



The State Bar of California

A.5. Action Summary
02-18-22 Meeting
Open Session

Committee on Professional Responsibility and Conduct

Friday, January 7, 2022

10:00 am – 4:30 pm

TELECONFERENCE

Questions regarding any agenda item should be directed to the Committee Coordinator, Mimi Lee at 415-538-2162, 180 Howard Street, San Francisco, CA 94105, or Chair, Justin Fields at 415-538-2162. 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, Mr. Munoz, Ms. Roche (Advisor), Ms. Rowe, and Mr. Starr.

Committee Members Not Present: Ms. Mercado.

Others Present: Jeff A, Maraky Alemseged, ALM, Amy Ament, Ian Anderson, Mark Azzouni, Barry, Steve Bassi, Lynn Berkley-Baskin, Elizabeth Bradley, Carlo Brooks, Adrian Carpenter, David Carr, Michael Caves, Kate Chatfield, Ephraim Cheever, Richard Choi, David Cirina, Rick Coca, David Corrick, Cristine Soto DeBerry, Randall Difuntorum, Mica Doctoroff, Elizabeth, Gabriel Garcia, Bridget Gramme, James Ham, Michael Hastings, Katayoon Hemati, Carl Huber, Joseph Iniguez, J L, MJ King, Kamila Knaudt, Damon Kurtz, Sierra Layton, Mimi Lee, Kelsey Lyles, Cheryl M., J Martinez, Cal Matters, Alana Mathews, Marshall McClain, Merced County Law Enforcement Sergeants Association, Natasha Minsker, Mike Nichelini, Tim Novetzke, Nick Odenath, Vern Pierson, JJ Puglisi, Richard Rahn, Jose Ramirez, Aaron Read, Thairie Ritchie, Roberto, Tori Verber Salazar, Shoko Sato, Mike Schemmel, Sheila, Tom Snook, Wade Stern, Jeff Swearingen, Max Szabo, Rob Taylor, Bryan Tenhet, Melanie Walker, Shawn Welch, Filomena Yeroshek, 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: 941 038 97217

Zoom: <https://calbar.zoom.us/j/94103897217>

ACTION SUMMARY

A. Remarks From the Chair

1. Roll Call

2. **Public Comment**

Alana Mathews, Wade Stern, JJ Puglisi, Mike Nichelini, Joseph Iniguez, Jeff Swearingen, Nick Odenath, Natasha Minsker, Cristine Soto De Berry, Damon Kurtz, Michael Hastings, Rob Taylor, MJ King, Bryan Zmikewski, Adrian Carpenter, Carl Huber, Marshall McClain, Maraky Alemseged, Vern Pierson, Aaron Read, Kate Chatfield, Max Szabo, Cheryl Morris, Steve Bassi, David Carr, and Sheila gave public comment.

3. **Announcements**

None.

4. **Staff Report**

Mr. Difuntorum reported that: (1) on January 5th, Gavin Newsom extended the order permitting public agencies to continue to meet remotely until March 31st under the Bagley-Keene meeting requirements; and (2) Katayoon Kemati will be assigned to assist COPRAC until Mr. Tuft's position is filled.

5. **Approval of Open Session Action Summary from the December 3, 2021 Meeting**

The committee voted to approve the open session action summary from the December 3, 2021 meeting (10-0-0).

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

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

Mr. Starr presented a revised opinion and an oral report. Following discussion, drafting team assigned to revise the opinion in accordance with the committee's discussion.

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

This item was carried over to the February meeting.

3. **19-0003 [re Illegal Contract Provisions] (7)**

This item was carried over to the February meeting.

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))

2. **20-0002 [re Succession Planning]**

(Roche (L), Mark, Fields (A))

This item was not discussed but will be discussed at the April meeting. Ms. Inlender was added to the drafting team.

3. **20-0003 [re Flat Fees and Termination]**
Mr. Bacon presented an opinion outline and gave an oral report. Following discussion, the drafting team was assigned to prepare a revised opinion outline in accordance with the committee's discussion. This item to be discussed at February meeting.
4. **20-0005 [re Contingency Fee Agreements and Earning an Hourly Rate When Terminated]**
(Krueger (L), Bacon, Mark, Starr, Fields (A))
5. **21-0001 [re Trial Publicity]**
Mr. Starr gave an oral report. Following discussion, the committee decided to table this opinion for future consideration.
6. **21-0002 [re Attorney as Advocate]**
Ms. Rowe gave an oral report. Following discussion, the drafting team was assigned to prepare an issue outline for the April meeting.
7. **21-0003 [re Ethics of In-House Counsel]**
Ms. Banola gave an oral report. Following discussion, the drafting team was assigned to prepare a revised issue outline for the February meeting. Ms. Chivers was added to the drafting committee.
8. **21-0004 [re Ethical Obligation of a Deportation Attorney]**
Mr. Starr gave an oral report. Following discussion, drafting was assigned to prepare an issue outline for the February meeting.
9. **21-0005 [re Criminal Defense Attorney Disclosure Obligations]**
Mr. Starr gave an oral report. Following discussion, the committee decided to table this opinion for future consideration.
10. **21-0007 [re Cryptocurrency]**
This item was not discussed.
11. **21-0008 [re In-House Lawyer Compensation]**
Mr. Mark gave an oral report. Following discussion, the committee decided to table this opinion for future consideration.

D. Special Projects

1. **Paraprofessional Rules of Professional Conduct**
Mr. Fields presented a draft comment letter and gave an oral report. Following discussion, the committee voted to approve the letter for submission to the paraprofessional working group subject to making the revisions discussed at the meeting today (11-0-0).

2. **Legislative Activity Concerning the Restrictions on Campaign Contributions**

This item was not discussed.

3. **Proposed Amendments to Rules 1.4 and 1.15**

Mr. Difuntorum presented a memo and gave an oral report. Following discussion, the drafting team was assigned to review the rules, prepare a memo, and draft proposed rules, if necessary. Ms. Banola, Ms. Inlender, Mr. Mark, and Mr. Munoz have been added to the drafting team.

4. **2022 Ethics Symposium Planning**

Mr. Fields led a discussion on potential ethics symposium topics. Following discussion, the committee decided to consider further the following topics:

- Recently Published Ethics Opinions and Upcoming Ethics Opinions
- Attorney Fees/Billing/Liens/Fee Arbitration
- In-house counsel issues (in-firm issues, professional responsibility issues, a-c,)
- Implicit bias/elimination of bias and legal ethics, diversity, inclusion (microaggressions, civility)
- Entry to the practice of law/discipline and how to avoid it

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>.