



**MEMORANDUM**

**DATE:** February 15, 2012

**TO:** Members of the Board's Regulation, Admissions & Discipline Oversight Committee

**FROM:** Randall Difuntorum, Director, Professional Competence Programs

**SUBJECT:** RAD Meeting on March 1, 2012 – Status of the Professional Competence Unit

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This memorandum provides a 2011 year-end report on the activities of the Professional Competence Unit.<sup>1</sup> In addition to this memorandum, provided are the following: (1) Ethics Hotline Activity Statistics, and (2) Ethics Hotline satisfaction survey excerpts. Board members with questions may contact Randall Difuntorum at (415) 538-2161 or Lauren McCurdy at (415) 538-2107.

**1. ETHICS HOTLINE**

In 2011, 14,748 member inquiries were received with a completion rate of 90%. This completion rate includes distribution of 381 copies of published ethics opinions and other written materials requested by inquirers and 6,008 referrals to information posted at the Bar's website. (Due to the availability of State Bar Formal Opinions at the Ethics Information area of the website, there is a decreasing need for distribution of this information by mail.) In addition, the staff made 1,624 courtesy follow-up calls to members who placed a call to the Hotline, received a call back from Hotline staff but were not available at that time to take the call from the Hotline staff person. These members received instructions on how to call-in and receive priority handling when they choose to return the Hotline's call at their convenience. However, when no return call is received, the Hotline initiates a courtesy follow-up call.

Six Ethics Hotline paralegals handle the majority of calls received. In 2011: (1) the monthly average number of total calls handled by one paralegal was 352; (2) the monthly average number of completed calls by one paralegal was 211; and (3) the monthly average number of left messages by one paralegal was 141. In 2011, 45 voluntary satisfaction surveys were received from members after using the Ethics Hotline service. Each survey asks for a rating on several specified categories of service, including: satisfaction with the system for handling the calls; helpfulness of receptionist; helpfulness of paralegal; usefulness of materials sent; whether the inquirer would recommend the Hotline to others; and whether they received the assistance they needed. Nearly all of the surveys received gave the Hotline top marks in most survey categories (Copies of 2011 surveys are available upon request). Of these 45 surveys, 5 were received in December and were not included in the last status report. Comments from members were provided on all five of these surveys, commending the staff for being thorough, knowledgeable, professional and courteous. (An excerpt from these 5 surveys with the full text of the member comments is attached.)

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<sup>1</sup> There are 13.5 authorized positions in the Professional Competence Unit and one of the positions, a staff attorney position, currently is vacant. This vacancy was posted on December 26, 2011. Applications received are under review and a first round of interviews is anticipated in February.

The table below presents the top issues presented by the Hotline callers in 2011 as compared to 2010 and 2009. The top issues raised in 2011 were: fees and costs (18%); conflicts of interest (13%); and communications (11%). Demographic data collected voluntarily from callers indicates that 59% of the Ethics Hotline users were first time callers and 41% were callers who had previously used the service. This information was presented to you in the last status report and is included here for convenient reference as part of our year-end report. In the future, staff will be presenting similar information on the top issues in a new format, comparing data captured month to month.

<b><i>Ethics Hotline: Primary Issues</i></b>	<b>2011</b>	<b>2010</b>	<b>2009</b>
<i>Fees and Costs for Legal Services</i>	18%	17%	18%
<i>Conflicts of Interest</i>	13%	11%	11%
<i>Communications with Clients, Adverse Party and Others</i>	11%	11%	10%
<i>Misconduct/Moral Turpitude/Trial Conduct</i>	10%	9%	9%
<i>Attorney Advertising and Solicitation</i>	10%	11%	13%
<i>Client Confidential Information</i>	8%	8%	7%
<i>Unauthorized Practice of Law</i>	6%	6%	7%

## **2. COPRAC**

COPRAC's 2011 accomplishments report is provided as a separate agenda item on the Board Committee's March 1, 2012 agenda (RAD Open Session Agenda Item V.D.).

Since the last Professional Competence status report submitted for the Board Committee's February 9, 2012 meeting, COPRAC met on February 9, 2012 in Los Angeles.

