

MEETING OF THE COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

November 4, 2020

By Teleconference

MINUTES

Members Present: Chair M. Lewis Kinard; Amy Bresnen; Claude Ducloux; Hon. Dennise Garcia; Rick Hagen; Professor Vincent Johnson; Karen Nicholson.

Members Not Present: Timothy D. Belton; W. Carl Jordan.

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

A. CALL TO ORDER; ROLL CALL

Mr. Kinard called the meeting to order at 10:03 a.m. Mr. Squires called the roll and a quorum was present.

B. COMMENTS FROM THE CHAIR

Mr. Kinard noted that the 2021 rules vote will take place between February 2 and March 4, 2021, and that the proposed rule amendments and Supreme Court of Texas order for a rules vote are included in the November issue of the *Texas Bar Journal*. Mr. Kinard explained that Committee members are beginning to give presentations and write articles to help members of the State Bar understand the proposals. Mr. Kinard explained that any groups that would like someone to answer questions or provide a presentation could use the “Contact Us” feature at texasbar.com/rulesvote. Mr. Kinard noted that there was a significant amount of information available at texasbar.com/cdrr and at texasbar.com/rulesvote. Mr. Kinard explained that public forum events for the rules vote will be held in January and February of 2021.

Mr. Kinard thanked everyone who has participated in getting the ballot items to the membership vote stage. Mr. Kinard explained that the goal for the proposals is to help lawyers clearly know their obligations while assuring the public that the Bar will remain effectively governed by its own rules and procedures. Mr. Kinard encouraged those listening to keep submitting comments and feedback. Mr. Kinard congratulated Judge Garcia on her election to the Fifth District Court of Appeals.

C. APPROVAL OF THE MINUTES OF THE LAST MEETING

Mr. Kinard and Mr. Ducloux addressed the Committee on this agenda item. Mr. Ducloux made a motion to approve the minutes from the October 5, 2020, meeting. Ms. Bresnen seconded the motion. The Committee voted in favor of the motion.

D. PROPOSED RULE 1.00. TERMINOLOGY, TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT (TDRPC)

Mr. Kinard addressed the Committee on this agenda item. Mr. Kinard explained that, at the last meeting, the Committee voted to table proposed Rule 1.00 to consider whether to republish it in early 2021 due to the possible addition of new terms. Mr. Kinard explained that the Committee could table the subject until February 2021, at which time it could reinstate the proposal and vote on publishing a revised version. Mr. Kinard discussed possible publication in March or April of 2021. Mr. Ducloux responded with comments. Ms. Bresnen made a motion to table the subject until the Committee's February 2021 meeting. Ms. Nicholson seconded the motion. The Committee voted in favor of the motion. The Committee also discussed whether to hold a January 2021 meeting. Mr. Kinard noted that the Committee could take that up later in the meeting.

E. RULES 5.08 (PROHIBITED DISCRIMINATORY ACTIVITIES) AND 8.04 (MISCONDUCT), TDRPC

Mr. Kinard addressed the Committee on this agenda item. Mr. Kinard explained that the Committee decided in September to revisit this subject at this meeting to see what action, if any, the State Bar Board of Directors Discipline and Client-Attorney Assistance Subcommittee (DCAAP) might have taken. Mr. Cantu addressed the Committee and explained that DCAAP is in the process of reviewing these issues, including Rule 8.04(g) of the American Bar Association Model Rules of Professional Conduct and what other states are doing. Mr. Cantu explained that DCAAP had not come to an ultimate conclusion on a recommendation to the Board. Mr. Cantu estimated that DCAAP might make a recommendation to the Board by the January or April Board meeting. Mr. Ducloux suggested waiting to see what DCAAP recommends in order to get additional input. Judge Garcia made a motion to table the subject until the Committee's February 2021 meeting. Mr. Ducloux seconded the motion. The Committee voted in favor of the motion.

F. PROPOSED RULE TIMELINES

Mr. Kinard asked Brad Johnson whether there were any timeline issues that needed to be discussed. Mr. Johnson addressed the Committee regarding proposed rule timelines.

The Committee discussed whether to hold a January 2021 meeting. Mr. Kinard explained that the Committee previously hesitated to schedule a January meeting due to the outreach efforts taking place related to the upcoming rules vote. The Committee will discuss whether to hold a January 2021 meeting again when it meets in December.

G. AGENDA ITEMS FOR NEXT MEETINGS

Mr. Kinard explained that the Committee's annual report should be on the December 2020 meeting agenda. Mr. Kinard asked whether anything else needed to be added for the December meeting agenda. No Committee members indicated that they had any items to add.

H. ADJOURNMENT

Mr. Hagen made a motion to adjourn. Ms. Nicholson seconded the motion. The Committee voted in favor of the motion. The meeting adjourned at 10:22 a.m.