

Committee on Professional Ethics

Meeting Minutes

October 15, 2021

The meeting was held virtually.

Members present were Pam Anderson (Chair), Don Curran, Lucinda Fernald, Brooks Holland, Vince Lombardi, Hugh Spitzer, Janice Wong, and Monte Jewell. Asel Neutze was excused and Brett Purtzer (BOG Liaison) was absent. Also present were Jeanne Marie Clavere (staff liaison), Doug Ende, Office of Disciplinary Counsel, Sandra Schilling, Ethics Counsel, and, briefly, Darlene Neumann, (paralegal).

The chair called the meeting to order at 10:05 a.m.

Announcements/Updates

- The chair thanked Darlene Neumann for her work and contributions on the committee and welcomed Sandra Schilling as new WSBA staff support for the committee.
- Pam encouraged members to use the tools they have for administrative tasks (such as Box) and also welcomed new member Janice Wang.
- Introductions were made by all.
- Cinda agreed to be backup for Pam if she's unavailable to chair a meeting.
- Jeanne Marie reminded members of the Volunteer Toolbox available at WSBA.org and the importance of keeping receipts if and when travel and expense forms are used.
- Jeanne Marie alerted members to three Supreme Court Orders which relate to the Rules of Professional Conduct. Suggested amendments brought by the Identifying Biased or Non-Inclusive Language in Court Rules Project and also amendments suggested by QLaw have comment periods ending April 30, 2022.

RPC 4.2 Reply All Email to Opposing Counsel with Opposing Client cc'd

The subcommittee presented the latest draft and discussed suggestions, including Doug Ende's comment that the draft was missing discussion of an initial email to opposing counsel and client. The committee discussed transactional/business lawyers "industry" course of business and decided to do informal outreach to transactional/business lawyers. The subcommittee will continue to work on the draft for the next meeting.

RPC 1.4(c) Insurance Malpractice Disclosure Requirement

Hugh Spitzer presented that the subcommittee is trying to address about half a dozen questions and wondered what the correct format might be. FAQs? Members are encouraged to send possible questions to the subcommittee. Jeanne Marie will send links to previous AOs, such as one on providing legal assistance regarding the retail marijuana law, to Hugh for suggested formats for an advisory opinion.

The August 27, 2021 minutes were approved.

RPC 1.8(e) Financial Aid Exception

A motion was passed to recommend the final draft to the January BOG, subject to suggestions by Pro Bono Committee Council Manager, Mike Terasaki.

RPC 1.15A Lawyer's Unidentified Trust Account Funds (LFW proposal)

The subcommittee reported the input they had received from the DOR and AAG regarding two issues: 1) DOR's statutory construction interpreting the Unclaimed Property Act and 2) a separation of powers issue between the judicial and legislative branches of government. The subcommittee thanked Doug Ende for his October 8 Memo addressing the issues. The subcommittee reported that the BOG requested the CPE work with the LFW to present a proposed amended rule for the November BOG meeting. The WSBA General Counsel's office is also looking into the legal implications of such an amendment. A motion was passed to prepare a final draft of a memorandum and proposed rule for the BOG, and also send it to the GC with the suggestion she might share it with the AGO before the November BOG meeting.

Remote Work Advisory Draft Opinion

The subcommittee continues to work on this. One member has left but Don Curran and Janice Wang volunteered to join the subcommittee.

RPC 7.2

Tabled.

Reporting Data and Client Privacy

A new subcommittee was formed to address a request by legal aid organizations regarding requests by funding agencies for data on clients. The existing AO 183 from 1990 needs updating. Monte volunteered to be chair, Brooks and Cinda also volunteered to be on the subcommittee. Monte will also contact Michael Terasaki, Pro Bono Council Manager, regarding the new subcommittee.

The meeting adjourned at 1:35 p.m.