



THE STATE BAR OF CALIFORNIA

180 HOWARD STREET, SAN FRANCISCO, CA 94105-1639

OFFICE OF PROFESSIONAL COMPETENCE

PLANNING, AND DEVELOPMENT

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MEMORANDUM

DATE: April 21, 2015

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

FROM: Randall Difuntorum, Director, Professional Competence Programs

SUBJECT: R&D Meeting on May 7, 2015 – Status of the Professional Competence Unit

This memorandum provides a report on the activities of the Professional Competence Unit through March 31, 2015.¹ 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 March 31, 2015, 3,663 member inquiries were received with a completion rate of 88%. This completion rate includes distribution of 85 copies of published ethics opinions and other written materials requested by inquirers and 1,028 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 238 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 March 31, 2015: (1) the monthly average number of total calls handled by one paralegal was 362; (2) the monthly average number of completed calls by one paralegal was 218; and (3) the monthly average number of left messages by one paralegal was 142.

Between January and March, 2015, 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). All survey respondents added personal comments commending the staff for being helpful, professional 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.

Through March, 2015, the category of “Fees and Costs” was the most frequently raised issue category, which accounted for 19% of the total calls. This 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 were the categories of “Communications” (16%) and “Conflicts” (15%). 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 12, 2015 meeting, COPRAC met on March 6, 2015 in Los Angeles, and April 24, 2015 in San Diego.

A. Meetings

At the March 6, 2015 meeting, COPRAC continued the post-public comment work on Formal Opinion Interim No. 12-0007 (Puffing in Negotiations). COPRAC also continued pre-public comment work on the following draft opinions: 12-0002 (Revocation of Waivers); 12-0003 (Attorney Directory and Rating Websites); 12-0005 (Law Firm In-House Counsel); 13-0002 (Attorney with a Vulnerable Client); 13-0003 (Ethical Obligations When Departing Firm); 13-0004 (Collecting Unpaid Fees); 13-0005 (Publicly Available Confidential Information); 14-0001 (Colleague Impairment); 14-0002 (Alternative Litigation Funding); 14-0003 (Settling Before Withdrawal); and 14-0004 (Witness Perjury). The Committee discussed the status of plans for the 2015 Annual Statewide Ethics Symposium at Thomas Jefferson School of Law in San Diego on April 25, 2015. In addition, the Committee continued work on plans for four panel presentations for the 2015 Annual Meeting in Anaheim in October, and two panel presentations for the Solo & Small Firm Summit in Newport Beach in June.

At the April 24th meeting, COPRAC will consider the public comments received on Formal Opinion Interim No. 11-0004 (ESI and Discovery Requests) and 12-0006 (Attorney Blogging). The Committee will continue the post-public comment work on Formal Opinion Interim No. 12-0007 (Puffing in Negotiations). COPRAC will also continue pre-public comment work on the following draft opinions: 12-0002 (Revocation of Waivers); 12-0003 (Attorney Directory and Rating Websites); 12-0005 (Law Firm In-House Counsel); 13-0002 (Attorney with a Vulnerable Client); 13-0003 (Ethical Obligations When Departing Firm); 13-0004 (Collecting Unpaid Fees); 13-0005 (Publicly Available Confidential Information); 14-0001 (Colleague Impairment); 14-0002 (Alternative Litigation Funding); 14-0003 (Settling Before Withdrawal); and 14-0004 (Witness Perjury). The Committee will finalize plans for the 2015 Annual Statewide Ethics Symposium at Thomas Jefferson School of Law in San Diego on April 25, 2015. In addition, the Committee will continue work on four panel presentations for the 2015 Annual Meeting in Anaheim in October, and two panel presentations for the Solo & Small Firm Summit in Newport Beach in June.

