

**MEETING OF THE
COMMITTEE ON DISCIPLINARY RULES AND REFERENDA**

May 4, 2022
By Teleconference

MINUTES

CALL TO ORDER OF MEETING AND ROLL CALL

Chair Kinard called the meeting to order at 10:04 a.m. Mr. Squires called the roll and a quorum was present.

Members Present: Chair M. Lewis Kinard; Timothy D. Belton; Amy Bresnen; Robert Denby; Claude Ducloux; Judge Phyllis Gonzalez; Rick Hagen; Professor Vincent Johnson (at 10:09 a.m.); and Karen Nicholson.

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

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.

APPROVAL OF THE MINUTES OF THE LAST MEETING

Mr. Ducloux moved to approve the Minutes of the April 6, 2022, meeting, with an amendment stating the number of people who participated in the public hearing and noting that the Committee heard public comments for more than two hours. Ms. Bresnen seconded the motion, as amended. The motion carried unanimously.

**PROPOSED RULE 1.00 (TERMINOLOGY) OF THE TEXAS DISCIPLINARY RULES
OF PROFESSIONAL CONDUCT**

Chair Kinard stated that the Committee could vote on whether to make amendments to Proposed Rule 1.00 and/or to recommend the proposed rule to the Board of Directors of the State Bar of Texas. The deadline to vote on whether to recommend the proposed rule to the Board is June 4, 2022, which is the 60th day after April 5, 2022, the final day of the comment period.

Mr. Ducloux moved to recommend Proposed Rule 1.00, as published, to the Board. Ms. Bresnen seconded the motion. After discussion by the Committee, the motion carried unanimously.

PROPOSED RULES 1.09 (CONFLICT OF INTEREST: FORMER CLIENT) AND 1.10 (IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE) OF THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

Chair Kinard stated that the Committee could vote on whether to make amendments to Proposed Rules 1.09 and 1.10 and/or to recommend the proposed rules to the Board of Directors of the State Bar of Texas. The deadline to vote on whether to recommend the proposed rules to the Board is June 4, 2022, which is the 60th day after April 5, 2022, the final day of the comment period.

Mr. Denby moved to recommend Proposed Rules 1.09 and 1.10, as published, to the Board. Ms. Nicholson seconded the motion. After discussion by the Committee, the motion carried unanimously.

Chair Kinard stated that the Committee would provide an explanation to the Board as to why the Committee considered and voted to recommend Proposed Rules 1.09 and 1.10 together, while understanding that the Board could consider each proposed rule separately and vote to take different actions on each.

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

Chair Kinard stated that the Committee could vote on whether to make amendments to Proposed Rule 3.09 and/or to recommend the proposed rule to the Board of Directors of the State Bar of Texas. The deadline to vote on whether to recommend the proposed rules to the Board is June 4, 2022, which is the 60th day after April 5, 2022, the final day of the comment period.

The Committee discussed Proposed Rule 3.09 to clarify the issues raised during the public comment period and at the public hearing. The Committee considered: 1) separating Proposed Rule 3.09 into multiple proposed rules, each with different changes to the current proposal; 2) terminating the rule proposal process, assigning the proposed rule to a subcommittee, and then reinitiating the rule proposal process; 3) recommending a proposed rule containing a narrower duty; or 4) continuing to discuss and consider the proposed rule at the next meeting.

Mr. Ducloux moved to table consideration of Proposed Rule 3.09 until the Committee's next meeting. Professor Johnson seconded the motion. The motion carried unanimously.

The Committee asked the public to continue to submit comments. Chair Kinard encouraged the Committee to come to the next meeting with proposals.

ANNIVERSARY OF 2021 RULES VOTE

Mr. Ducloux stated that this is the first anniversary of the Committee's appearance before the Supreme Court of Texas on May 4, 2021, regarding the results of the Rules Vote by the membership of the State Bar of Texas.

AGENDA ITEMS FOR FUTURE MEETINGS

Chair Kinard asked whether Committee members had any topics members would like to add to the agenda for the June 1, 2022, meeting.

Ms. Bresnen suggested that the Committee examine a lawyer's duty of due diligence concerning a client, as it applies to cryptocurrencies, but would raise the matter in the future after conducting more research. Mr. Denby opined that it may not be appropriate for a disciplinary rule.

ADJOURNMENT

Mr. Ducloux moved to adjourn the meeting. Ms. Nicholson seconded the motion. The motion carried unanimously. The meeting adjourned at 11:03 a.m.