

Committee on Professional Ethics

Meeting Minutes

December 3, 2021

The meeting was held virtually.

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

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

Announcements/Updates

- The Chair announced Don Curran's decision to leave the committee and recognized his great contribution to the committee. She stated she is taking the next steps necessary to secure an alternate for the remainder of Don's term before the next meeting.
- Jeanne Marie informed members that the latest WSBA COVID-19 Vaccination Requirements for meetings are uploaded in Box. There was discussion about whether the negative test requirement applies to CPE members who have been vaccinated.
- Jeanne Marie also encouraged members to independently upload documents in Box and provided a demonstration of the process. Members should upload documents into their subcommittee folders, and, when ready for review by the entire committee, into the meeting folder for the next meeting.

The October 15, 2021 minutes were approved with the change of adding Janice Wong to those present.

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

The subcommittee presented the latest draft and the committee voted to approve it, subject to adoption of today's recommendations, and submit a final version to the BOG for information purposes.

RPC 1.4(c) Insurance Malpractice Disclosure Requirement

The committee reviewed a draft, discussed suggestions, and the subcommittee will bring back another draft at the next meeting.

RPC 1.8(e) Financial Aid Exception

A final version was approved at the last meeting in October, subject to further suggestions by the Pro Bono Council. The opinion is now ready to go to the BOG, hopefully in time for the January meeting, but if not, then the March meeting.

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

The Chair updated the committee regarding the last BOG meeting when the LFW proposal was reviewed and approved by the BOG. It appears the amendment is out of the CPE's hands now; the LFW will proceed with it and draft the GR 9 before it is submitted to the WSSC.

Remote Work Advisory Draft Opinion

The subcommittee continues to work on this. The subcommittee will bring back another draft at the next meeting.

RPC 1.6 Reporting Data and Client Privacy

The subcommittee is reaching out to stakeholders and will present a more complete report and possible draft at the next meeting. The subcommittee chair stated he has received a letter from the Office of Civil Legal Aid and its counterpart agency of criminal defense, stating concerns and encouraging the committee to reach out to professors and other legal resources. He noted a law professor is on the subcommittee.

Discretionary Items:

Supreme Court Amendments

The Chair reported that she had received a letter from WSBA staff asking if the CPE would be making a recommendation to the BOG regarding Supreme Court proposed rule amendments in a comment period until April 30, 2022. It was decided that the CPE would make no comment regarding Rule 25700-A-1375 but did form a subcommittee to review Rule 25700-A1372, and report back at the February meeting. The Chair will send a letter back to WSBA staff regarding the CPE's actions.

Request for Advisory Opinion regarding RPC 1.4 and Language Access in the Client-Lawyer Relationship

A request was made for an Advisory Opinion when an attorney can't effectively communicate and represent their client because of language barriers. The committee discussed ABA Formal Opinion 500 and whether a Washington AO would be helpful. The decision was made to form a subcommittee regarding the language access issue. The Chair pre-volunteered the new member, and two other CPE members volunteered to join. The Chair will send a letter to the member requesting the AO informing him of the new subcommittee.

The meeting adjourned at 1:30 p.m.