee regarding possible changes to Rule 3.02. Mr. Ducloux and Mr. Kinard responded with comments. No formal action was taken on this agenda item. The Committee will consider the item again at its October 9, 2019, meeting.

G. CONTINUED DISCUSSION AND POSSIBLE ACTION: REVISED PROPOSAL ON LAWYER ADVERTISING RULES – PART VII. INFORMATION ABOUT LEGAL SERVICES, TDRPC

The Committee returned to the subject of the proposed lawyer advertising rules. Mr. Ducloux addressed the Committee on this agenda item. Brad Johnson responded with comments. The Committee further discussed the proposed changes to proposed Rule 7.03, TDRPC, which were the subject of Mr. Kinard's earlier motion. The Committee voted in favor of the motion, which Mr. Ducloux previously seconded.

The Committee further discussed the proposed advertising rules. Ms. Bresnen addressed the Committee regarding the subject of trade names. Mr. Kinard and Mr. Ducloux responded with comments. Mr. Squires addressed the Committee and Mr. Kinard responded with comments. The Committee further discussed trade names and public comments pertaining to trade names.

Mr. Ducloux made a motion to recommend the proposed advertising rules, as amended, to the State Bar Board of Directors. Ms. Bresnen seconded the motion. The Committee discussed a timeline for submission to the Board of Directors, as well as a report regarding the Committee's proposal. The Committee voted in favor of the motion.

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)

Ms. Bresnen addressed the Committee on Rule 3.06, TDRPC, and the issue of lawyer access to juror social media. Ms. Bresnen described a draft report she prepared on the issue, as well as the recommendation of the subcommittee. Mr. Kinard and Mr. Belton responded with comments and the Committee further discussed the subject. No formal action was taken on this agenda item. The Committee will consider the item again at a future meeting.

I. DISCUSSION AND POSSIBLE ACTION: RULE 3.06. MAINTAINING INTEGRITY OF JURY SYSTEM, TDRPC (POST-TRIAL COMMUNICATIONS WITH JURORS)

The Committee tabled this item until a future meeting.

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

Mr. Kinard addressed the Committee on this agenda item. Brad Johnson responded with comments. The Committee discussed the timeline for proposed rule submission packets, including proposed rule comments, to the State Bar Board of Directors. Mr. Cantu addressed the Committee on the subject of submission of proposed rules to the Board of Directors. Mr. Ducloux and Mr. Kinard responded with comments. No formal action was taken on this agenda item. The Committee will consider the item again at its October 9, 2019, meeting.

K. PROPOSED RULE TIMELINES

Brad Johnson addressed the Committee regarding the timeline for publication of a proposal on Rule 3.02, TRDP. Mr. Kinard responded with comments.

L. AGENDA ITEMS FOR NEXT MEETINGS

Mr. Kinard addressed the Committee regarding agenda items for the next meetings. Brad Johnson and Mr. Squires responded with comments. Upcoming meeting agenda items will include proposed comments to the proposed advertising rules and proposed Rule 6.05, TDRPC, the Supreme Court of Texas request for a recommendation on a comment regarding lawyer access to juror social media, post-trial communication with jurors, and the Committee's annual report.

M. 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 12:38 p.m.