

MINUTES

FOR THE

ATTORNEY ETHICS ADVISORY COMMITTEE

Thursday January 31, 2019

9:30 a.m.

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

Present

Hon. Paul McMurdie (Chair)
Sheena Singh Chiang
Maria Hubbard
Kimberly Demarchi
Daniel Mazza
Regina Nassen
Jon Sands
Anne Schrock
Charles Thomson
Geoffrey Trachtenberg
Maret Vessella
Angela Woolridge

Telephonically Present

Hon. John Napper (Vice Chair)
Kim Ortiz
Michael Aaron

Staff

Ann Ching
Ashley Mahoney
Mark Wilson
Brianna Farmer
Michelle Martinez
Ashleigh Hansen

Guests

Heather Wilson
Eve Schnapp
David Morgan
Elizabeth Ortiz
Cameron Artigue
Hayley Zimmerman
Marty Lieberman
Leonardo Ruiz
Judy Schaffers
William Brown
Mathew Cannon
Lane Conrad
Mark Suagee

9:30 a.m. Call to Order, Welcome and Introductions

Hon. Paul McMurdie, Chair

No. 1 Administrative Issues (Taken out of order)

- Appointment of Vice Chair

Hon. Paul McMurdie announced the appointment of Hon. John Napper as Vice Chair.

- Presentation on Rule 42.1 and Administrative Order 2018-110 – Scope and Responsibilities

Mark Wilson provided an overview of Rule 42.1 and Administrative Order 2018-110. Mr. Wilson also discussed Open Meeting Law and Public Records requests.

- Meeting dates

Hon. Paul McMurdie proposed committee meetings to be scheduled monthly.

The next meeting will be Thursday March 28, 2019.

No. 2 Discussion and possible action concerning Ethics Opinion request cover sheet

Mark Wilson presented to the committee information on the process of submitting an ethics opinion request.

Staff drafted a coversheet for requesters to submit with their request to the Clerk of the Court's Office. The coversheet will help ensure there is no identifying information present within the ethics opinion request.

An update regarding the coversheet will be provided at the next meeting.

No. 3 Discussion and possible action on Ethics Opinion Requests (Taken out of order)

Hon. McMurdie opened discussion on procedure for addressing ethics opinion requests.

The procedure calls for discussion amongst the committee first to determine if an opinion should be drafted which would be determined by a majority vote. The task of creating an opinion would then be assigned to a primary writer with two other members to assist in developing an opinion. The draft would then be presented to the committee.

It is understood that the draft opinion may result in further discussion, requests for information or research depending on the circumstances.

- Opinion request regarding Early Resolution Court process and Opinion request regarding may a prosecutor refuse to offer plea agreement if defendant requests preliminary hearing

Hon. Paul McMurdie presented.

The issue is whether it is ethical for a lawyer to counsel his/her client regarding the plea agreement if the lawyer believes the process does not provide sufficient time for the lawyer to acquire knowledge of the underlying facts.

The committee raised a concern on whether or not this issue would be better addressed through the court's analysis of due process or to be considered a legal issue to be resolved through the

courts.

Angela Woolridge discussed the difference between the plea offer for a petty offense or felony. Ms. Woolridge also expressed that committee should take in consideration of vast discrepancies within the case in analysis.

Hon. John Napper expressed that the issue is intertwined with the rules of criminal procedure and discovery rules within the jurisdiction. He believes this issue should be addressed by the courts and that it could not be adequately addressed by an Ethics Opinion.

Kimberly Dimarchi questioned if the committee has jurisdiction over the issues presented.

Remarks from public; following members of the public Mark Suagee, Mathew Cannon, Marty Lieberman, Leonardo Ruiz, and William Brown spoke.

Motion: Deny Ethics Opinion requests

Moved by: Geoffrey Trachtenberg

Second: Charles Thomson

Motion Passed: 10-5-0

- o Opinion request regarding may a lawyer supply information to a holder of the health care provider lien in order to satisfy ER 1.15(f) if the lawyer knows the identify the tortfeasor in a personal injury case.

