



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: November 3, 2015

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

FROM: Randall Difuntorum, Director, Professional Competence Programs

SUBJECT: RAD Meeting on November 19, 2015 – Status of the Professional Competence Unit

This memorandum provides a report on the activities of the Professional Competence Unit through September 30, 2015. In addition to this memorandum, provided are the following: (Encl. 1) Ethics Hotline Activity Statistics; (Encl. 2) Ethics Hotline Satisfaction Survey Excerpts; (Encl. 3) Professional Competence Budget Summary – Actuals vs. Authorized; and (Enc. 4) Overview of Professional Competence Programs and Activities. Board members with questions may contact Randall Difuntorum at (415) 538-2161 or Lauren McCurdy at (415) 538-2107.

1. ETHICS HOTLINE

As of September 30, 2015, 10,502 member inquiries were received with a completion rate of 87%. This completion rate includes distribution of 192 copies of published ethics opinions and other written materials requested by inquirers and 2,809 referrals to information posted at the Bar's website. In addition, the staff made 852 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 September 30, 2015: (1) the monthly average number of total calls handled by one paralegal was 346; (2) the monthly average number of completed calls by one paralegal was 210; and (3) the monthly average number of left messages by one paralegal was 136.

During June through September, 2015, since the last Competence status report submitted for the Board Committee's July 23, 2015 meeting, thirteen 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. Most of the surveys received gave the Hotline top marks in all survey categories (copies of the surveys are available upon request). All thirteen survey respondents added personal comments commending the staff for being courteous, helpful, professional and knowledgeable, and describing the service as a valuable resource. (See Enclosure 2: Ethics Hotline Satisfaction Survey Excerpts.)

Through September, 2015, the category of "Fees and Costs" was the most frequently raised issue category, which accounted for 18% 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" (17%) 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 July 23, 2015 meeting, COPRAC met on July 17, 2015 in Los Angeles, August 28, 2015 in San Francisco and October 8, 2015 in Anaheim.

A. Meetings

At the July 17, 2015 meeting, COPRAC continued the post-public comment work on Formal Opinion Interim No. 12-0006 (Attorney Blogging). 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); 14-0001 (Colleague Impairment); 14-0002 (Alternative Litigation Funding); 14-0003 (Settling Before Withdrawal); and 14-0004 (Witness Perjury). The Committee continued work on plans for four panel presentations for the 2015 Annual Meeting in Anaheim in October. The Committee also discussed the actions taken during Rule Revision Commission's June 26th meeting.

At the August 28, 2015 meeting, COPRAC continued the post-public comment work on Formal Opinion Interim No. 12-0006 (Attorney Blogging). 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); 14-0001 (Colleague Impairment); 14-0002 (Alternative Litigation Funding); 14-0003 (Settling Before Withdrawal); and 14-0004 (Witness Perjury). The Committee continued work on four panel presentations for the 2015 Annual Meeting in Anaheim in October. In addition, the Committee began considering possible locations for the 2016 Annual Ethics Symposium. The Committee also discussed the actions taken during the Rule Revision Commission's August 14th meeting and discussed a process for how to draft and review public comment letters on the Commission's approved rules.

At the October 8, 2015 meeting, COPRAC considered the public comments received on Formal Opinion Interim No. 12-0007 (Puffing in Negotiations) and 13-0005 (Publicly Available Confidential Information). The Committee continued the post-public comment work on Formal Opinion Interim No. 12-0006 (Attorney Blogging). 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); 14-0001 (Colleague Impairment); 14-0002 (Alternative Litigation Funding); 14-0003 (Settling Before Withdrawal); and 14-0004 (Witness Perjury). In addition, the Committee discussed the actions taken during the Rule Revision Commission's September 25th and 26th meeting. Finally, the Committee also continued discussion of possible locations for the 2016 Annual Ethics Symposium.

Post-public comment consideration of proposed Formal Opinion Interim No. 12-0007 occurred at the Committee's October 8, 2015 meeting, and the Committee approved this opinion for submission to the Committee on Regulation and Discipline for final approval. This circulation will take place following the November 19-20, 2015 Board Meeting. This issue and digest of proposed Formal Opinion Interim No. 12-0007 is set forth below.

Formal Opinion No. 12-0007:

Issue: When an attorney is engaged in negotiations on behalf of a client, are there ethical limitations on the statements the attorney may make to third parties, including statements that may be considered "puffing" or posturing?

