



THE STATE BAR OF CALIFORNIA

180 HOWARD STREET, SAN FRANCISCO, CA 94105-1639

OFFICE OF PROFESSIONAL COMPETENCE

PLANNING, AND DEVELOPMENT

TELEPHONE: (415) 538-2167

MEMORANDUM

DATE: April 18, 2014

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

FROM: Randall Difuntorum, Director, Professional Competence Programs

SUBJECT: RAD Meeting on May 8, 2014 – Status of the Professional Competence Unit

This memorandum provides a report on the activities of the Professional Competence Unit through February 28, 2014.¹ In addition to this memorandum, provided are the following: (Encl. 1) Ethics Hotline Activity Statistics; (Encl. 2) Ethics Hotline Satisfaction Survey Excerpts; and (Encl. 3) Professional Competence Budget Summary – Authorized vs. Actuals. Board members with questions may contact Randall Difuntorum at (415) 538-2161 or Lauren McCurdy at (415) 538-2107.

1. ETHICS HOTLINE

As of February 28, 2014, 2,456 member inquiries were received with a completion rate of 87%. This completion rate includes distribution of 57 copies of published ethics opinions and other written materials requested by inquirers and 806 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 263 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. (See Enclosure 1: Ethics Hotline Activity Statistics.)

Currently five paralegals have primary responsibility for the Ethics Hotline call work. As of February 28, 2014: (1) the monthly average number of total calls handled by one paralegal was 368; (2) the monthly average number of completed calls by one paralegal was 225; and (3) the monthly average number of left messages by one paralegal was 143.

Between January and February, 2014, 6 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. All of the surveys received gave the Hotline top marks in all survey categories (copies of the surveys are available upon request). Five of the six survey respondents added personal comments commending the staff for being helpful and knowledgeable, and describing the service as great. (See Enclosure 2: Ethics Hotline Satisfaction Survey Excerpts.)

¹ There are 13.5 authorized positions in the Professional Competence Unit and one of the positions, a paralegal position, currently is vacant. This vacancy was posted on December 23, 2013. Initial and second round interviews have been held.

Through February, the category of “Fees and Costs” was the most frequently raised issue category by Hotline callers in 2014. The “Fees and Costs” category encompasses questions concerning: client trust accounts; fee agreements; and costs (litigation expenses, advances of costs to client, loans to client, payment of third party expenses). Close behind are the categories of “Communications” and “Conflicts.” Historical data indicates that these categories often occupy the top three positions each year.

2. COPRAC

Since the last Professional Competence status report submitted for the Board Committee’s March 6, 2014 meeting, COPRAC met on February 28, 2014 in Los Angeles, and April 11, 2014 in San Francisco.

A. Meetings

At the February 28th meeting, COPRAC continued the post-public comment work on Formal Opinion Interim No. 11-0003 (Dissolving Firm and Moving to New Firm) and 12-0001 (Disclosure of Confidences at Motion for Withdrawal). COPRAC also continued pre-public comment work on the following draft opinions: 11-0004 (ESI and Discovery Requests); 12-0002 (Revocation of Waivers); 12-0003 (Attorney Directory and Rating Website); 12-0005 (Law Firm In-House Counsel); 12-0006 (Attorney Blogging); 13-0001 (Intentionally Conflicting Out Experts); 13-0002 (Attorney with Incapacitated Client); 13-0003 (Ethical Obligations When Departing Firm); 13-0004 (Collecting Unpaid Fees); and 13-0005 (Publically Available Confidential Information). Following discussion of 13-0001 (Intentionally Conflicting Out Experts) at this meeting, the Committee decided to convert the opinion into an article. The Committee discussed plans for the 2014 Annual Statewide Ethics Symposium scheduled to be held at the Golden Gate University School of Law on April 12, 2014. In addition to the Symposium, the Committee is planning to present four CLE programs at the State Bar Annual Meeting and two programs at the California Solo and Small Firm Summit.

On Friday, March 14th, the Appointment Nominations Subcommittee met by conference call to rank and select applicants for interview. The Subcommittee selected twelve individuals to interview out of twenty-eight total applicants. Seven applicants will be interviewed on Wednesday, May 7th in San Francisco and five applicants will be interviewed on Thursday, May 15th in Los Angeles. The Board Committee on Nominations and Appointments (NAC) and Board are set to consider the appointment recommendations at their meetings on July 17- 18, 2014.

