

WASHINGTON STATE BAR ASSOCIATION

Committee on Professional Ethics

Meeting Minutes

April 5, 2019

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

Members present: Don Curran (Chair), Pam Anderson, Jeffrey Kestle (phone), Brooks Holland, Vince Lombardi, Mark Fucile, and Lucinda Fernald. Excused: Tom Andrews and Anne Seidel. Absent: Kyle Sciuchetti (BOG Liaison). Also present: Jeanne Marie Clavere (staff liaison), Doug Ende, Office of Disciplinary Counsel, and Darlene Neumann, paralegal.

The chair called the meeting to order at 10 a.m.

1. General announcements

The chair announced that four candidates were nominated to fill the three open positions on the CPE. The BOG Nomination Committee will review the nominations and forward the final slate to the BOG who will make the committee appointments in July.

2. Minutes

The minutes from Feb. 22, 2019 were approved.

3. LLLT Board Memo to CPE re RPC 1.15A(h)(9) (trust account signatory rule)

Following a summary of the issue and discussion, the committee voted unanimously to approve deleting the last sentence of RPC 1.15A(h)(9) to mirror the proposed amendment to LLLT RPC 1.15A(h)(9) approved by the LLLT Board on February 11, 2019. The subcommittee will prepare a memo for the BOG for a first reading in May.

4. Scrivener's error in RPC 6.1(a)(2)

Members reviewed a scrivener's error in RPC 6.1(a)(2) that had been brought to the committee's attention. The committee voted unanimously to correct the typographical error to replace "civil" with "civic" to reflect the Model Rules. Staff will prepare a memo to the BOG for action in May. The committee agreed that both amendments to RPC 1.15A and 6.1(a)(2), if approved by the BOG, should be forwarded to the Supreme Court as one set.

5. RPC 4.2 Government Contacts Subcommittee

The subcommittee discussed their research on the question raised by the dissenting opinion contained in the final report from the earlier subcommittee. After reviewing all of the information and data collected, the subcommittee concluded the issue was far too complex, involved numerous blind spots, and attempts to clarify the rule and comments could lead to unintentional effects which the committee cannot foresee. For those reasons, the subcommittee recommended the committee accept the report

from the earlier subcommittee, leave the rule and comments unchanged, and take no further action. Moreover, the subcommittee reaffirmed the sufficiency of Advisory Opinion 201803 and noted that in many cases the private lawyer and government counsel were generally able to resolve the contact issue. The committee chair will convey the committee's decision to the inquirer.

6. Lawyer Referral Services Subcommittee

The subcommittee discussed research of other states regarding the treatment of fee sharing with lawyer referral services and of RPC 7.2(b)(2). Only a few states allowed fee sharing under very limited conditions. Washington was the only state to include a provision in RPC 1.5 that allowed fee sharing with lawyer referral services operated exclusively by WSBA and county bar associations.

The subcommittee suggested the committee take a closer look at Arizona's rule and bypass relocating RPC 1.5(e)(2) to 5.4 to avoid the profit sharing issue. Members discussed the AZ language describing an "appropriate regulatory authority" to approve lawyer referral services, which Washington does not have and is unlikely to create for numerous reasons. Members suggested a registry such as the one used to certify financial institutions that offer IOLTA accounts as a possible model. Other ideas included drafting an advisory opinion, a rule amendment or comment, examining the DC Bar rule (lawyers may share fees with tax exempt nonprofit 501(c)(3) organization), and gathering information on mechanisms used by other states to authorize and regulate lawyer referral services. Following discussion, the subcommittee agreed to conduct further research and report back at the June meeting.

7. Ghostwriting Subcommittee

Tabled to the next meeting.

8. SAAG Subcommittee

The subcommittee reported they had contacted the state L & I Department and received a written response from the senior attorney general to L & I a few days ago. The subcommittee did not have enough time to review and analyze the letter prior to today's meeting. Tabled to the next meeting.

9. Retiring Lawyer Keeping Trust Account Open

Members noted the issue came before the committee in 2015. The subcommittee at that time recommended a change to the trust account rule which ultimately did not pass. Following discussion, the committee agreed to reconsider the topic again with a focus towards providing more guidance to attorneys. Volunteers on the subcommittee are: Don (subcommittee chair), Vince, Lucinda, Pam, and Brooks. Don will prepare a background memo for the subcommittee.

10. Advisory Opinion 2223

Lucinda volunteered to join the AO 2223 subcommittee, whose members are rolling off in September.

11. Other

The chair noted the source of issues considered by the committee is not limited to inquiries from bar members. Topics can also originate from CPE members under the committee's Rules of Procedure.

Meeting adjourned at 11:30 a.m. The next meeting is June 7, 2019.