



Committee on Professional Responsibility and Conduct

Friday, December 3, 2021

10:00 am – 4:30 pm

ACTION SUMMARY

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: Mr. Fields (Chair), Mr. Bacon, Ms. Banola, Ms. Bradley, Ms. Chivers, Mr. Krueger, Mr. Mark, Ms. Mercado, Mr. Munoz, Ms. Roche (Advisor), and Mr. Starr.

Committee Members Not Present: Ms. Inlender and Ms. Rowe.

Others Present: ALM, Ian Anderson, Chris Barker, Robert Carlborg, Rick Coca, Joyce Cutler, Cristine Soto DeBerry, Randall Difuntorum, Nate Ferrier, Lori Frugoli, Morgan Gire, Bridget Gramme, Guthrey, Daniel Hansen, Katayoon Hemati, Areta K., Todd Kendrick, J L, Sierra Layton, Kathy Lee, Mimi Lee, Brian Marvel, David E. Mastagni, Marshall McClain, Mike Nichelini, JJ Puglisi, Wade Stern, Jeff Swearingen, Benjamin Therriault, and Andrew Tuft, M. Walker, Walter Wall, Shawn Welch, Neil J Wertlieb, and Bryan Zmijewski.

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: 955 0606 8249

Zoom: <https://calbar.zoom.us/j/95506068249>

A. Chair's Report

1. Roll Call

2. Public Comment

Todd Kendrick, Cristine Soto DeBerry, JJ Puglisi, Mike Nichelini, Robert Carlborg, Wade Stern, Bryan Zmijewski, Brian Marvel, Jeff Swearingen, Marshall McClain, and Benjamin Therriault gave public comment on request for a rule amendment or ethics opinion re campaign contributions and prosecutorial conflicts. Neil Wertlieb gave public comment on proposed opinion 19-0003 which is currently circulating for public comment.

3. Announcements
None.
4. Staff Report
Mr. Tuft reported that: (1) on November 18th, the Board's Regulation and Discipline subcommittee approved for publication formal ethics opinion 2021-207 (Client with Diminished Capacity); (2) 19-0003 is currently circulating for public comment with a public comment deadline of December 22, 2021; (3) AB361 was signed into law which continued to suspend certain requirements of existing law that each teleconference must list the location of a meeting to be posted on an agenda until January 31, 2022; and (4) Mr. Tuft will be leaving the State Bar on December 21, 2021 and that today will be his last meeting.
5. Approval of Open Session Action Summary from the October 8, 2021 Meeting
The open session action summary from the October 8, 2021 meeting was approved unanimously (8-0-0).

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

1. **19-0004 [re Client File Release and Retention Duties]**
This item was carried over.
2. **20-0004 [re Ethical Obligations when Working Remotely]**
Ms. Banola presented a revised opinion and gave an oral report. Following discussion, the drafting team was assigned to prepare a revised opinion in accordance with the committee's discussion.

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

1. **20-0001 [re Lawyer as Expert Witness]**
This item was not discussed.
2. **20-0002 [re Succession Planning]**
This item was not discussed.
3. **20-0003 [re Flat Fees and Termination]**
Mr. Bacon presented an issue outline and gave an oral report. Following discussion, the drafting team was assigned to prepare a revised issue outline in accordance with the committee's discussion.
4. **20-0005 [re Contingency Fee Agreements and Earning an Hourly Rate When Terminated]**
This item was carried over.

5. **21-0001 [re Trial Publicity]**
This item was not discussed.
6. **21-0002 [re Attorney as Advocate]**
This item was not discussed.
7. **21-0003 [re Ethics of In-House Counsel]**
This item was not discussed.
8. **21-0004 [re Ethical Obligation of a Deportation Attorney]**
This item was not discussed.
9. **21-0005 [re Criminal Defense Attorney Disclosure Obligations]**
This item was not discussed.
10. **21-0006 [re Negotiating Carve Out Provisions]**
Mr. Bacon gave an oral report and recommended that this topic not be considered for an opinion. The committee agreed to not pursue this topic at this time.
11. **21-0007 [re Cryptocurrency]**
Mr. Munoz presented an issue outline and gave an oral report. Following discussion, the drafting team was assigned to prepare a revised issue outline in accordance with the committee's discussion.
12. **21-0008 [re In-House Lawyer Compensation]**
This item was not discussed.

D. Oral Report on Opinions Currently Circulating for Public Comment

1. **19-0003 [re Improper Contract Provisions]**
This item was not discussed.

E. Special Projects

1. **Outreach Working Group Report**
This item was not discussed.
2. **Paraprofessional Rules of Professional Conduct**
Mr. Tuft gave a brief introduction on the paraprofessional rules of professional conduct. Following discussion, the drafting team was assigned to prepare revised comments in accordance with the committee's discussion.
3. **2022 Ethics Symposium Planning**
Mr. Fields led a discussion on potential ethics symposium panel topics. Following

discussion, the committee was assigned to submit additional topics for consideration to leadership and staff before the next meeting.

4. **Consideration of Request for Rule Amendment or Ethics Opinion re Campaign Contributions and Prosecutorial Conflicts Following 2021 Legislative Activity**

Mr. Tuft presented a memo on the request for rule amendment or ethics opinion re campaign contribution and prosecutorial conflicts following consideration of 2021 legislative activity and gave an oral report. Following discussion, the committee is assigned to review the memo and prepare to discuss the appropriate course of action at the next meeting.

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>.