The following opinion was tentatively approved by COPRAC for a 90-day public comment period at its February 28, 2014 meeting, with a public comment deadline of June 24, 2014. Post-public comment consideration of the opinion will occur at the Committee’s June 27, 2014 meeting.

Formal Opinion Interim No. 11-0004:

ISSUE: What are an attorney’s ethical duties in the handling of discovery of electronically stored information?

DIGEST: An attorney’s obligations under the ethical duty of competence evolve as new technologies develop and then become integrated with the practice of law. Attorney competence related to litigation generally requires, at minimum, a basic understanding of, and facility with, issues relating to e-discovery, i.e., the discovery of electronically stored information (“ESI”). On a case-by-case basis, the duty of competence may require a higher level of technical knowledge and ability, depending on the e-discovery issues involved in a given matter and the nature of the ESI involved. Such competency requirements may render an otherwise highly experienced attorney not competent to handle certain litigation

matters involving ESI. An attorney lacking the required competence for the e-discovery issues in the case at issue has three options: (1) acquire sufficient learning and skill before performance is required; (2) associate with or consult technical consultants or competent counsel; or (3) decline the client representation. Lack of competence in e-discovery issues can also result, in certain circumstances, in ethical violations of an attorney's duty of confidentiality, the duty of candor, and/or the ethical duty not to suppress evidence.

Post-public comment consideration of the following opinion occurred at the Committee's February 28, 2014 meeting, and the Committee revised the opinion after consideration of public comments and approved the opinion for submission to the Board Committee on Regulation, Admissions and Discipline (RAD). The draft opinion was circulated before RAD for a 30-day approval period with a deadline of April 18, 2014.

Formal Opinion Interim No. 11-0003:

ISSUE: Upon the dissolution of a law firm, what duties does an attorney affiliated with the firm owe to a client on whose behalf he or she provided legal services if the attorney no longer will be representing the client following dissolution? How does the fulfillment of those duties differ if the attorney had no connection with or knowledge of the client prior to dissolution of the firm? Do the steps an attorney may be required to take depend on the nature of the attorney's position with the firm?

DIGEST: Rule 3-700(A)(2) of the California Rules of Professional Conduct provides that a member may not withdraw from the representation of a client until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client. The requirements of rule 3-700(A)(2) apply when an attorney's withdrawal is prompted by the dissolution of the attorney's law firm. In the event of dissolution, all attorneys who are employed by or partners of a firm are required to comply with rule 3-700(A)(2) as to all clients of the firm, regardless of their connection to any specific client or the specific nature of their affiliation with the firm. What "reasonable steps" an attorney must take to protect a particular client's rights may vary considerably, however, depending on the circumstances, including the attorney's relationship to the client and its matter and the attorney's position within the firm.

At the April 11, 2014 meeting, COPRAC continued the post-public comment work on Formal Opinion Interim No. 12-0001 (Disclosure of Confidences at Motion for Withdrawal). COPRAC also continued pre-public comment work on the following draft opinions: 12-0002 (Revocation of Waivers); 12-0003 (Attorney Directory and Rating Website); 12-0005 (Law Firm In-House Counsel); 12-0006 (Attorney Blogging); 13-0002 (Attorney with Incapacitated Client); 13-0003 (Ethical Obligations When Departing Firm); 13-0004 (Collecting Unpaid Fees); and 13-0005 (Publicly Available Confidential Information). The Committee also continued planning for the COPRAC CLE panels to be offered at the 2014 Annual Meeting.

COPRAC's next meeting is scheduled for May 16, 2014, and will be held in Los Angeles. At this meeting, COPRAC will consider the public comment received on Formal Opinion Interim No. 12-0004 (In Rem Bankruptcy Conflicts), and continue post-public comment consideration of 12-0001 (Disclosure of Confidences at Motion for Withdrawal). COPRAC will continue pre-public comment work on the following opinions: 12-0002 (Revocation of Waivers); 12-0003 (Attorney Directory and Rating Websites); 12-0005 (Law Firm In-House Counsel); 12-0006 (Attorney Blogging); 13-0002 (Attorney with Incapacitated Client); 13-0003 (Ethical Obligations When Departing Firm); 13-0004 (Collecting Unpaid Fees); and 13-0005 (Publicly Available Confidential

Information). At this meeting, the Committee will consider new opinion topics. In addition, the Committee will finalize its annual appointment recommendations for the 2014-2015 Committee year. The Committee will also continue planning for the CLE panels to be offered at the 2014 Annual Meeting.

