



The State Bar of California

A.5. Action Summary
10-08-21 Meeting
Open Session

Committee on Professional Responsibility and Conduct
Friday, September 10, 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), 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.

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: 939 9864 1744

Zoom: <https://calbar.zoom.us/j/93998641744>

ACTION SUMMARY

A. Remarks From the Chair

1. Roll Call
2. Public Comment
James Gorton provided public comment.
3. Announcements
4. Staff Report
Mr. Tuft reported that: (1) Bridget Gramme is the new Deputy Chief of Programs for the State Bar of California; and, (2) as the last meeting of the Committee year continuing members should send staff an email regarding opinions that are losing members from the drafting team that they would like to work on.
5. Approval of Open Session Action Summary from the July 30, 2021 Meeting
The committee voted to approve the open session action summary from the July 30, 2021 meeting (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))
Mr. Carr presented a revised opinion and gave an oral report. Following discussion, the drafting team was asked to prepare a revised the opinion in accordance with the committee's discussion.
2. **13-0002 [re Client with Diminished Capacity]**
(Bundy (L), Carr, Inlender, Koss, Roche (A))
Mr. Bundy gave an oral report on the comments received and presented a revised opinion. Following discussion, the Committee voted to approve the opinion for publication (10-0-0).

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

1. **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 team was asked to prepare a revised the opinion in accordance with the committee's discussion.
2. **20-0002 [re Succession Planning]**
(Roche (L), Lee, Mark, Fields (A))
This item was not discussed.
3. **20-0003 [re Flat Fees and Termination]**
(Bacon (L), Carr, Mark, Krueger, Roche (A))
This item was not discussed.
4. **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.
5. **21-0001 [re Trial Publicity]**
(Starr (L), Roche (A))
This item was not discussed.
6. **21-0002 [re Attorney as Advocate]**
(Rowe (L), Fields (A))
This item was not discussed.

7. **21-0003 [re Ethics of In-House Counsel]**

(Banola, Roche)

This item was not discussed.

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

1. **19-0004 [re Client File Release and Retention Duties]**

(Lee (L), Bacon, Bundy, Starr, Fields (A))

Circulating for a 90-day public comment period with a deadline of November 10, 2021.

2. **20-0004 [re Ethical Obligations when Working Remotely]**

(Banola (L), Inlender, Koss, Lee, Rowe, Fields (A))

Circulating for a 90-day public comment period with a deadline of November 12, 2021

E. **Discussion of New Opinion and Arbitration Advisory Topics**

1. **Consideration of New Opinion and Arbitration Advisory Topics**

This item was carried over.

F. **Special Projects**

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

(Carr (L))

This item was not discussed.

2. **Outreach Working Group Report**

This item was not discussed.

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