

MEETING OF THE COMMITTEE ON DISCIPLINARY RULES AND REFERENDA

December 5, 2018
Texas Law Center, Room 103
Austin, Texas

MINUTES

CALL TO ORDER

The meeting was called to order at 10:00 a.m.

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

Not present: Hon. Dennise Garcia

A. APPROVAL OF MINUTES

The Committee reviewed the minutes from the November 7, 2018 meeting. Mr. Ducloux made a Motion that the Committee approve the minutes. The Motion was seconded by Ms. Bresnen. The Committee voted in favor of the Motion.

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

Mr. Squires addressed the progress being made on the Rules Submission Packet that will be presented to the Board of Directors. He stated that the packet was created and had been forwarded to the Legal Department for review. He stated that upon completion the packet will be forwarded to the Committee members and that the Committee will have an opportunity to vote on it at the January meeting.

C. RULE 1.01

Mr. Johnson reminded the Committee that the reason that the subcommittee was looking at Rule 1.01 was because of the request by the Supreme Court to study and make a recommendation regarding the adding of a comment noting a lawyer's duty to maintain competence in the area of relevant technology. The subcommittee recommended adopting this comment.

However, in the course of reviewing that issue, the subcommittee found other improvements that could be made to Rule 1.01. Mr. Johnson stated that the Model Rules have a separate rule regarding diligence and he proposed adding language to Rule 1.01 which states a clear duty of diligence as well as competence. He stated that this change to the Texas rule would be consistent with both the Model Rules and the rules of many other states. The subcommittee also proposed comments to a new Texas Rule 1.01.

The Committee discussed the proposals. The Committee discussed the request from the Supreme Court. The Committee decided that it would act in two ways. First of all, Mr. Kinard will send a letter to the Supreme Court and address their request from the Committee and secondly the Committee would move forward through the rules process regarding rule 1.01.

Mr. Ducloux made a Motion to initiate the rules process with regard to Rule 1.01 and also that the Committee send a letter to the Supreme Court concerning the Committee's recommendation and actions on this issue. The Motion was seconded by Jane King. The Committee voted in favor of the Motion.

It was decided that the subcommittee, particularly Ms. Bresnen, will assist Mr. Kinard in the drafting of the letter to the Supreme Court.

D. TIMELINES

The Committee discussed the Advertising Rules timeline.

E. RULE 6.05- CONFLICTS AND PRO BONO

The Committee noted that at its January meeting, Trish McAllister is expected to be available to speak to the proposed Rule 6.05 issue and the Committee may vote whether to initiate the rules process or not at that time.

F. MEETING RECORDINGS

The Committee discussed whether to continue to record their meetings and decided to continue to record meetings and to devise a method to post those recordings on its website.

G. END OF THE YEAR WRAP UP

The Committee reviewed those members that had terms that were expiring. The Chairman thanked the Committee for its work and the Committee thanked the Chairman for his work.

It was noted that the Annual Report will be presented to both the State Bar Board of Directors and to the Texas Supreme Court. Additionally, Mr. Kinard will speak at the January Board of Directors meeting about the Committee's work.

H. AGENDA ITEMS FOR THE NEXT MEETING

Mr. Squires noted agenda items for the next meeting included: the public hearing on the advertising rules; a Committee vote on the Rules Submission Packet; continued discussion of Rule 1.01; and for Trish McAllister to speak on Rule 6.05.

ADJOURNMENT

Mr. Belton made a Motion to Adjourn. Ms. Bresnen seconded the Motion. The Committee voted in favor of the Motion and the meeting adjourned at 10:55 a.m.