

Committee on Professional Ethics

Meeting Minutes

December 11, 2020

The meeting was held via video conference.

Members present were Pam Anderson (Chair), Don Curran, Lucinda Fernald, Brooks Holland, Jeffrey Kestle, Vince Lombardi, Hugh Spitzer, Monte Jewell, Asel Neutze, and Brett Purtzer (BOG Liaison). Also present were Jeanne Marie Clavere (staff liaison), Doug Ende, Director and Chief Disciplinary Counsel, Kirsten Schimpff, Associate Director, Office of Disciplinary Counsel, and Darlene Neumann, (paralegal).

The chair called the meeting to order at 10:06 a.m.

The committee approved the October 2, 2020 minutes.

Updates:

1. The chair updated the committee on a list of recent Supreme Court orders publishing suggested amendments to the RPCs. The comment periods expire on April 30, 2021. The Court adopted amendments to RPC 1.15A(h)(9) (removing restrictions on LLLT signatory authority on a trust accounts).
2. The chair announced a subcommittee is working on a BOG request regarding a proposal to amend RPC 1.15A to allow unclaimed funds in the IOLTA to be transferred to the Legal Foundation of Washington rather than remitting the funds to the Unclaimed Property Division of the DOR.
3. The staff liaison reported there is still no action by the Court on the suggested amendments to Title 7, Lawyer Advertising. The comment period expired on April 30, 2019.

Ghostwriting Advisory Opinion

The committee suggested the draft opinion affirm that the CPE agrees with the ABA Standing Committee's conclusion on ghostwriting. There was a motion to accept the draft opinion subject to the change suggested. The motion passed unanimously. The subcommittee will make the edit and forward the final advisory opinion to staff for submission to the BOG as information for their January meeting. The chair thanked the subcommittee for all their work on developing a new advisory opinion.

RPC 6.5 Subcommittee

The subcommittee presented a memo supporting the Pro Bono Council's proposed amendments to RPC 6.5, currently before the Supreme Court. The subcommittee noted it was satisfied the technical issues were resolved and recommended the committee defer to the PBC on the substantive policy issues. Following discussion of scrivener's edits by the subcommittee, the committee moved to approve the memo with the suggested revisions and forward to the BOG for their January 2021 meeting. The motion passed unanimously. The chair thanked the subcommittee for its work on the memo.

Disclosure of Civil Commitment Subcommittee

The subcommittee presented a revised draft opinion and reported on comments from stakeholders. Civil litigation groups opted not to comment, while NJP and WAPA generally supported the draft opinion. Criminal defenders commented that obtaining informed consent early on may be impractical and defenders are typically the last to learn of the commitment. Despite that, the defenders believed the guidance was useful and should be included in the opinion. The committee suggested the subcommittee include the RPC rule to the sentence beginning with "Comment 6." The subcommittee agreed, and will prepare a formatted final opinion for a vote at the February meeting.

Lawyer Mediator Subcommittee

The subcommittee presented a preliminary draft opinion and discussed the problem of spotting domestic violence issues in mediating family law disputes where a lack of awareness by the lawyer mediator could lead to worse consequences for a party. The subcommittee attempted to define precise terminology to describe those impacted by domestic violence. After consulting multiple sources, they settled on "gender-based violence" to define the gender risk of domestic violence. Committee members also discussed other non-gender related types of domestic violence. Finally, there was a suggestion to provide focus as to what ethics issue the opinion was attempting to resolve and to amplify and analyze the RPCs to anchor the answer to the RPCs.

RPC 1.8(e) Financial Assistance Exception Subcommittee

The subcommittee presented a revised draft with additional edits to Comment [21] and new Comment [22] following input from Debi Perluss. The committee discussed concerns that Comment [22] appeared to be more of a rule than a comment, adding language to Comment [21] from AO 1959, which among other things, may be overbroad, and using the term financial assistance rather than the language in the ABA Model Rule. Further discussion focused on revisions proposed by Perluss and broadening the rule to non-litigation matters.

RPC 1.15A LFW Proposal Subcommittee

The subcommittee gave an oral report on preliminary investigations into a proposal by the Legal Foundation of Washington (LFW) to remit unclaimed trust account funds to the LFW rather than escheating those funds to the Unclaimed Property Division as abandoned property. Two other jurisdictions have proposed changes to their trust account rules to allow such transfers to state bar foundations. The subcommittee noted there is no language in the RCW or WAC that refers to “unidentified funds.” The subcommittee will continue its research and analysis for another update to the committee in February.

The meeting adjourned at 12:31 p.m.