

**Committee on Professional Ethics**

Meeting Minutes

June 22, 2018

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

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

Also present were Jeanne Marie Clavere (staff liaison), Doug Ende (ODC), Kirsten Schimpff (ODC), Nicole Luth (ODC intern), Gurpreet Gill (ODC intern), and Darlene Neumann, paralegal.

The meeting began at 10:02 a.m. without a quorum. The staff liaison discussed the Bar's Bylaws that require a quorum be present when votes are taken. The committee decided that any votes taken during the meeting would be provisional only ("straw votes"). The chair will circulate the items requiring a committee vote after the meeting.

**1. Minutes**

A correction to the April 20, 2018, minutes was suggested. The change would be to paragraph 8 to delete "...of a draft opinion..."

**2. Updates/Announcements**

The chair updated members on recent Supreme Court orders to adopt amendments to RPC 1.6, 1.7, 1.15A, 7.3, and 8.4, effective September 1, 2018.

**3. Suggested Amendment to RPC 4.2, Comment 13**

The committee discussed the public comments received in response to the suggested amendment which was published for comment by the Court in November 2017. In a correspondence to the Bar's Executive Director, the Court requested the committee's response to the public comments. The committee viewed one comment as offering friendly amendments. The second comment expressed concern on the effect the change would have on family law matters and urged that it not apply to this practice area. The third comment opposed the part of the amendment that allows a represented lawyer to

communicate directly with a represented party without consent of that party's lawyer and suggested the proposed comment be modified. After hearing the committee's thoughts on the issues, the chair will draft a letter to the Executive Director and circulate it to the committee before sending it to the ED.

#### **4. WSBA Lawyer Referral Service**

Members discussed an issue that was referred by the Executive Director from a Seattle lawyer regarding a provision in the Washington RPC about a lawyer referral service under the Bar. The rules and ethics opinion in question are RPC 1.5(e)(2), RPC 7.2(b)(2), and Advisory Opinion 2227 (2012). Since there is no lawyer referral service authorized by the WSBA and it is unforeseeable the Bar would certify and administer such a service in the future, the committee considered a recommendation to amend the rules to delete the provision. Members discussed the potential impact on county bar associations which provide lawyer referral services for a fee, including programs that serve low income clients, and fee sharing of the programs among county bars. Members noted a related issue involving for-profit lawyer referral services. The committee decided to table the discussion to the August meeting. In the meantime, the chair will prepare a letter to the Executive Director explaining the committee's intention to further review the issue. The chair will circulate the draft letter to members before providing it to the ED.

#### **5. RPC 1.2, Comment 18 concerning WA state marijuana laws**

The committee agreed with the proposed changes to Comment 18 and discussed two versions of new Comment 8 to RPC 8.4 which carves out an exception for lawyers who work with marijuana clients. One version permits a lawyer to advise and assist marijuana clients ("narrow version"); the other broadens the comment to include the personal conduct of lawyer ("broad version"). Following discussion, the committee in a straw vote favored recommending the narrow version to the Court. Members considered another approach to send both versions to the Court without a recommendation, but to notate the committee's votes for each version. The full committee will vote on the preferred approach and inform the subcommittee so that they can revise their report accordingly. The committee plans to present the final report and recommendation at the July 27-28, 2018, Board of Governors meeting in Vancouver, WA.

#### **6. Quadripartite Advisory Opinion**

The committee made one minor edit to the draft executive summary. The chair will circulate the amended version to the full committee for approval and/or further input. The final opinion will be submitted as information at the Board's July meeting.

#### **7. RPC 4.2 and Government Contacts**

Following its preliminary report, the subcommittee issued an extensive final report on the inquiry. The report recommended the CPE decline to issue an opinion because the

questions raised were determined to be beyond the scope of the committee's authority to answer. The subcommittee noted the report's recommendation was not unanimous and included a dissenting opinion which suggested amending the rules and comment. Discussion followed on issuing an advisory opinion, the *Wright* decision, the ABA opinion, the need for a rule comment, the petition issue, concerns about continuing work on the inquiry, and the need to reach a conclusion. Among the possible responses to the inquirer, members discussed disseminating the final report to the inquirer, asking for the inquirer's response, or sending a letter to the inquirer with an explanation of why the committee chose to not issue an opinion. The chair proposed holding a teleconference with the full committee to consider the options. In the meantime, the chair will correspond with the inquirer regarding today's meeting.

**8. Retiring Lawyer and Trust Account**

The chair will contact the LLLT Board chair again to get a status update. The staff liaison offered to contact the Bar's staff liaison to the LLLT Board if necessary.

**9. Review of Advisory Opinion 2223**

Anne Seidel and Tom Andrews volunteered to prepare a draft advisory opinion that will be reviewed by the subcommittee chair. The subcommittee hopes to have a discussion draft for the next meeting.

Staff will make arrangements to set a teleconference meeting of the full committee within the next two weeks.

Meeting adjourned at 12:11 p.m.