

# MEETING OF THE COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

May 6, 2020  
By Teleconference

## MINUTES

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

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

### A. CALL TO ORDER; ROLL CALL

Mr. Kinard called the meeting to order at 10:04 a.m. Brad Johnson called the roll and a quorum was present. (Mr. Hagen joined the meeting later.)

### B. COMMENTS FROM THE CHAIR

Mr. Kinard thanked those who joined the meeting and those who have continued to provide feedback on the rule proposals the Committee is working on. Mr. Kinard emphasized the importance of feedback from State Bar members and the general public. Mr. Kinard emphasized that the Committee reads every public comment, listens to every public speaker at the Committee's public hearings, and does all it can to ensure all issues raised are adequately addressed. Mr. Kinard explained that he thought the Committee's April quarterly meeting and two public hearings via Zoom were a success and allowed for more public participation for those outside of Austin. Mr. Kinard thanked those who participated and attended the April meeting.

### C. UPDATE ON STATE BAR BOARD OF DIRECTORS ACTION ON PROPOSED CHANGES TO RULES 3.01 TO 3.03, TEXAS RULES OF DISCIPLINARY PROCEDURE (TRDP) – RELATING TO THE ASSIGNMENT OF JUDGES AND RELATED PROCEDURES WHEN A RESPONDENT IN A DISCIPLINARY COMPLAINT ELECTS TO PROCEED IN DISTRICT COURT

Mr. Kinard explained that the State Bar Board of Directors unanimously voted at its last meeting to approve the proposed changes to Rules 3.01 to 3.03, TRDP, which were recently recommended by the Committee. Mr. Kinard explained that the Board decided to wait until a future date to petition the Supreme Court for a referendum on these and other proposed rule changes. Mr. Kinard explained that his expectation is the Board could potentially vote to petition the Supreme Court at its September 2020 meeting, which would make early 2021 a tentative timeline for a vote by Bar membership.

### D. APPROVAL OF THE MINUTES OF THE LAST MEETING

Mr. Kinard addressed the Committee on this agenda item. Mr. Ducloux made a motion to approve the minutes from the April 7, 2020, meeting. Ms. Bresnen seconded the motion. The Committee voted in favor of the motion.

**E. PROPOSED CHANGES TO PART VII. INFORMATION ABOUT LEGAL SERVICES (LAWYER ADVERTISING AND SOLICITATION RULES), TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT (TDRPC)**

Mr. Kinard addressed the Committee on this agenda item. Mr. Kinard explained that this is the last scheduled meeting before the deadline to vote on whether to recommend the proposed rules. Mr. Kinard explained that the subcommittee on the advertising rules (Dean Johnson, Ms. Bresnen, and Mr. Ducloux) submitted proposed amendments to the proposed rules and proposed comments. Dean Johnson briefed the Committee on the proposed amendments recommended by the subcommittee. Mr. Ducloux responded with comments, including to emphasize the subcommittee's attention to the public comments received and to recognize Dean Johnson's efforts on the proposed rules and proposed comments. Mr. Ducloux made a motion to approve the proposed amendments to the proposed rules and proposed comments as recommended by the subcommittee. Judge Garcia seconded the motion. The Committee voted in favor of the motion. Ms. Bresnen made a motion to recommend the proposed rules and proposed comments, as amended, to the Board of Directors. Ms. Nicholson seconded the motion. The Committee voted in favor of the motion. Mr. Kinard responded with comments. Brad Johnson noted that the Board will meet in late June. Mr. Kinard expressed that the Board will hopefully take the matter up at that meeting.

**F. PROPOSED RULE 13.04. VOLUNTARY APPOINTMENT OF CUSTODIAN ATTORNEY FOR CESSATION OF PRACTICE, TRDP**

Mr. Kinard addressed the Committee on this agenda item. Mr. Kinard explained that this is the last scheduled meeting before the deadline to vote on whether to recommend the proposed rule to the Board of Directors. Mr. Kinard noted a proposed one-word amendment to the proposed rule, which was previously discussed by the Committee. Mr. Ducloux made a motion to approve the amendment. Ms. Bresnen seconded the motion. The Committee voted in favor of the motion. Mr. Belton made a motion to recommend the proposed rule, as amended, to the Board of Directors. Mr. Ducloux seconded the motion. The Committee voted in favor of the motion. Mr. Ducloux and Mr. Kinard thanked Ms. Willing for her help on the subject.

