

WASHINGTON STATE BAR ASSOCIATION

Committee on Professional Ethics

Meeting Minutes (Amended 6-22-18)

April 20, 2018

The committee met at the offices of the Washington State Bar Association, 1325 4th Avenue, Suite 600, Seattle, WA 98101.

Members present were Don Curran (Chair), Tom Andrews, Callie Castillo (phone), Lucinda Fernald, Colin Folawn, Mark Fucile, Brooks Holland, Anne Seidel (phone), and Kyle Sciuchetti (BOG Liaison). Natalie Cain was excused.

Also present were Jeanne Marie Clavere (staff liaison), Doug Ende, Office of Disciplinary Counsel, and Darlene Neumann, paralegal.

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

1. Minutes

The minutes from February 9, 2018, were approved.

2. Updates and Announcements

- Advisory Opinion 2137 (2006) was removed by the Bar following a review by the general counsel's office.
- The BOG approved changes to the volunteer reimbursement policy concerning travel to bar meetings. The updated form is posted on the Bar's website and in the Committee's Box folder.

3. Lawyer Mobility Subcommittee

The subcommittee presented a revised draft based on feedback it had received at the last meeting. A motion was made and seconded to approve the opinion. The motion passed unanimously. The committee expressed its appreciation to the members of the subcommittee for their hard work on a well drafted opinion. The new opinion will be forwarded to the BOG for information prior to publication online.

4. RPC 4.2 and Government Client Subcommittee

In response to external inquiries the CPE received about the amount of time the matter has taken, the subcommittee noted that the issue is more complicated than it appears. The subcommittee is currently reviewing research from academic literature, state ethics opinions, other laws, state court opinions, federal laws and statutes. So far the information has been mixed and the review has yielded very few useful perspectives on what “authorized by law” means. For those reasons, the subcommittee determined that more work is needed before they are able to present their analysis to the full committee. Discussion followed on the ABA opinion, the issue being partly a legal question, or a policy decision that would put it beyond the scope of the CPE. The chair requested the subcommittee conclude its research and present a recommendation at the June meeting. An incremental timetable for progress on the inquiry was discussed and agreed to by the subcommittee. The chair will update the inquirer on the status of the inquiry.

5. Quadripartite Subcommittee

The committee proposed an edit to the last sentence of the revised draft opinion and suggested the opinion would benefit from having an abstract or an executive summary at the beginning. A motion was made and seconded to approve the opinion as amended, including an abstract to be prepared by the subcommittee following the meeting. The motion passed unanimously. The committee discussed a timeline and procedure for circulating the draft abstract to the committee for comment and approval.

6. Marijuana Ethics Subcommittee

The subcommittee discussed a survey they conducted of other states with marijuana laws. Since the committee last dealt with this issue in 2014, more states have decriminalized the use of medical or recreational marijuana. The vast majority have taken the position that it would not be an ethics violation for a lawyer to counsel and assist marijuana clients and likewise did not amend their ethical rules on the blessing of the federal policy in existence at the time.

The subcommittee proposed amending RPC 1.2, Comment [18], to remove the federal enforcement clause and include an additional requirement that the lawyer advise the client on conflicts involving federal law, tribal law, or policy. Since the Supreme Court declined to adopt a new comment to RPC 8.4 last time, the subcommittee made no recommendation there.

The committee considered whether to propose a new comment to RPC 8.4. Discussion followed on the risk to lawyers being charged with a federal violation (a felony) and subject to professional discipline (if convicted) for following state laws. The committee voted unanimously to recommend a new comment to rule 8.4. The proposed comment is based on a previous version that was sent to the Court in 2014.

The subcommittee will complete the summary of other states' actions and circulate an updated report to the committee ahead of the June meeting. The committee took no action on Advisory Opinion 201501, but recommended the issue be flagged in the report.

7. Retiring Lawyer Trust Account Subcommittee

The committee chair reported the LLLT Board has decided to consider the trust account rule issue raised by the CPE. The subcommittee will wait to hear back from the Board.

8. Advisory Opinion 2223 Subcommittee

The subcommittee reported it has prepared an outline which is being reviewed by the subcommittee members.

The meeting adjourned at 12:04 p.m.