



WSBA

TRUST ACCOUNT RESPONSIBILITIES AND RETAINERS TASK FORCE

Meeting Minutes June 25, 2007

Task Force Chair Mark Johnson called the meeting to order at 2:08 p.m.

Members present: Randy Beitel, David Boerner (by phone), Liza Burke, Marc Christianson (by phone), Ann Guinn, David Heller (by phone), Alison Holcomb, and Art Lachman. **Members not present:** Jody McCormick, Marijean Moschetto, and Nancy Pacharzina. **Also attending:** Doug Ende (WSBA Staff Counsel), and Anna Schmidt (WSBA Paralegal).

Discussion & Drafting Regarding “Minimum” Fee Issue: The Chair reminded the Task Force that at the June 15th meeting, the Task Force left unresolved the issue of whether and how the draft rule amendments should address “minimum” fees. The last sentence of draft Comment [14] to Rule 1.5 represented an initial effort to provide guidance regarding minimum fees, but the Task Force had not agreed that the comment was adequate.

Mr. Beitel and Ms. Holcomb expressed concern that the term “minimum” implies that a fee is nonrefundable and such terminology could be used by some practitioners to avoid either placing funds in the trust account or complying with the requirements of the flat fee/retainer exception. Other task force members agreed that the term connotes nonrefundability and may be used as a loophole. Discussion ensued about the nature of minimum fee structures and how they would be treated under the draft rule, with members observing that such a fee would either have to be placed into a trust account entirely or re-styled as a hybrid flat fee/retainer coupled with an advance fee deposit. The Chair questioned whether the rule adequately addresses use of a hybrid fee arrangement involving a flat fee covering a certain amount of work, with hourly charges billed thereafter. It was agreed that Comment [16] suffices in that regard.

Ms. Holcomb moved to delete the last sentence of Comment [14] in the draft. Mr. Christianson seconded the motion. The motion passed unanimously.

Discussion ensued regarding whether to prohibit the use of the term “minimum” entirely. Ms. Holcomb moved to revise paragraph (g) of the draft amendment by inserting the word “minimum” after the word “nonrefundable.” The motion was seconded and passed by a vote of six in favor and two opposed.

The Chair asked the Ad Hoc Comment Drafting Subcommittee to review and amend the draft comments as necessary to reflect the change to paragraph (g), and further requested

that the updated draft be circulated for review and comment by the Task Force well in advance of the July 12 deadline for submission of Board materials.

Minutes: The minutes of June 4, 2007 and June 15, 2007 were approved by consensus subject to correction of a number of typographical errors.

The meeting was adjourned at 3:15 p.m.

Minutes prepared by:

Douglas Ende, WSBA Staff Counsel

Anna Schmidt, WSBA Paralegal