Digest: Statements made by counsel during negotiations are subject to those rules prohibiting an attorney from engaging in dishonesty, deceit or collusion. Thus, it is improper for an attorney to make false statements of fact or implicit misrepresentations of

material fact during negotiation. However, puffery and posturing, such as statements about a party's negotiating goals or willingness to compromise, are generally permissible because they are not considered statements of fact.

COPRAC's next meeting is scheduled for December 4, 2015, and will be held in San Francisco. At this meeting, COPRAC will continue post-public comment consideration of Formal Opinion Interim 12-0006 (Attorney Blogging) and 13-0005 (Publicly Available Confidential Information). 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); 14-0001 (Colleague Impairment); 14-0002 (Alternative Litigation Funding); 14-0003 (Settling Before Withdrawal); and 14-0004 (Witness Perjury). The Committee will also continue planning for the 2016 Statewide Ethics Symposium.

B. Education and Outreach Programs

COPRAC members presented ethics CLE programs on the following dates: July 23rd for the Northern Santa Barbara County Bar Association in Santa Barbara; September 17th for the ABA National Legal Malpractice Conference in Scottsdale, Arizona; September 22nd for the San Francisco Bar Association in San Francisco; October 2nd for the County Counsels' Association of California in Burlingame; October 22nd for Appellate Defenders, Inc. in San Diego; and on October 23rd for the San Diego ESI Forum in San Diego.

See section 6 of this report for a discussion of the programs conducted by COPRAC at the State Bar Annual Meeting in Anaheim.

3. PROPOSED NEW AND AMENDED RULES OF PROFESSIONAL CONDUCT

The Rules Revision Commission met on October 23, 2015 at the State Bar office in San Francisco. At that meeting, the Commission voted to tentatively approve Rules 5-110 (the closest counterpart to ABA Model Rule 3.8) as revised at the meeting. The Commission also voted to expedite the processing of this rule with a request that it be circulated for a public comment period ahead of the comprehensive set of proposed rules. Representatives for both defense attorneys and prosecutors attended the meeting and addressed the Commission with their concerns, and provided input concerning the expedited processing of the proposed rule. The request for approval for a 90-day public comment circulation is anticipated to be carried out at the Board Committee's and Board's November 19 & 20, 2015 meeting.

The Commission also met on August 14, 2015, at the State Bar office in Los Angeles, and September 25 & 26, 2015, at the LA Hotel Downtown Los Angeles. The Commission has tentatively approved the following twenty rules to date:

- Rule 1-100 (Rules of Professional Conduct, in General)
- Rule 1-110 (Disciplinary Authority of the State Bar)
- Rule 1-200 (False Statement Regarding Admission to State Bar)
- Rule 1-300 (Unauthorized Practice of Law)
- Rule 1-311 (Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Members)
- Rule 1-500 (Agreements Restricting a Member's Practice)
- Rule 1-650 (Limited Legal Services Programs)
- Rule 2-100 (Communication with a Represented Party)
- Rule 2-200 (Financial Arrangements Among Lawyers)
- Rule 3-100 (Confidential Information of a Client)
- Rule 3-110 (Failing to Act Competently)
- Rule 3-500 (Communication)
- Rule 3-510 (Communication of Settlement Offer)
- Rule 4-200 (Fees for Legal Services)

- Rule 5-110 (Performing the Duty of a Member in Government Service)¹
- New Rule 1.8.2 (Use of Current Client's Information) [no CA counterpart]
- New Rule 4.3 (Communication with Unrepresented Party) [no CA counterpart]
- New Rule 5.1 (Responsibilities of Supervisory or Managerial Lawyers) [no California counterpart] (Note: The comments section of this rule is on the Commission's November meeting agenda for a final vote.)
- New Rule 5.2 (Responsibilities of Subordinate Lawyers) [no CA counterpart]
- New Rule 5.3 (Responsibilities regarding Nonlawyer Assistants) [no CA counterpart]

The Commission's next meeting is scheduled for November 13 & 14, 2015 at the Los Angeles office of the State Bar.

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, and the 2015 report was timely submitted.

New urgency legislation, effective immediately, was chaptered on October 10, 2015 ([AB 1521](#)), that extends the sunset of the statute enacted under SB 1186, and adds some additional obligations for attorneys handling construction-related disability access claims.