At the February 9th meeting, COPRAC considered the public comment received on Formal Opinion Interim No. 09-0001A (State Bar Complaint Threats), and continued post-public comment consideration of Formal Opinion Interim No. 06-0004 (confidential information and unsolicited e-mail correspondence) which is being redrafted as an article for publication at the State Bar website. During the open session portion of COPRAC's meeting, Stan Lamport, a representative of the Los Angeles County Bar Association Committee on Professional Responsibility and Ethics, appeared and provided oral comments on Formal Interim Opn. No. 09-0001A. COPRAC also continued pre-public comment work on the following draft opinions: 10-0001 (social networking); 11-0001 (third party payors); 11-0002 (duties to opposing side); 11-0003 (dissolving firm and moving to new firm); and 11-0004 (ESI and discovery requests). The committee selected the following new opinion topics to add to their working inventory: 12-0001 (re disclosure of confidences in motion for withdrawal); 12-0002 (re springing or shifting conflict of interest); and, 12-0003 (re attorney ratings descriptions). The committee discussed the status of plans for the 2012 Annual Statewide Ethics Symposium scheduled to be held at UC Hastings in San Francisco on May 19, 2012. Finally, the committee began planning for the COPRAC panels to be presented at the 2012 Annual Meeting.

The following opinion was tentatively approved by COPRAC for 90-day public comment circulation at its November 5, 2011 meeting. The public comment deadline is March 23, 2012. Post-public comment consideration of the following opinion will occur at the Committee's March 23, 2012 meeting.

Formal Opinion Interim No. 10-0003:

**ISSUE:** May an attorney maintain a virtual law office practice (“VLO”) and still comply with her ethical obligations, if the communications with the client, and storage of and access to all information about the client’s matter, are all conducted solely through the internet using the secure computer servers of a third-party vendor (i.e., “cloud computing”).

**DIGEST:** As it pertains to the use of technology, the Business and Professions Code and the Rules of Professional Conduct do not impose greater or different duties upon a VLO practitioner operating in the cloud than they do upon an attorney practicing in a traditional law office. While an attorney may maintain a VLO in the cloud where communications with the client, and storage of and access to all information about the client’s matter, are conducted solely via the internet using a third-party’s secure servers, Attorney may be required to take additional steps to confirm that she is fulfilling her ethical obligations due to unique issues raised by the hypothetical VLO and its operation. Failure of Attorney to comply with all ethical obligations relevant to these issues will preclude the operation of a VLO in the cloud as described herein.

The following opinion was tentatively approved by COPRAC for 90-day public comment circulation at its November 5, 2011 meeting. The public comment deadline is April 30, 2012. Post-public comment consideration of the following opinion will occur at the Committee’s May 18, 2012 meeting.

Formal Opinion Interim No. 09-0001B:

**ISSUE:** May an attorney disclose client confidences to her own attorney to evaluate a wrongful discharge action against her former firm and, in pursuing her claim, may she or her attorney publicly disclose those client confidences?

**DIGEST:** While an attorney may disclose client confidences to her own attorney to evaluate a potential wrongful discharge claim against her former firm, neither she nor her attorney may publicly disclose those confidences except in the narrowest of circumstances.

COPRAC’s next meeting is scheduled for March 23, 2012 and will be held in Los Angeles. At this meeting, COPRAC will consider the public comment received on Formal Opinion Interim No. 10-0003 (Virtual Law Office), and continued post public comment consideration of 09-0001A (State Bar Complaint Threats). COPRAC will continue pre-public comment work on the following opinions: 10-0001 (social networking); 11-0001 (third party payors); 11-0002 (duties to opposing side); 11-0003 (dissolving firm and moving to new firm); and 11-0004 (ESI and discovery requests). COPRAC will begin initial consideration of the following new opinion topics: 12-0001 (re disclosure of confidences in motion for withdrawal); 12-0002 (re springing or shifting conflict of interest); and 12-0003 (re attorney ratings descriptions). The committee will also continue work on plans for the 2012 Annual Statewide Ethics Symposium scheduled to be held at UC Hastings in San Francisco on May 19, 2012, and for the COPRAC panels to be offered at the 2012 Annual Meeting.

At the Board’s February meeting an interim appointment to fill the unexpired term of a resigned member of COPRAC was approved (Board Closed Session Agenda Item FEB 6013).

