AMERICAN BAR ASSOCIATION
CPR/SOC PROFESSIONAL RESPONSIBILITY COMMITTEE

MINUTES OF THE MEETING

Thursday, April 6, 2017
12:00 PM (CDT)
TELECONFERENCE

Section/Division Liaisons:
Barbara K. Howe, Chair
Rew R. Goodenow, Vice-Chair and Section of Business Law
William T. Barker, Section of Tort Trial and Insurance Practice
Kristen M. Blankley, Section of Dispute Resolution
Alexandra Darraby, Section of International Law
John Ratnaswamy, Solo, Small Firm and General Practice Division
Siri Thanasombat, Young Lawyers Division
Thomas G. Wilkinson, Jr., Section of Litigation

CPR Committee Representatives:
None

Affiliated Organizations:
George R. Clark, Association of Professional Responsibility Lawyers (APRL)
William Slease, National Organization of Bar Counsel (NOBC)

ABA/CPR Counsel:
Angie Burke, Director, Program and Planning
Larson Frisby, Governmental Affairs Office
John A. Holtaway, Policy Implementation Counsel
Tracy L. Kepler, Director
Dennis Rendleman, Ethics Counsel
Ellyn S. Rosen, Deputy Director

I. Approval of Minutes: The members approved the minutes of the February 4, 2017 business meeting conducted in Miami.

II. Chair’s Report: Chair Howe welcomed the Committee members and liaisons who joined the teleconference and noted that at the conclusion of the 2017 ABA Annual Meeting, Rew Goodenow will become the Chair of the CPR/SOC Professional Responsibility Committee. Chair Howe encouraged all Committee members and liaisons to attend the 43rd National Conference on Professional Responsibility, 33rd National Forum on Client Protection, and Annual National Specialization Roundtable that will be conducted May 31 – June 2, 2017 at the Hyatt Regency in St. Louis.
III. Center for Professional Responsibility Director’s Report: Director Tracy Kepler emphasized the need for collaborative work between the Center’s Standing Committees and the Sections and Divisions. Director Kepler noted that she has an open door policy and she encouraged all Committee members and liaisons to contact her and let her know of any projects and programs where the Center and the Sections can work together. She can be reached at (312) 988-5294 or tracy.kepler@americanbar.org Director Kepler noted that she is the process of re-organizing responsibilities for the Center staff to fully utilize the skills of all staff members.

Director Kepler reported that, as a result of the Public Forum held in Miami, the Center received many valuable comments about the APRL’s comprehensive proposal which seeks to standardize the rules and focuses regulation on false and misleading communications about legal services. She stated that a transcript of the Public Forum can be found on the Center’s website and she encouraged any entity that has comments on the Model Rule amendments to send them to the Standing Committee on Ethics and Professional Responsibility. The current goal is to submit a Resolution with Report to amend the Model Rules of Professional Conduct at the 2018 ABA Midyear Meeting.

http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aprl_public_forum_transcript.authcheckdam.pdf

Finally, she encouraged everyone to attend the National Conference in St. Louis and reported that there will a program featuring the Chief Justice of the Missouri Supreme Court, the Honorable Patricia Breckenridge, examining the events on August 9, 2014 in Ferguson, Missouri and how those events may help lawyers and judges to better understand our professional responsibilities. Director Kepler noted there will also be programs on implicit bias in the legal workplace; Proactive Management Based Regulation (PMBR); and improving the health and well-being of the legal profession.

http://www.americanbar.org/groups/professional_responsibility/events_cle/43natl_conf_on_prof_respon/43conf_general_information.html

IV. Resolutions with Reports to the House of Delegates – 2017 ABA Annual Meeting

A. Section of Tort Trial and Insurance Practice: William Barker reported that the Section will be filing a Resolution with Report at the 2017 ABA Annual Meeting in New York. The Resolution urges all federal, state, tribal, territorial, and local legislative, judicial and other governmental bodies to support the principles that:

(1) where communications or materials are protected from compelled disclosure by the attorney-client privilege or work product protection, the holder of that privilege or protection does not waive the privilege or protection by sharing such communications or materials with another person who,

(a) having common legal interests with the holder in some litigated, potentially litigated, or nonlitigated matter or in related matters,

(b) has expressly or impliedly agreed with the holder of the privilege or protection (i) to cooperate with one another to develop and pursue a joint strategy with respect to some aspect of the matter or matters in which the parties have common interests, and (ii) to maintain the confidentiality of any privileged or protected communications or
materials shared in pursuit of such cooperation; *provided that* the communications or materials shared relate to the parties’ common interests;

(2) no party to such a common-interest arrangement can unilaterally waive privilege or protection with respect to communications or materials other than the waiving party’s own communications or materials;

(3) in the event of later dispute between or among the parties to the common-interest, any party may use communications or materials shared against any other party;

(4) existence of a common-interest or agreement to a common-interest arrangement is not a basis to compel the holder of a privilege or protection to disclose to others having that common interest any communications or materials that the holder does not voluntarily share;

(5) while some authorities condition protection of common-interest sharing on each party to the common-interest arrangement being separately represented, no such requirement should be applied when the parties to the common-interest arrangement are part of a network created by a preexisting relationship (e.g., indemnitor-indemnitee, insurer-insured, patent holder-licensee, or lead lender and participants in the loan) that

(a) binds them to a common outcome on the issue(s) as to which they have a common interest,

(b) creates duties to respect one another’s interests, and

(c) creates rights to participate in decision making regarding the common interest.

Mr. Barker noted that the Section has received written comments from the Standing Committees on Ethics and Professional Responsibility and Professional Discipline and made changes to the Resolution based upon those comments. He further stated that the Section is seeking support for the Resolution from other ABA entities.

B. **Standing Committees on Client Protection and Professional Discipline**

Deputy Director Ellyn Rosen reported that the Standing Committees on Client Protection and Professional Discipline are co-sponsoring a Resolution with report to amend Rule 7 of the ABA Model Rules for Lawyer Disciplinary Enforcement. She noted that the Resolution has been widely disseminated and that there is no known opposition at this time. The Resolution urges minor but important changes to Rule 7 by requiring lawyers to provide more specific information on their annual registration statement filed with their lawyer disciplinary agency. The proposed amendments are intended to enhance lawyer accountability for the handling of client and third-party funds and provide lawyer disciplinary agencies with important information related to client trust accounts.

V. **Future Business Meetings:**

A. **Saturday, August 12, 2017**

12:00 PM – 2:00 PM

2017 ABA Annual Meeting

Hotel TBD

New York, NY
B. October 2017 Teleconference  
Date/Time TBD

VI. Future CPR Conferences:


• 2018 – 44th National Conference on Professional Responsibility, May 30 - June 1, 2018 and 34th National Forum on Client Protection and ABA National Specialization Roundtable, June 1-2, 2018, Louisville, Kentucky (Hotel TBD).


Respectfully submitted,

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