



The State Bar of California

A.5. Action Summary
10-23-20 Meeting
Open Session

Committee on Professional Responsibility and Conduct
Friday, September 11, 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, Mr. Krueger, Ms. Lee, Ms. Roche, and Mr. Whitney.

Not Present: None.

Others Present: Alex Cherin, Jennifer Kropke, Henrik Nilson, M Bucky, Betsy, Ponte Corzo, Ms. Lee (State Bar staff), Mr. Tuft (State Bar staff), Mr. Difuntorum (State Bar staff), 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: 982 2598 9948

Zoom: <https://calbar.zoom.us/j/98225989948>

ACTION SUMMARY

A. Remarks From the Chair

1. Roll Call
2. Public Comment
Mr. Cherin and Ms. Kropke gave public comment on proposed rule 5.4.
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 arbitration advisory 2020-OXA is circulating for a 90-day public comment period with a deadline of October 15, 2020; (2) 14-0001 is circulating for a 90-day public comment period with a deadline of November 25, 2020; (3) at the next Committee meeting we will be considering new opinion topics; (4) and, this is the last meeting for Kendra Basner, Justin Fields and Marshall Whitney and thanked them for all their hard work.
5. Approval of Open Session Action Summary from the July 24, 2020 Meeting
The Action Summary was approved (8-0-2).

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]
Mr. 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. 17-0003 [re Duty of Confidentiality to Prospective Client]
Mr. Whitney presented a revised opinion and gave an oral report. Following discussion the Committee voted to approve the opinion for a 90-day public comment circulation (10-0-0).
3. 19-0003 [re Improper Contract Provisions]
Mr. Carr presented a revised opinion outline and gave an oral report. Following discussion by the Committee, the drafting team was asked to prepare a draft opinion in accordance with the Committee's discussion.
4. 19-0004 [re Client File Release and Retention Duties]
Ms. Lee 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.
5. 20-0001 [re Lawyer as Expert Witness]
Mr. Koss presented an opinion outline and gave an oral report. Following discussion by the Committee, the drafting team was asked to prepare a draft opinion in accordance with the Committee's discussion.
6. 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. 2020-0XB [re Arbitration Advisory on Costs]
Mr. Bacon gave an oral report and presented a revised opinion. Following discussion, the drafting team is assigned to revise the advisory in accordance with the discussion. Staff to circulate a clean version to Mr. Bacon and Mr. Krueger.

D. Oral Report on Opinions Currently Circulating for Public Comment

1. 14-0001 [re Colleague Impairment]
This item was not discussed. Public Comment deadline is: November 25, 2020.

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 public comments received on the District Attorneys' request. Following discussion, the working group is assigned to prepare an initial report.
2. Proposed Amended California Rule of Professional Conduct 5.4 [Discussion of Public Comments Received and Recommendation of Revised Rule 5.4 to the Board of Trustees]
Mr. Tuft gave an oral report on the public comments received and presented a revised rule. Following discussion, the Committee voted to approve the rule and permit drafting team to work with staff to complete and finalize the supporting documents to be submitted to the Board (10-0-0).
3. 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>.