Committee leadership selected an Appointment Nominations Subcommittee to evaluate applicants for the 2012-2013 committee year, conduct interviews and make appointment recommendations to the full committee. The Appointment Nominations Subcommittee will be meeting by conference call in March to rank and select applicants for interview sometime in late April/early May.

**3. RULES REVISION COMMISSION**

Preparation of a comprehensive petition for all of the sixty-seven proposed new and amended Rules of Professional Conduct is in process with Professional Competence and General Counsel staff. An oral report will be provided at the RAD meeting.

**4. COMPETENCE PUBLICATIONS**

Handbook on Client Trust Accounting for CA Attorneys: A revised 2011 online version of the handbook is now available at the Bar’s website. The updated book provides revised information concerning FDIC coverage for IOLTA client trust accounts.

California Compendium on Professional Responsibility: Sales of the 2011 Compendium update began in August, and 494 orders for the 2011 update and past updates have been received and processed through December 31, 2011. Production of the 2012 Compendium update is progressing, with an anticipated release date in the second quarter of the year.

CA Rules of Professional Conduct & State Bar (a.k.a Publication No. 250): Sales of the 2011 Publication 250 began in April, and 1,200 orders have been received and processed through December 31, 2011. In September, at the State Bar Annual Meeting in Long Beach, the Office of Professional Competence introduced a new e-reader version of Publication No. 250. In 2011, 89 copies of the e-Reader version of the Bar’s rule book<sup>2</sup> were sold. Production of the 2012 e-Reader version of Pub. 250 is in the works and anticipated to be available in the second quarter of the year, at which time publication notices will be circulated and other outreach will be conducted.

**5. COMPETENCE RESOURCES AT CALBAR.CA.GOV**

Year-end Web Activity: The State Bar tracks the web activity for all website pages accessed. The chart below lists selected web pages administered by Professional Competence and the 2011 activity in terms of downloads and visits (a.k.a. “hits”).

Professional Competence Web Resources – Activity Detail*	
January – December, 2011	
Webpage	Approx. Number of Visits
Rules of Professional Conduct html web pages	469,000
The State Bar Act html web pages	25,200
Ethics Opinions html web pages	41,500
Ethics Information html web pages	234,300

NOTE: Since the transition to the new website in June, 2010 web download statistics are no longer available for Adobe PDF documents.

<sup>2</sup> The e-Reader version of the rule book is compatible with the Kindle Reader App which is a free e-Reader application available for iPads, iPhones, Blackberry Phones, Android Phones, Macbooks, and PC laptops. The book also works on all versions of Amazon.com’s own Kindle Reader device, including the new Kindle Fire. The e-Reader version of the book can be purchased at Amazon.com and has several useful features including: a search function; bookmarking; highlighting and annotating. In addition, once downloaded to a tablet, smartphone or other compatible device, the book can be accessed at any time, even if there is no Internet or cellular data signal.

In 2011, the various resources posted at the new Ethics and Technology area of the Ethics Information page, established in September, were accessed 7,551 times.

Year-end Professional Competence Free MCLE Information: Two free online MCLE self-study articles produced by the Office of Professional Competence have been used by thousands of lawyers to obtain free MCLE credit in ethics. In 2011, an article entitled “A ‘Charging Lien’ as an Adverse Interest Under Rule 3-300 of the Rules of Professional Conduct” was used by 2731 members and another article addressing the topic of the Proposed New and Amended Rules of Professional Conduct has been used by 3554 members.

As previously reported, one of the panels from the Annual Statewide Ethics Symposium held in 2011 at UC Irvine is posted at the Bar’s MCLE website and offers 1.5 hours of free online participatory credit in ethics. In 2011, the panel, entitled “Ethics in Limbo: Practical Issues for Lawyers as Changes in the Law Regulating Lawyers Continue,” was viewed by 542 members.

