

# MEETING OF THE COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

December 4, 2019  
Texas Law Center, Room 102  
Austin, Texas  
And by Teleconference

## MINUTES

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

Members Not Present: Chair M. Lewis Kinard; Hon. Dennise Garcia; Karen Nicholson.

State Bar of Texas Staff Present: Seana Willing, Chief Disciplinary Counsel; Brad Johnson, Disciplinary Rules and Referenda Attorney; Cory Squires, Staff Liaison.

### A. CALL TO ORDER; ROLL CALL

Mr. Ducloux called the meeting to order at 10:05 a.m. Mr. Ducloux explained that Mr. Kinard requested he act as chair for the meeting. Mr. Squires called the roll and a quorum was present.

### B. COMMENTS FROM MR. DUCLOUX

Mr. Ducloux congratulated Mr. Belton on his recent reappointment to the Committee by the Supreme Court of Texas. Mr. Ducloux discussed the January 16, 2020, quarterly Committee meeting, including expected attendance for the meeting. Mr. Ducloux noted that the State Bar of Texas Board of Directors is expected to consider three rule proposals recommend by the Committee at its January 2020 Board meeting.

### C. APPROVAL OF THE MINUTES OF THE LAST MEETING

Mr. Ducloux addressed the Committee on this agenda item. Ms. Bresnen made a motion that the Committee approve the minutes from the November 6, 2019, meeting. Mr. Belton seconded the motion. The Committee voted in favor of the motion.

### D. PROPOSED RULES 3.01, 3.02, AND 3.03, TEXAS RULES OF DISCIPLINARY PROCEDURE (TRDP) – RELATING TO THE ASSIGNMENT OF JUDGES IN DISCIPLINARY PROCEEDINGS

Mr. Ducloux addressed the Committee on this agenda item. Brad Johnson briefed the Committee on the status of proposed changes to Rules 3.01, 3.02, and 3.03, TRDP. The proposed changes were published in the November 29, 2019, issue of the *Texas Register* and the December 2019 issue of the *Texas Bar Journal*. The Committee will accept public comments on the proposed changes through January 31, 2019. The Committee will hold a public hearing on the proposed changes on January 16, 2019, at the Texas Law Center. Mr. Ducloux discussed the background and rationale for the proposed rule changes and addressed public comments received regarding the proposed

changes. Mr. Ducloux expressed appreciation for the public comments received thus far and noted that public comments can be submitted through the Committee's website (texasbar.com/CDRR). Mr. Ducloux welcomed those listening to attend and provide feedback at the Committee's January 16, 2020, public hearing.

**E. SUPREME COURT OF TEXAS REQUEST FOR A RECOMMENDATION ON A COMMENT TO RULE 3.06. MAINTAINING INTEGRITY OF JURY SYSTEM, TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT (TDRPC) – ADDRESSING LAWYER ACCESS TO JUROR SOCIAL MEDIA**

Mr. Ducloux addressed the Committee on this agenda item. Brad Johnson updated the Committee on the status of the Committee's recommendation on the subject, which was approved by the Committee at its previous meeting and submitted to the Supreme Court of Texas on November 8, 2019. Mr. Ducloux discussed the background and rationale for the Committee's recommendation.

**F. SUPREME COURT OF TEXAS REQUEST FOR A RECOMMENDATION ON A COMMENT TO PART XIII. CESSATION OF PRACTICE, TRDP**

Mr. Ducloux addressed the Committee on this agenda item. Mr. Ducloux discussed the importance for succession planning, as well as a recent meeting of a succession planning workgroup appointed by State Bar President Randy Sorrels. Mr. Ducloux discussed a possible rule proposal related to Part XIII, TRDP, including draft language he submitted to the co-chairs of the succession planning workgroup to address the designation of volunteer attorneys to assist with the cessation of practice. Brad Johnson responded with comments. Mr. Ducloux addressed the request for a rule comment. Ms. Willing responded with comments. Mr. Squires addressed the Committee regarding the succession planning workgroup. The Committee further discussed the subject. The Committee will include the subject, including a possible rule proposal, on the agenda for its January 16, 2020, quarterly meeting

**G. RULE 3.06. MAINTAINING INTEGRITY OF JURY SYSTEM, TDRPC – ADDRESSING POST-TRIAL COMMUNICATIONS WITH JURORS**

Mr. Ducloux addressed the Committee on this agenda item. Mr. Hagen responded with comments. Mr. Hagen is awaiting feedback he requested from certain groups on the subject. Mr. Hagen will continue to solicit feedback and the Committee will consider the subject again at a future meeting.

**H. COMMITTEE ANNUAL REPORT**

Mr. Ducloux addressed the Committee on this agenda item. Brad Johnson responded with comments. Ms. Bresnen addressed the Committee on the subject. Ms. Bresnen made a motion to approve the 2019 Annual Report, subject to updates that may become necessary for accuracy. Mr. Belton seconded the motion. The Committee voted in favor of the motion.

**I. PROPOSED RULE TIMELINES**

Mr. Ducloux addressed the Committee on this agenda item. Brad Johnson briefed the Committee on timelines pertaining to proposed rules.

## **J. AGENDA ITEMS FOR NEXT MEETINGS**

Mr. Ducloux addressed the Committee on this agenda item. The Committee discussed including the following subjects on the agenda for its January 16, 2020, quarterly meeting: a proposed rule related to volunteer attorneys designated to assist with the cessation of practice (Part XIII, TRDP), further discussion of the subject of post-trial communications with jurors (Rule 3.06, TDRPC), and requests to initiate the rule proposal process which may be received from the Commission for Lawyer Discipline. The Committee will also hold a public hearing on proposed rule changes relating to the assignment of judges in disciplinary proceedings (Rules 3.01, 3.02, and 3.03, TRDP) at its January 16, 2020, meeting.

## **L. ADJOURNMENT**

Mr. Belton made a motion to adjourn. Ms. Bresnen seconded the motion. The Committee voted in favor of the motion and the meeting adjourned at 10:39 a.m.