



# WSBA

## Committee on Professional Ethics

### Meeting Minutes (amended)

**April 21, 2017**

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 Mark Fucile (Chair), Tom Andrews, Colin Folawn, Peter Jarvis, Anne Seidel, Ted Stiles, and Mario Cava (BOG Liaison). Natalie Cain was excused. Sumeer Singla was absent. Also present were Jeanne Marie Clavere (staff liaison), Doug Ende, Office of Disciplinary Counsel, and Darlene Neumann, paralegal.

The meeting began at 10:10 a.m.

#### **Preliminary matters**

The Chair thanked Anne Seidel for serving as interim chair at the last meeting.

#### **1. Minutes**

The minutes were approved.

#### **2. Updates and Information**

- The proposed amendments to RPC 1.6, 7.3, and 8.4 (g) and (h) were approved by the BOG on March 9 and subsequently submitted to the Supreme Court.
- Members discussed the current member openings on the CPE and the appointment timeline and process.

#### **3. Proposed Additional Washington Comment [13] to RPC 4.2**

At the last meeting, the committee approved proposed Comment [13] to RPC 4.2 with additional changes. The subcommittee prepared the GR9 statement, including a redline amended comment for the committee's information. Mark Fucile moved to approve the GR9 materials. The motion was seconded and the motion passed unanimously. Discussion followed regarding the number of proposed RPC amendments coming out of the committee and it was suggested that staff develop a coordinated process to submit rule amendments to the Supreme Court in a consistent manner.

#### **4. Lawyer Mobility Subcommittee**

Tabled to next meeting.

#### **5. Lawyer Withdrawal and Revelation of Confidential Client Information**

The subcommittee presented a revised draft opinion to the committee. The committee discussed the rare instance whereby a lawyer might be ordered by the court to publically reveal confidential client information and whether the draft should include a reference to RPC 1.6 comment [15]. Following discussion, Tom Andrews moved, seconded by Anne Seidel, to approve the draft opinion. The committee considered several suggested editorial changes. Following that discussion, the committee unanimously approved the draft opinion with the amended language.

#### **6. Communication with Client Represented by Government Agency**

Tabled to the next meeting.

#### **7. Retiring Lawyer and Trust Account**

The subcommittee noted there is no clear answer under the RPC that addresses whether a retiring lawyer may maintain a trust account. The situation occurs most commonly in L & I cases that involve long-term structured settlements for clients. The subcommittee initially considered whether the issue could be addressed through a rule change and comment or by an advisory opinion. After several meetings, the subcommittee reached the conclusion that the issue involved numerous variables that make it difficult to draft a rule or issue an opinion that would sufficiently address the problem. Several committee members expressed concerns over possible unintended consequences in trying to fix the problem or to prevent an issue.

The committee agreed to temporarily suspend the work of the subcommittee until additional information from the WSBA auditors could be obtained. Doug Ende offered to assist with those efforts. A brief discussion followed on the LLLT trust account rule and with some members suggesting that the current authorized signatory rule is confusing. The chair asked the subcommittee to draft a memo outlining their thoughts and concerns which he will forward to the LLLT Board.

#### **8. Proposed Revision to Washington Comment [3] of RPC 1.15A**

The committee reviewed the proposed revision of Comment [3] of RPC 1.15A which was approved at the last meeting. The version before the committee included the revised version of the comment and a GR9 statement. The committee unanimously approved the GR9 materials.

#### **9. Review of Advisory Opinion 2223**

The subcommittee provided a status report and discussed the upcoming May 9 public comment session to be held at the Bar. Staff will follow up on the webcasting questions from the subcommittee.

## **10. Quadripartite Subcommittee**

The subcommittee reported they had met and discussed the issues. They intend to begin drafting a memo and to have a report for the next committee meeting.

## **11. Lawyer Advertising (Title 7) Workgroup**

Doug Ende discussed the creation of the lawyer advertising workgroup, which was formed with the Washington members of the APRL committee that recommended proposals to amend the Model Rules for lawyer advertising, and the report and request to the BOG earlier this year to refer the matter to the CPE for drafting. Members of the CPE subcommittee include Mark Fucile, Peter Jarvis, Natalie Cain, Art Lachman, Bruce Johnson, Jean McElroy, and Mr. Ende. The workgroup will report back to the committee with recommendations.

## **12. Trust Account Advisory Opinions Review**

The committee reviewed a list of recommended actions for old trust account opinions prepared by the staff liaison with assistance from bar staff. The recommendations were: (A) simple rule update, (B) substantive revision, or (C) withdraw opinion. The chair requested (B) be tabled to the June meeting. Anne Seidel and Tom Andrews suggested several opinions be pulled from certain categories (i.e., from (A) to (B) and from (C) to (B)). The chair asked members to forward their suggestions regarding opinions in (C) that they believed should be moved to (B) to the staff liaison. At the June meeting, the committee will take up consideration of opinions in (A) and (~~B~~C) without having to deal with (~~C~~B).

## **13. Discretionary Docket**

### **a. Impact of State v. Arlene's Flowers**

The committee was unsure what the inquirer was asking for and requested the staff liaison contact the inquirer for clarification on the specific issues and concerns in the context of the RPC.

The meeting adjourned at 2:09 p.m.