



WSBA

Committee on Professional Ethics

Meeting Minutes

August 25, 2017

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), Natalie Cain, Colin Folawn, Peter Jarvis, Callie Castillo, Anne Seidel, and Ted Stiles. Tom Andrews was excused. Absent was BOG Liaison Mario Cava. Also present were Jeanne Marie Clavere (staff liaison), Erica Temple, Office of Disciplinary Counsel, Don Curran (in-coming CPE chair), and Darlene Neumann, paralegal.

The meeting was called to order at 10:05 a.m.

1. Minutes

The minutes were approved.

2. Information & Updates:

- The chair informed the committee of new members: Don Curran (as chair), Brooks Holland, and Lucinda Fernald, who will begin their terms in October.
- The meeting schedule for the term 2017-18 is out and will be distributed to returning members.
- The committee's newest advisory opinion #201701 was provided to the BOG is now published on the Bar's website.
- Staff liaison Jeanne Marie Clavere thanked departing members Peter Jarvis and Ted Stiles for their time and contributions to the committee. The chair expressed his appreciation as well to Mr. Jarvis and Mr. Stiles.

3. Lawyer Mobility Subcommittee

The subcommittee is continuing to work on a checklist of the ethical considerations when lawyers change firms. A draft opinion will be ready by October or December meeting.

4. RPC 4.2 and Government Employee Client

Subcommittee member Callie Castillo discussed issues regarding the level of communications a nongovernment lawyer may have with his/her client, a government employee, who is also represented in the matter by the government attorney's office. The subcommittee reviewed no contact rules in CA, WA, D.C, UT, and NC, which ranged from no prohibitions on contact to more restricted boundaries. The committee discussed developing an advisory opinion or a rule amendment, and the *Wright* case and its application to the current issue. Following discussion, the general consensus among the committee was to draft a rule and comment. The committee suggested the subcommittee seek input from government lawyers and lawyers on the other side given the potential impact of any proposed rule.

5. Retired Lawyers Trust Account

The subcommittee presented a draft memo addressed to the LLLT Board concerning language in RPC 1.15A(h)(9) on the restriction of LLLTs to sign trust account checks. The subcommittee, in a separate memo, is recommending the rule be amended to eliminate the restriction. It was moved and seconded to authorize the committee chair to contact the LLLT Board chair and forward the memo to the Board and request input on the CPE proposed amendment to RPC 1.15A(h)(9).

Discussion followed on the various issues involved and the subcommittee's proposal to amend the rule, including creating a comment to address "admitted to practice law" which is not defined in the RPC. The subcommittee reported they had met with Doug Ende and the WSBA auditors to discuss an alternate proposal which had a more regulatory stance towards inactive lawyers and inactive LLLTs maintaining trust accounts.

6. Advisory Opinion 2223 Subcommittee

Tabled to the next meeting. Subcommittee chair Natalie Cain will have a draft opinion ready for the October meeting.

7. Quadripartite Subcommittee

Subcommittee chair Colin Folawn presented a draft opinion on a lawyer sharing work product with a fourth party in a medical malpractice matter involving a physician employed and insured by a hospital. The subcommittee noted that it kept the opinion narrow and declined to answer every question from the inquirer and purposely avoided substantive law issues. Members considered whether to broaden the draft opinion, discussed the substantive issues in the *Tank* case, and whether the committee should withdraw Advisory Opinion 195 (disclosure of confidential client billing statements) issued in 1999.

Following discussion, the subcommittee agreed to make revisions to the draft opinion suggested by the committee, including changes to the conclusion regarding the implications/impact of consent on privilege, and to seek input from medical malpractice defense practitioners, Washington Defense Trial Lawyers (WDTL), and others who may be affected by the opinion. The chair suggested putting the issue of Advisory Opinion 195 on the agenda for the next meeting.

8. Lawyer Advertising Workgroup

Workgroup chair Mark Fucile reported they have a meeting scheduled for September 18, 2017, and may have specific proposals afterwards to present to the CPE at the October meeting. In the meantime, the workgroup has been asked to provide an interim report to the BOG at their September 28-29, 2017 meeting.

9. Arlene's Flowers Subcommittee

Tabled to the next meeting.

10. Small Batch Subcommittee

The subcommittee reported that it will have a list of 10-20 old trust account opinions to recommend for withdrawal and possibly other opinions which may need revisions at the October meeting. The subcommittee will periodically report back to the committee on advisory opinions they have identified as requiring further work.

Adjournment

In closing remarks, Chair Mark Fucile thanked members Peter Jarvis and Ted Stiles and the rest of the committee for their hard work over the years. Staff liaison Jeanne Marie Clavere expressed her thanks to the chair for leading the committee the last three years.

The meeting adjourned at 12:30 p.m.