AMERICAN BAR ASSOCIATION
CPR/SOC PROFESSIONAL RESPONSIBILITY COMMITTEE

MINUTES OF THE MEETING

Saturday, February 6, 2016
12:00 – 2:00 P.M.
La Costa Room, 4th Floor, South Tower
Marriott Marquis
San Diego, CA

Section/Division Liaisons:
Barbara K. Howe, Chair
Rew R. Goodenow, Vice-Chair and Section of Business Law
Michael Downey, Law Practice Division
Marla N. Greenstein, Judicial Division
Thomas Grella, Law Practice Division
Albert Harvey, Senior Lawyers Division
William H. Horton, Section of Health Law
Hon. Elizabeth Lang-Miers, Judicial Division
Thomas Wilkinson, Section of Litigation

CPR Committee Representatives:
John Gleason, Chair, Policy Implementation Committee
Shontraire Irving, Chair, Standing Committee on Specialization
Tracy Kepler, Chair, CLE Committee
Janet Green Marbley, Chair, Diversity Committee

Affiliated Organizations:
William Slease, National Organization of Bar Counsel (NOBC)

ABA/CPR Counsel:
Angela Burke, Director Program and Planning
H. Maria Enright, Associate Executive Director, Professional/Specialty Services Group
R. Larson Frisby, Governmental Affairs Office
Kenneth J. Goldsmith, Governmental Affairs Office
John A. Holtaway, Policy Implementation Counsel
Ellyn S. Rosen, Deputy Director
Martin Whittaker, Specialization Counsel

I. Approval of Minutes: The members approved the minutes of the October 15, 2015 business meeting conducted by teleconference.

II. Chair’s Report: Chair Barbara Howe welcomed the members of the Committee and reminded them of the Committee’s mission to serve as a network for the exchange of information about ongoing projects and programs related to ethics and professionalism.
She asked that the members share what they have learned from their Section and Division Councils as well as from their ethics and professionalism committees. Chair Howe stressed the importance of Committee members advising the Center for Professional Responsibility (CPR) of any developing resolutions with reports that have ethics, professional responsibility law, or regulatory components and that may be going before the ABA House of Delegates. The CPR can assist the Sections/Divisions in ensuring that their resolutions comply with existing Association policies in the area of professional responsibility law.

Chair Howe next encouraged all Committee members to consider becoming members of the CPR. Committee members are the ethics leaders for their Sections/Divisions and their participation in CPR would benefit this work. CPR "Members Only" benefits include online resources, including an online ethics opinion library, articles, and course materials from our annual National Conference on Professional Responsibility; quarterly issues of The Professional Lawyer e-magazine and its annual Journal, featuring updates and analysis on professional responsibility law and programs; ETHICSearch research service, a complimentary service staffed by attorney ethics experts; and revised electronic editions of the ABA Model Rules of Professional Conduct. In addition, CPR members receive discounts on CPR publications, registration fees for the annual National Conference on Professional Responsibility, National Forum on Client Protection, and teleconference CLE programs.

Finally, Chair Howe noted that by e-mail messages dated September 23, 2015 and November 12, 2015, Lucian Pera, Chair of the Center for Professional Responsibility Coordinating Council and Michael Drumke, Chair of the Section Officers Conference, requested that each Section/Division contribute $200 toward the finances of the CPR/SOC Professional Responsibility Committee for FY15-16. She stated that as of the date of the business meeting, four Sections/Divisions had made a contribution. (Government and Public Sector Lawyers Division, Section of Legal Education, Solo, Small Firm and General Practice Division, and the Section of Tort Trial and Insurance Practice). Chair Howe asked that each Committee member contact their Section/Division Director and request that a contribution be made. Please contact Angie Burke (Angela.Burke@americanbar.org) for more information.

