

# 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**