

# WASHINGTON STATE BAR ASSOCIATION

## Committee on Professional Ethics

Meeting Minutes (amended)

October 23, 2019

The committee met at the offices of the Washington State Bar Association, 1325 4<sup>th</sup> Avenue, Suite 600, Seattle, WA 98101.

Members present were Don Curran (Chair), Pam Anderson, Brooks Holland, Monte Jewell, Vince Lombardi, Asel Neutze (phone), and Hugh Spitzer. Excused were Lucinda Fernald, Jeffrey Kestle, and Kyle Sciuchetti (BOG Liaison). Also present were Jeanne Marie Clavere (staff liaison), Kirsten Schimpff, Office of Disciplinary Counsel, and Darlene Neumann, paralegal.

The chair called the meeting to order at 10:05 a.m. and informed the committee of changes to the order of the agenda to allow members leaving before lunch to participate in discussion.

### **Lawyer Referral Services Subcommittee**

The subcommittee discussed the latest changes to proposed RPC 7.2(b) and Comment 6. Members inquired whether county bars were aware of the proposals and recommended deleting “individual” from Comment 6 and adding language from RPC 6.5 concerning court legal service programs. The subcommittee agreed to revise the proposed rule and circulate to county bars for input. The full committee will vote on the final proposed rule amendments at the December meeting. Monte Jewell volunteered to assist Brooks Holland with the draft revisions and the committee chair will reach out to county bars.

### **Retired Lawyer Trust Account Subcommittee**

The subcommittee noted two additional issues about an inactive lawyer continuing to receive settlement checks on behalf of the client. One was the continuation of an attorney/client relationship, and the second concerned client consent to the limited representation. Discussion followed on what a lawyer should do in anticipation of retirement, how to handle future periodic payments, and other edits to the memo. After lunch, the subcommittee circulated a revised draft and discussed the various changes, which reinforced the committee’s analysis and conclusion. Following discussion, the committee voted unanimously to adopt the revised memo as an advisory opinion.

### **Karstetter v. King Cty Corrections Guild, No. 95531-0**

The committee discussed the Supreme Court case about an in-house lawyer who brought wrongful termination and breach of contract claims against his client/employer, the Court's analysis of RPC 1.16, and if the decision signaled a need to update comments to RPC 1.16. The committee noted that lawyers who sue their clients could risk possible ethics violations if they go too far and echoed the court's concern that such actions could undermine the integrity of the attorney/client relationship. The committee agreed to form a subcommittee chaired by Brooks Holland, with Vince Lombardi and Hugh Spitzer, to consider amending Comment 4 to RPC 1.16 to reference the court's decision and other potential cross references.

### **Updates/Announcements**

The staff liaison reviewed the committee's policies and procedures, including compliance with the Open Public Meetings Act (OPMA), and the Bar's Public Records policy. Afterwards, introductions by members were made around the table and over the telephone.

### **SAAG Subcommittee**

The subcommittee presented a proposed draft opinion about a worker's comp matter and the special assistant attorney general (SAAG) contracted to represent the department in a claim against a third party. Following a discussion of the attorney/client relationship, the SAAG contract, and conflicts of interest, the committee voted unanimously to approve the draft advisory opinion.

### **Minutes**

The minutes were approved 4-0-3.

### **Ghostwriting Subcommittee**

Tabled to the next meeting.

### **Discretionary Items:**

- **Multiple Client Representation in Wrongful Death Cases**

The committee considered a hypothetical for an advisory opinion concerning multiple client representation in wrongful death civil cases. Members discussed the issues surrounding client consent and conflict, RPC 1.8(g) and aggregate settlements, broadening the opinion, and including explanatory content in the opinion for readers unfamiliar with the practice area. The committee formed a subcommittee to draft an advisory opinion based on the hypothetical and later to draft an opinion on aggregate settlements.

- **Representing Personal Representative in Probate**

The committee considered a hypothetical about a lawyer's ethical duty to beneficiaries while representing a personal representative in probate proceedings. Following discussion, the committee declined to take on the topic.

### **Advisory Opinion 2223 Subcommittee**

The committee reviewed a bar member's comment forwarded by the interim executive director regarding the new replacement advisory opinion to AO 2223. The committee found the comment failed to raise any new issues not previously considered, and therefore declined to revisit the opinion issued in August. The chair will convey the committee's action to the interim executive director.

Monte Jewell and Hugh Spitzer volunteered to join the subcommittee (to be renamed) in its next phase to consider rule changes regarding joint representation of unrepresented parties or post-mediation representation by lawyer-mediators.

The meeting adjourned at 2:07 p.m.