

MEETING OF THE COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

February 2, 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 10:02 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.

APPROVAL OF THE MINUTES OF THE LAST MEETING

Mr. Ducloux moved to approve the Minutes of the January 5, 2021, meeting with an amendment to state that "the Committee recognized that some lawyers may have concluded that the advertisement was not in violation of Rule 7.01" under AMENDMENTS TO COMMENTS TO RULE 7.01 OF THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT (COMMUNICATIONS CONCERNING A LAWYER'S SERVICES). Ms. Bresnen seconded the motion. The motion carried unanimously.

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

Chair Kinard asked the subcommittee to report on its development of proposed Rule 3.09. Professor Johnson, on behalf of the subcommittee, stated there was no objection to proposed Rule 3.09(f), as drafted by Mr. Hagen. Mr. Ducloux moved to publish proposed Rule 3.09, subject to the Committee's decision on the date to publish. Ms. Bresnen seconded the motion. Ms. Nicholson asked for discussion of the term "credible and material evidence" as contained in the proposed rule. The Committee members discussed whether the term sets an evidentiary standard that properly limits the application of proposed Rule 3.09. After discussion, the motion carried unanimously.

PROPOSED AMENDMENTS TO RULES 1.00 (TERMINOLOGY), 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 reminded the Committee that it voted to recommend proposed Rule 1.00 to the Board of Directors of the State Bar of Texas on August 4, 2021, but the Committee may amend the recommended proposed rule before the Committee submits proposed Rule 1.00 to the Board. Professor Johnson described terminology that may be needed to clarify the application of proposed Rules 1.09 and 1.10. Mr. Ducloux moved to amend proposed Rule 1.00 to include additional definitions. Ms. Nicholson seconded the motion. The motion carried unanimously.

PUBLIC HEARING ON RULES 1.00 (TERMINOLOGY), 1.09 (CONFLICT OF INTEREST: FORMER CLIENT), AND 1.10 (IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE), AND 3.09 (SPECIAL RESPONSIBILITIES OF A PROSECUTOR) OF THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

Chair Kinard suggested that the Committee hold one public hearing for proposed Rules 1.00, 1.09, 1.10, and 3.09 on April 6, 2022. Mr. Ducloux moved to publish the four proposed rules in the March 1, 2022, issue of the Texas Bar Journal and in the Texas Register. Mr. Belton seconded the motion. The motion carried unanimously.

Chair Kinard stated that the next meeting of the Board of Directors of the State Bar of Texas will be on April 29, 2022, and that the Committee may decide after a public hearing when to recommend the proposed rules to the Board. Mr. Ducloux moved to hold a public hearing on the four proposed rules at the Committee's quarterly meeting on April 6, 2022, with the comment period commencing today. Ms. Bresnen seconded the motion. The motion carried unanimously.

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

Chair Kinard announced that the Supreme Court of Texas adopted the Committee's recommended amendments to Comment 10 to Rule 7.01 and issued the order on January 31, 2022.

AGENDA ITEMS FOR FUTURE MEETINGS

Chair Kinard asked whether Committee members had any topics they would like to add to the agenda for the March 3, 2022, meeting. Committee members did not have new items for the next agenda. Committee members agreed to consider public comments on the four published proposed rules at the March 3, 2022, meeting.

ADJOURNMENT

Mr. Ducloux moved to adjourn the meeting. Mr. Denby seconded the motion. The motion carried unanimously. The meeting adjourned at 10:41 a.m.