B. Ethics Symposium

On Saturday, April 12, COPRAC held the 2014 Annual Statewide Ethics Symposium at Golden Gate University School of Law in San Francisco. This day-long program provided 6 hours of continuing legal education credit in legal ethics. State Bar President Luis Rodriguez attended and provided the welcoming remarks, along with Golden Gate University School of Law Dean Rachel Van Cleave. James Brosnahan delivered the Symposium's keynote address which was titled "Utopian Legal Ethics in 2020." The program was well-received by the nearly 100 lawyers in attendance.

3. PROPOSED NEW AND AMENDED RULES OF PROFESSIONAL CONDUCT

The State Bar of California has filed 14 proposed Rules of Professional Conduct with the California Supreme Court and there have been no additional filings since the last report to RAD. An online docket posting (case #S206125) is available at the California Courts website: <http://www.courts.ca.gov/home.htm>.

4. SENATE BILL NO. 1186

Enacted in September 2012, Senate Bill No. 1186 made significant changes to the law governing construction-related disability access claims. In accordance with Senate Bill No. 1186, Professional Competence staff receives and reviews copies of demand letters to screen for matters that may give rise to a disciplinary investigation. Any identified compliance issues are forwarded to the Office of Enforcement. Senate Bill No. 1186 also requires the State Bar to submit an annual report to the legislature on July 31 of each year.

The table below shows the number of demand letters received and reviewed by the Office of Professional Competence, as well as the number of matters referred to Enforcement for possible violations of the statute, by month.

ADA Letters Received-Referred to Enforcement

Month	Letters Received	Letters Referred To Enforcement
Jan.	34	3
Feb.	29	5
TOTAL	63	8

The table below lists the possible compliance issues and shows the numbers of issues referred to Enforcement.

Compliance Issues Referred to Enforcement*
(1/1/14 through 2/28/14)

<u>Compliance Issue</u>	<u>No. of Issues</u>
Failure to Copy the State Bar within 5 Business Days	5
Failure to Include Mandatory Advisory	3
Failure to Copy the CCDA within 5 Business Days	5
Possible Prohibited Request/Demand for Money or Offer/Agreement to Accept Money	2
Possible Prohibited Statement of Recipient's Specific Monetary Liability	2

(*Note: A single letter may have more than one compliance issue.)

5. COMPETENCE PUBLICATIONS

Handbook on Client Trust Accounting for California Attorneys: The online Trust Accounting Handbook html webpage was visited 1,484 times between January – February, 2014.

California Compendium on Professional Responsibility: Four hundred and twenty-two 2013 Compendium updates and earlier updates have been processed to date. The 2014 Compendium update is anticipated to be released in the third quarter.

California Rules of Professional Conduct & State Bar (a.k.a Publication No. 250): Sales of the 2013 Publication 250 began in early June 2013, and 1,250 orders have been received and processed through February 28, 2014.

An e-Reader version of Publication 250² is available at the Amazon Kindle store. A total of one hundred ninety-nine e-books have been purchased to date. One hundred thirty-four copies of the 2011 e-book have been purchased since posting in September 2011. Forty copies of the 2012 e-book have been purchased since posting in June 2012. The 2013 e-Reader version of Publication 250 was posted on June 12, 2013 and twenty-five copies have been purchased since that time. The 2014 e-Reader version of Publication 250 is nearing completion and is anticipated to be available at the end of the second quarter of the year.

6. PROFESSIONAL COMPETENCE EDUCATIONAL PROGRAMS & OTHER OUTREACH ACTIVITIES

A State Bar ethics resources flyer will be included in materials distributed to approximately 3,500 new admittees in May, 2014. This flyer highlights the following resources: Ethics Hotline service; ethics related publications; online ethics resources including the advisory ethics opinions and the Ethics & Technology web page; and the e-Reader version of the California Rules of Professional Conduct and State Bar Act book.

7. COMPETENCE RESOURCES AT CALBAR.CA.GOV

Senior Lawyer Ethics Resources Page: This page recognizes that many attorneys reach their senior years with questions about what to do if they faced health problems that might affect how long they can work. They may be thinking of closing their practice or how to handle their business if they suddenly become ill or pass away. The Senior Lawyers Ethics Resources page is a collection of resources addressing attorney professional responsibility issues that arise in connection with retirement, disability, and death of attorneys. The resources include rules, advisory ethics opinions, articles, publications, and MCLE programs. Most of the links are to internal resources found on other State Bar pages. Others are external links to the ABA's website, or to local, or out-of-state bar associations. The Senior Lawyer web pages were launched in May 2013 and have been visited approximately 11,200 times, through February 28 , 2014.

