

Committee on Disciplinary Rules and Referenda

Agenda

Date and Time: Wednesday, September 1, 2021 – 10:00 a.m. CDT
By Teleconference

Join by Meeting Link: <https://texasbar.zoom.us/j/94666602945>

Or Join by Telephone: 888-788-0099 (Toll Free); **Meeting ID:** 946 6660 2945

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1. Call to Order; Roll Call
2. Comments from the Chair
3. Discussion and Possible Action: Approval of the Minutes of the Last Meeting (Pages 2 – 3)
4. Discussion: Report from the Chair on the Meeting of the Discipline and Client Attorney Assistance Program (“DCAAP”) Committee of the State Bar of Texas Board of Directors on August 19, 2021, to consider Proposed Rule 1.18 of the Texas Disciplinary Rules of Professional Conduct (Duties to Prospective Client) and Proposed Rule 13.05 of the Texas Rules of Disciplinary Procedure (Termination of Custodianship)
5. Discussion: Possible Future Consideration of Proposed Rules Included in the 2011 Referendum and Other Subjects Identified for Future Consideration in the Review of the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure
6. Agenda Items for Next Meeting
7. Adjourn

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MEETING OF THE COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

August 4, 2021
By Teleconference

MINUTES

Members Present: Chair M. Lewis Kinard; Timothy D. Belton; Amy Bresnen; Claude Ducloux; Justice Dennise Garcia; Rick Hagen; Professor Vincent Johnson; and Karen Nicholson.

Members Not Present: W. Carl Jordan.

State Bar of Texas Staff Present: Ray Cantu, Deputy Executive Director; Seana Willing, Chief Disciplinary Counsel; Cory Squires, Staff Liaison; Brad Johnson, In-House Legal Counsel; and Anne Davis.

Also Present: Andrea Low, Incoming Disciplinary Rules and Referenda Attorney.

CALL TO ORDER and ROLL CALL

Chair Kinard called the meeting to order at 10:00 a.m. Mr. Squires called the roll and a quorum was present.

COMMENTS FROM THE CHAIR

Chair Kinard welcomed everyone to the meeting. Chair Kinard provided a reminder that agendas, proposals, comments, and schedules are available on the Committee's webpage, texasbar.com/cdrr. Visitors can also sign up for notifications and submit comments.

ANNOUNCEMENTS AND INTRODUCTION

Chief Disciplinary Counsel Seana Willing introduced Andrea Low, newly-hired Disciplinary Rules and Referenda Attorney, and advised that Ms. Low will begin her position on August 16th. Ms. Low summarized her professional background.

Brad Johnson was commended for his work and contributions as the former Disciplinary Rules and Referenda Attorney.

APPROVAL OF THE MINUTES OF THE LAST MEETING

Upon consideration, the following motion was made by Mr. Ducloux and seconded by Ms. Bresnen: to approve the minutes of the June 10, 2021, meeting. The Committee unanimously voted in favor of the motion.

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

The Committee considered proposed Rule 1.00, TDRPC, and the public comments submitted in connection with the same. Chair Kinard noted that the Committee’s deadline to vote on proposed Rule 1.00 is September 13, 2021. Professor Vincent Johnson suggested changes to proposed Rule 1.00, as well as to the accompanying proposed Comment. Following a discussion, the following motion was made by Mr. Ducloux and seconded by Ms. Bresnen: to recommend proposed Rule 1.00 to the State Bar Board of Directors and to recommend the proposed Comment, with the following amendments to the proposed Rule and Comment: delete the proposed “Client” definition in paragraph (d) altogether, delete a cross reference to the term “Client,” delete paragraph 1 of the proposed Comment, and renumber paragraphs accordingly. The motion carried unanimously.

**SUPREME COURT OF TEXAS REQUEST TO STUDY AND MAKE
RECOMMENDATIONS ON PROPOSED COMMENTS TO RULES 1.01 (COMPETENT
AND DILIGENT REPRESENTATION) AND 2.01 (ADVISOR), TDRPC**

The subcommittee of Justice Garcia, Ms. Bresnen, and Mr. Belton completed its study of the proposed comments. Justice Garcia explained that it is the consensus of the subcommittee to decline to recommend the proposed comments. A motion was made by Mr. Belton and seconded by Mr. Ducloux to adopt the recommendation of the subcommittee and explain the reason for the recommendation in the Committee’s response to the Supreme Court of Texas. The motion carried unanimously. Ms. Bresnen offered to draft a response.

PROPOSED RULE TIMELINES

There were no proposed rule timelines to discuss.

CONSIDER AGENDA ITEMS FOR FUTURE MEETINGS

Chair Kinard asked if anyone had any topics they would like added to the September agenda. Justice Garcia provided an update on a change she proposed last year. A brief discussion was held regarding a review of the TDRPC and Texas Rules of Disciplinary Procedure. A suggestion was made to review and identify proposed amendments from the 2011 referendum that would be useful, necessary, and non-controversial.

No public hearings are currently scheduled. Chair Kinard reminded those listening or tuning in how to send recommendations for rule initiations to the Committee.

ADJOURNMENT

A motion to adjourn was made by Ms. Nicholson and seconded by Mr. Ducloux. The motion carried unanimously. The meeting was adjourned at 10:41 a.m.