

MEETING OF THE COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

February 6, 2019
Texas Law Center, Room 103
Austin, Texas
And by Teleconference

MINUTES

CALL TO ORDER; ROLL CALL

The meeting was called to order at 10:01 a.m.

In attendance: Chairman M. Lewis Kinard; Claude Ducloux; Amy Bresnen; Timothy Belton; Rick Hagen; Vincent Johnson; Hon. Dennise Garcia; and Karen Nicholson. Also present: Ray Cantu, Director; Brad Johnson, Staff Attorney; and Cory Squires, Staff Liaison.

Not present: W. Carl Jordan.

A. COMMENTS FROM THE CHAIR

Mr. Kinard expressed that the Committee is committed to encouraging public participation in the rule proposal process and the need for different perspectives in the process. Mr. Kinard also discussed efforts that have been made to allow for public participation in the process, including through the Committee's website. Mr. Squires discussed additional public outreach efforts that have been made and the Committee further discussed public outreach. Mr. Kinard discussed recent reports he made to the State Bar of Texas Board of Directors and its Discipline and Client-Attorney Assistance Program (DCAAP) Committee.

B. APPROVAL OF MINUTES

Mr. Ducloux addressed the Committee on this agenda item. Mr. Ducloux made a Motion that the Committee approve the minutes from the January 9, 2019, meeting. The Motion was seconded by Ms. Bresnen. The Committee voted in favor of the Motion.

C. DISCUSSION OF PROCESS AND PROTOCOL

Mr. Kinard discussed general process and protocol for the Committee, including communications with subject matter experts and formality in communications on behalf of the Committee.

D. RULE 1.01 COMPETENT AND DILIGENT REPRESENTATION

Brad Johnson addressed the Committee on the status of the proposed rule. The Committee reviewed a draft report to the Supreme Court of Texas, which Ms. Bresnen and Mr. Kinard prepared, regarding a proposed change to Comment 8 to Rule 1.01, Texas Disciplinary Rules of Professional Conduct (TDRPC). Ms. Bresnen made a Motion that the Committee submit the report to the Supreme Court of Texas. The Motion was seconded by Mr. Belton. The Committee

voted in favor of the Motion.

E. PROPOSED ADVERTISING RULES

The Committee discussed public comments received regarding the proposed advertising rules and possible changes to the published version of the proposed advertising rules. The advertising rules subcommittee will continue its work on the proposed rules. Vincent Johnson discussed case law pertaining to the issue of trade names, as well as what other states allow and/or prohibit. The Committee discussed additional methods to seek input from Texas lawyers on the issue of trade names.

F. RULE 6.05 CONFLICTS AND PRO BONO

The Committee reviewed draft language pertaining to proposed exceptions to conflict of interest rules for certain nonprofit and limited pro bono legal services. Mr. Ducloux made a Motion that the Committee initiate and publish the proposed rule. The Motion was seconded by Judge Garcia. The Committee voted in favor of the Motion.

G. PROPOSED CHANGES TO RULE 1.05 COMMENTS

The Committee discussed draft language prepared by Mr. Ducloux and Mr. Hagen regarding possible proposed changes to Comments 18 and 20, Rule 1.05, TDRPC. The Committee discussed whether recommendations to the Supreme Court of Texas regarding the comments were necessary. The issue will be put on a future meeting agenda for further discussion.

H. TIMELINES

Mr. Kinard addressed general timelines relating to the rule proposal process. Brad Johnson also addressed general rule proposal timelines. The Committee discussed the timeline for proposed Rule 6.05 regarding conflicts and pro bono services.

Ms. Bresnen left the meeting at approximately 11:30 a.m.

ADJOURNMENT

Mr. Ducloux made a Motion to Adjourn. Judge Garcia seconded the Motion. The Committee voted in favor of the Motion and the meeting adjourned at 11:33 a.m.