

MEETING OF THE COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

January 16, 2020
Texas Law Center, Room 101
Austin, Texas

MINUTES

Members Present: Chair M. Lewis Kinard; Timothy Belton; Amy Bresnen; Claude Ducloux; Dean Vincent Johnson; W. Carl Jordan; Karen Nicholson.

Members Not Present: Hon. Dennise Garcia; Rick Hagen.

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

A. CALL TO ORDER

Mr. Kinard called the meeting to order at 10:59 a.m.

B. COMMENTS FROM THE CHAIR

Mr. Kinard explained that the Texas Law Center was experiencing a problem with its power supply. Mr. Kinard thanked those in attendance and noted that Mr. Belton, Ms. Bresnen, and Mr. Hagen were each reappointed to the Committee. Mr. Kinard noted that the Committee would take a group photo after the meeting for its next annual report. Mr. Kinard explained that he would be presenting the Committee's 2019 annual report to the State Bar Board of Directors at its January 24, 2020, meeting. Mr. Kinard explained the procedures for the public hearing on proposed Rules 3.01 (Disciplinary Petition), 3.02 (Assignment of Judge), and 3.03 (Filing, Service and Venue), Texas Rules of Disciplinary Procedure (TRDP).

C. UPDATE ON RULE PROPOSALS SUBMITTED TO STATE BAR BOARD OF DIRECTORS

Mr. Kinard provided an update on recent rule proposals submitted to the State Bar Board of Directors. Mr. Kinard explained that the Board's Discipline and Client-Attorney Assistance Subcommittee recommended that the Board: reject proposed Rule 1.01 (Competent and Diligent Representation), Texas Disciplinary Rules of Professional Conduct (TDRPC); approve proposed Rule 6.05 (Conflict of Interest Exceptions for Nonprofit and Limited Pro Bono Legal Services), TDRPC; and return proposed Part VII (Information about Legal Services), TDRPC, to the Committee for additional consideration. The Board is scheduled to take action on these items at its January 24, 2020, meeting.

D. PUBLIC HEARING AND DISCUSSION: PROPOSED RULES 3.01, 3.02, AND 3.03, TRDP

Mr. Kinard called to order the public hearing on proposed Rules 3.01, 3.02, and 3.03, TRDP, relating to the assignment of judges and related procedures when a respondent in a disciplinary complaint elects to proceed in district court. No individuals signed up to address the Committee at the hearing. Mr. Ducloux addressed the Committee on the subject, including written public comments received on the proposal. Mr. Kinard noted that public comments could be submitted through January 31, 2020, and encouraged members of the public to submit comments.

E. ROLL CALL

Mr. Squires called the roll. A quorum was present. The Committee convened its post-hearing quarterly meeting.

F. APPROVAL OF THE MINUTES OF THE LAST MEETING

Mr. Kinard addressed the Committee on this agenda item. Mr. Belton made a motion that the Committee approve the minutes from the December 4, 2019, meeting. Ms. Bresnen seconded the motion. The Committee voted in favor of the motion.

G. PART XIII. CESSATION OF PRACTICE, TRDP

Mr. Kinard addressed the Committee on the Supreme Court of Texas request for a recommendation on a comment to Part XIII, TRDP, relating to the voluntary appointment of custodian attorneys to assist with the cessation of practice. Mr. Ducloux addressed the Committee on the subject, including on draft proposed Rule 13.04, TRDP, which as drafted would address the voluntary appointment of custodian attorneys (without judicial involvement) to assist with the cessation of practice, including issues related to liability and the attorney-client privilege. Greg Sampson, a co-chair of a succession planning workgroup established by State Bar President Randy Sorrels, as well as Laura Gibson, a State Bar Board Member and a co-chair of the succession planning workgroup, provided feedback on the subject. Mr. Sampson expressed general support for the draft rule proposal, as well as for a comment to Part XIII, and Ms. Gibson expressed agreement with Mr. Sampson. Mr. Sampson and Ms. Gibson offered a suggestion for the draft rule proposal to address possible temporary cessation of practice. The Committee discussed the subject and Mr. Sampson and Ms. Gibson provided additional feedback. At the request of Mr. Ducloux, Brad Johnson addressed the Committee on possible actions the Committee could take as to the rule proposal process.

