

ATTORNEY ETHICS ADVISORY COMMITTEE

Thursday January 30, 2020

No. 1 Review and approve November 21, 2019 Minutes

A draft of the minutes for the meeting of November 21, 2019, has been provided for the Committee's review and consideration.

DRAFT MINUTES

FOR THE

ATTORNEY ETHICS ADVISORY COMMITTEE

November 21, 2019

9:30 a.m.

State Courts Building, 1501 West Washington Street, Phoenix, Arizona
Conference Room 109

Present

Hon. Paul McCurdie (Chair)
Hon. John Napper (Vice Chair)
Kimberly Demarchi
Daniel Mazza
Anne Schrock
Charles Thomson
Angela Woolridge
Maret Vessella

Telephonically Present

Michael Aaron
Maria Hubbard
Regina Nassen

Absent

Sheena Singh Chiang
Hon. Kim Ortiz
Jon Sands
Geoffrey Trachtenberg

Staff

Mark Wilson
Christine Davis
Ashley Mahoney
Brianna Farmer
Ashleigh Hansen
Lorena Landeros

Guests

Chris Hering
Lane Conrad
Robin Siverts

No. 1 Review and Approve October 24, 2019 Minutes

Motion: Approve October 24, 2019 Minutes

Moved by: Hon. John Napper

Second: Daniel Mazza

Motion Passed 11-0-4

No. 2 Update regarding EO-19-0003 proposed Ethics Opinion

Brianna Farmer presented.

Draft for EO-19-0003 was posted on November 5, 2019 to Committee and State Bar's website and will be available for 90 days for public comments.

After the 90 days, staff will compile the comments and provide them to the committee to consider and review. Once the draft is finalized, staff will submit the Opinion to the Clerk's office for Supreme Court review.

No. 3 Update and possible action regarding Former State Bar Ethics Opinions

- o Op. 09-02

Charles Thomson presented.

Kimberly Demarchi proposed a draft be presented to Committee that addresses practical issues that may arise in the scenario of a successor lawyer attempting to gain information from the previous lawyer, to ensure the successor has the client's consent for gathering past information from the previous lawyer.

Hon. John Napper suggested the draft include what kind of information a successor lawyer can receive *with* consent as well as discuss what kind of information a successor lawyer can be given *without* consent.

Charles Thomson offered to develop a paragraph to add to 09-02 that addresses the details and thoughts on best practices for lawyers in this scenario.

The Committee moved to table 09-02 for discussion at the December meeting

No. 4 Update and possible action regarding Ethics Opinion draft

- o EO-19-0006

Hon. John Napper presented.

Four draft opinions were created and provided to the Committee:

Draft 1: *Fearnow* controls who receives the fees and the fees that are allowed

Draft 2: *Fearnow* controls but any fee per client by departing attorney must be reasonable

Draft 3: Concludes 5.6 does not allow types of fee arrangements

Draft 4: Arrangement is precluded by other ethical rules and is supported by reasoning of 5.6

After discussion of each, the Committee selected to pursue draft 3 due to the guidance it provides.

Regina Nassen will finalize the opinion and provide it to the Committee at the December meeting for a final vote.

- o EO-19-0010

Hon John Napper and Charles Thomson presented.

The subcommittee provided two drafts to the Committee to review and consider.

Draft #1 allows a lawyer to post a specific response if genuine controversy between the lawyer and client or clients representative arises. However, as it is impossible for an attorney to ascertain the identity of the person behind an online posting, an attorney may not disclose confidential information with regard to a controversy pursuant to E.R. 1.6(d).

Draft #2 allows lawyers to dispute or defend negative comments or posts made by a client online, after specific measures were appropriately made. These measures include: (1) Reasonably identifying the source of the comment (2) Reassure that the comment adequately falls under the definition of “controversial” allowing for cause to respond and (3) Proportionality in response.

The Committee raised a concern that acknowledging a post may indicate that the author is the lawyer’s client and expressed that the draft opinion does not describe what constitutes a controversy.

Further, the Committee suggested broadening draft #1 to include more practical categories and include a distinct and wider definition on the term of “controversy”.

The subcommittee will revisit the drafts and provide an update at the December meeting.

- o EO-19-004/005/007

Maria Hubbard presented.

Member of the public, Chris Hering addressed the Committee.

The Committee suggested the subcommittee include the date of settlement into the opinion.

Committee members Maret Vessella, Kimberly Demarchi and Hon. John Napper expressed concern regarding the lack of details about the funds and property within in the opinion.

Motion: Accept draft as amended with date of settlement.

Moved by: Hon. John Napper

Second: Charles Thomson

Motion Passed 11-0-4

No. 5 Discussion and possible action regarding topics to be addressed at future meetings

A list of previous State Bar Ethics Opinions will be provided to the Committee to review.

No. 6 Call to Public

None.

Next Meeting: December 13, 2019

Adjourned: 10: 37 a.m.

DRAFT