

August 3, 2022 Laurie Zelon to CTJG:

Can we consider adding language to Option 2 to apply the attorney standard of care not only to the lawyer directly providing the services, but also to the lawyer supervising the person or persons providing the services? This would be parallel to the obligations of a lawyer in any firm supervising another lawyer.

August 3, 2022 Wendy Chang to CTJG:

My comments on the memo are as follows:

- 1) On the section talking about the standard of care of legal professionals, I think it is worth noting that many professions have similar specialized standards of care that are established through expert testimony. The legal profession is not unique in that.
- 2) With respect to the proposed 3 standards, 1 and 3 are similar in some sense – both apply a common law negligence standard, with 1 being silent and 3 doing so with specific words. The other difference is 3 highlights that lawyers working with any approved entity would be governed by the standard of care governing lawyers.

As to the general common law standard, I think a better way to address that is to simply state that the baseline/minimum standard would be the common law standards as developed through case law. I would not attempt to restate that standard, so as to not give any impression that it is a different standard, and also not to lock the standard in, where the case law develops over time.

As to the lawyer standard of care, I think it is a good idea to specifically make such a statement, so that there is no doubt that lawyers acting like lawyers will always be measured as a lawyer, irrespective of what hat they choose to wear. (This is the current standard governing lawyers as it applies to the CRPC.) I think some attention should be given to that middle potential tier of non-lawyer professional services. It is an issue that currently exists (for example, document preparers and negligence claims against them) and there is no guidance that I am aware of in the case law as to how that is proven at trial. From a pure question of whether expert testimony would be required to establish breach, I would think the answer is likely yes, as it is likely such would be outside the common understanding.