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
Apr.	49	1
May	17	1
June	43	0
July	21	0
Aug.	43	0
Sept.	15	1
TOTAL	263	6

¹ The Commission is recommending that proposed amended Rule 5-110 rule be prioritized and processed separately from, and ahead of, the Commission's anticipated comprehensive report and recommendation.

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 9/30/15)

<u>Compliance Issue</u>	<u>No. of Issues</u>
Failure to Copy the State Bar within 5 Business Days	2
Failure to Include Mandatory Advisory	2
Failure to Copy the CCDA within 5 Business Days	4
Possible Prohibited Request/Demand for Money or Offer/Agreement to Accept Money	2
Possible Prohibited Statement of Recipient's Specific Monetary Liability	4

(*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 5,110 times between January – September, 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 fourth quarter.

California Rules of Professional Conduct & State Bar Act (a.k.a Publication No. 250): The 2015 Publication 250 was completed and 630 copies have been purchased and distributed since August, 2015.

An e-Reader version of Publication 250² is available at the Amazon Kindle store. A total of two hundred thirty-two 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-book have been purchased since posting in June 2013. Thirty-four copies of the 2014 e-book have been purchased since posting in June 2014. The 2015 version of Publication 250 was posted on August 21, 2015 and 10 copies have been purchased to date.

6. PROFESSIONAL COMPETENCE EDUCATIONAL PROGRAMS & OTHER OUTREACH ACTIVITIES

Targeted Outreach: The Professional Competence staff hosted a booth in the exhibit hall of the State Bar's Annual Meeting in Anaheim to conduct outreach, distribute items promoting the Ethics Hotline service, and to provide free competence resources, including copies of a booklet containing the Rules of Professional Conduct and selected State Bar Act sections. The booth was staffed by a Hotline paralegal who provided research assistance on ethics questions presented by the visitors to the booth. Visitors who did not have an ethics question were encouraged to play a computer game that helped self-assess the player's knowledge of California legal ethics, including recent developments.

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.

In addition, COPRAC members presented four CLE programs at the Annual Meeting. The programs were entitled: (1) Ethics Update 2015: Significant Developments in the Law of Lawyering (182 attendees); (2) Dealing with Difficult Clients in Your Law Practice (155 attendees); (3) Ethics for the Solo and Small Firm Lawyer (237 attendees); and (4) Ethics of Getting Your Legal Fees Paid (99 attendees). In addition, Professional Competence sponsored a CLE program entitled "Current Ethical Issues for In-House and Outside Counsel" (109 attendees). Each of these programs was approved for ethics credit and legal specialization credit for legal malpractice specialization. The ratings and comments received on the attendee evaluation forms for these programs were favorable.

In late October, approximately 5,000 copies of a State Bar ethics resources flyer were mailed out with other materials to the new admittees to the State Bar. The flyers highlight the following resources: the Ethics Hotline service; ethics related publications; online ethics resources including the advisory ethics opinions; the Ethics & Technology web page; the new Client Trust Accounting web page; and the e-Reader version of the California Rules of Professional Conduct and State Bar Act book.

Client Trust Accounting Survey and Education: In follow-up to the discussion at the Board's January planning meeting, Professional Competence assumed a lead role in coordinating State Bar staff's development of a member survey on client trust accounting. At an April 24, 2015 teleconference meeting, the Board Committee approved the voluntary survey and an initial outreach and education plan. A brief article announcing the survey ran in the June issue of the California Bar Journal. On June 9, 2015, the survey and the new trust accounting online resources page were featured in The San Diego Daily Transcript. An MCLE self-study article highlighting the survey as well as the State Bar's client trust accounting resources appeared in the July issue of the California Bar Journal. Outreach utilizing social media (Twitter posts) was carried out through the end of the survey period on July 31, 2015. At the close of the survey period, 1,123 surveys were submitted. A meeting of the staff working group was held on October 1, 2015 to orient the staff to the survey content and results received and provide options for the staff to request any cross tabulations of the results they believed to be informative. Another meeting to further discuss the survey results and initiatives for targeted education and outreach has been set for December 3, 2015. It is anticipated that staff will report suggested initiatives to the Board Committee at its March 2016 meeting.

