



The State Bar of California

A.5. 10/23 Action Summary
12-04-20 Meeting
Open Session

Committee on Professional Responsibility and Conduct
Friday, September 11, 2020
10:00 am – 4:30 pm

TELECONFERENCE

Members Present: Ms. Roche (Chair), Mr. Bacon, Ms. Banola, Prof. Bundy (Advisor), Mr. Carr, Mr. Fields, Ms. Inlender, Mr. Koss, Mr. Krueger, Ms. Lee, Mr. Mark, Ms. Rowe, and Mr. Starr.

Not Present: None.

Others Present: 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: 925 3185 0741

Zoom: <https://calbar.zoom.us/j/92531850741>

ACTION SUMMARY

A. Remarks from the Chair

1. Roll Call
2. Public Comment
Ben Elga gave comment in support of 19-0003. Cristine Soto DeBerry gave public comment in support of the DA's proposal.
3. Announcements
The Chair welcomed the Committee and the Committee introduced themselves to the new members.
4. Staff Report
Mr. Tuft welcomed the new members, the new chair, and the Committee. Mr. Tuft reported that: (1) the Board adopted opinions CAL 2020-203 [Data Breach] and CAL 2020-204 [Alternative Litigation Funding]; (2) Board adopted a slightly revised rule 5.4 which is being prepared for submission to the Supreme Court; (3) 14-0001 is circulating for a 90-day public comment period with a deadline of November 25, 2020; (4) 17-0003 is circulating for a 90-day public comment period with a deadline of January 4, 2021; and (5) the Committee will have a discussion regarding the 2021 Ethics Symposium either today or at the next meeting.

5. Approval of Open Session Action Summary from the September 11, 2020 Meeting
The Action Summary was approved (9-0-3).

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 Committee approved the opinion for a 90-day public comment circulation (10 yes – 0 no – 2 abstain).
2. 19-0003 [re Improper Contract Provisions]
Mr. Carr presented a draft opinion and gave an oral report. Following discussion by the Committee, the drafting team was asked to revise the opinion in accordance with the Committee's discussion.
3. 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. Mr. Starr joined the drafting team.
4. 20-0001 [re Lawyer as Expert Witness]
Mr. Koss presented a draft opinion and gave an oral report. Following discussion by the Committee, the drafting team was asked to revise the opinion in accordance with the Committee's discussion. Mr. Krueger joined the drafting team.
5. 20-0002 [re Succession Planning]
This item was carried over.

C. Discussion of Arbitration Advisories Previously Circulated for Public Comment

1. 2020-0XA [re Arbitration Advisory on Awards of Interest by Arbitrator]
Mr. Bacon gave an oral report on the public comments received. Following discussion, the Committee voted to approve the arbitration advisory for publication (11 yes – 0 no – 0 abstain).

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

1. 2020-0XB [re Arbitration Advisory on Costs]
Mr. Bacon gave and oral report and presented a revised advisory. Following discussion, the Committee approved the arbitration advisory for a 90-day public comment circulation (12 yes – 0 no – 0 abstain).

E. 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.

2. 17-0003 [re Duty of Confidentiality to Prospective Client]
This item was not discussed. Public Comment deadline is: January 4, 2021.

F. Discussion of New Opinion Topics

1. Consideration of New Opinion Requests
Three topics were selected for new opinion topics: (1) when is a flat fee earned and does an attorney have to refund a portion of the flat fee if terminated [Bacon, Mark, Carr, Krueger]; (2) ethical obligations for lawyers working remotely [Banola*, Rowe, Koss, Inlender]; and (3) contingency fee and earning an hourly rate if terminated [Krueger*, Starr, Mark, Bacon].*

G. Discussion of 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. Roche gave an oral report and led a discussion on the DA request memo. Following discussion, the working group is assigned to revise the memo in accordance with the Committee's discussion.
2. Ethics Symposium Planning
Mr. Tuft gave an oral report and asked the Committee to submit panel topics for the 2021 Ethics Symposium. The Committee will select the panels and format at the next meeting.
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>.