

MEETING OF THE COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

March 4, 2020
Texas Law Center, Room 103
Austin, Texas
And by Teleconference

MINUTES

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

Members Not Present: Timothy Belton; Rick Hagen.

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

A. CALL TO ORDER; COMMENTS FROM THE CHAIR

With a quorum present, Mr. Kinard called the meeting to order at 10:05 a.m. Mr. Kinard noted that he expected a condensed meeting.

B. ROLL CALL

Mr. Squires called the roll and a quorum was present. (Ms. Nicholson joined the meeting later.)

C. APPROVAL OF THE MINUTES OF THE LAST MEETING

Mr. Kinard addressed the Committee on this agenda item. Ms. Bresnen made a motion that the Committee approve the minutes from the February 4, 2020, meeting. Judge Garcia seconded the motion. The Committee voted in favor of the motion.

D. PROPOSED RULES 3.01 (DISCIPLINARY PETITION), 3.02 (ASSIGNMENT OF JUDGE), AND 3.03 (FILING, SERVICE AND VENUE), 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 addressed the Committee on this agenda item. Mr. Kinard explained that this is the last Committee meeting before the deadline to vote on whether to recommend the proposal to the State Bar Board of Directors. Mr. Kinard noted suggested amendments from Presiding Judge David Evans, which were submitted during the public comment period. Mr. Ducloux responded with comments, including that he supported the suggested amendments from Judge Evans. Mr. Ducloux requested that Ms. Willing address the Committee on the subject. Ms. Willing responded with comments. Mr. Ducloux responded with comments. Brad Johnson briefed the Committee on the suggested amendments. Mr. Ducloux made a motion that the Committee recommend the proposal

to the State Bar Board of Directors with the amendments suggested by Judge David Evans. Dean Johnson seconded the motion. The Committee voted in favor of the motion.

E. RULE 1.05. CONFIDENTIALITY OF INFORMATION, TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT (TDRPC) – RELATING TO THE COMMISSION FOR LAWYER DISCIPLINE REQUEST TO INITIATE THE RULE PROPOSAL PROCESS REGARDING THE DISCLOSURE OF CONFIDENTIAL INFORMATION AND CLIENTS CONTEMPLATING SUICIDE

Mr. Kinard addressed the Committee on this agenda item. Mr. Kinard explained that the subcommittee of Ms. Bresnen, Mr. Belton, and Mr. Ducloux submitted a recommendation on proposed rule language. Mr. Kinard discussed timelines related to the rule proposal process. Mr. Ducloux and Ms. Bresnen responded with comments. Ms. Bresnen made a motion that the Committee publish the proposed rule changes recommended by the subcommittee in the *Texas Register* and the *Texas Bar Journal*. Mr. Ducloux seconded the motion. The Committee voted in favor of the motion. The proposal will be scheduled for publication in the April issue of the *Texas Bar Journal* and in the *Texas Register*.

F. RULE 8.03(F), TDRPC, ALONG WITH RULE 1.06 AND/OR RULE 9.01, TRDP – RELATING TO THE COMMISSION FOR LAWYER DISCIPLINE REQUEST TO INITIATE THE RULE PROPOSAL PROCESS REGARDING REPORTING PROFESSIONAL MISCONDUCT AND RECIPROCAL DISCIPLINE FOR FEDERAL COURT OR FEDERAL AGENCY DISCIPLINE

Mr. Kinard addressed the Committee on this agenda item. Mr. Kinard explained that a working draft of proposed rule changes was included in the meeting materials. Mr. Ducloux briefed the Committee regarding the draft proposed changes. Mr. Kinard responded with comments. At the request of Mr. Ducloux, Brad Johnson addressed the Committee regarding the draft proposed changes. Mr. Ducloux made a motion that the Committee publish the draft proposed rule changes in the *Texas Bar Journal* and the *Texas Register*. Dean Johnson seconded the motion. The Committee voted in favor of the motion. The proposal will be scheduled for publication in the April issue of the *Texas Bar Journal* and in the *Texas Register*.

G. PROPOSED RULE 13.04. VOLUNTARY APPOINTMENT OF CUSTODIAN ATTORNEY FOR CESSATION OF PRACTICE, TRDP; TEMPORARY CESSATION OF PRACTICE AND/OR TEMPORARY MANAGEMENT OF LAW PRACTICE

Mr. Kinard addressed the Committee on proposed Rule 13.04, TRDP. Mr. Kinard noted that the proposed rule was recently published and public comments were starting to come in. Mr. Kinard noted that the Committee will hold a public hearing on the proposed rule on April 7, 2020, and that the Committee will accept public comments on the proposed rule through April 10, 2020. Mr. Kinard addressed the deadline to vote on whether to recommend the proposed rule to the State Bar Board of Directors.