III. Professional Responsibility Law Speakers Bureau: Counsel Holtaway reported that the Professional Responsibility Law Speakers Bureau has assisted many entities by suggesting legal ethics speakers to bar associations and other groups that are organizing conferences, workshops, continuing legal education, and similar programming. Counsel Holtaway encouraged all Committee members to join the speaker’s bureau. http://www.americanbar.org/groups/professional_responsibility/professionalresponsibilit ylawspeakersbureau.html

IV. Resolutions with Reports to the House of Delegates – 2016 ABA Midyear Meeting

Deputy Director Ellyn Rosen reported on several Resolutions with Reports that are pending before the ABA House of Delegates for debate at the 2016 ABA Midyear Meeting.
A. Deputy Director Rosen reported that Resolution 103 proposes to amend the black letter of Rule 5.5 of the ABA Model Rules of Professional Conduct and the ABA Model Rule for Registration of In-House Counsel, to include language specifying that the court of highest appellate jurisdiction may, in its discretion, allow foreign in-house lawyers who do not meet the ABA definition of foreign lawyer because they cannot be “members of the bar” to be able to practice as in-house counsel in the U.S. and to be so registered. She stated that the New York State Bar Association and the Section of Business Law are supporters of Resolution 103.

(Note: Adopted as revised, February 8, 2016).

B. Deputy Director Rosen reported that Resolution 105 proposes the adoption of the *ABA Model Regulatory Objectives for the Provision of Legal Services* and urges that each state’s highest court, and those of each territory and tribe, be guided by the Model Regulatory Objectives when they assess the court’s existing regulatory framework and any other regulation they may choose to develop concerning non-traditional legal service providers. She noted that the Conference of Chief Justices recently adopted a resolution recommending consideration of the Model Regulatory Objectives for the Provision of Legal Services by its members as a means to help assess the state’s existing regulatory framework and to help identify and implement regulations related to legal services beyond the traditional regulation of the legal profession. Deputy Director Rosen stated that the ABA Board of Governors, Young Lawyers Division, and Law Practice Division are now supporters of Resolution 105. She noted there is opposition from the state bars of Illinois, New Jersey, and New York, as well as the Section of Litigation.

(Note: Adopted as revised, February 8, 2016).

C. Finally, Deputy Director Rosen stated that Resolution 113, urging courts and legislative bodies to adopt rules or enact legislation to establish an evidentiary privilege for confidential communications between a client and a lawyer referral service for the purpose of retaining a lawyer or obtaining legal advice from a lawyer, would be withdrawn by its proponent, the Standing Committee on Lawyer Referral and Information Service.

(Note: Withdrawn, February 8, 2016).

V. **Director’s Report - Center for Professional Responsibility (CPR):** Angie Burke reported that the Center has seen a surge in Center membership due to its offer of free membership to members of the Law Student Division. The Center membership has increased by approximately 1000 members. Ms. Burke noted that the Michael Franck Award will be presented to Gene Shipp at 5:00 P.M. on Thursday, June 2, 2016, following the conclusion of the day’s programming for the 42nd National Conference on Professional Responsibility in Philadelphia. She further reported that the nomination period for the Rosner and Rosner Young Lawyers Professionalism Award and the E. Smythe Gambrell Professionalism Awards closes on March 31, 2016.

http://www.americanbar.org/groups/professional_responsibility/initiatives_awards/awards/rosner.html

and
VI. Standing Committee on Ethics and Professional Responsibility – Model Rule 8.4: Counsel Holtaway reported that the Standing Committee on Ethics and Professional Responsibility has issued a draft proposal to amend ABA Model Rule of Professional Conduct 8.4 and Comment 3 to Rule 8.4. The proposal reflects the efforts of the Ethics Committee to examine how the Model Rules of Professional Conduct address discrimination and harassment by lawyers and is meant to further focus and advance the discussion on this important issue. Counsel Rendleman stated that the Ethics Committee will conduct a public hearing on Sunday, February 7, 2016 from 3:00 p.m. – 5:00 p.m. at the Marriott Marquis San Diego Marina, 3rd Floor, South Tower, Balboa & Mission Hills Meeting Rooms and he invited all Committee members and liaisons to attend the hearing.

VII. ABA Commission on the Future of Legal Services: Counsel Holtaway reported that the ABA Commission on the Future of Legal Services will conduct a roundtable discussion during the ABA Midyear Meeting in San Diego: Saturday, February 6, 2016, 2:00 – 3:30 p.m., Manchester Grand Hyatt, Grand Hall A, Lobby Level. He stated the Commission is soliciting comments about ways to improve the delivery of -- and access to -- legal services in the United States.