Mr. Ducloux made a motion that the Committee initiate the rule proposal process for proposed Rule 13.04, TRDP, relating to the voluntary appointment of custodian attorneys to assist with the cessation of practice. Ms. Bresnen seconded the motion. The Committee voted in favor of the motion.

Mr. Ducloux made a motion that the Committee publish proposed Rule 13.04, TRDP. Ms. Bresnen seconded the motion. The Committee voted in favor of the motion. The proposed rule will be scheduled for publication in the March 2020 issue of the *Texas Bar Journal*, as well as in the *Texas Register*. The Committee will hold a public hearing at the Texas Law Center on April 7, 2020, and

will accept public comments through April 10, 2020.

Mr. Belton, Ms. Bresnen, and Mr. Ducloux will serve on a subcommittee regarding the Supreme Court request for a recommendation on a comment to Part XIII, TRDP. Mr. Belton will serve on a subcommittee to study and make a recommendation regarding temporary periods where an attorney is unable to manage his or her practice, including whether a rule proposal may be warranted to address the issue.

At the request of the Committee, Ms. Willing addressed the Committee on the subject.

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

Mr. Kinard addressed the Committee on this agenda item. The Committee tabled the item.

I. COMMISSION FOR LAWYER DISCIPLINE REQUEST TO INITIATE THE RULE PROPOSAL PROCESS FOR RULE 1.05, TDRPC – RELATING TO THE DISCLOSURE OF CONFIDENTIAL INFORMATION AND CLIENTS CONTEMPLATING SUICIDE

Mr. Kinard addressed the Committee on this agenda item. The Committee discussed the request and Rule 1.05, TDRPC. Mr. Kinard addressed the Committee regarding the timeline for possible initiation of the rule proposal process. Ms. Bresnen addressed the request and stated that she would like to solicit outside feedback on the subject. The Committee further discussed the request and Rule 1.05. Brad Johnson responded with comments. Mr. Belton made a motion that the Committee initiate the rule proposal process for Rule 1.05 relating to clients contemplating suicide. Ms. Nicholson seconded the motion. The Committee voted in favor of the motion. Ms. Bresnen and Mr. Belton will serve on a subcommittee on the subject.

J. COMMISSION FOR LAWYER DISCIPLINE REQUEST TO INITIATE THE RULE PROPOSAL PROCESS FOR RULE 8.03(F), TDRPC, ALONG WITH RULE 1.06 AND/OR RULE 9.01, TRDP – RELATING TO RECIPROCAL DISCIPLINE FOR FEDERAL COURT OR FEDERAL AGENCY DISCIPLINE

Mr. Kinard addressed the Committee on this agenda item. Mr. Ducloux addressed the Committee on the subject. The Committee further discussed the request. The Committee did not take action on the item and will take it up again at its February 5, 2020, meeting. Mr. Ducloux indicated that he would contact the Chair of the Commission for Lawyer Discipline concerning possible language for a rule proposal.

K. PROPOSED RULE TIMELINES

Mr. Kinard addressed the Committee on this agenda item. Brad Johnson briefed the Committee regarding current proposed rule timelines and Mr. Kinard responded with comments.

L. AGENDA ITEMS FOR NEXT MEETINGS

Mr. Kinard asked whether Committee members had any topics they wanted to place on the agenda

for the next meeting. No additional rules were suggested for inclusion in the next meeting agenda.

L. ADJOURNMENT

Mr. Ducloux made a motion to adjourn. Ms. Nicholson seconded the motion. The Committee voted in favor of the motion. The meeting adjourned at 12:13 p.m.