7. COMPETENCE RESOURCES AT CALBAR.CA.GOV

Client Trust Accounting Resources Page: This new page is a collection of client trust accounting resources which includes links to relevant rules and statutes, publications (including the Client Trust Accounting Handbook), forms, ethics opinions, links to trust accounting MCLE programs, and online videos. This page was first posted in May, 2015 as a complement to the announcement of the voluntary client trust accounting survey. The various resources available at this page have been visited approximately 5,110 times since the page was originally posted.

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 8,970 times between January – September, 2015.

Judicial Ethics Page: The Judicial Ethics page is a collection of selected resources to promote a lawyer's awareness and understanding of judicial ethics. The Judicial Ethics page was launched in October 2013 and has been visited approximately 3,500 times through September 30, 2015. Lawyers often interact with judges and court staff, sometimes on a daily basis. An awareness of the standards of conduct applicable to judges and court staff helps assure that a lawyer practices law in a competent and professionally responsible manner. In some circumstances, a lawyer is required to comply with standards ordinarily applicable only to judges (for example, a lawyer serving as a temporary judge, referee or court-appointed arbitrator). The provided resources are organized into five categories: general information; candidates for judicial office; gifts to judges; lawyers as temporary judicial officers;

and social media. The resources include rules, statutes, advisory ethics opinions and court policy guides. The resources also include information concerning restrictions on gifts to judges, and a link to an online educational course on Judicial Campaign Ethics which is a mandatory requirement for all candidates for judicial office.

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 – September, 2015	
Webpage	Approx. Number of Visits
Rules of Professional Conduct html web pages	437,110
The State Bar Act html web pages	21,160
Ethics Opinions html web pages	305,540
Ethics Information html web pages	45,270
Ethics & Technology html web pages	14,020

Since the last Professional Competence status report submitted for the Board Committee's July 23, 2015 meeting, the following website updates were made:

1. New Commission for the Revision of the Rules of Professional Conduct web page and State Bar Board of Trustees meeting page were updated as follows: August 26, September 25 & 26, October 23, and November 13 & 14 meeting agendas and materials posted; proposed rule drafts posted; and approved meeting summaries posted.
2. The Senior Lawyers page was updated to add links to 10 more resources including: three ABA Ethics Opinions, the NOBC APRL Joint Committee on Aging Lawyers – Final Report, a guide for dealing with disability and unexpected events, and several articles.
3. The Ethics & Technology pages were updated to add links to: an August, 2015 Cal. Bar Journal article entitled "Ethics Opinion: Assess risks before releasing electronic files;" an August, 2015 Recorder article concerning social media marketing and ethics rules; three ABA Journal articles published in July and August, one regarding appeals' court decision that a lawyer can't learn identity of anonymous Avvo critic absent defamation evidence, one regarding the ethical handling of confidential information received inadvertently, and the other regarding twin (real & fake) law firm websites; and a new 2015 New York State Bar Association Ethics Opinion No. 1062 regarding financing a law practice and crowd funding websites.

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

ENCLOSURE 1

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	1,206	1,051	155	87%	13%	35	362
February	19	1,229	1,126	103	92%	8%	21	336
March	21	1,228	1,047	181	85%	15%	29	330
April	22	1,171	1,050	121	90%	10%	22	292
May	20	1,106	916	190	83%	17%	16	286
June	22	1,146	984	162	86%	14%	17	299
July	22	1,157	1,005	152	87%	13%	24	328
August	21	1,132	979	153	86%	14%	9	300
September	21	1,127	967	160	86%	14%	19	276
Cumulative Totals	189	10,502	9,125	1,377	87%	13%	192	2,809

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:	56
	Completed Calls:	48
Monthly:	Incoming Calls:	1,167
	Completed Calls:	1,014

2015 Aggregate Outgoing Calls

Average Monthly Aggregate:	1,732*
Cumulative to Date:	15,590*

*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

Excerpt from Ethics Hotline Customer Satisfaction Surveys Additional Comments (Surveys Received for June – September 2015)

1. Received June 9, 2015

COMMENTS/SUGGESTIONS:

Spoke with Ricardo – he is amazingly sharp and knows the ethical rules and citations cold. Very very helpful.

2. Received June 16, 2015

COMMENTS / SUGGESTIONS:

Good job, ladies and gentlemen!

3. Received June 26, 2015

COMMENTS / SUGGESTIONS:

I was helped by Ricardo who was excellent.

4. Received July 10, 2015

COMMENTS / SUGGESTIONS:

The intake receptionist, David, was very cordial and helpful, providing an anticipated response time for me and taking down my information accurately. The paralegal, Carissa, was very helpful, pointed me to appropriate information, was non-judgmental and seemed genuinely concerned with helping me. Thank you!

