



# The State Bar of California

A.5. Action Summary  
09-11-20 Meeting  
Open Session

## Committee on Professional Responsibility and Conduct

Friday, July 24, 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, and Ms. Roche.

**Not Present:** 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: 955 0953 1580

Zoom: <https://calbar.zoom.us/j/95509531580>

### ACTION SUMMARY

#### A. Remarks From the Chair

1. Roll Call
2. Public Comment  
*Multiple individuals gave public comment testimony in support of or in opposition to the District Attorneys' request for a new Rules of Professional Conduct or ethics opinion.*
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 Board approved the new Comment to rule 1.1 at the July Board meeting; (2) the Board issued for a 45-day public comment circulation of revised rule 5.4 with a public comment deadline of August 28, 2020; (3) a public hearing will be held on August 11 on the District Attorneys' request; (4) the 2020-2021 COPRAC appointments were approved by the Board (3 new members, Mr. Fields as Vice-Chair, and Ms. Roche as Chair); and that Mr. Bundy has been appointed as an Advisor for 2020-2021 to assist with the District Attorneys' request.*
5. Approval of Open Session Action Summaries from the June 5, 2020 and June 25, 2020 meeting

*The Action Summary from the June 5, 2020 meeting was approved (10-0-0).  
The Action Summary from the June 25, 2020 meeting was approved (9-0-1).*

**B. Discussion of Draft Opinions Previously Circulated for Public Comment**

1. 14-0002 [re Alternative Litigation Funding]  
*Mr. Fields gave an oral report on the public comments received. Following discussion, the Committee voted to approve the opinion for submission to the Board of Trustees for publication approval (10-0-0).*
2. 16-0002 [re the Ethics of Responding to Cyber Risks]  
*Ms. Roche gave an oral report on the public comments received. Following discussion, the Committee voted to approve the opinion for submission to the Board of Trustees for publication approval (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 not discussed.*
2. 14-0001 [re Colleague Impairment]  
*Ms. Basner presented a revised opinion and gave an oral report. Following discussion by the Committee, the Committee voted to approve the opinion for a 90-day public comment circulation (9-0-0).*
3. 17-0003 [re Duty of Confidentiality to Prospective Client]  
*Ms. Roche 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. 19-0003 [re Improper Contract Provisions]  
*This item was not discussed.*
5. 19-0004 [re Client File Release and Retention Duties]  
*This item was not discussed.*
6. 20-0001 [re Lawyer as Expert Witness]  
*This item was not discussed.*
7. 20-0002 [re Succession Planning]  
*Ms. Roche presented a revised opinion outline 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.*

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

1. 2020-0XB [re Arbitration Advisory on Costs]  
*This item was carried over.*

**E. Oral Report on Advisories Currently Circulating for Public Comment**

1. 2020-0XA [re Arbitration Advisory on Awards of Interest by Arbitrator]  
*This item was not discussed. Public Comment deadline is: October 15, 2020.*

**F. Special Projects**

1. Discussion of a Proposed Rule or Ethics Opinion Regarding Prohibitions on Elected Prosecutors from Seeking or Accepting Political or Financial Support from Law Enforcement Unions  
*Mr. Bundy gave an oral report and led a discussion on the various factors to consider in regards to the District Attorneys' request.*
2. Outreach Working Group Report  
*This item was not discussed.*

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