**G. PROPOSED RULE 13.05, TRDP – RELATING TO THE VOLUNTARY APPOINTMENT OF A CUSTODIAN ATTORNEY TO ACT DURING A DISABLING CIRCUMSTANCE**

Mr. Kinard addressed the Committee on this agenda item. As background, Mr. Kinard noted that just prior to the Committee's April meeting, Greg Sampson and Laura Gibson, co-chairs of a succession planning task force, submitted a draft proposed rule for consideration by the Committee, and that they also spoke about their concerns regarding temporary cessations of practice due to a disabling circumstance at the April public hearing. Mr. Kinard stated that the Committee appreciated Mr. Sampson and Ms. Gibson's help. Mr. Kinard explained that on April 17, 2020, the Board of Directors adopted a resolution asking the Committee to initiate a proposal for Rule 13.05, TRDP. Mr. Kinard explained that Mr. Ducloux worked with Brad Johnson and Mr. Belton on a revised draft of proposed Rule 13.05. Mr. Ducloux made a motion to initiate the rule proposal process. Judge Garcia seconded the motion. Mr. Kinard responded with comments. The Committee voted in favor of the motion. Mr. Ducloux discussed the background of the subject and briefed the Committee regarding the revised

draft of proposed Rule 13.05. Brad Johnson responded with comments. The Committee further discussed the subject. Brad Johnson and Ms. Willing responded with comments. The Committee discussed whether to publish a draft for public comment at this time. Mr. Ducloux made a motion to publish the revised draft of proposed Rule 13.05. Mr. Belton seconded the motion. The Committee voted in favor of the motion. The proposal will be published in the June issue of the *Texas Bar Journal* and in the *Texas Register*. Mr. Kinard addressed the Committee regarding the date for a public hearing on the proposal. Mr. Ducloux made a motion that the Committee hold the public hearing at the Committee's June 18, 2020, meeting. Judge Garcia seconded the motion. The Committee voted in favor of the motion. The Committee will accept public comments on the proposal through July 6, 2020.

#### **H. PROPOSED CHANGES TO RULE 1.05, CONFIDENTIALITY OF INFORMATION, TDRPC – RELATING TO THE DISCLOSURE OF CONFIDENTIAL INFORMATION AND CLIENTS CONTEMPLATING SUICIDE**

Mr. Kinard addressed the Committee on this agenda item. Mr. Kinard noted that the Committee will hold a public hearing on the proposed changes to Rule 1.05, TDRPC, at its June 18, 2020, meeting, and will accept comments on the proposed changes through June 20, 2020. Mr. Kinard discussed a proposed amendment to the proposed rule changes, which was previously recommended by the subcommittee on the subject (Mr. Belton, Ms. Bresnen, and Mr. Ducloux). Mr. Kinard explained that the Committee could vote on the proposed amendment at a later date. Mr. Kinard and Ms. Bresnen discussed public comments received on the proposed changes. Brad Johnson responded with comments. Mr. Kinard explained that the Committee will hold the June 18 public hearings via teleconference.

#### **I. PROPOSED CHANGES TO RULE 8.03, TDRPC, AND RULES 1.06 AND 9.01, TRDP – RELATING TO REPORTING PROFESSIONAL MISCONDUCT AND RECIPROCAL DISCIPLINE FOR FEDERAL COURT OR FEDERAL AGENCY DISCIPLINE**

Mr. Kinard addressed the Committee on this agenda item. Mr. Kinard noted that the Committee received public comments on the proposed changes, and that the Committee will hold a public hearing on the proposed changes at its June 18, 2020, meeting. Mr. Ducloux responded with comments.

#### **J. PROPOSED RULE TIMELINES**

Mr. Kinard asked Brad Johnson whether there were any timeline or other outstanding issues to discuss. Mr. Johnson responded that the Committee had covered the relevant timelines. Mr. Johnson noted that proposed Rule 13.05, TRDP, should be able to make the deadline for the June issue of the *Texas Bar Journal*.

#### **K. AGENDA ITEMS FOR NEXT MEETINGS**

Mr. Kinard asked whether anyone had suggestions or requests for items to add to the next meeting agenda. Dean Johnson suggested the subject of duties owed to prospective clients, as well as the sale of a law practice, for future consideration. Dean Johnson suggested that he, Mr. Ducloux, and Ms. Bresnen could look at the relevant provisions of the American Bar Association Model Rules of Professional Conduct and determine what changes might be needed for incorporation into the Texas

rules. Mr. Ducloux responded with comments regarding the closure of a law practice. Mr. Kinard discussed the considerations of the previous disciplinary rules committee with regard to the sale of a law practice. Mr. Kinard expressed that both items would be good for discussion at the next meeting. With regard to duties to prospective clients, Mr. Kinard discussed also looking at what was proposed in 2011. Ms. Bresnen, Dean Johnson, and Mr. Ducloux responded with comments.

#### **L. SCHEDULE SEPTEMBER 2020 COMMITTEE QUARTERLY MEETING**

Mr. Kinard addressed the Committee on this agenda item. Mr. Kinard explained that September 17, 2020, is the tentative date for the Committee's September quarterly meeting. The Committee discussed possibly holding the meeting via teleconference. Brad Johnson responded with comments. The Committee will decide later on whether to hold the meeting via teleconference. Mr. Kinard thanked staff for their work.

#### **M. ADJOURNMENT**

Ms. Bresnen made a motion to adjourn. Judge Garcia seconded the motion. The Committee voted in favor of the motion. Mr. Kinard thanked all those who participated in the meeting. The meeting adjourned at 11:11 a.m.