

MEETING OF THE COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

June 11, 2018
Texas Law Center, Room 101
Austin, Texas

MINUTES

CALL TO ORDER

The meeting was called to order at 10:30 a.m.

In attendance: Chairman M. Lewis Kinard; Claude Ducloux; Amy Bresnen; Rick Hagen; W. Carl Jordan; Vincent Johnson; Timothy Belton; Hon. Dennise Garcia and Jane King. Also present: Linda Acevedo, Chief Disciplinary Counsel; Michelle Jordan, Staff Attorney; Cory Squires, Staff Liaison, Ray Cantu, Assistant Deputy Director; John Sirman, Legal Counsel and Lona Chastain, Records Attorney.

A. APPROVAL OF MINUTES

The Committee reviewed the minutes from the May 8, 2018 meeting. Mr. Kinard suggested a change in the language in paragraph "F" of the minutes to be "Conflicts- Exception for Limited Pro Bono Work". Ms. King made a Motion that the Committee approve the minutes as amended. The Motion was seconded by Mr. Hagen. The Committee voted in favor of the Motion.

B. COMMITTEE INITIATED RULES

Ms. Bresnen discussed the statutory language regarding Committee initiated proposed rules. The general consensus among the Committee was that, per the statute, a Committee proposed rule is not required to initiate within 60 days. A question was raised and the Committee discussed whether after the Committee initiates a rule if the Committee is required to follow the same statutory timeline as other requests. A Motion was made by Mr. Ducloux that a rule that has been initiated by the Committee will apply the same timelines as those initiated in any other matter. It was seconded by Ms. Bresnen. The Committee voted in favor of the Motion. Ms. Bresnen made a Motion to add the following language to the Committee's Operating Rules and Procedures, "A Committee initiated rule proposal will follow the same timelines as those initiated in any other matter". The Motion was seconded by Mr. Belton. The Committee voted in favor of the Motion.

C. RECORDING COMMITTEE VOTES

The Committee discussed by what means can the Committee members vote. Mr. Ducloux made a Motion that the Committee's Operating Rules and Procedures be amended to say "In any matter requiring a vote, a Committee member's vote may be recorded by electronic means as long as the vote is recorded in the minutes". Mr. Jordan seconded the Motion. The Committee voted in favor of the Motion.

D. DOCKETED REQUESTS

18-1 Confidentiality- Child/Elder Abuse

The Committee discussed the materials provided and the issues raised regarding 18-1. The Committee discussed whether the proposed language should be in the rule itself or instead be placed in a comment to the rule. A Motion was made by Mr. Ducloux that the Committee initiate 18-1. Judge Garcia seconded the Motion. There was additional discussion about 18-1 and Michelle Jordan discussed her memo regarding 18-1 to the Committee. Ms. Bresnen made a Motion to table 18-1. Mr. Hagen seconded the Motion. The Committee voted in favor of the Motion.

18-2 Confidentiality- Substantial Bodily Harm and 18-5-Candor Toward the Tribunal- Child/Elder Abuse

The Committee discussed 18-2. Mr. Johnson made a Motion to continue 18-2 and 18-5 to the next meeting. Ms. Bresnen seconded the Motion. The Committee voted in favor of the Motion.

18-3 Confidentiality- Ethics Advice

The Committee discussed the materials provided and the issues raised regarding 18-3. Mr. Johnson voted to initiate 18-3. Mr. Ducloux seconded the Motion. There was additional discussion by the Committee. The Committee voted in favor of the Motion.

18-4 Diminished Capacity

The Committee discussed the materials provided and the issues raised regarding 18-4. The Committee decided adding to the Docketing Statement for 18-4 the recommendation that rule 1.02(g) be deleted and replaced with 18-4. Mr. Johnson proposed numbering this new rule as 1.16. The Committee discussed the phrase under 1.16(c) "unless otherwise prohibited by law". There was general consensus among the Committee members that this phrase should be deleted from the proposed rule. Mr. Johnson made a Motion to initiate 18-4 as amended by deleting the phrase in 1.16(c) "unless otherwise prohibited by law". Mr. Jordan seconded the Motion. The Committee voted in favor of the Motion.

18-5 Candor Toward the Tribunal- Child/Elder Abuse

The Committee discussed 18-5. Mr. Johnson made a Motion to continue 18-2 and 18-5 to the next meeting. Ms. Bresnen seconded the Motion. The Committee voted in favor of the Motion.

E. RULES PROCESS

The Committee began a discussion regarding comments to the rules. They discussed a CLE/PDP Resolution recommending that TDRPC 1.01, comment 8 be revised. At Mr. Kinard's request, Linda Acevedo solicited input from Martha Newton, staff attorney for Chief Justice Hecht who confirmed that the Supreme Court adopts comments, and that the Supreme Court would seek input from the Committee regarding the recommendation. The SBOT Board of Directors is expected to vote at its June Board meeting to send the CLE/PDP request to the Supreme Court and that the Supreme Court will direct it to this Committee.

There was further discussion regarding the Committee's ability to draft comments and the general consensus is that any comments drafted were not subject to the statutory deadlines as they are not rules of enforcement and are not voted on by the bar membership.

Ms. Acevedo reported that the SBOT Board of Directors is expected to adopt a resolution at the June Board meeting referring the Advertising Review Committee's recent report on the lawyer advertising rules to this Committee. Ray Cantu confirmed that a resolution concerning these rules was included in the June SBOT Board of Directors meeting packet. The Committee noted that according to this Committee's Operating Rules and Procedures that the advertising rules would be considered

“received” at the first Committee meeting date after the request was sent, most probably in this instance at the July meeting. Mr. Cantu will have someone from the Advertising Committee to come speak to this Committee at its July meeting.

The Committee discussed generally the practical aspects of holding a public hearing and also discussed the “Proposed Future Timeline for June and July Meetings” document.

F. COMMITTEE OPERATIONS

John Sirman and Lona Chastain joined the meeting. With regard to “Information Requests”, John Sirman stated that he believed information requests to the Committee should be responded to according to Rule 12 of the Rules of Judicial Administration. He noted that as part of its administrative support of the Committee, the State Bar will help the Committee respond to such requests for information. The Committee inquired as to what kinds of information might be protected and Mr. Sirman and Ms. Chastain noted that it will depend on the nature of the specific information.

With regard to “Committee Meeting Materials”, Mr. Sirman agreed that these meeting materials should be made public since the Committee’s meetings are public and the materials correspond to the issues being discussed at these public meetings.

With regard to “Confidential Deliberations”, Mr. Sirman shared his view that it would not be practical for the Committee to deliberate in executive or closed session during its public meetings. He compared the Committee’s work to that of the Supreme Court Advisory Committee, which makes its meetings, and deliberations during those meetings, public.

G. AGENDA ITEMS FOR NEXT MEETING

The Committee will bring back all docketed requests, 18-1 through 18-5 at its July meeting. However the docketed requests should be divided into two categories, those that have been initiated and those that have not been initiated.

Mr. Hagen would like to head a subcommittee on the statutory duty to disclose child/elder abuse and how the word “substantial” applies in proposed rule 1.16(b) as it currently reads “substantial physical, financial, or other harm”.

The Committee will discuss at its next meeting creating subcommittees for the statutorily required reports to the Supreme Court and the SBOT Board of Directors.

ADJOURNMENT

Mr. Ducloux made a Motion to Adjourn. Ms. Bresnen seconded the Motion. The Committee voted in favor of the Motion and the meeting adjourned at 1:50 p.m.