

KCBA GELS December 18, 2014 CLE and monthly meeting.
4-1-15 is the date for the section's Advanced Guardianship CLE
Title 11 GAL training is May 14-15

Commissioners Velategui and Bradburn Johnson presentation on Ethics
Reminders

You can request ethics opinion from the WSBA Ethics Line. And can also make anonymous referrals for a person you might notice is experiencing some trouble in their practice.

WSBA has wonderful resources in the ethical considerations area. If you plug in the RPC number in the "key words" search, cases and comments are displayed.

Hypothetical discussions:

1. Attorney's client is breaching their fiduciary duty in a probate: What to do? RPC 1.6(b)(7) Attorney may come to court and report if they believe client breach of fiduciary duty. Advice: get your client to fix it (pay back); if they won't, then make report to courts. Idea: In your initial engagement letter include paragraph that puts client on notice that the attorney/client privilege does not include breaches of fiduciary duty by the client, which "I WILL report to the court." Can you do that? Yes, but what about the litigious client? Send the client a letter that says you can report or do investigation then share with them. But another consideration is that people share their fee agreements with other parties, and if your fee agreement says that, "I WILL inform the court," others may rely on that.

WSBA opinion on the issue: they read the MAY as SHALL; you can be disciplined if you don't report client breaches of fiduciary duty.

RPC 3.3(f) Candor to the court—Attorneys have duty of disclosure even if it's adverse to attorney or client's interests.

How much do you have to believe in order to be required to report?

Off record or on record? No one thinks it is appropriate to be off the record.

Can't do it in chambers sealed unless meet *Ishikawa* and *Bone-Club* analysis, which requires written findings.

Minute entries by the clerk are not sealed.

What do attorneys need to give to court when making disclosure verbal or written?

There is a different standard of disclosure to court vs beneficiary of estate--for the latter you need proof positive of a breach.

Commissioner will revoke the PR's letters and set a hearing on Notice of Review Hearing pleading.

What about a noisy withdrawal? Ethically, you are covered if the commissioner asks a question. Attorney should cite attorney/client privilege, and then the court has authority to make you answer. Advice: Make your request of the clerk to talk to the court while commissioner is on the bench. Eeyore.

2. PR doing tasks wrong such as paying self as due for work done, without court order or not paying taxes, taking an advance for self and denying to another equally entitled? If there's a PGAL is the answer the same? Non intervention powers means can't touch \$.

Is it ok to pay self as PR without a court order? Not w/o notice to PGAL and others who have filed request for special notice. *Larsen* case re setting fees. Transparency.

3. Can petitioning attorney in a guardianship also represent the appointed guardian? CPGB opinion on point re self petitioner. Advice: Establish boundaries! If the facility contacts the guardian to petition, then disclosure process must occur.

4. Candor to the court. In the Ex Parte Department, the duty is even higher re petitions for guardianship and VAPO. RPC 3.3 requires disclosure of information favorable and in opposition to your petition. TIP: Ex Parte Via the Clerk has an information sheet that can be filled out to notify the court of issues. Give the court the complete picture. What happens to the information sheet? Commissioner Velategui said they should be filed; some attorneys report receiving the original back.

5. Interviewing clients when open probate to find out who other beneficiaries might be. Publish your due diligence efforts. The Court wants the death certificate. Access to safe deposit box? The Lawyer should always be present. King County Local Rule: only attorney gets key to safe deposit box.