



Committee on Professional Ethics

Meeting Minutes

December 9, 2016

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

Members present were Mark Fucile (Chair), Tom Andrews, Natalie Cain, Colin Folawn, Anne Seidel, Sumeer Singla, and Ted Stiles. Excused were Peter Jarvis, Chris Lanese, and Mario Cava (BOG Liaison).

Also present were Jeanne Marie Clavere (staff liaison), Jean McElroy, General Counsel, Doug Ende, Chief Disciplinary Counsel, Michael Vaska of Foster Pepper, and Darlene Neumann, paralegal.

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

- 1. Welcome and introductions** were exchanged around the table and over the phone.
- 2. Executive Session** from 10:08 a.m. – 11:43 a.m.

Following the executive session, there was a short break. The public session began at 11:57 a.m.

3. General Information

The chair announced there will be 3 open positions on the committee, including the chair's position, for the term starting October 1, 2017. He encouraged committee members to tell those who may be interested in serving on the CPE to apply during the volunteer recruitment period in early 2017. Committee members were also asked to consider applying for the chair position.

The chair announced the committee's Virtual Law Office Advisory Opinion is now published on the Bar's website and in the Ethics Advisory Opinions database.

4. Minutes

The minutes were approved.

5. RPC 4.2 Comment re Pro Se Lawyer Communication

(Tom Andrews – chair, Peter Jarvis, Colin Folawn)

The committee discussed certain activities of a lawyer-client that would be considered acting as co-counsel. Discussion followed on addressing the issue in a second paragraph of the proposed comment. Mr. Folawn offered to draft additional language and email it to committee members. The committee will vote on the language at its Feb. 10, 2017 meeting. The minority report from the subcommittee is also still pending. (During the meeting, Mr. Folawn circulated the draft language to the members.)

6. Lawyer Mobility Subcommittee

(Ted Stiles – chair, Mark Fucile, Natalie Cain)

The subcommittee is considering preparing an outline or draft opinion.

7. Lawyer Withdrawal and Revelation of Confidential Client Information

(Peter Jarvis– chair, Colin Folawn, Anne Seidel, Sumeer Singla)

No report. Mr. Fucile will follow up with the subcommittee chair.

8. Communication with Client Represented by Government Agency

(Tom Andrews – chair, Sumeer Singla)

The subcommittee plans to draft a comment which will be prepared by Mr. Singla.

9. Advanced Waivers

(Peter Jarvis – chair, Ted Stiles, Colin Folawn)

The subcommittee is considering drafting a comment on advanced waivers similar to the ABA Model Rule comment. Mr. Fucile will follow up with the subcommittee chair.

10. Retiring Lawyer and Trust Account

(Anne Seidel – chair, Ted Stiles, Colin Folawn)

The subcommittee is still working on a draft opinion and a rule to address the situation of a retiring lawyer maintaining a trust account.

11. Advisory Opinion 2219 (General Counsel Responsibility)

(Peter Jarvis – chair, Tom Andrews)

Mr. Andrews reported the subcommittee is close to completing a revision of Advisory Opinion 2219, but still needed to review draft language related to RPC 1.13.

12. Advisory Opinion 2223 (Lawyer – Mediator)

(Natalie Cain – chair, Tom Andrews, Anne Seidel)

The subcommittee had no report. Chair Fucile commented that he was contacted by an interested party for an update on the review of 2223. He provided an explanation to the person of the CPE's general process for reviewing advisory opinions which can take several months.

13. Advisory 2158 (Funds held in TA for Guardianship and Probate)

(Tom Andrews – chair, Anne Seidel, Ted Stiles)

The subcommittee reported they are working on draft language to clarify comment 3 of RPC 1.15A.

14. Advisory Opinions Archive

The committee continued discussion about numerous old, non-useful advisory opinions that have not been formally withdrawn. Staff discussed setting a cut-off date and moving the older opinions into an archive offline. Discussion followed on concerns about public access to the archived opinions, other alternatives to maintaining the opinions online, and an explanation by staff of the technical limitations of the current database. It was noted the language on the database page should be updated to reflect the CPE as the current committee.

15. Corrections and Amendments to the RPC

The committee reviewed a discrepancy in RPC 7.3(b) that had been brought to its attention. The language "...from a client..." should have been omitted when the Ethics 20/20 changes were submitted to the Supreme Court. The correction would also conform Washington's rule to the ABA Model Rule.

Another minor correction found by WSBA staff involved RPC 1.6. When subsection (8) was added to the rule, the series connector "or" was not moved from subsection (6) to (7). The committee agreed that both corrections should be submitted together with the WSVBA amendments to RPC 8.4. In addition, parallel amendments would need to be made to the LLLT RPC. The chair suggested the CPE could prepare the conforming copy and will contact the LLLT Board chair about this suggestion. Given the short deadline to submit materials in time for the January BOG meeting, the committee agreed it would be better to defer the package of proposed amendments to the BOG's March 9, 2017 meeting.

16. Other Business

Staff will follow up on the proposed amendments to RPC 1.0A, 1.10, 1.11 regarding imputed conflicts for public defenders that were submitted to the Court earlier this year.

The chair also asked members to provide their thoughts on the use of the Bar's online file sharing service for next time.

The meeting adjourned at 1:06 p.m.