

CBA LITIGATION COUNCIL
January 6, 2018 MEETING MINUTES

LOCATION: CBA Offices, Denver

COUNCIL MEMBERS PRESENT:

In Person: Chair: Loraine Parker
 Treasurer: Nicoal Sperazza
 Kayla Dreyer
 Michael Mihm
 Kathy Riley
 Kayla Dreyer
 Alden Hill
 Jerry Pratt
 Mike Chapman

By telephone: Secretary: Luke Ritchie
 Sam Starritt
 Natascha Guitierrez
 Peter Black
 Peter Goldstein
 Pat Wilson
 Amanda Francis
 Joe Rivera

CBA/CLE
Personnel: Elizabeth Akalin
 Vince O'Brien

Speaker: Marcy Glenn, Chair of Supreme Court Standing Committee on
 Rules of Professional Conduct

1. **CALL TO ORDER:** 9:00 PM
2. **APPROVAL OF MINUTES** from both December 4, 2017. Revisions noted and approved.
3. **Presentation by Marcy Glenn, Chair of Supreme Court Standing Committee on Rules of Professional Conduct:** Jerry Pratt introduced Ms. Glenn and provided her with a background on the LC's prior discussions regarding Colo. RPC 1.6 and the recently issued Formal Ethics Opinion 130 concerning the sharing of information regarding the representation of a client. A number of EC

members explained their concerns with FEO 130 and the practical implications that a rigid adherence to FEO 130 would have on their respective practices and mentoring, brainstorming, and CLE presentation efforts. Ms. Glenn advised that she understood the concerns and commented on FEO 130's implications on her own practice. Ms. Glenn also presented on the background of both RPC 1.6 and FEO 130, and discussed recent efforts to revise Rule 1.6. Discussion ensued. Ms. Glenn advised that if EC decides to propose something in terms of position statement or amendment, that it do its legwork first in researching exceptions that have been adopted in states like NY, Mass., etc. Also suggested that EC review the ABA model rule, which will provide all exceptions adopted by other states. Ms. Glenn also discussed implications on the prohibition of using information gained during representation of former client in connection with subsequent matter. FEO 130 does not even except sharing decision from that prior representation in connection with new representation. Likely response from committee to many of concerns raised, is that "just go ahead and get clients' permission" – perhaps even advance permission as provision in engagement letter. Ms. Glenn confirmed that she hears our concerns, because she too faces the same issues.

After Ms. Glenn's departure from meeting, EC discussed making a proposal to carve out reasonable exceptions or an amendment to Rule 1.6 and/or FEO 130. General consensus was that the litigation bar, the real estate bar, probate/trust bar, etc., statewide would benefit from reasonable exceptions. Subcommittee consisting of Loraine Parker, Nicoal Sperazza, Gerry Pratt, Michael Mihm, Michael Chapman, and Sam Starritt will exploratory options and reach out to other sections for unity in the endeavor.

Discussion also ensued regarding need for CLE presentation on what lawyers need to update in their practices in order to comply with the Rule 1.6 and FEO 130. CBA/CLE ED Vince O'Brien advised that he would support CLE presentation and would reach out to those on the subcommittee for planning purposes.

4. Presentation on Financials by Treasurer:

Ms. Sperazza presented current state of financials and overall impression was that the Litigation Section is in strong financial condition.

5. Litigation Section's Mission Statement: Chair Parker next discussed proposal for new mission statement for the Litigation Section. Mr. Ritchie committed to draft a proposed revised mission statement and to circulate to executive members for preliminary review, and then to LC for follow-up review and finalization. Will be ready for February meeting.

6. Old Business:
COMMITTEE AND SUB-COMMITTEE REPORTS:

- A. Membership.** Nothing to report.
- B. Events.** Nothing to report.
- C. Rules.** Mr. Goldstein reported that he will have report for February meeting. No developments in the meantime.
- D. Newsletter/Website.** See supra at ¶ 3.
- E. Symposium.** Ms. Sperazza circulated sponsorship packet for event. Discussion ensued regarding preferences for sponsors e.g., third-party vendors versus law firms. Discussion also ensued regarding sponsorships perks include Symposium admissions and LC's desire for those to be donated to young lawyers, students, small firms, etc.
- F. Appellate Practice.** Nothing to report.
- G. CLE.** Vince reported that we are focusing on Symposium.
- H. Newsletter.** Nothing to report
- I. Ethics Committee.** Nothing to report.
- J. Legislative.** Nothing to report.
- K. Nominating Committee.** Meeting shortly, and will update group in February.

7. New Business.

- A. Speakers for future meetings.** Ms. Sperazza proposed diversity panel (CHPA, LGBT, CWBA, APBA) in March to present on current state of inclusivity and diversity in Colorado Bar. LC would like to know what we can do to increase diversity on the counsel. Patrick Flaherty on April 2nd. Need Chief Justice to present in May – Elizabeth will coordinate. And, Mr. Hill proposed that newest Justice also be invited to attend the Chief Justice's presentation.

8. ADJOURNED at 11:18 a.m.

Prepared by:

/s/ Luke Ritchie
Secretary

Approved: _____
(date)