



# The State Bar of California

A.5. Action Summary  
12-03-21 Meeting  
Open Session

**Committee on Professional Responsibility and Conduct**  
**Friday, October 8, 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, Justin Fields 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 Present:** Mr. Fields (Chair), Mr. Bacon, Ms. Banola, Ms. Bradley, Ms. Chivers, Ms. Inlender, Mr. Krueger, Mr. Mark, Ms. Mercado, Mr. Munoz, Ms. Roche (Advisor), Ms. Rowe, and Mr. Starr.

**Others Present:** Kathy Lee, Mimi Lee, Angela Marlaud, Maria Rapier, Andrew Tuft, Natasha Viteri, 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: 915 8071 1406

Zoom: <https://calbar.zoom.us/j/91580711406>

**ACTION SUMMARY**

**A. Remarks From the Chair**

1. Roll Call
2. Public Comment
3. Announcements
4. Staff Report
5. Approval of Open Session Action Summary from the September 10, 2021 Meeting  
*The action summary was approved unanimously (6-0-6).*

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

**1. 19-0003 [re Improper Contract Provisions]**

*(Banola, Roche (A))*

*Ms. Banola presented a revised opinion and gave an oral report on the public comments received. Following discussion, the Committee voted to approve the opinion for an additional 60-day public comment circulation (12-0-0).*

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

**1. 20-0001 [re Lawyer as Expert Witness]**

*(Banola (L), Krueger, Fields (A))*

*Ms. Banola 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), Mark, Fields (A))*

*This item was not discussed.*

**3. 20-0003 [re Flat Fees and Termination]**

*(Bacon (L), 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))*

*Mr. Krueger 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.*

**5. 21-0001 [re Trial Publicity]**

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

*Mr. Starr presented an issue outline and gave an oral report. Following discussion, the drafting team was asked to prepare a revised issue outline in accordance with the committee's discussion.*

**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 (A))*

*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]**  
*(Starr (L), Bacon, 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, 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**  
*(Staff/Leadership)*  
*Mr. Fields led a discussion on opinion and arbitration advisory requests. Following discussion, Mr. Starr and Ms. Chivers volunteered to research whether a deportation attorney's ethical obligations would be a viable opinion topic, Mr. Starr volunteered to prepare an issue outline on a criminal defense attorney's obligation to disclose evidence, Mr. Bacon volunteered to prepare an issue outline on negotiating carve out provisions, Mr. Fields and Mr. Munoz volunteered to prepare an issue outline on cryptocurrencies, and Mr. Mark volunteered to research whether an in-house lawyer's compensation is to be considered fees or wages would be a viable opinion topic.*

**F. Special Projects**

1. **Outreach Working Group Report**  
*Subcommittee to prepare a status report.*
2. **Paraprofessional Rules of Professional Conduct**  
*Staff to prepare a status report.*  
*Ms. Mercado, Ms. Inlender, Ms. Bradley, Ms. Chivers, and Mr. Fields volunteered to review the proposed paraprofessional RPC's and draft public comment letters as necessary.*

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.

The notice and agenda is available at: <http://board.calbar.ca.gov/Committees.aspx>.