COPRAC’s next meeting is scheduled for June 5, 2015, and will be held in San Francisco. At this meeting, COPRAC will continue post-public comment consideration of Formal Opinion Interim No. 11-0004 (ESI and Discovery Requests), 12-0006 (Attorney Blogging) and 12-0007 (Puffing in Negotiations). 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); 13-0002 (Attorney with a Vulnerable Client); 13-0003 (Ethical Obligations When Departing Firm); 13-0004 (Collecting Unpaid Fees); 13-0005 (Publicly Available Confidential Information); 14-0001 (Colleague Impairment); 14-0002 (Alternative Litigation Funding); 14-0003 (Settling Before Withdrawal); and 14-0004 (Witness Perjury).

In addition, the Committee will finalize its annual appointment recommendations for the 2015-2016 Committee year. The Committee will also continue planning for the 2015 Annual Meeting CLE panels.

B. Education and Outreach Programs

COPRAC members presented ethics CLE programs on March 11th for the California Club in Los Angeles, and on March 25th for the Orange County Bar Association in Newport Beach.

3. PROPOSED NEW AND AMENDED RULES OF PROFESSIONAL CONDUCT

The first meeting of the new Rules Revision Commission was held on March 27, 2015 at the State Bar office in San Francisco. State Bar President Craig Holden attended a portion of the meeting to welcome the Commission members and to discuss the Commission charter. The Commission's next meeting is scheduled for May 29 & 30, 2015 at the Los Angeles office of the State Bar. At this meeting, substantive discussion of the following rules is anticipated:

Rule 1-100 Rules of Professional Conduct, in General

Rule 1-110 Disciplinary Authority of the State Bar

Rule 1-120 Assisting, Soliciting, or Inducing Violations

Rule 1-200 False Statement Regarding Admission to the State Bar

Rule 1-300 Unauthorized Practice of Law

Rule 1-310 Forming a Partnership With a Non-Lawyer

Rule 1-311 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Member

At an April 24th Regulation and Discipline teleconference meeting, the Commission will request Board Committee authorization to seek public comment on possible rule revisions that the Commission ought to consider as it begins its comprehensive study.

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, year to date by month.

ADA Letters Received-Referred to Enforcement

Month	Letters Received	Letters Referred To Enforcement
Jan.	18	2
Feb.	17	1
Mar.	40	0
TOTAL	75	3

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

Compliance Issues Referred to Enforcement*
(1/1/15 through 3/31/15)

<u>Compliance Issue</u>	<u>No. of Issues</u>
Failure to Copy the State Bar within 5 Business Days	1
Failure to Include Mandatory Advisory	1
Failure to Copy the CCDA within 5 Business Days	3
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 approximately 2,490 times between January – March, 2015.

California Compendium on Professional Responsibility: 2014 Compendium case entries have been completed for the 2015 Compendium index. The 2015 Compendium update is anticipated to be released in the third quarter.

California Rules of Professional Conduct & State Bar Act (a.k.a Publication No. 250): Updates to the 2015 Publication 250 have been completed and it is anticipated to be released at the end of the second quarter.

An e-Reader version of Publication 250² is available at the Amazon Kindle store. A total of two hundred twenty-eight e-books have been purchased to date. One hundred thirty-five copies of the 2011 e-book have been purchased since posting in September 2011. Thirty-eight copies of the 2012 e-book have been purchased since posting in June 2012. Twenty-nine copies of the 2013 e-Reader version have been purchased since posting in June 2013. The 2014 e-Reader version of Publication 250 was posted on June 3, 2014 and twenty-six copies have been purchased since that time. The 2015 version is being prepared and it is anticipated to be available at the end of the second quarter.

6. PROFESSIONAL COMPETENCE EDUCATIONAL PROGRAMS & OTHER OUTREACH ACTIVITIES

Client Trust Accounting Survey and Education: In follow-up to the discussion at the Board's January planning meeting, Professional Competence has assumed a lead role in coordinating State Bar staff's development of a member survey on client trust accounting. On February 10, 2015, Competence staff met with Executives who attended the Board's planning meeting. On February 17, Competence staff met with Member Services and General Counsel staff to prepare revised draft survey questions. At a February 26 teleconference meeting, and a March 12 in-person meeting, the Board Committee received progress reports on a draft client trust

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.

accounting survey developed by staff, as well as other proposed educational initiatives. Board Committee action to approve the survey and an outreach and initial education plan is anticipated to be considered at the Board Committee's April 24th teleconference meeting.

