

MINUTES

FOR THE

ATTORNEY ETHICS ADVISORY COMMITTEE

Thursday September 26, 2019

9:30 a.m.

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

**Present**

Hon. Paul McMurdie (Chair)  
Hon. John Napper (Vice Chair)  
Kimberly Demarchi  
Geoffrey Trachtenberg  
Angela Woolridge  
Jon Sands  
Sheena Singh Chiang  
Regina Nassen  
Daniel Mazza

**Telephonically Present**

Michael Aaron  
Charles Thomson  
Maret Vessella

**Absent**

Maria Hubbard  
Hon. Kimberly Ortiz  
Anne Schrock

**Staff**

Ashley Mahoney  
Mark Wilson  
Brianna Farmer  
Michelle Martinez  
Ashleigh Hansen  
Dominique Cidro

**Guests**

9:33 a.m. Call to Order, Welcome and Introductions

**No. 1 Review and Approve May 30, 2019 Minutes**

**Motion:** Approve May 30. 2019 Minutes with correction

**Moved by:** Geoffrey Trachtenberg

**Second:** Hon. John Napper

**Motion Passed:** 12-0-3

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

- o Op. 93-02

Sheena Singh Chiang presented.

Sheena Singh Chiang discussed Former State Bar Ethics Opinion 93-02, which originated in 1993 which addresses a lawyer disclosing information pertaining to a former or current client when responding to negative comments.

The issue for this Committee is whether 93-02 and the self-defense exception to Rule 1.6 allows lawyers to disclose information to the extent the lawyer believes is reasonably necessary and whether it applies to online reviews.

The Committee discussed what constitutes as a negative review. The Committee further expressed concerns about the difficulty it is to distinguish the author of a negative online review. The Committee also questioned whether the forum of the controversy mattered.

**Motion:** Draft an Opinion

**Moved by:** Geoffrey Trachtenberg

**Second:** Angela Woolridge

**Motion Passed:** 12-0-3

Charles Thompson and Hon. John Napper will assist Sheena Singh Chiang in drafting the opinion.

- o Op. 01-04 – Unauthorized Disclosure

Ashley Mahoney presented.

Ashley Mahoney reviewed ABA Formal Opinion 94-382 which was withdrawn when Rule 4.2 was amended. The Rule was amended to include inadvertent disclosure and notification of opposing client. Ashley Mahoney urges Committee to revisit Op. 01-04.

The Committee expressed that the topic of the opinion occurs frequently in Family Court, though Committee found that the opinion is not currently significant enough to revisit at this time.

**Motion:** Table Review of Op. 01-04  
**Moved by:** Geoffrey Trachtenberg  
**Second:** Kim Ortiz  
**Motion Passed:** 11-1-3

Hon. John Napper opposes.

### **No. 3 Update and possible action regarding Ethics Opinion draft**

#### ○ EO-19-0003

Angela Woolridge presented subcommittee's second draft of their opinion.

Charles Thompson expressed concerns over clarification of "associated with the lawyer" and such phrases found within the opinion. Kimberly Demarchi explains that the issue lies within the difference of working for the lawyer directly, under the lawyer's control versus working with the lawyer. Jon Sands also brings up the use of words such as "engage" and whether it can be found as a way of control or non-supervisory.

Hon. Paul McMurdie asked that written comments be sent to the subcommittee to then be used to produce a final draft. The final draft will be presented with strike through showing substantive changes.

Mark Wilson brought up the Legal Task Force who have examined E.R 5.3 in detail and are recommending changes. Their report will be distributed to subcommittee when finalized.

**Motion:** Edit draft opinion with revisions and comments from Committee  
**Moved by:** Hon. McMurdie  
**Second:** Geoffrey Trachtenberg  
**Motion Passed** 12-0-3

#### ○ EO-19-0006

Hon. John Napper presented.

Hon. John Napper explained that each member of the subcommittee had drafted their own opinion and asked Hon. Paul McMurdie if all three opinions should be submitted to the Committee. Regina Nassen suggested to either circulate the draft opinions or send out bullet points regarding the opinions for Committee members to address. She also urged Committee to read *Fearnow* as the issue at hand is that *Fearnow* limits the analysis to Rule 5.6 whereas the ethics opinion addresses multiple ethical rules. Hon. John Napper asked Committee to decide on whether to address Rule 5.6, only as approached by the Supreme Court in *Fearnow* or address Rule 5.6 and other ethic rules together.

**Motion:** Subcommittee to address all applicable rules within draft and present bullet points for discussion at next meeting

**Moved by:** Geoffrey Trachtenberg

**Second:** Jon Sands

**Motion Passed** 12-0-3

○ EO-19-0004/0005/0007

Regina Nassen states that the Subcommittee is not ready to present and will present at the Committee's next meeting.

○ EO-19-0009

Kimberly Demarchi states that Subcommittee is not ready to present and will present at the Committee's next meeting.

#### **No. 4 Discussion and possible action regarding meeting dates for calendar year 2020**

Hon. Paul McCurdie presented.

Hon. Paul McCurdie recommended that the Committee meets bi-monthly as opposed to monthly.

John Sands expressed his preference for the Committee to meet monthly because having the meetings monthly would provide more opportunity to address Committee. Angela Woolridge agreed with Jon. Kim Demarchi suggested that if a meeting is cancelled, a meeting by the subcommittee should be held in its place.

Most Committee members preferred to keep the current monthly meeting schedule. Hon. Paul McMurdie acknowledged and decided to continue the current monthly schedule.

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

No discussion.

#### **No. 7 Call to Public**

No public discussion.

**Next Meeting:** Wednesday October 24, 2019

**Adjourned:** 10: 45 am