Mr. Ducloux addressed the Committee regarding the background of proposed Rule 13.04, including comments made during the Committee's January 16, 2020, quarterly meeting. Mr. Ducloux explained that he believes the proposed rule should be limited to volunteer custodian attorneys assisting with

the closing of a law practice and not the continuation of a law practice when a lawyer is temporarily unable to practice or missing. Mr. Ducloux briefed the Committee on a recent conference call he and Mr. Belton participated in with Laura Gibson and Greg Sampson, members of a succession planning workgroup appointed by State Bar President Randy Sorrels.

H. SUPREME COURT OF TEXAS REQUEST FOR A RECOMMENDATION ON A COMMENT TO PART XIII. CESSATION OF PRACTICE, TRDP – RELATING TO THE VOLUNTARY APPOINTMENT OF CUSTODIAN ATTORNEYS TO ASSIST WITH THE CESSATION OF PRACTICE

Mr. Kinard addressed the Committee on this agenda item. Brad Johnson responded with comments. Mr. Ducloux and Ms. Bresnen expressed that they did not believe a comment to a rule could grant the protections sought (in the State Bar Board of Directors' resolution) and that a rule change would be necessary. Mr. Kinard expressed his agreement. Mr. Ducloux addressed the Committee regarding the aforementioned conference call. Brad Johnson responded with comments. Mr. Ducloux and Mr. Kinard responded with comments. The Committee will respond to the Supreme Court of Texas explaining its decision to propose a new rule, as opposed to recommending a comment to an existing rule. Mr. Squires noted that Ms. Gibson and Mr. Sampson may submit written feedback on the subject. Mr. Kinard thanked Ms. Gibson and Mr. Sampson for their input, as well as others who have provided comments.

I. PROPOSED LAWYER ADVERTISING AND SOLICITATION RULES – PART VII. INFORMATION ABOUT LEGAL SERVICES, TDRPC

Mr. Kinard addressed the Committee on this agenda item. Mr. Kinard explained that the latest version of the proposed advertising and solicitation rules was recently published and public comments were beginning to come in. Mr. Kinard encouraged those listening to review the proposed rules and to submit public comments. Mr. Kinard noted that the Committee will hold a public hearing on the proposed rules on April 7, 2020, and that the Committee will accept public comments on the proposed rules through April 10, 2020. Mr. Kinard explained that the Committee will also keep in mind public comments submitted on prior versions of the proposed advertising and solicitation rules. Dean Johnson and Mr. Kinard discussed some of the public comments received thus far. In response to public comments, Dean Johnson and Mr. Kinard suggested possible amendments to proposed Rule 7.01(e). Ms. Bresnen and Dean Johnson responded with comments. Dean Johnson, Mr. Kinard, and Mr. Ducloux further discussed the suggested amendments. Brad Johnson responded with comments. Mr. Kinard responded with comments. The Committee will keep a log of potential amendments for a possible future vote by the Committee.

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

The Committee returned to the subject of proposed Rule 13.04, TRDP. Mr. Ducloux discussed a public comment received on proposed Rule 13.04, including a possible amendment to proposed Rule 13.04. Brad Johnson responded with comments. Dean Johnson suggested an amendment to the proposed rule language. Mr. Ducloux and Mr. Kinard expressed their agreement with the suggested amendment. Mr. Ducloux asked a question on the subject. Brad Johnson responded with comments.

Mr. Ducloux and Mr. Kinard responded with comments. The Committee will keep a log of potential amendments for a possible future vote by the Committee.

K. PROPOSED RULE TIMELINES

Mr. Kinard requested Brad Johnson address any timelines that needed to be discussed. Brad Johnson inquired about scheduling a public hearing and a public comment period for proposed changes to Rule 1.05, TDRPC, as well as for proposed changes relating to reporting professional misconduct and reciprocal discipline. Mr. Kinard responded with comments. Brad Johnson responded with comments. The Committee discussed the scheduling of the public hearings and public comment periods. The Committee will hold a public hearing on proposed changes to Rule 1.05, TDRPC, as well as on proposed rule changes relating to reporting professional misconduct and reciprocal discipline, at its June 18, 2020, quarterly meeting. The Committee will accept public comments on the proposed rule changes through June 20, 2020.

L. AGENDA ITEMS FOR NEXT MEETINGS

Mr. Kinard asked whether anyone had items that needed to be included on the agenda for the next meeting. No Committee members indicated there were additional items to be added.

M. ADJOURNMENT

Mr. Ducloux made a motion to adjourn. Dean Johnson seconded the motion. The Committee voted in favor of the motion. The meeting adjourned at 10:44 a.m.