VIII. Reports from Section/ Professional Responsibility Committees and Liaisons:

A. National Organization of Bar Counsel (NOBC): William Slease stated he was proud to report that Wallace “Gene” Shipp, the District of Columbia Bar Counsel, will be the recipient of the 2016 Michal Franck Professional Responsibility Award. The Award will be presented at the 42nd National Conference on Professional Responsibility to be conducted June 1-3, 2016 in Philadelphia. Mr. Slease further reported that the NOBC has voted to support Resolution 105 (ABA Model Regulatory Objectives for the Provision of Legal Services).

B. CPR Policy Implementation Committee: Chair John Gleason reported that the West Virginia Supreme Court adopted a revised judicial code that follows the ABA Model Code numbering and formatting system. (Effective December 1, 2015). Thirty-three states have revised their judicial codes. Chair Gleason stated that twenty-four states have now amended, at least in part, their rules of professional conduct based upon the August 2012 Commission on Ethics 20/20 recommendations. Finally, he reported that Georgia, Illinois, and the United States Virgin Islands have implemented the ABA Guidelines for an International Regulatory Information Exchange, dated August 2013. (State supreme courts and lawyer regulatory authorities are urged to coordinate with their foreign counterparts and to enter into voluntary arrangements to facilitate the exchange of relevant disciplinary and admissions information. The Guidelines identify for regulators the primary issues and topics usefully addressed in a voluntary information exchange arrangement).

C. Standing Committee on Specialization: Chair Shontrai Irving reported that the Committee will host its annual educational conference, the National Roundtable on Lawyer
Specialty Certification in June 2016 in Philadelphia. The 2016 Roundtable is held in conjunction with the National Conference on Professional Responsibility. Chair Irving stated that the Civil Pretrial Practice Law program of the National Board of Trial Advocacy is seeking reaccreditation and a group of DUI defense attorneys is seeking accreditation. Counsel Martin Whittaker offered to assist any Section/Division Ethics Committee that wants to conduct a business meeting in conjunction with the 42nd National Conference on Professional Responsibility in Philadelphia.

D. Section of Litigation: Thomas Wilkinson reported that the Litigation Section is opposed to Resolution 105 (Model Regulatory Objectives). Mr. Wilkinson stated that the Litigation Section will be conducting its Annual Conference on April 13-15, 2016 at the Ritz-Carlton Hotel in Chicago. The Conference will include ethics programming such as: Choose Your Own Legal Ethics Adventure—An Interactive Journey Through the Most Troubling Ethical Dilemmas; and Getting Clients, Keeping Clients—and Keeping Your Good Name, Too? Hot Topics in Practical Ethics.

E. Senior Lawyers Division: Albert Harvey reported that the Senior Lawyers Division is opposed to Resolution 105 (Model Regulatory Objectives). General Harvey stated that the ABA Board of Governors has approved the Division’s request for free auto-enrollment in the Senior Lawyers Division for ABA dues-paying members who are 62 years old and older.

F. Judicial Division: Justice Elizabeth Lang-Miers stated that the Division’s Ethics and Professionalism Committee has produced “Ted Talks” style videos. The videos offer short 6-13 minute long segments of information on various ethics issues faced by members of our judiciary. http://www.americanbar.org/groups/judicial/membership/membership_recruitment.html Justice Lang-Miers further reported the Ethics and professionalism Committee will be working on a webinar to teach lawyers about judicial ethics and will be developing lunch n’ learn ethics programs for judges. Justice-Lang Miers stated the Committee will be looking to members of the CPR/SOC Professional Responsibility to participate in the programs.

G. ABA Governmental Affairs Office (GAO): Counsel Larson Frisby led a Committee discussion of the January 31, 2016 “60 Minutes” segment on money laundering. Many Committee members expressed deep concern on how the program portrayed the legal profession. Counsel Frisby noted, and handed out, ABA President Paulette Brown’s statement that clarifies the ABA’s position and its extensive actions related to money laundering. http://www.americanbar.org/news/abanews/aba-news-archives/2016/01/statement_of_abapre0.html Counsel Larson Frisby reported that the GAO, on behalf of the Association and in conjunction with 30 state and local bars, is supporting the traditional cash method of accounting utilized by most law firms and opposing draft legislation that would substantially limit the continued use of cash accounting. He also reported that the GAO,
ABA Gatekeeper Task Force and the Association are also urging the U.S. Treasury Department to protect client confidentiality in the new beneficial ownership disclosure rule as it applies to client trust accounts.

