

MEETING OF THE COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

January 9, 2019
Texas Law Center, Room 101
Austin, Texas

MINUTES

CALL TO ORDER

The meeting was called to order at 10:30 a.m.

In attendance: Chairman M. Lewis Kinard; Claude Ducloux; Amy Bresnen; Timothy Belton; Rick Hagen; W. Carl Jordan; Vincent Johnson; Hon. Dennise Garcia and Karen Nicholson. Also present: Ray Cantu, Director; Brad Johnson, Staff Attorney; Michelle Jordan, Staff Attorney, and Cory Squires, Staff Liaison.

Mr. Kinard introduced Karen Nicholson, who was recently appointed as a Public Member, and Brad Johnson, the new Staff Attorney for the Committee. Mr. Kinard noted that Michelle Jordan would be departing her position as Staff Attorney and expressed the Committee's gratitude for her work.

A. PUBLIC HEARING – ADVERTISING RULES

The Committee heard comments from the public regarding the proposed advertising rules. A number of speakers signed up to comment and addressed the Committee. The Committee asked follow up questions to certain speakers. Mr. Kinard stated that the Committee would continue to work on the proposed advertising rules.

B. APPROVAL OF MINUTES

The Committee reviewed the minutes from the December 5, 2018, meeting. Mr. Ducloux made a Motion that the Committee approve the minutes. The Motion was seconded by Judge Garcia. The Committee voted in favor of the Motion.

C. RULES SUBMISSION PACKET FOR 18-3 AND 18-4

Mr. Squires addressed the Committee on the status of these proposed rules. Mr. Kinard discussed the transmission of the proposed rules to the State Bar of Texas Board of Directors. The Committee received and reviewed a draft of a cover letter and memo for the Rules Submission Packet. Mr. Kinard discussed the contents of the full packet, which will be sent to the Board of Directors.

D. RULE 1.01 COMPETENT AND DILIGENT REPRESENTATION

With regard to the request by the Supreme Court regarding the proposed comment to Rule 1.01, Ms. Bresnen and Mr. Kinard are in the process of drafting a response to the Court. Ms. Bresnen circulated a draft letter on this issue.

With regard to a proposed rule change, the Committee discussed Vincent Johnson's recommended changes. The Committee discussed requesting input on the issue from the Chief Disciplinary Counsel's Office. Mr. Belton made a Motion to publish the rule in March. The Motion was seconded by Vincent Johnson. The Committee voted in favor of the Motion.

E. RULE 6.05 – CONFLICTS AND PRO BONO

Trish McAllister from the Texas Access to Justice Commission spoke to the Committee in support of the proposed rule. She discussed what she believes are the benefits of such a rule and past problems she has observed because of a lack of such a rule.

The Committee will put this issue on the February agenda for discussion.

F. PUBLIC COMMENTS TO THE ADVERTISING RULES

The Committee discussed the public comments to the proposed advertising rules that had been received thus far. The advertising subcommittee will begin work on making revisions to the proposed rules based on public comments received and the discussions of the Committee.

Mr. Ducloux made a Motion that the Committee notify the Texas Board of Legal Specialization that the Committee intends to follow their recommendations. The Motion was seconded by Mr. Belton. The Committee voted in favor of the Motion. Mr. Ducloux will make the notification.

Professor Johnson will research the trade name issues that the Committee discussed. This issue will be put on the February meeting agenda.

G. TIMELINES

The Committee discussed the timelines for the proposed advertising rules and for Rule 1.01.

H. AGENDA ITEMS FOR NEXT MEETING

In addition to the agenda items previously mentioned that will be addressed at the February meeting, Mr. Ducloux and Mr. Hagen will present their work on a proposed comment to Rule 1.05, regarding exceptions requiring disclosure of confidential client information.

ADJOURNMENT

Mr. Ducloux made a Motion to Adjourn. Mr. Johnson seconded the Motion. The Committee voted in favor of the Motion and the meeting adjourned at 1:32 p.m.