



The State Bar of California

A.5. Action Summary
01-17-20 Meeting
Open Session

Committee on Professional Responsibility and Conduct
Friday, December 06, 2019
10:00 am – 4:30 pm

State Bar Office – San Francisco
180 Howard Street
San Francisco, CA 94105
(415) 538-2116

Members Present: Mr. Bacon, Ms. Banola, Ms. Basner, Prof. Bundy, Mr. Koss, Mr. Krueger, Ms. Lee, Ms. Roche, and Mr. Whitney.

Not Present: Mr. Carr, Mr. Fields, and Ms. Inlender.

Others Present: Ms. Lee, Mr. Tuft (State Bar staff), Brian Scheerer (Justice Catalyst Law), and Bridgette Gramme (Public Center Law)

The order of business is approximate and subject to change.

To Join by Conference Call
Toll-Free Dial-In Number: 1-855-520-7605
Conference Code: 800-238-4427#

Additional Locations
7676 Hazard Center Drive, Ste. 500, San Diego 92108

ACTION SUMMARY

A. Remarks From the Chair

1. Roll Call
2. Public Comment
Mr. Scheerer from Justice Catalyst Law provided public comment on 19-0003. Ms. Gramme from Public Center Law provided support for Mr. Scheerer's comment.
3. Announcements
4. Staff Report
Mr. Tuft reported that: (1) CAL 2019-200 (Witness Perjury) and CAL 2019-199 (Attorney Ratings and Directory Websites) were published and posted on the State Bar's website; (2) January 23 BOT to consider 13-0003 for publication; (3) the Task Force on Access Through Innovation of Legal Services will meet on December 12 in San Francisco and their deadline to complete their recommendation has been extended to March 31, 2020; and (4) today we will select topics for the 2020 Ethics Symposium.

5. Approval of Open Session Action Summary from the October 25, 2019 Meeting
The Action Summary was approved (8-0-1).

B. Discussion of Draft Opinions Previously Circulated for Public Comment

1. 17-0001 [re Advising a Cannabis Business]
Prof. Bundy presented a revised opinion and gave an oral report. Following discussion by the Committee, the Committee voted to circulate the opinion for an additional 60-day public comment circulation (9-0-0).

C. Discussion and Possible Approval for Public Comment of Draft Opinions Not Yet Released for Public Comment

1. 13-0002 [re Attorney with a Vulnerable Client]
This item was carried over.
2. 13-0004 [re Collecting Unpaid Fees]
This item was carried over.
3. 14-0001 [re Colleague Impairment]
Ms. Basner presented a revised opinion and gave an oral report. Following discussion by the Committee, the drafting team was asked to prepare a revised opinion in accordance with the Committee's discussion.
4. 16-0002 [re Cyber Risks]
Ms. Roche presented a revised opinion and gave an oral report. Following discussion by the Committee, the Committee voted to circulate the opinion for a 90-day public comment circulation subject to non-substantive edits to be made by staff (9-0-0).
Change title to Data Breaches
5. 17-0003 [re Duty of Confidentiality to Prospective Client]
Mr. Whitney presented a revised opinion and gave an oral report. Following discussion by the Committee, the drafting team was asked to prepare a revised opinion outline in accordance with the Committee's discussion.
6. 19-0003 [re Improper Contract Provisions]
This item was not discussed.
7. 19-0004 [re Client File Release and Retention Duties]
This item was not discussed.

D. Discussion and Possible Approval of Arbitration Advisories Not Yet Release for Public Comment

1. 2019-0XA [re Arbitration Advisory on Awards of Interest by Arbitrator]
This item was carried over. Mr. Bacon was asked to prepare an oral report and revised opinion for the next meeting.

2. 2019-0XB [re Arbitration Advisory on Costs]
This item was carried over. Mr. Bacon gave a brief oral report on an ethical issue that arose from this opinion. Mr. Bacon and Mr. Krueger were assigned to prepare an issues outline on this ethics issue.

E. Oral Report on Opinions Currently Circulating for Public Comment

1. 14-0002 [re Alternative Litigation Funding]
This item is circulating for public comment with a deadline of January 14, 2020.

F. Special Projects

1. 2020 Annual Statewide Ethics Symposium Planning
The Committee selected 4 topics for the 2020 Symposium:
 - Client intake/screening/disengagement (rule 1.18 and screening rules) – Justin and Marshall
 - Attorney competency (impairment, substance abuse, aging attorneys, mental health, succession planning) – Kendra
 - Rule 1.14 and client impairment – Steve
 - Law firm departures – Dena
2. Outreach Working Group Report
This item was not discussed.
3. Proposed Amended Rules of Professional Conduct Regarding File Release and Retention Duties – Consideration Following Public Comment
Mr. Tuft gave an oral report on the public comments received and presented suggested revisions to the 3 proposed rules. Following discussion, the Committee voted to recommend adoption of the changes to rules 3.8 and 1.16 as drafted and to not make any changes to the current rule 1.4 (7-0-0).
4. ATILS Working Group Report
This item was not discussed.
5. Consideration Regarding Request to Adopt ABA Model Rule 8.3 (Reporting Professional Misconduct)
Following discussion, the Committee approved the response letter to Mr. Day as revised (8-0-0).

In compliance with the Americans with Disabilities Act, those requiring accommodations at this meeting should notify Lauren McCurdy at (415) 538-2107. Please provide notification at least 72 hours prior to the meeting to allow sufficient time to make arrangements for accommodations at this meeting.

The notice and agenda is available at: <http://board.calbar.ca.gov/Committees.aspx>.