

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

November 6, 2019  
Texas Law Center, Room 102  
Austin, Texas  
And by Teleconference

## **MINUTES**

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

Members Not Present: Timothy Belton; Hon. Dennise Garcia.

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; ROLL CALL**

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

### **B. COMMENTS FROM THE CHAIR**

Mr. Kinard addressed the Committee regarding the recent submission of proposed Rules 1.01 and 6.05, Texas Disciplinary Rules of Professional Conduct (TDRPC), to the Board of Directors. The Board is expected to consider the proposals at its January 2020 Board meeting. Mr. Kinard also briefed the Committee regarding meetings with the Board's Discipline and Client-Attorney Assistance Subcommittee (DCAAP).

Mr. Kinard briefly addressed the Committee regarding its Annual Report.

Mr. Kinard announced the recent reappointments of Ms. Bresnen and Mr. Hagen to the Committee, as well as Mr. Kinard's appointment as Committee Chair.

Mr. Kinard addressed the Committee regarding its December 4, 2019, meeting and expected attendance for the meeting.

Mr. Kinard addressed the Committee regarding Brad Johnson's recent presentation to the State Bar Council of Chairs regarding the rule proposal process. Brad Johnson responded with comments.

### **C. APPROVAL OF THE MINUTES OF THE LAST MEETING**

Mr. Kinard addressed the Committee on this agenda item. Mr. Ducloux made a motion that the Committee approve the minutes from the October 9, 2019, meeting. Ms. Bresnen seconded the motion. The Committee voted in favor of the motion.

**D. PROPOSED RULE 3.02. ASSIGNMENT OF JUDGE, TEXAS RULES OF DISCIPLINARY PROCEDURE (TRDP)**

Mr. Kinard addressed the Committee on this agenda item. Mr. Ducloux addressed the Committee on the subject and made a motion to approve publication of the draft proposal that would transfer assignment duties to the Presiding Judges of the administrative judicial regions when a respondent in a disciplinary complaint elects to proceed in district court. Dean Johnson seconded the motion. The Committee voted in favor of the motion. The rule proposal will be published in the December 2019 issue of the *Texas Bar Journal* and in the *Texas Register*.

Mr. Ducloux made a motion that the Committee hold a public hearing on January 16, 2020, and accept public comments through January 31, 2020. Ms. Bresnen seconded the motion. The Committee voted in favor of the motion.

**E. SUPREME COURT OF TEXAS REQUEST FOR A RECOMMENDATION ON A COMMENT TO PART XIII. CESSATION OF PRACTICE, TRDP**

Mr. Kinard addressed the Committee on this agenda item. Mr. Ducloux responded with comments. Ms. Bresnen addressed the Committee regarding whether a rule change may be necessary. The Committee further discussed the subject. Mr. Squires addressed the Committee regarding a succession planning workgroup appointed by State Bar President Randy Sorrels. The subcommittee of Mr. Ducloux and Judge Garcia will continue to study the subject. No formal action was taken on this agenda item. The Committee will consider the item again at its next meeting.

**F. SUPREME COURT OF TEXAS REQUEST FOR A RECOMMENDATION ON A COMMENT TO RULE 3.06. MAINTAINING INTEGRITY OF JURY SYSTEM, TDRPC – ADDRESSING LAWYER ACCESS TO JUROR SOCIAL MEDIA**

Mr. Kinard addressed the Committee on this agenda item. Ms. Bresnen addressed the Committee on the subject. The Committee further discussed the subject. Ms. Bresnen made a motion to approve submission of the subcommittee’s report and recommendation to the Supreme Court of Texas with minor changes. Dean Johnson seconded the motion. The Committee voted in favor of the motion.

**G. RULE 3.06. MAINTAINING INTEGRITY OF JURY SYSTEM, TDRPC – ADDRESSING POST-TRIAL COMMUNICATIONS WITH JURORS**

Mr. Kinard addressed the Committee on this agenda item. Mr. Hagen addressed the Committee on the subject, including on feedback he received from the Texas District and County Attorneys Association. Mr. Hagen discussed soliciting additional feedback on the subject from the Texas Trial Lawyers Association. Ms. Nicholson responded with comments on the subject. No formal action was taken on this agenda item. The Committee will consider the item again at its next meeting.

**H. COMMITTEE ANNUAL REPORT**

Mr. Kinard addressed the Committee on this agenda item. Mr. Kinard requested that Committee members provide any additional feedback or updates for the report. The Committee will consider the item again at its next meeting.

## **I. PROPOSED RULE TIMELINES**

Mr. Kinard addressed the Committee on this agenda item. Brad Johnson responded with comments.

## **J. MEETING SCHEDULE FOR 2020**

Mr. Kinard addressed the Committee on this agenda item, including expected attendance for the December 4, 2019, meeting. The Committee expects to have a quorum present for the December meeting and plans to hold the meeting as scheduled. The Committee also discussed and approved the 2020 meeting schedule, including changing the April 2020 quarterly meeting date to April 7, 2020.

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

Mr. Kinard addressed the Committee on this agenda item. Dean Johnson suggested additional rules for future review by the Committee, including rules in Part I, TDRPC. Dean Johnson discussed a provision of the American Bar Association Model Rules of Professional Conduct relating to duties to prospective client. Dean Johnson suggested subcommittee consideration of a possible Texas rule clarifying duties with regard to prospective clients. Mr. Ducloux and Ms. Bresnen volunteered to assist in such review. Mr. Kinard responded with comments, including expressing interest in additional review of the TRDP moving forward. Mr. Hagen raised the question of whether requirements related to attorney contracts may warrant review by the Committee. Dean Johnson, Mr. Kinard, and Mr. Ducloux responded with comments. Ms. Nicholson and Mr. Hagen provided additional comments related to the issue of post-trial communications with jurors.

## **L. ADJOURNMENT**

Mr. Ducloux made a motion to adjourn. Dean Johnson seconded the motion. The Committee voted in favor of the motion and the meeting adjourned at 10:54 a.m.