

# WASHINGTON STATE BAR ASSOCIATION

## Committee on Professional Ethics

### Special Meeting Minutes

August 14, 2020

The meeting was held via Zoom video conference. In-person meetings are suspended under Proclamation 20-28 issued by the governor of the state of Washington.

Members present: Don Curran (Chair), Pam Anderson, Lucinda Fernald, Brooks Holland, Jeffrey Kestle, and Monte Jewell. Excused: Vince Lombardi, Hugh Spitzer, and Asel Neutze. Absent: Kyle Sciuchetti (BOG Liaison). Also present: Jeanne Marie Clavere (staff liaison), Kirsten Schimpff, Office of Disciplinary Counsel, and Darlene Neumann, (paralegal).

The chair called the meeting to order at 10:03 a.m. The minutes of June 19, 2020, were approved.

#### **Ghostwriting Draft Opinion**

The subcommittee reported the Superior Court Judges Association has agreed to look at the draft opinion and provide feedback to the subcommittee next month. The subcommittee will update the committee in October.

#### **Proposed Comment to RPC 2.4 (Lawyer Mediator Subcommittee)**

The subcommittee presented a memo regarding the issue of the enforceability of written agreements drafted by lawyer mediators in family law practice and a possible inconsistency between the proposed draft comment and Advisory Opinion 201901. Discussion ensued regarding changing the comment, amending the 2019 advisory opinion, CR 2A agreements, neutrality of mediators, the role of scriveners, vulnerability of parties, and focusing the comment on the special considerations of family law and parenting mediations. Following discussion, the committee agreed that the subcommittee should continue its work on the draft comment and possible revisions to AO 201901.

#### **Disclosure of Client Civil Commitment Draft Opinion**

The subcommittee discussed changes to the draft and whether examples of harm should be included. Following the discussion, the committee suggested it would be helpful to get feedback from stakeholders on the draft. Members suggested distributing the proposed draft opinion to the Council on Public Defense, WAPA and others. Finally, it was suggested to include a reference to RPC 3.3.

## **Multi-client Representation in Wrongful Death Cases Draft Opinion**

The subcommittee noted the latest changes were stylistic and there were no substantive changes. A motion was made to approve the draft advisory opinion, which passed unanimously. Staff will submit the approved advisory opinion to the Board of Governors (BOG) for information at their September meeting. If there are no objections, the opinion will be published online following the BOG meeting.

## **Proposed Comment to RPC 1.11 (State v. Nickels Subcommittee)**

The subcommittee reported they are waiting for the formal case cite before drafting proposed language. They expect to have a draft comment to present to the committee in October.

## **Potential Amendments to RPC 1.8(e) re Financial Assistance to Clients Due to COVID-19**

Prior to the meeting, the chair received a request from the bar president to review consideration of possible amendments to RPC 1.8(e) that would permit limited financial aid to clients under a humanitarian exception. An amendment adopted by the ABA on August 2, 2020, adds a new subsection (3) to Model Rule 1.8(e) which states that a lawyer representing an “indigent client pro bono” can offer at no fee “modest gifts” to help cover basic living expenses like food, rent, or medicine to ensure access to justice. The bar’s Regulatory Services Department (RSD) Counsel and the Chief Disciplinary Counsel (ODC) provided memos to the Court in response to the Court’s questions. To expedite the CPE’s action, the chair formed a subcommittee to begin work right away. Members of the subcommittee are the chair, Asel, and Pam.

## **LLLT Board Chair Request for Opinion**

Steve Crossland, Chair of the LLLT Board, requested an opinion from the CPE regarding whether LLLTs can disclose cause numbers of their cases to a third party. The National Center for State Courts (NCSC) is doing a report on cases handled by the LLLTs in Washington State. Mr. Crossland initially contacted the Washington State Administrative Office of the Courts (AOC), but they do not yet have a process to furnish the data. The committee discussed RPC 1.6, advisory opinions on disclosure of confidential client information, the difficulty in overcoming the prohibitions of 1.6, and the limited information the committee received. Following discussion, the committee passed a resolution directing the chair to respond to the LLLT Board chair with a communication that references the advisory opinions discussed and the CPE’s declination to opine based on the information provided.

## **Announcements/Updates**

The staff liaison and members of the committee expressed their thanks and great appreciation for the out-going chair, Don Curran, for his contributions and leadership of the committee during the last three years. The in-coming chair will be member, Pam Anderson.

The meeting adjourned at 12:02 p.m.