

OPINION REQUESTS FOR CONSIDERATION AT PRES

F.1. New Opinion Requests  
01-17-20 Meeting  
Open Session

Number	Requestor/ Date	Issue / Disposition
97	Attorney 07-08-19	<p><b>Re:</b> An opinion on Bitcoin, Libra, or other cryptocurrencies. Some of the issues include: when does the value of the Bitcoin set? Who keeps the gain if it shoots up in a week? Can a lawyer take it and hold it and put his own cash in the trust account to ride the Bitcoin tide?</p> <p><b>Status:</b></p> <p><b>Disposition at 7/26/2017 meeting: HOLD FOR FUTURE CONSIDERATION</b></p>
84	Attorney 02-28-18	<p><b>Re:</b> Request an ethics opinion stating that the rule articulated in <i>Moeller v. Sup. Ct.</i> (1997) 16 Cal.4<sup>th</sup> 1124, may not be waived, that attorneys may not seek to impose its waiver, and that any attempted or purported waiver is invalid and unenforceable.</p> <p>Bank was acting as trustee and trust beneficiaries desired its removal. Bank agreed to resign as trustee in favor of beneficiaries nominated successor, but only on terms of a settlement agreement that Bank would prepare. The settlement agreement gave Bank a full release and covenant not to sue, which the beneficiaries signed. The agreement also contained provisions which required the beneficiaries and all interested persons to waive the rule of the <i>Moeller</i> case which held that the person who currently serves in the position of trustee is the holder of the attorney-client privilege (Evid. Code § 950 <i>et seq.</i>). Under this rule, a successor trustee can demand that a prior trustee turn over communications with its counsel because, upon succession, the prior trustee is no longer the holder of the privilege.</p> <p><b>Status:</b></p> <p><b>Disposition at 7/26/2019 meeting: HOLD FOR FUTURE CONSIDERATION</b></p> <p><b>Andrew's Note: see also, <i>Morgan v. Superior Court</i> (2018) 23 Cal.App.5<sup>th</sup> 1026 – “trust provision stating trustee was free of any duty to disclose communications with legal counsel to successor trustee was void as against public policy; and former trustee was not entitled to withhold communications with trust’s former counsel on ground of attorney-client privilege.”</b></p>

OPINION REQUESTS FOR CONSIDERATION AT PRESENT

Number	Requestor/ Date	Issue / Disposition
93	Attorney 05-08-19	<p><b>Re:</b> Lawyer is in-house counsel and negotiates his own employment, and writes them, which are written in a confusing manner and include a provision that extends his severance to 16 years. Is there a rule 1.8.1 obligation for in-house lawyers?</p> <p>Lawyer commits bad acts against his client, a company, for whom lawyer is acting as in-house counsel. Is Lawyer entitled to severance compensation under the employment agreement as a contract provision, as opposed to a disgorgement of attorney’s fees for performing services in violation of the rules of professional conduct?</p> <p>See, <i>Chism v. Tri-State Construction</i> (Washington, 2016) – “Following a month-long jury trial, attorney Geoffrey Chism was awarded \$750,000 for breach of two compensation contracts by his former employer, Tri–State Construction, Inc., and exemplary damages for unlawful wage withholding. The trial court then dramatically reduced Chism's recovery, premised on findings that Chism violated Washington's Rules of Professional Conduct (RPCs) during his time as Tri–State's in-house general counsel. By ordering disgorgement of Chism's wages based on novel interpretations of several RPCs, the trial court exceeded the disciplinary authority delegated to it by our Supreme Court. Moreover, the trial court disregarded the strong legislative policy preference in favor of payment of earned wages by failing to even acknowledge that, unsupported by precedent, it was ordering disgorgement of an attorney's wages, as opposed to an attorney's fee. Accordingly, we reverse the trial court's challenged rulings and remand the cause for entry of judgment consistent with the jury's verdict.”</p> <p><b>Status:</b></p> <p><b>Disposition at 7/26/2019 meeting: HOLD FOR FUTURE CONSIDERATION</b></p>
64	COPRAC Request	<p><b>Re: If client comes to you but you have a conflict, can you refer the client to another lawyer without violating your duties?</b></p> <p><b>Status:</b></p> <p><b>Disposition at 6/2/2017 meeting: Hold for future consideration.</b></p>

OPINION REQUESTS FOR CONSIDERATION AT PRESENT

Number	Requestor/ Date	Issue / Disposition
96	Legislative Request 06-07-19	<p><b>Re:</b> Client file release and retention duties in the context of post-conviction discovery.</p> <p><b>Status:</b> <b>Assigned to Lee</b></p> <p><b>Disposition at 7/26/2019 meeting: ACCEPTED 19-0004</b></p>
86	Attorney 05-22-18	<p><b>Re:</b> Contract provisions contained in fee agreements that are intended to scare the client, even if the lawyer knows such provisions are unenforceable; such as, “I have the right to withdraw at any time if you don’t immediately pay” and “Your fee is non-refundable.”</p> <p><b>Status:</b> <b>Assigned to Carr</b></p> <p><b>Disposition at 7/26/2019 meeting: ACCEPTED 19-0003</b></p>
95	Organization 06-05-19	<p><b>Re:</b> Whether drafting, reviewing (without objection), approving, and/or causing to be signed an employment contract or agreement between a business and worker that contains contractual provisions that the lawyer knows or should know are unambiguously illegal and unenforceable, violates rule 8.4(c) prohibiting “conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation;” rule 1.2.1 prohibiting “counsel[ing] a client to engage, or assist[ing] a client in conduct that the lawyer knows is criminal, fraudulent, or a violation of any law, rule or ruling of a tribunal;” or any other ethical rule.</p> <p>The opinion should also make clear whether including noncompete agreements, clauses allowing the employer to unilaterally choose an arbitrator, out-of-state forum selection clauses, and other obviously unenforceable terms in employment contexts would violate the California Rules of Professional Conduct.</p> <p><b>Status:</b> <b>Assigned to Carr, along with topic above</b></p> <p><b>Disposition at 7/26/2019 meeting:</b></p>
29	Ethics Hotline 11-09-11	<p><b>Re:</b> Credit Card Processing companies such as Lawpay.com who allocate funds to the appropriate accounts (CTA or attorney business accounts) without commingling funds.</p> <p><b>Status:</b> <b>Assigned to Koss</b></p> <p><b>Disposition at 7/26/19 meeting: ACCEPTED 19-0001</b></p>

OPINION REQUESTS FOR CONSIDERATION AT PRESENT

Number	Requestor/ Date	Issue / Disposition
92	Ethics Hotline Request 02-25-19	<p><b>Re:</b> Defense counsel makes a settlement offer requires the plaintiff's counsel to agree to indemnify and hold harmless the defendant and the defense counsel for any liens on the settlement.</p> <p>See: <a href="#">Maryland State Bar Ethics Opinion 2012-03</a> – “As part of the settlement of an automobile accident claim, the insurer requires that the lawyer for the plaintiff hold harmless and indemnify both the carrier and the defendant from any claim for any of plaintiff's medical bills, or from medical liens or workers compensation liens, arising out of the accident or the action filed by plaintiff. The question is whether this violates the Maryland Rules of Professional Conduct.”</p> <p><b>Status: (Requested either Justin or Kendra take lead drafter responsibilities)</b></p> <p><b>Disposition at 7/26/2019 meeting: ACCEPTED 19-0002</b></p>