5. Received July 31, 2015

COMMENTS / SUGGESTIONS:

I spoke with Ricardo Patino who was simply on fire. He had command of the myriad rules that applied to my case and provided me with a fresh perspective on my situation. I'd like him to be recognized for excellent customer service and for his supreme command of the relevant rules, regulations and law.

6. Received July 31, 2015

COMMENTS / SUGGESTIONS:

Ricardo was excellent.

7. Received August 12, 2015

COMMENTS / SUGGESTIONS:

The ability to speak to someone on a critical issue that affects the clients was greatly appreciated.

8. Received August 21, 2015

COMMENTS / SUGGESTIONS:

Your receptionist, Dave, was extremely helpful to me. I recommend him and the entire team.

ENCLOSURE 2

9. Received August 21, 2015

COMMENTS / SUGGESTIONS:

I recently completed a survey form to compliment your receptionist Dave for his professionalism and helpfulness. I would like to add my appreciation for the professionalism and helpfulness of your paralegal Ricardo. Both of these gentlemen were very helpful to me in addressing a pressing ethical question.

10. Received September 10, 2015

COMMENTS / SUGGESTIONS:

I spoke with "Elbert," and he was wonderful. He provided not only the information I sought but also the legal authority to help me research the issue further. He was approachable, empathetic, and knowledgeable – and amazing resource and a real lifeline for me as I deal with these new issues. I am so grateful!

11. Received September 17, 2015

COMMENTS / SUGGESTIONS:

Pam Hill was very conscientious and thorough in making sure my questions were addressed.

David (the receptionist) was also very helpful. On his own initiative, he tracked down my original request to be sure I was matched up with the original specialist who had assisted me a couple of days earlier.

Thank you for providing this valuable service to the Bar's members!

12. Received September 18, 2015

COMMENTS / SUGGESTIONS:

This resource is vital to my practice.

13. Received September 22, 2015

COMMENTS / SUGGESTIONS:

To the State Bar. I have practiced for 39 years. From time to time, I will utilize the services of the State Bar Hotline. I feel obliged to highly commend the people who have been of assistance to me.

David, the receptionist was highly courteous and thoughtful.

Carissa, the paralegal who assisted me was very knowledgeable, thoughtful, and helpful. She provided an in depth analysis and referred me to State Bar Ethics Opinions. I was calling to assist a elderly client involved in probate proceedings as to matters involving her attorneys. The assistance provide is a credit to the State Bar and certainly assists in helping us advise and fulfill the fundamental ethical obligations of those whose profession is that of an attorney.

These individuals are a credit to the State Bar.

ENCLOSURE 3

Professional Competence Budget Summary Authorized vs. Actual

Year-to-Date as of September 30, 2015

Budget (Actual)	\$1,719,754
Budget (Authorized)	\$1,923,880
Variance	\$204,126

Monthly (January thru September 30, 2015)

	January	February	March	April	May	June
Budget (Actual)	\$218,622	\$173,392	\$168,836	\$158,715	\$176,427	\$191,957
Budget (Authorized)	\$269,266	\$195,588	\$195,868	\$196,120	\$196,146	\$202,377
Variance	\$50,644	\$22,196	\$27,032	\$37,405	\$19,719	\$10,420

	July	August	September	October	November	December
Budget (Actual)	\$285,621	\$159,402	\$186,782			
Budget (Authorized)	\$271,521	\$198,425	\$198,569			
Variance	-\$14,100	\$39,023	\$11,787			

ENCLOSURE 4



THE STATE BAR OF CALIFORNIA

180 HOWARD STREET, SAN FRANCISCO, CA 94105-1639

OFFICE OF PROFESSIONAL COMPETENCE,
PLANNING, AND DEVELOPMENT

TELEPHONE: (415) 538-2116

MEMORANDUM

DATE: November 3, 2015

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

FROM: Randall Difuntorum, Director, Professional Competence

SUBJECT: The Office of Professional Competence

This memorandum provides a general overview of the activities of the State Bar's Office of Professional Competence ("OPC"). OPC administers the State Bar's professional responsibility programs and publications. Including the office director, OPC has 13 authorized staff positions. State Bar General Counsel Vanessa Holton is the Senior Executive for the office. The Board of Trustees Regulation and Discipline Committee exercises policy oversight for the office's primary activities.