Targeted Outreach: A State Bar ethics resources flyer will be included in materials distributed to approximately 3,500 new admittees in April, 2015. 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 new 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 visited approximately 3,040 times between January – March, 2015.

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. Resources at this page include information concerning restrictions on gifts to judges, and other resources. The Judicial Campaign Ethics web page was launched in October 2013 and has been visited approximately 2,200 times through March 31, 2015.

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 2015 activity in terms of visits.

Professional Competence Web Resources – Activity Detail* January – March, 2015	
Webpage	Approx. Number of Visits
Rules of Professional Conduct html web pages	160,530
The State Bar Act html web pages	7,570
Ethics Opinions html web pages	10,520
Ethics Information html web pages	18,960
Ethics & Technology html web pages	5,600

Since the last Professional Competence status report submitted for the Board Committee's March 12, 2015 meeting, the following website update was made:

1. New Commission for the Revision of the Rules of Professional Conduct web pages were updated as follows: March 27, 2015 meeting agenda and materials posted; May 29 & 30, 2015 meeting date posted at meetings pages; roster updated to add Advisors.

cc: Robert A. Hawley

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

ETHICS HOTLINE ACTIVITY STATISTICS - 2015

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	1206	1051	155	87%	13%	35	362
February	19	1229	1126	103	92%	8%	21	336
March	21	1228	1047	181	85%	15%	29	330
Cumulative Totals	61	3,663	3,224	439	88%	12%	85	1,028

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.

2015 Key Hotline Activity Averaged by Day and Month

Daily:	Incoming Calls:	60
	Completed Calls:	53
Monthly:	Incoming Calls:	1,221
	Completed Calls:	1,075

2015 Aggregate Outgoing Calls

Outgoing Calls:	5,425*
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*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 January – March 2015)

1. Received January 16, 2015

COMMENTS/SUGGESTIONS:

Give Ricardo a raise. The man is very helpful and enthusiastic. He represents the State Bar Ethics Hotline well. I am more likely to use the service again because of the manner in which he handled my questions.

2. Received February 3, 2015

COMMENTS/SUGGESTIONS:

Bryan was patient, knowledgeable, and very helpful.

3. Received February 5, 2015

COMMENTS / SUGGESTIONS:

The State Bar ethics hotline is enormously beneficial and has been of tremendous value to me personally. I am extremely grateful for its availability and assistance. Being able to talk with someone familiar with the pits and falls of navigating through the societal jungle is of great benefit for lawyers trying to “do the right thing” in often difficult situations. The availability of this hotline has made my bar dues worth every penny. The receptionist, David, is also very helpful, courteous and professional. Thank you!

4. Received February 6, 2015

COMMENTS / SUGGESTIONS:

Excellent customer service. Excellent knowledge of the issues I presented.

5. Received February 12, 2015

COMMENTS / SUGGESTIONS:

David took my call and did an excellent job. Pamela Hill returned my call in a timely manner and was very professional and helpful. I have been an attorney for 27 years and have used the Ethics Hotline more than 20 times. Each time has been a positive experience.

6. Received February 25, 2015

COMMENTS / SUGGESTIONS:

I want to say how much I appreciate this service and how much I appreciate the time and effort of the receptionist who is sometimes overwhelmed. Please not that this specific comment is only about the receptionist and I am waiting for the call back, but I wanted to tell you guys how much I appreciate the receptionists' time and effort.

Professional Competence Budget Summary*

Authorized vs. Actual

Year-to-Date as of February, 2015

Budget (Actual)	\$392,014
Budget (Authorized)	\$464,854
Variance	\$72,840

Monthly (January – February)

	January	February
Budget (Actual)	\$218,622	\$173,392
Budget (Authorized)	\$269,266	\$195,588
Variance	\$50,644	\$22,196

* The information provided above reports on the latest financial figures available at the time of this report.