



Committee on Professional Responsibility and Conduct

Friday, July 30, 2021

10:00 am – 4:30 pm

TELECONFERENCE

Questions regarding any agenda item should be directed to the Committee Coordinator, Andrew Tuft at 415-538-2172, 180 Howard Street, San Francisco, CA 94105, or Chair, Dena Roche at 415-538-2116. Committee members are requested to notify the Committee Coordinator as early as possible in advance of the meeting if they wish to remove any item/s from the consent agenda.

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

**Not Present:** Mr. Bacon and Mr. Carr.

**Others Present:** Randall Difuntorum, Kenneth Howard, Kathy Lee, Mimi Lee, Andrew Tuft, and Melanie Walker.

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: 9646 0901 736

Zoom: <https://calbar.zoom.us/j/96460901736>

ACTION SUMMARY

A. Remarks From the Chair

1. Roll Call
2. Public Comment  
*Mr. Howard gave public comment on proposed opinion 20-0002 [Succession Planning].*
3. Announcements
4. Staff Report  
*Mr. Tuft reported that: (1) the Board approved the request to reinstate the Committee's advisor position; (2) the Board also approved the committee appointments of Justin Fields as chair and Sarah Banola as vice-chair for 2021-2022; (3) the Board approved Tobi Inlender's reappointment for a one-year term; and*

*(4) the committee received 43 applications for 2021-2022 and the Board approved the appointment of 4 new members.*

5. Approval of Open Session Action Summary from the June 11, 2021 Meeting  
*The open session action summary from the June 11, 2021 meeting was approved (9-0-1).*

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

1. **19-0003 [re Improper Contract Provisions]**  
*(Carr (L), Banola, Roche (A))*  
*This item was not discussed.*

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

1. **19-0004 [re Client File Release and Retention Duties]**  
*(Lee (L), Bacon, Bundy, Starr, Fields (A))*  
*Ms. Lee presented a revised opinion and gave an oral report. Following discussion, the committee voted to approve the opinion as revised for a 90-day public comment circulation (9-0-0).*
2. **20-0001 [re Lawyer as Expert Witness]**  
*(Koss (L), Banola, Carr, Krueger, Fields (A))*  
*Mr. Koss presented a revised opinion and gave an oral report. Following discussion, the drafting was asked to prepare a revised opinion in accordance with the discussion.*
3. **20-0002 [re Succession Planning]**  
*(Roche (L), Lee, Mark, Fields (A))*  
*This item was not discussed.*
4. **20-0003 [re Flat Fees and Termination]**  
*(Bacon (L), Carr, Mark, Krueger, Roche (A))*  
*Ms. Roche led a discussion on the opinion outline. Following discussion, the drafting was asked to prepare a revised opinion outline in accordance with the discussion.*
5. **20-0004 [re Ethical Obligations when Working Remotely]**  
*(Banola (L), Inlender, Koss, Lee, Rowe, Fields (A))*  
*Ms. Banola presented a revised opinion and gave an oral report. Following discussion, the committee voted to approve the opinion as revised for a 90-day public comment circulation (9-0-0).*
6. **20-0005 [re Contingency Fee Agreements and Earning an Hourly Rate When Terminated]**  
*(Krueger (L), Bacon, Mark, Starr, Fields (A))*  
*This item was not discussed.*

7. **21-0001 [re Trial Publicity]**

*(Starr (L), Roche (A))*

*Mr. Starr led a discussion on potential issues regarding trial publicity.*

8. **21-0002 [re Attorney as Advocate]**

*(Rowe (L), Fields (A))*

*Ms. Rowe presented an issue outline and gave an oral report. Following discussion, the drafting was asked to prepare a revised issue outline in accordance with the discussion.*

9. **21-0003 [re Ethics of In-House Counsel]**

*(Banola, Roche)*

*Ms. Roche presented an issue outline and gave an oral report. Following discussion, the drafting was asked to prepare a revised issue outline in accordance with the discussion.*

**D. Oral Report on Opinions Currently Circulating for Public Comment**

1. **13-0002 [re Client with Diminished Capacity]**

*(Bundy (L), Carr, Inlender, Koss, Roche (A))*

*Circulating for a 60-day public comment period with a deadline of August 24, 2021.*

**E. Special Projects**

1. **MCLE Article re Best CTA Practices**

*(Carr (L))*

*This item was not discussed.*

2. **Outreach Working Group Report**

*Subcommittee to prepare a status report.*

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.

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