



The State Bar of California

Committee on Professional Responsibility and Conduct

Friday, June 5, 2020

10:00 am – 4:30 pm

TELECONFERENCE

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

Not Present: Mr. Krueger

Others Present: Ms. Lee, Mr. Tuft, Mr. Difuntorum, Ms. McCurdy (State Bar staff), and Mr. Rothschild.

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: 928 2624 9333

Zoom: <https://calbar.zoom.us/j/92826249333>

ACTION SUMMARY

A. Remarks From the Chair

1. Roll Call
2. Public Comment
None.
3. Announcements
The Chair welcomed the Committee and thanked them for all their hard work for this meeting.
4. Staff Report
Mr. Tuft reported that: (1) the Supreme Court approved revised rules 1.16 and 3.8, effective June 1, 2020; (2) on May 14, 2020 the Committee on Regulation and Discipline of the Board of Trustees approved the request to publish CAL 2020-202 (formerly 17-0001); and (3) 14-0002 and 16-0002 is circulating for 60-day public comment with a deadline of June 29 and June 24, respectively.
5. Approval of Open Session Action Summary from the April 16, 2020 Meeting
The Action Summary was approved unanimously (10-0-0).

B. 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 not discussed.
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 a revised opinion in accordance with the Committee's discussion.
6. 20-0001 [re Lawyer as Expert Witness]
This item was carried over.
7. 20-0002 [re Succession Planning]
This item was not discussed.

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

1. 2020-0XA [re Arbitration Advisory on Awards of Interest by Arbitrator]
Mr. Bacon presented a revised arbitration advisory and gave an oral report. Following discussion, the Committee voted to standardize the introduction language for all future arbitration advisories (11-0-0). The Committee voted to approve the opinion for a 90-day public comment circulation (10-0-0).
2. 2020-0XB [re Arbitration Advisory on Costs]
Mr. Bacon presented a revised arbitration advisory and gave an oral report.

D. Oral Report on Opinions Currently Circulating for Public Comment

1. 14-0002 [re Alternative Litigation Funding]
Opinion is circulation for a 60-day public comment period. Deadline: June 29, 2020. This item was not discussed.

2. 16-0002 [re Data Breaches]
*Opinion is circulation for a 60-day public comment period. Deadline: June 24, 2020.
This item was not discussed.*

E. Special Projects

1. Proposed Rule 1.1 (Discussion of Public Comments Received and Possible Approval Following Consideration)
Mr. Bundy gave an oral report on the development and consideration of the proposed rule. Following discussion by the Committee, the Committee voted to approve proposed rule 1.1 and the public commenter table as drafted. (11-0-0)
2. Proposed Rule 5.4 (Discussion of Public Comments Received and Possible Approval Following Consideration)
Mr. Rothschild gave an oral report on the development of the proposed rule. Following discussion by the Committee, the working group is assigned to prepare a revised rule in response to public comments. Committee to hold an hour-long meeting prior to the Board's July meeting.
3. Outreach Working Group Report
This item was not discussed.

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>.



The State Bar of California

A.5. Action Summaries
07-24-20 Meeting
Open Session

Committee on Professional Responsibility and Conduct
Thursday, June 25, 2020
10:30 am – 12:00 pm

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

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

Not Present: Ms. Inlender, Mr. Krueger, and Mr. Whitney.

Others Present: Ms. Lee, Mr. Tuft, Mr. Difuntorum, and Ms. McCurdy (State Bar staff).

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: 989-9923-9081

Zoom: <https://calbar.zoom.us/j/98999239081>

ACTION SUMMARY

A. Remarks From the Chair

1. Roll Call
2. Public Comment
None.
3. Announcements
None.
4. Staff Report
None.

B. Discussion of Special Projects

1. **Proposed Amended Rule 5.4 (Discussion of Public Comments Received and Possible Recommendation of Revised Rule 5.4 to the Board of Trustees)**
Mr. Tuft gave an oral report and brief history of the rule's consideration. Following discussion, the Committee voted to approve the rule and submit it to the Board with a recommendation that the rule be circulated for a 45-day public comment circulation. (9-0-0)

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