Since the last Professional Competence status report submitted for the Board Committee’s February 9, 2012 meeting, the following website updates have been made:

1. Updated PDFs for the California Rules of Professional Conduct and The State Bar Act, reflecting the change from Board of Governors to Board of Trustees, and other legislative revisions, were posted at the Bar’s Rules and Selected Legal Authority pages of the website.
2. The following draft opinions were posted at the public comment page of the Bar’s website: 10-0003 (Virtual Law Office), and 09-0001A (Duty of Confidentiality and Seeking Legal Advice).
3. A “Save the Date” letter announcing the May 19, 2012 Ethics Symposium at UC Hastings in San Francisco was posted at the COPRAC Education page of the Bar’s website.

cc: Robert A. Hawley

## ETHICS HOTLINE ACTIVITY STATISTICS - 2011

Month	Work Days	Incoming Calls	Completed Calls	Left Messages	Percentage of Incoming Calls that are Completed Calls	Percentage of Incoming Calls that are Left Messages	Resources Mailed/ Faxed	Internet Resource Referrals
January	20	1325	1283	42	97%	3%	54	531
February	19	1155	1044	111	90%	10%	23	507
March	22	1421	1273	148	90%	10%	30	610
April	21	1263	1152	111	91%	9%	38	556
May	21	1269	1148	121	90%	10%	47	543
June	22	1288	1210	78	94%	6%	19	527
July	20	1148	1014	134	88%	12%	27	441
August	23	1376	1231	145	89%	11%	29	569
September	21	1263	1112	151	88%	12%	27	517
October	21	1147	1000	147	87%	13%	26	421
November	19	1040	858	182	83%	18%	25	394
December	19	1053	940	113	89%	11%	36	398
<b>Cumulative Totals</b>	<b>248</b>	<b>14,748</b>	<b>13,265</b>	<b>1,483</b>	<b>90%</b>	<b>10%</b>	<b>381</b>	<b>6008</b>

### EXPLANATIONS

**Incoming Calls:** Total member inquiries to the Hotline received during that month.

**Completed Calls:** Member inquiries received in that month that were handled and resolved by staff during that month.

**Left Messages:** Member inquiries received in that month where staff left an initial message or courtesy follow-up message, but did not reach the member to resolve the inquiry.

**Percentage of Incoming Calls that are Completed Calls:** Proportion of Incoming Calls that were Completed Calls handled and resolved by the staff.

**Percentage of Incoming Calls that are Left Messages:** Proportion of Incoming Calls where staff left a message but the member did not return the call.

### Key Hotline Activity Averaged by Day and Month

<b>Daily:</b>	Incoming Calls:	59
	Completed Calls:	53
<b>Monthly:</b>	Incoming Calls:	1,229
	Completed Calls:	1,105

### Aggregate Outgoing Calls

<b>Current Month:</b>	1,616*
<b>Cumulative to Date:</b>	22,510*

These figures account for all calls placed by staff, including: Completed Calls; Left Messages; and, courtesy follow-up calls. Due to "telephone tag" with members, staff may place multiple calls and leave multiple messages prior to completing a call.

Excerpt from Ethics Hotline Customer Satisfaction Surveys  
Additional Comments  
(Surveys Received for December, 2011)

1. Received December 2, 2011

COMMENTS / SUGGESTIONS:

I wish I knew the name of the female paralegal I spoke with yesterday - the only identifying statement I recall is that she has been working on the hotline for 20 or so years. She was thorough, helpful and continued to think through the question from many angles.

2. Received December 5, 2011

COMMENTS/SUGGESTIONS:

Lynn is the BEST researcher and most knowledgeable person I have ever spoken with on the Hotline!

3. Received December 5, 2011

COMMENTS / SUGGESTIONS:

As I told the person who helped me, I can't tell you how much I am grateful for this service. I am an aggressive attorney and I stick up for my clients completely. When I am in trial I am aggressive. Today I was accused of a violation of ethics and he, the opposing attorney, was accusing me in such a way that it was to effect a criminal trial. I take such accusation seriously. I called you up and I was called back by the end of the day. The assistance I received was of excellent quality and superbly presented. I give it a 10 but you only go to five. Much obliged. I didn't get the paralegal's name, but she was female.

4. Received December 14, 2011

COMMENTS/SUGGESTIONS:

Thanks for the efficient professional service. Lynn Cobb was well prepared for my question and gave me the information I needed.

5. Received December 14, 2011

COMMENTS/SUGGESTIONS:

Dave was the receptionist who took my contact information. He is helpful and a pleasure to work with. Likewise, Pam Hill was the research professional who assisted me. She quickly identified and understood the issues giving rise to my call. Pam was professional, courteous and informative. Thank you for providing such a great service.