

MEETING OF THE COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

May 8, 2018
Texas Law Center, Room 102
Austin, Texas

MINUTES

CALL TO ORDER

The meeting was called to order at 10:10 a.m.

In attendance: Chairman M. Lewis Kinard; Claude Ducloux; Amy Bresnen; Rick Hagen; W. Carl Jordan; Vincent Johnson; Timothy Belton; Hon. Dennise Garcia and Jane King. Also present: Linda Acevedo, Chief Disciplinary Counsel; Michelle Jordan, Staff Attorney; Cory Squires, Staff Liaison, and Ray Cantu, Assistant Deputy Director.

A. APPROVAL OF MINUTES

The Committee reviewed the minutes from the April 11, 2018 meeting. Mr. Ducloux made a Motion that the Committee approve the minutes. The Motion was seconded by Ms. Bresnen. The Committee voted unanimously in favor of the Motion.

B. ANNUAL REVIEWS

Ms. Bresnen presented a letter from members of the legislature regarding the “one subject rule” and the legislative intent concerning the Committee’s annual review of the rules. She also presented a report she created concerning the “one subject rule.” It was noted that later if needed, Ms. Bresnen could bring in an expert on the “one subject rule.” In discussing the letter the Committee considered alternatives on how to proceed with the annual review and discussed creating a subcommittee to do the annual review.

C. REFERENDUMS

In response to a question, Ray Cantu spoke as to the cost of a referendum.

D. ADVERTISING RULES

Ray Cantu spoke on the status of the Advertising Review Committee’s report regarding changes to the advertising rules. The report has been referred to the State Bar Board of Directors and the Board is expected to pass a resolution to refer the report to this Committee in June.

E. RECEIPT OF RULE PROPOSAL

The Committee discussed the meaning of the term “receives” with respect to what date should a request for a rule proposal be considered received by the Committee. Mr. Ducloux made a Motion that a rule proposal be considered received at the first meeting date of the Committee after the proposal has been sent. Ms. Bresnen seconded the Motion. The Committee voted unanimously in favor of the Motion. Staff will amend the Committee’s Operating Rules and Procedures to reflect this definition.

F. DISCUSSION ON LIST OF TOPICS FOR CONSIDERATION AS PROPOSED RULES

Mr. Kinard listed the topics being considered by the Committee as proposed rules: Prospective Clients; Diminished Capacity; Conflicts- Exception for Limited Pro Bono Work; Confidentiality- Ethics Advice; Confidentiality- Substantial Bodily Harm; Confidentiality- Child Abuse and Elder Abuse; and Confidentiality- Digital Information. Cory Squires informed the Committee regarding the results of the Committee’s poll as to their list of preferred order of topics to consider.

The Committee assigned the topics Confidentiality- Child Abuse and Elder Abuse and Confidentiality- Substantial Bodily Harm to Mr. Ducloux for initial review and considered the topics for rule proposals received May 8, 2018.

The Committee assigned the topics Confidentiality- Ethics Advice and Diminished Capacity to Mr. Johnson for initial review and considered the topics for rule proposals received May 8, 2018.

G. PUBLIC PARTICIPATION

The Committee discussed the process of public participation at the quarterly in-person meetings and decided that they should be handled similarly to the way the State Bar Board of Directors conducts its meetings. The Committee discussed the possibility of video recording these quarterly meetings. Cory Squires will discuss with the State Bar video department regarding recording issues.

H. DOCUMENTS TO MAKE PUBLIC

The Committee discussed what Committee documents to make public. The Committee wants both the agenda and the minutes of meetings posted on the website. They also want the website to post what is currently under consideration by the Committee with docket numbers and subject as well as any formal reports of the Committee and memoranda on rule topics created by the Committee members.

I. MEETING SCHEDULE

The Committee decided on September 4, 2018 for the date of the September meeting. The Chair informed the Committee that he may not be able to attend the June meeting. The Committee decided that Mr. Ducloux would serve as Chair if Mr. Kinard is unable to attend.

ADJOURNMENT

Mr. Ducloux made a Motion to Adjourn. The Motion was seconded by the Ms. King. The Committee voted unanimously in favor of the Motion and the meeting adjourned at 11:55 a.m.