

Disciplinary Rules and Procedures Committee
Meeting of October 23, 2020
Via Zoom

MINUTES

Chair Harold Michael Bagley called the meeting to order at 2:00 p.m.

Attendance:

Committee members: Harold Michael Bagley, R. Gary Spencer, Erin H. Gerstenzang, John G. Haubenreich, Patrick H. Head, R. Javoyne Hicks, Seth D. Kirschenbaum, Edward B. Krugman, David N. Lefkowitz, David S. Lipscomb, Patrick E. Longan, Jabu M. Sengova, H. Craig Stafford, William Thomas, Jr. and Patrick J. Wheale.

Staff: Paula J. Frederick, Jenny K. Mittelman, William D. NeSmith, III, and Kathya S. Jackson.

Guests: District Attorney Sherry Boston, Robert W. Smith, Jr., General Counsel for Prosecuting Attorneys' Council of Georgia, and Judge Paige Reese Whitaker.

Approval of Minutes:

The Committee approved the Minutes from the January 10, 2020 meeting.

Action Items:

Possible revision to Part 7 of the GRPC

The Committee discussed whether they should make changes to all of the rules or focus on Rule 7.2. The Committee decided to create a subcommittee to work with Paula Frederick on possible revisions to Part 7. The subcommittee will present a draft to the Committee at its next meeting.

Rule 1.17 Comment 6

The Committee voted to add the language in ABA Rule 1.6(b)(7) to GRPC 1.6 as new subsection (b)(1)(v).

Proposed New Comment 7 to Rule 1.1

The Committee previously approved adding comment 7 to emphasize the importance of wellness as a component of competence. The Executive Committee had approved the amendment and it was on the agenda for approval at the January 2019 Board of Governors meeting when Bar Counsel received word that the Lawyer Assistance Program was opposed to the addition. Bar counsel agreed to pull the comment from the agenda and asked the leadership of the Attorney Wellness Committee and the Lawyers Assistance Program to make a recommendation about proceeding. R. Javoyne Hicks, member of the DRPC and Chair of the Wellness Committee, provided a report recommending that we not proceed with the comment at this time. Since the

Executive Committee has already voted to approve the amendment, Bar Counsel will provide a report to the Executive Committee.

Discussion Items:

ABA Rule 1.8(e)(3)

The Committee discussed the revision to ABA Rule 1.8. Paula Frederick will provide the revised rule to the pro bono community and bring all comments back to the Committee at its next meeting.

Rule 5.4

Several jurisdictions are exploring changes to Rule 5.4 to allow nonlawyer investment in law firms and some forms of nonlawyer practice. The loosened restrictions are in response to the access to justice problem. Bar counsel will keep the committee updated on the effect of these rule changes.

Rule 3.8

Sherry Boston and Robert Smith provided the Committee with a revised version of GRPC Rule 3.8 based off of the ABA Rule 3.8. R. Gary Spencer also presented the Committee with a revised version of Rule 3.8. The Committee discussed the differences between both drafts. The Committee decided that Sherry Boston, R. Gary Spencer, and any other members will collaborate and draft a version to present to the Committee at its next meeting.

Rule 8.4(g)

The Committee decided to wait for the Seeking Equal Justice and Addressing Racism & Racial Bias Committee to present them with a possible revision to Rule 8.4.

Revisions as approved:

RULE 1.6 CONFIDENTIALITY OF INFORMATION

- a. A lawyer shall maintain in confidence all information gained in the professional relationship with a client, including information which the client has requested to be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client, unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, or are required by these rules or other law, or by order of the court.
- b.
 1. A lawyer may reveal information covered by paragraph (a) which the lawyer reasonably believes necessary:

- i. to avoid or prevent harm or substantial financial loss to another as a result of client criminal conduct or third party criminal conduct clearly in violation of the law;
 - ii. to prevent serious injury or death not otherwise covered by subparagraph (i) above;
 - iii. to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
 - iv. to secure legal advice about the lawyer's compliance with these rules;
 - v. to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.
2. In a situation described in paragraph (b) (1), if the client has acted at the time the lawyer learns of the threat of harm or loss to a victim, use or disclosure is permissible only if the harm or loss has not yet occurred.
 3. Before using or disclosing information pursuant to paragraph (b) (1) (i) or (ii), if feasible, the lawyer must make a good faith effort to persuade the client either not to act or, if the client has already acted, to warn the victim.
- c. The lawyer may, where the law does not otherwise require, reveal information to which the duty of confidentiality does not apply under paragraph (b) without being subjected to disciplinary proceedings.
 - d. The lawyer shall reveal information under paragraph (b) as the applicable law requires.
 - e. The duty of confidentiality shall continue after the client-lawyer relationship has terminated.

The maximum penalty for a violation of this rule is disbarment.