



The State Bar of California

A.5. Action Summary
01-08-21 Meeting
Open Session

Committee on Professional Responsibility and Conduct
Friday, December 4, 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), and Mr. Difuntorum (State Bar staff).

The order of business is approximate and subject to change.

Members of the public may access this meeting as follows:

Zoom: <https://calbar.zoom.us/j/93572972038>

Call-In Numbers:

669-900-9128

346-248-7799

253-215-8782

301-715-8592

312-626-6799

646-558-8656

Meeting ID: 935 7297 2038

ACTION SUMMARY

A. Remarks from the Chair

1. Roll Call

2. Public Comment

Michael Hartmann, Cristine Soto DeBerry, Gil Garcetti, Briana Mullen, Paul, Alana Matthews (Community Justice), Nancy Haydt (Death Penalty Focus), and Pat Hardy, gave comment in support of the DA's proposal. Marshall McClain (Peace Officers Union) gave public comment in opposition to the DA's proposal.

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) Arbitration Advisory 2020-01 has been published; (2) 14-0001 returned from public comment and is on the agenda today; (3) 17-0003 is circulating for a 90-day public comment period with a deadline of January 4, 2021;

(4) 13-0002 is circulating for a 90-day public comment period with a deadline of February 16, 2021; (5) Arbitration Advisory 2020-0XB is circulating for a 90-day public comment period with a deadline of February 22, 2020; and (5) the Committee should encourage qualified individuals to apply for COPRAC.

5. Approval of Open Session Action Summary from the October 23, 2020 Meeting
The Action Summary was approved as revised (11-0-0).

B. Discussion and Possible Approval of Draft Opinions Previously Circulated for Public Comment

1. 14-0001 [re Colleague Impairment]
Ms. Banola gave an oral report on the public comments received and presented a revised opinion. Following discussion by the Committee, the drafting team was asked to revise the opinion in accordance with the Committee's discussion.

C. Discussion and Possible Approval for Public Comment of Draft Opinions Not Yet Released for Public Comment

1. 19-0003 [re Improper Contract Provisions]
This item was carried over.
2. 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.
3. 20-0001 [re Lawyer as Expert Witness]
Mr. Koss presented a revised 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.
4. 20-0002 [re Succession Planning]
Ms. Roche 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.
5. 20-0003 [re Flat Fees and Termination]
This item was carried over.
6. 20-0004 [re Ethical Obligations when Working Remotely]
Ms. Banola presented an issues outline and gave an oral report. Following discussion by the Committee, the drafting team was asked to revise the issues outline in accordance with the Committee's discussion.

7. 20-0005 [re Contingency Fee Agreements and Earning an Hourly Rate When Terminated]

Mr. Krueger presented an issues outline and gave an oral report. Following discussion by the Committee, the drafting team was asked to revise the issues outline in accordance with the Committee's discussion.

D. Oral Report on Opinions Currently Circulating for Public Comment

1. 17-0003 [re Duty of Confidentiality to Prospective Client]

This item was not discussed. Public Comment deadline is: January 4, 2021.

2. 13-0002 [re Attorney with a Vulnerable Client]

This item was not discussed. Public Comment deadline is: February 16, 2021.

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

1. 2020-0XB [re Arbitration Advisory on Costs]

This item was not discussed. Public Comment deadline is: February 22, 2021.

F. 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 Committee voted to approve memo and for submission to Board subject to Staff making revisions in conjunction with leadership (9 yes – 0 no – 2 abstain).

2. Ethics Symposium Planning

Mr. Tuft gave an oral report and asked the Committee to select the panel topics. The topics selected were: Lawyer Impairment; Ethics of Working Remotely; Beginning of the Attorney-Client Relationship; and Recent Developments with a Focus on COPRAC Opinions. Staff to assign moderators.

3. Outreach Working Group Report

This item was not discussed.

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