



The State Bar of California

A.5. January Action Summary
06-05-20 Meeting
Open Session

Committee on Professional Responsibility and Conduct
Thursday, April 16, 2020
10:00 am – 4:30 pm

TELECONFERENCE

State Bar Office – San Francisco
180 Howard Street
San Francisco, CA 94105

Members Present: Mr. Bacon, Ms. Banola, Ms. Basner, Prof. Bundy (by telephone), Mr. Carr, Mr. Fields, Ms. Inlender, Mr. Koss, Mr. Krueger (by telephone), Ms. Lee, and Ms. Roche.

Not Present: Mr. Bacon and Mr. Whitney.

Others Present: Ms. Lee, Mr. Tuft (State Bar staff), Jane Flannigan, Bridget Gramme, Brian Shearer, and Sejal Singh.

The order of business is approximate and subject to change.

Members of the public may access this meeting as follows:

Toll-Free Dial-In Number: 1-669-900-9128

Meeting ID: 286 849 8414

Zoom: <https://calbar.zoom.us/j/2868498414>

ACTION SUMMARY

A. Remarks From the Chair

1. Roll Call

2. Public Comment

The Chair called for public comment and Jessica Rahmoune provided comment in support of 19-0003.

3. Announcements

The Chair welcomed the Committee, expressed regrets regarding the postponement of the Ethics Symposium, and thanked the Committee and staff for all their hard work since the last meeting considering the current state of affairs.

4. Staff Report

Mr. Tuft reported that: (1) 16-0002 returned from public comment on March 30th, we received 5 public comments and will discuss the revised opinion today; (2) 17-0001 is will be sent to RAD on May 14th for publication approval; (3) rule amendments on file retention was filed with the Supreme Court on March 10th; (4) at the March 12th Board meeting, ATILS presented their final report which resulted in 2 rules (rules 1.1 and 5.4(a)(5)) being circulated for a 60-day public comment with a deadline of May

18th and has been assigned to this Committee for consideration; and (5) second and third year members are eligible to apply for the vice-chair position for the 2020-2021 committee year and should express their interest to staff.

5. Approval of Open Session Action Summary from the February 28, 2020 Meeting
The Action Summary was approved as amended (10-0-2).

B. Discussion of Draft Opinions Previously Circulated for Public Comment

1. 14-0002 [re Alternative Litigation Funding]
Mr. Fields presented a revised opinion and gave an oral report. Following discussion by the Committee, the Committee voted to approve the opinion for a 60-day public comment circulation (12-0-0).
2. 16-0002 [re Data Breaches]
Ms. Roche presented a revised opinion and gave an oral report on the public comments received. Following discussion by the Committee, the Committee voted to approve the opinion for a 60-day public comment circulation (12-0-0).

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]
Prof. Bundy 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.
2. 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.
3. 17-0003 [re Duty of Confidentiality to Prospective Client]
Mr. Whitney presented a draft 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. 19-0003 [re Improper Contract Provisions]
This item was carried over.
5. 19-0004 [re Client File Release and Retention Duties]
Ms. Lee presented a revised issue outline and gave an oral report. Following discussion by the Committee, the drafting team was asked to prepare an opinion outline in accordance with the Committee's discussion.

6. 20-0001 [re Lawyer as Expert Witness]
Mr. Koss presented an issues memo and gave an oral report. Following discussion, the drafting team was asked to prepare an issues outline. Mr. Koss is the lead drafter, Ms. Banola is added to drafting team. Prof. Bundy is the advisor. Mr. Carr is also on the drafting team.
7. 20-0002 [re Succession Planning]
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 not discussed.
2. 2019-0XB [re Arbitration Advisory on Costs]
This item was not discussed.

E. Oral Report on Opinions Currently Circulating for Public Comment

None.

F. Special Projects

1. 2020 Annual Statewide Ethics Symposium Planning
This item was covered in the Staff Report.
2. Proposed Rules 1.1 and 5.4 (Discussion of Public Comments Received)
Mr. Tuft gave an oral report on the public comment circulation of the rules. Fields, Carr, and Bundy will join the subcommittee and review the comments.
3. Outreach Working Group Report
This item was not discussed.
4. ATILS Working Group Report
This item was covered in the Staff Report.

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