DRAFT MINUTES

FOR THE

ATTORNEY ETHICS ADVISORY COMMITTEE

Thursday March 28, 2019
9:30 a.m.
State Courts Building, 1501 West Washington Street, Phoenix, Arizona
Conference Room 345

Present	**Telephonically Present**	**Absent**
Hon. Paul McMurdie (Chair)	Hon. Kim Ortiz	Maret Vessella
Hon. John Napper (Vice Chair)		
Sheena Singh Chiang		
Michael Aaron		
Maria Hubbard		
Kimberly Demarchi		
Daniel Mazza		
Regina Nassen		
Jon Sands		
Anne Schrock		
Charles Thomson		
Geoffrey Trachtenberg		
Angela Woolridge		

Staff	**Guests**
Ann Ching	Cameron Artigue
Ashley Mahoney	Lane Conrad
Mark Wilson	Nancy Greenlee
Brianna Farmer	Patrick-Christian Hansen
Michelle Martinez	
Ashleigh Hansen	
Lorena Landros	

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9:33 a.m. Call to Order, Welcome and Introductions *Hon. Paul McMurdie, Chair*

No. 1 **Review and Approve January 31, 2019 Minutes**

Motion: Approve January 31, 2019 Minutes
Moved by: Geoffrey Trachtenberg
Second: Jon Sands
Motion Passed: 14-0-1

No. 2 **Discussion and possible action regarding:**

- Clerk of the Court File Numbers

Mark Wilson presented.

The process for assigning file numbers has been established but the process is still an ongoing discussion. It has been determined, thus far, when an opinion request is submitted the Clerk's Office will assign a file number and forward the request to the committee.

No. 3 **Subcommittee update and possible action on Ethics Opinion requests**

- EO-19-0003: 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.

Subcommittee members: Angela Woolridge, Jon Sands and Maret Vessella.

Angela Woolridge provided an update regarding the subcommittee's review of EO-19-0003.

The subcommittee proposed the Committee draft an opinion that would apply to any individual that is subject to the Arizona statutory mandatory reporting requirements. In addition, the opinion will emphasize the lawyer's obligation to inform any individuals who are subjected to the Arizona statutory mandatory reporting requirements and clients, with whom the lawyer works with, that the lawyer is bound to the rules of professional conduct to maintain client confidentiality.

Hon. John Napper raised a concern regarding drafting such a broad opinion. He suggested the context of the opinion should be specific to the request due to the fact it may result in unintended consequences in other mandatory reporter fields.

The Committee discussed issues that may arise from an opinion that is too narrow.

Motion: Accept the subcommittee's recommendation and draft an Ethics Opinion
Moved by: Geoffrey Trachtenberg
Second: Kimberly Demarchi
Motion Passed: 14-0-1

- EO-19-0004: May a Rule 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.

Note: Consolidated vote with EO-19-0005

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- EO-19-0005: 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.

  Subcommittee members: Maria Hubbard, Regina Nassen and Geoffrey Trachtenberg.

  Remarks from the following member of the public: Cameron Artigue.

  Maria Hubbard provided an update regarding the subcommittee's review of EO-19-0004 and EO-19-0005.

  The subcommittee explained the sparse occurrence of disciplinary issues regarding ER 1.15 (f) and provided two proposals for the Committee to consider: (1) Draft an ethics opinion or (2) Propose a rule petition.

  Motion: Continue to review and move forward with EO-19-0004 and EO-19-0005
  Moved by: Hon. John Napper
  Second: Charles Thomson
  Motion Passed: 14-0-1

  The Committee suggested the subcommittee draft an Ethics Opinion, however if the subcommittee finds that an opinion is not suitable they may proceed with drafting a rule petition.

  Mark Wilson raised a question of whether the Committee should draft a rule petitions in this situation or if it should be left for that specific field.

  Motion: Draft an opinion consideration with discretion of the subcommittee to modify if deemed necessary whilst drafting
  Moved by: Geoffrey Trachtenberg
  Second: Regina Nassen
  Motion Passed: 14-0-1

- EO-19-0006: Reconsideration of Ethics opinion 09-01.

  Subcommittee: Hon. John Napper, Regina Nassen and Anne Schrock.

  Hon. John Napper provided an update regarding the subcommittee's review of EO-19-0006.

  The subcommittee addressed that though the former State Bar's Ethics Committee issued Ethics Opinion 09-01 after issuance of the Supreme Court's decision in *Fearnow*, the opinion does not address *Fearnow* or apply its reasonableness standard.

  The subcommittee brought forth three proposals: (1) Leave Ethics Opinion 09-01 as is, (2) Reconsider the opinion and apply the reasonableness standard or, (3) Reconsider the opinion and address *Fearnow* but note that *Fearnow* only applies in situations when the interests of the firm or profitability of the firm are an issue as oppose to situations when the interests of a specific client is an issue.

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Motion: Draft an Ethics Opinion with reference to *Fearnow*
Moved by: Geoffrey Trachtenberg
Second: Jon Sands
Motion Passed: 14-0-1

No. 2 **Discussion and possible action regarding:**

- Scope and Responsibilities of the Committee (Taken out of order)

Kimberly Demarchi proposed forming a subcommittee to research previous ethics opinions issued by the State Bar's Ethics Committee to provide better understanding of past ethics opinions that may range in a variety of legal sectors.

Hon. Paul McCurdie requested Ann Ching to research and bring forth past ethics opinions for the Committee to review.

Ann Ching, Angela Woolridge, Hon. Kimberly Ortiz and Jon Sands volunteered to assist Kimberly Demarchi.

No. 4 **Discussion and possible action regarding subcommittee's role and approach in drafting a proposed opinion.**

No Discussion.

No. 5 **Call to Public**

Remarks from the following member of the public: Patrick Christian Hansen.

Next Meeting: April 25, 2019

Adjourned: 10:43 AM

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