

# DRAFT MINUTES

FOR THE

## ATTORNEY ETHICS ADVISORY COMMITTEE

March 25, 2021

9:30 a.m.

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

**Note:** Meeting of the Attorney Ethics Advisory Committee was conducted virtually. Members of the Committee and most staff attended virtually.

### **Present**

Hon. Paul McMurdie (Chair)

Hon. Kim Ortiz

Michael Aaron

Ann Ching

Kimberly Demarchi

Jason Easterday

Maria Hubbard

Ashley Mahoney

Regina Nassen

Jon Sands

Anne Schrock

Charles Thomson

Maret Vessella

Angela Woolridge

### **Absent**

Hon. John Napper (Vice Chair)

Geoffrey Trachtenberg

### **Staff**

Mark Wilson

Michelle Martinez

Christine Davis

Ashleigh Hansen

Savannah Peavy

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

**No. 1 Review and Approve January 28, 2021 Minutes**

**Motion:** January 28, 2021 Minutes approved with correction of Subcommittee members for 19-000-03. Anne Schrock replaced with Maret Vessella.

**Moved by:** Maret Vessella

**Second:** Hon. Kim Ortiz

**Motion Passed** 14-0-2

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

Mark Wilson presented.

- State Bar Op. 05-04 (Electronic storage)  
State Bar Op. 09-04 (Maintaining client files; technology)

Mark Wilson presented that with respect to ER 1.1 and 1.6, client files may be stored electronically, and the attorney is responsible for ensuring that competence among those utilizing and managing the electronic systems meet the attorney's ethical obligations maintaining retention and client confidentiality.

**Motion:** Refer to State Bar Ethics Group for it to consider whether to develop a best practice guidance.

**Moved by:** Anne Schrock

**Second:** Jon Sands

**Motion Passed** 14-0-2

**Note:** Vote Consolidated with Op. 05-04 and Op. 09-04.

**No. 3** Update and possible action regarding:

- EO-20-0004 (AMMA)

Ashley Mahoney presented.

Discussion was held addressing whether to file a petition to amend Rule 42 (ER 1.2) in light of new state laws regarding the legal use of marijuana and the conflict between federal and state law.

There was discussion of the need to further define the role an attorney has in providing counsel and guidance on the use of marijuana with respect to state and federal laws. It was determined to file a Rule petition to amend Rule 42 (ER 1.2).

**Motion:** Refer draft to Supreme Court

**Moved by:** Charles Thompson

**Second:** Maret Vessella

**Motion Passed** 8-6-2

- EO-20-0011 (coping opposing party)

Anne Schrock presented.

EO-20-0011 focused on the appropriateness of copying the opposing attorney's client when emailing opposing attorneys. A draft was presented, and the Committee decided that it would be best to refer the draft opinion to a new Subcommittee for further consideration.

**Motion:** Refer draft opinion to Subcommittee for revision and further consideration.

**Moved by:** Regina Nassen

**Second:** Anne Schrock

**Motion Passed** 13-1-2

The Subcommittee includes Regina Nassen and Anne Schrock.

- EO-19-0003 (Nonlawyers with mandatory reporting)

Anne Schrock presented.

Upon discussion, the draft opinion for EO-19-0003 will be sent to the Supreme Court.

**Motion:** Refer draft to Supreme Court.

**Moved by:** Maret Vessella

**Second:** Jon Sands

**Motion Passed** 14-0-2

**No. 4** Discussion and possible action regarding ABA Formal Opinion on virtual practice.

Mark Wilson presented.

Mark Wilson discussed the ABA Formal Opinion addressing best practices for utilizing virtual systems. Confidentiality, competence, and security were among the topics discussed as well as proper etiquette revolving around the use of multiple devices was mentioned.

The Committee decided that no further action should be taken on the Formal Opinion and staff will have the ABA formal opinion posted on the Committee's website.

**No. 5** Discussion of Legal Paraprofessional Sub Committee

Maret Vessella presented.

The Committee discussed the role the Subcommittee established on the January 28, 2021 meeting has. The Subcommittee is to work on possible recommendations as to how those certified under the newly developed legal paraprofessional program would be best addressed with regard to the Ethics Committee.

**No. 5 Call to Public**

No remarks from the public were made.

**Adjourned:** 10: 41 am