Judicial Campaign Ethics Page: Lawyer candidates for judicial office are subject to Rule 1-700 of the Rules of Professional Conduct. In part, this rule provides that a lawyer who is a candidate for judicial office in California shall comply with Canon 5 of the Code of Judicial Ethics. An online educational course on Judicial Campaign Ethics by the Administrative Offices of the Courts, Center for Judicial Education and Research (CJER) is available and is a mandatory requirement for all candidates for judicial office. The Judicial Campaign Ethics web page was launched in October 2013 and has been visited approximately 500 times, through February 28 , 2014.

² The e-Reader version of Publication 250 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 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.

Web Activity: The State Bar tracks the web activity for all html website pages accessed.³ The chart below lists selected web pages administered by Professional Competence and the 2014 activity in terms of visits.

Professional Competence Web Resources – Activity Detail* January – February, 2014	
Webpage	Approx. Number of Visits
Rules of Professional Conduct html web pages	98,790
The State Bar Act html web pages	5,550
Ethics Opinions html web pages	7,400
Ethics Information html web pages	38,060
Ethics & Technology html web pages	3,870

Since the last Professional Competence status report submitted for the Board Committee's March 6, 2014 meeting, the following website updates have been made:

1. Draft Formal Ethics Opinion Interim No. 11-0004 (ESI and Discovery Requests) was posted at the public comment page of the Bar's website for public comment with a deadline of June 24, 2014.
2. Ethics & Technology web page was updated to add an ABA Journal article concerning the use of Facebook by a judge.
3. The web page for the April 12th Ethics Symposium was updated with details about panel topics and speakers, and online registration was activated. This page is a subpage of COPRAC's Education page of the Bar's website.

cc: Robert A. Hawley

³ Web download statistics are not available for web content posted as Adobe PDF documents.

ETHICS HOTLINE ACTIVITY STATISTICS - 2014

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	21	1,293	1,108	185	86%	14%	21	424
February	19	1,163	1,037	126	89%	11%	36	382
Cumulative Totals	40	2,456	2,145	311	87%	13%	57	806

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.

ENCLOSURE 1 – Ethics Hotline Activity Statistics

Key Hotline Activity Averaged by Day and Month

Daily:	Incoming Calls:	55
	Completed Calls:	49
Monthly:	Incoming Calls:	1,228
	Completed Calls:	1,073

Aggregate Outgoing Calls

Current Month:	1,863*
Cumulative to Date:	3,677*

*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.

ENCLOSURE 2 – Ethics Hotline Satisfaction Survey Excerpts

Excerpt from Ethics Hotline Customer Satisfaction Surveys Additional Comments (Surveys Received for January – February 2014)

1. Received January 16, 2014

COMMENTS/SUGGESTIONS:

Ricardo was AWESOME.

2. Received January 17, 2014

COMMENTS/SUGGESTIONS:

The service was GREAT! I have used the service before and each time, the paralegal was very knowledgeable and extremely helpful in pointing me in the right direction for my research. For the question I had this time, Mr. Ricardo Patino's information and direction for research was GOLDEN!

3. Received January 31, 2014

COMMENTS / SUGGESTIONS:

Elbert was extremely helpful in helping me distinguish between legal and ethical issues. He allowed his personality to effectively come through the conversation as he helped me figure things out.

4. Received February 24, 2014

COMMENTS / SUGGESTIONS:

Such a great service, thanks so much! Elbert immediately knew the rules and ethics opinions I should look at ... so knowledgeable! Please keep this department going. It is a great service to us lawyers!

5. Received February 27, 2014

COMMENTS / SUGGESTIONS:

Spoke with Pamela Hill. She understood the legal issue immediately, and cited authority that was right on point.

Professional Competence Budget Summary

Authorized vs. Actual

Year-to-Date as of February 28, 2014

Budget (Actual)	\$245,416
Budget (Authorized)	\$334,550
Variance	\$89,134

Monthly (January - February 28, 2014)

	January	February
Budget (Actual)	\$131,518	\$113,898
Budget (Authorized)	\$195,139	\$139,411
Variance	\$63,621	\$25,513