Counsel Ken Goldsmith stated that the GAO is working with ABA President-elect Linda Klein and the United States Veterans Administration ("the VA") to obtain legal ethics training for the some 900 lawyers employed by the VA. The VA does not have the finances to conduct CLE for its staff counsel and yet they face the same ethical issues and concerns faced by other government lawyers and private practice lawyers. Finally, Counsel Goldsmith requested information any Committee member may possess on “model rules of professional conduct for federal lobbyists”.

H. Law Practice Division: Thomas Grella and Michael Downey reported that the Division is a co-sponsor of Resolutions 105 and 113. They stated the Division continues to publish a newsletter and present ethics CLE programs for practitioners. Mr. Grella and Mr. Downey noted that the Division will be presenting the 2016 ABA TechShow on March 16-19, 2016 in Chicago. [http://www.techshow.com/](http://www.techshow.com/)

They reported that the Division continues to train lawyers regarding advances in technology so that lawyers can comply with amended Rule 1.1 of the Model Rules of Professional Conduct. Finally, the Division will be studying whether to recommend an amendment to Model Rule 5.4 (d)(2) to allow law firms to share fees with nonlawyers that serve as officers or directors, or similar positions, in a law firm.

I. Center Diversity Committee: Chair Janet Green Marbly requested that the Committee members ask their Section/Directors to provide her with information about the Section/Division’s diversity plan and/or initiatives. Chair Green Marbly would like to see the CPR Diversity Committee work alongside of the Section/Divisions on diversity issues affecting the ABA and the legal profession.

J. Center CLE Committee: Chair Tracy Kepler noted the Agenda for this business meeting of the Committee contains a listing on the CLE programs on which the CPR and the Section/Divisions collaborated. Chair Kepler would like to hear from the Sections/Divisions on how the CPR CLE Committee can be of assistance to them. Finally, Chair Kepler, in her role as the Chair of the National Conference Planning Committee, urged all Committee members and liaisons to attend the 42nd National Conference on Professional Responsibility to be held June 1-3, 2016 at the Loews Hotel in Philadelphia. [http://www.americanbar.org/groups/professional_responsibility/events_cle/42nationalconference/generalinformation.html](http://www.americanbar.org/groups/professional_responsibility/events_cle/42nationalconference/generalinformation.html)

K. Section of Health Law: William Horton stated that the Section will shortly submit comments to the Standing Committee on Ethics and professional Responsibility on its proposal to amend Rule 8.4 of the Model Rules of Professional Conduct. Mr. Horton reported that the Section presented an ethics webinar on December 8, 2015: "When Two Worlds Collide: Ethics Challenges in the Compliance Officer-General Counsel Relationship". Finally, Mr. Horton stated the Section will be conducting its Conference on

L. Section of Business Law: Vice-Chair Rew Goodenow reported that the Business Law Section voted to support Resolution 105 (Model Regulatory Objectives).

IX. CPR Programs, Awards, and Scholarships: Angie Burke reported on the Jeanne P. Gray Diversity Scholarship. In 2014, the ABA Board of Governors approved the creation of the Jeanne P. Gray Diversity Scholarship in memory of Jeanne and her over 30 years of dedication to the ABA and its Center for Professional Responsibility. Each year, on a rotating basis, a national diverse bar association will be invited to select a recipient to become an honored member of the Center’s family and explore ways we might work more closely together with their host bar. The National Asian Pacific American Bar Association (NAPABA) was invited to appoint the 2016 participant in the program. http://www.americanbar.org/groups/professional_responsibility/cprdiversityplan.html

X. Future Meetings:

A. Teleconference
   April 2016
   Date/Time (TBD)

B. 2016 ABA Annual Meeting
   Saturday, August 6, 2016
   12:00 P.M. - 2:00 P.M.
   Hotel TBD
   San Francisco, CA

C. Teleconference
   October 2016
   Date/Time (TBD)

D. 2017 ABA Midyear Meeting
   Saturday, February 4, 2017
   12:00 P.M. – 2:00 P.M.
   Hotel TBD
   Miami, FL

XI. Future CPR Conferences:

• 2016 - 42nd National Conference on Professional Responsibility (June 2nd-3rd), 32nd National Forum on Client Protection and ABA National Specialization Roundtable (June 3rd-4th) – Loews Hotel, Philadelphia.
http://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=139107928


Respectfully submitted,

John A. Holtaway  
Lead Senior Counsel  
Client Protection and Policy Implementation