Mark Wilson presented.

Requester suggested that the notice given by the attorney is inadequate and does not include the identity of the tortfeasor, the tortfeasor's insurance company, the date on which the settlement was made, and the amount of the settlement. The requester believes that if this information is known but not provided it is an ethical violation.

Geoffrey Trachtenberg presented additional information regarding ER1.15 (f) and summarized the request. He stated the notice provided by the attorney is not deficient and that a third party, through an investigation, should be able to obtain the wanted information. Feels request asks for items outside of rule which would in turn be detrimental to client.

Kimberly Demarchi suggested a subcommittee be formed to broaden discussion and improve understanding of both ER 1.15 and ER 1.15 (f) pertaining to what is required and appropriate in a notice under ER 1.15 (f) and when is ER 1.15 permitted.

Remarks from public; following member of the public Cameron Artigue spoke.

Motion to form a subcommittee is combined with next request pertaining to ER 1.15.

- o Opinion request regarding may an ER 1.15 letter be sent to defendant's counsel to claim an interest in proceeds in an unrelated personal injury claim when defendant's insurance is insufficient.

Ashley Mahoney presented.

The request asks if it is ethical for an attorney to send a letter claiming interest in proceeds from a prior settlement if there is a separate debt unrelated to the settlement owned and questions the definition of “interest” in terms of a third party under ER 1.15(d).

Geoffrey Trachtenberg raised issue with defining the term “interest” and gave additional information regarding ER 1.15 mentioning that it is not intended to be used for a debt collection, instead ER 1.15 is used to protect property that has been given to attorney.

Hon. Paul McMurdie proposed a subcommittee be formed to determine if a draft of an opinion is appropriate. Maria Hubbard agreed to head the subcommittee. Regina Nassen and Geoffrey Trachtenberg offered to serve on the subcommittee.

Motion: Form a subcommittee to further determine if an ethics opinion would be appropriate regarding ER 1.15 and ER 1.15(f).

Moved by: Geoffrey Trachtenberg

Second: Hon. John Napper

Motion Passed: 15-0-0

- o Opinion request regarding may the attorney-client confidentiality be breached by a professional supervised by the lawyer if the professional has a professional obligation to report offenses against children.

Ann Ching presented.

Ann Ching informed the committee the request has been looked into previously. Ms. Ching discussed two issues the request raised, a confidentiality issue in terms of professional obligation to an attorney’s client and the obligation an attorney must supervise non-lawyer assistants specified in ER 5.3.

She also noted past Ethics Opinion, 99-11, to further conclude that the issue is in essence about the rationale of whether or not the information given is helpful or adverse to client.

Hon. Paul McMurdie proposed a subcommittee be formed to review the ethics opinion request. Angela Woolridge agreed to head the subcommittee. Jon Sands and Anne Schrock offered to serve on the subcommittee.

Motion: Form a subcommittee to review Ethics Opinion request.

Moved by: Regina Nassen

Second: Geoffery Trachtenburg

Motion Passed: 15-0-0

- o Opinion request regarding Reconsideration of Ethics Opinion 09-01

Ann Ching presented the question on whether Ethics Opinion 09-01 should be re-examined.

The committee expressed support to re-examine 09-01 Ethics Opinion.

Hon. Paul McMurdie proposed a subcommittee be formed to review the ethics opinion request. Hon. John Napper agreed to head the subcommittee. Regina Nassen and Anne Schrock offered to serve on the subcommittee.

Motion: Form a subcommittee to review Ethics Opinion request.

Moved by: Regina Nassen

Second: Kimberly Demarchi

Motion Passed: 14-1-0

No. 5 Call to Public

Kimberly Demarchi suggested looking at past ethics opinion to form a body of precedent as well as seek if any ethics opinions that may need to be reevaluated.

Next Meeting: March 28, 2019

Adjourned: 11: 51 a.m.