

ATTORNEY ETHICS ADVISORY COMMITTEE

Thursday January 30, 2020

No. 1 Review and approve December 19, 2019 Minutes

A draft of the minutes for the meeting of December 19, 2019, has been provided for the Committee's review and consideration.

DRAFT MINUTES

FOR THE

ATTORNEY ETHICS ADVISORY COMMITTEE

December 19, 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)
Michael Aaron
Sheena Singh Chiang
Kimberly Demarchi
Daniel Mazza
Jon Sands
Charles Thomson
Geoffrey Trachtenberg
Maret Vessella
Angela Woolridge

Telephonically Present

Regina Nassen
Anne Schrock

Absent

Maria Hubbard

Staff

Mark Wilson
Michelle Martinez
Christine Davis
Ashley Mahoney
Ashleigh Hansen
Dominique Cidro

Guests

Chris Hering
Ann Ching
Nancy Greenlee
Lane Conrad
Keith Swisher
Robin Siverts

No. 1 Review and Approve November 21, 2019 Minutes

The November 21, 2019 Minutes were not presented to the Committee for approval but will be presented at the next meeting.

No. 2 Discussion and possible action regarding Former State Bar Ethics Opinions

- o Op. 95-03

Hon. Kim Ortiz presented.

Hon. Kim Ortiz discusses if Arizona should change EO 95-03, originally issued in 1995. The Ethics Opinion addresses the issue of when a lawyer may ethically record a conversation. Generally, a non-lawyer may record a conversation if one party consents to the recording. Generally, a lawyer may not record a conversation without the consent of all parties.

The Opinion contains four exceptions for the recording policy: crime, protect perjury, criminal cases, to be used with an informant or someone under investigation or if the recording is approved by another court statute, rule or order. The question brought forth for the Committee is if the Committee wants to expand exceptions, for example to include recording conversations with clients, witnesses and council.

Motion: Establish a subcommittee to further review Op. 95-03.

Moved by: Kimberly Demarchi

Second: Hon. Kim Ortiz

Motion Passed: 14-0-1

Subcommittee will consist of Committee members: Angela Woolridge, Ann Schrock, Regina Nassen and Hon. Kim Ortiz.

- o 09-02

Charles Thomson presented.

Charles Thomson presented draft language that could be used as a supplement or used within the opinion to reinforce teachings found in 09-02. The additional language emphasizes the information that can be imparted to new counsel from previous counsel without client consent

Mark Wilson suggested that the Committee create its own opinion, rather than merely a supplement to State Bar's opinion.

Motion: Establish a subcommittee to further review Op. 09-02.

Moved by: Geoffrey Trachtenberg

Second: Charles Thomson

Motion Passed: 14-0-1

Subcommittee will consist of Committee members: Charles Thomson and Geoffrey Trachtenberg. Anne Schrock and Jon Sands will assist with any criminal law expertise needed.

No. 3 Update and possible action regarding Ethics Opinion draft

- EO-19-004/0005/0007

Member of the public, Chris Hering addressed the Committee.

The Committee discussed the appropriateness of adding the amount received as compensation or damages to the notice requirement. Committee agreed to table discussion for next meeting.

- EO-19-0006

Hon. John Napper and Regina Nassen presented edited draft opinion.

Motion: Accept draft opinion and review proposed edits at next scheduled meeting.

Moved by: Hon. John Napper

Second: Geoffrey Trachtenberg

Motion Passed: 14-0-1

- EO-19-0009

Kim Demarchi presented draft comment to Committee.

Motion: Accept draft opinion and review proposed edits at next scheduled meeting.

Moved by: Geoffrey Trachtenberg

Second: Hon. Kim Ortiz

Motion Passed: 14-0-1

Proposed edits are due by January 15, 2020 to discuss at next scheduled meeting.

No. 4 Discussion and possible action regarding topics to be addressed at future meetings

No new topics discussed.

No. 5 Call to Public

None.

Next Meeting: January 30, 2019

Adjourned: 10:09 am