

MEETING OF THE COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

January 5, 2022
By Teleconference

MINUTES

Members Present: Chair M. Lewis Kinard; Timothy D. Belton; Amy Bresnen; Robert Denby; Claude Ducloux; Judge Phyllis Gonzalez; Rick Hagen; Professor Vincent Johnson; and Karen Nicholson.

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

CALL TO ORDER and ROLL CALL

Chair Kinard called the meeting to order at 10:01 a.m. Mr. Squires called the roll, and a quorum was present.

COMMENTS FROM THE CHAIR

Chair Kinard welcomed everyone to the meeting and thanked all who called in for their participation. He explained the Committee's purpose and mandate, where to find all information about the Committee, and encouraged the public to participate in the process. He stated that public comments will be presented at the meeting on February 2, 2022.

APPRECIATION OF FORMER COMMITTEE MEMBER AND INTRODUCTION OF NEW COMMITTEE MEMBERS

The Chair thanked Justice Dennise Garcia for meritorious service to the Committee during her three-year term of office that ended on December 31, 2021. Justice Garcia described the value of her experience as a member of the Committee.

The Chair introduced the new members who joined the Committee on January 1, 2022, Mr. Robert Denby and the Honorable Phyllis Martinez Gonzalez.

APPROVAL OF THE MINUTES OF THE LAST MEETING

Mr. Ducloux moved to approve the Minutes of the December 8, 2021, meeting. Ms. Bresnen seconded the motion. The motion carried unanimously.

PROPOSED AMENDMENT TO RULE 3.09 OF THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT (SPECIAL RESPONSIBILITIES OF A PROSECUTOR)

Professor Johnson proposed that the Committee consider the draft that was proposed at the

November 3, 2021, meeting. Mr. Hagen stated that he would draft alternative language regarding a continuing duty to disclose exculpatory and mitigating evidence, which the Committee may discuss at its next meeting. The Committee decided to continue to solicit additional public comments and stated its intention to consider multiple drafts of proposed Rule 3.09 at the February 2, 2022, meeting.

The Committee agreed to continue to study the issue and did not vote to publish a proposed rule.

**AMENDMENTS TO COMMENTS TO RULE 7.01 OF THE TEXAS DISCIPLINARY
RULES OF PROFESSIONAL CONDUCT
(COMMUNICATIONS CONCERNING A LAWYER'S SERVICES)**

Mr. Ducloux explained an issue that arose under Rule 7.01, which was adopted after the 2021 referendum, wherein a lawyer advertised that he obtained a verdict/judgment of \$1.25 billion, but the lawyer did not state that the client received \$0. The Committee agreed that the advertisement was false and misleading, and therefore, proscribed by Rule 7.01, as adopted in 2021. However, the Committee recognized that some lawyers may have concluded that the advertisement was not in violation of Rule 7.01. Professor Johnson stated that the Committee need not recommend amendments to Rule 7.01, but it could propose an amendment to Comment 10 to clarify that Rule 7.01 requires a lawyer to disclose the amount received by a client if a judgment is never collected. Mr. Ducloux stated that it is within the mandate of the Committee to propose clarifying amendments to the interpretive comments to the Supreme Court of Texas. Professor Johnson moved to propose an amendment to Comment 10 to Rule 7.01 to the Supreme Court for its consideration as expeditiously as possible. Mr. Ducloux seconded the motion. The motion carried unanimously.

COMMITTEE ANNUAL REPORT FOR 2021

Mr. Belton moved to adopt the Annual Report of the Committee on Disciplinary Rules and Referenda for 2021, subject to inclusion of year-end statistics currently being compiled. Ms. Bresnen seconded the motion. The motion carried unanimously.

AGENDA ITEMS FOR FUTURE MEETINGS

Chair Kinard asked whether Committee members had any topics they would like to add to the agenda for the February 2, 2022, meeting. Committee members did not have new items for the next agenda but indicated they would like more discussion of proposed Rule 3.09, TDRPC.

ADJOURNMENT

Ms. Bresnen moved to adjourn the meeting. Ms. Nicholson seconded the motion. The motion carried unanimously. The meeting adjourned at 10:55 a.m.