PROGRAMS

Ethics Hotline - The State Bar Ethics Hotline is a confidential telephone information service that provides assistance to attorneys in researching attorney professional responsibility issues. For lawyers facing a legal ethics dilemma, such as a conflict of interest or an ex parte communication issue, the Ethics Hotline offers full-time (9:00 am - 5:00 pm, Monday - Friday), toll free help in researching applicable California law. Ethics Hotline staff refers callers to Rules of Professional Conduct, State Bar Act sections, advisory ethics opinions, and other authorities. Advice is not provided but an inquirer is equipped to pursue a thorough analysis of the law and to make their own informed decision on how to proceed in an ethical manner. The Supreme Court has described the Ethics Hotline as playing "an important role" that "save[s] costs to the overall [discipline] system and reduce[s] delay in the processing of cases by avoiding the filing of additional complaints." (*In re Attorney Discipline System* (1998) 19 Cal.4th 582 [79 Cal.Rptr.2d 836].)

On average, about 1,500 calls are handled each month. Statistical data from the Ethics Hotline voluntary survey reveals that most inquirers are from firms with ten or less attorneys. On many of these calls, inquirers are directed to online resources, such as the State Bar's formal ethics opinions, State Bar forms, and "Ethics Alert" articles. The typical response time from inquiry to call back ranges from two to six hours. The Ethics Hotline phone number is 1-800-2ETHICS and appears on the back of each member's bar card. Detailed information about the Ethics Hotline program is posted at the [State Bar website](#) and is included in the informational materials provided to new admittees.

Committee on Professional Responsibility and Conduct ("COPRAC") - COPRAC is a State Bar standing committee charged with the function of issuing advisory opinions on the ethical propriety of hypothetical attorney conduct at the request of members of the bar. COPRAC also serves as an advisor to the Board of Trustees on the substantive aspects of proposals to amend

the California Rules of Professional Conduct or other laws governing attorney conduct. As needed, COPRAC also assists the Board in addressing various ad hoc initiatives impacting attorney competence. For example, COPRAC provided input to the Board on a proposal to alter the legal ethics MCLE requirement to recognize credit for general law practice management education.

Much information about COPRAC is found at the [State Bar website](#). The information includes: the full text of all of COPRAC's published opinions; draft opinions distributed for public comment; COPRAC's roster and meeting schedule; COPRAC's Rules of Procedure; and information on how to submit a request for an opinion. Although the opinions issued by COPRAC are not binding, they have been cited in the decisions of the Supreme Court and the Court of Appeal in matters involving attorney professional responsibility.

Amendments to the California Rules of Professional Conduct - The State Bar Board of Trustees is authorized to formulate and adopt rules of professional conduct, which when approved by the Supreme Court, are binding upon members. (Bus. & Prof. Code sections 6076 and 6077.) When the State Bar has considered proposed amendments, OPC has been responsible for shepherding the proposals through an intricate process that includes: 1) screening and conducting research on new amendment proposals; 2) drafting proposed rule amendments and background explanations and rationales; 3) facilitating outreach to stakeholders regarding proposed rule amendments, including publishing proposed amendments for public comment and holding public hearings; 4) preparing Board agenda items regarding proposed amendments; 5) assisting the Office of General Counsel in preparing and filing rule amendment requests with the Supreme Court; and 6) providing member education on new rule amendments.

Comprehensive proposed new and amended rules prepared by a special Commission were adopted by the Board in 2010 and the State Bar proceeded to submit individual proposed rules to the Supreme Court for approval. However, by order docketed on September 19, 2014, the California Supreme Court returned the proposed rules previously submitted for the Court's approval. The return included guidance for further consideration of amendments to the current rules, including the appointment of a new Commission. This Commission was appointed in January of this year and has begun the task of considering proposed amendments in accordance with the Court's guidance and building upon the work previously submitted. The Court's guidance states a deadline of March 31, 2017 for the State Bar to complete this project.

Educational Programs - OPC sponsors and administers various educational programs, including: the State Bar's Annual Statewide Ethics Symposium presented by COPRAC; local and specialty bar association outreach programs and several MCLE programs presented at the State Bar Annual Meeting by COPRAC and others, such as the American Inns of Court. Programs often are recorded and available after the live presentation as audio or video MCLE offerings.

PUBLICATIONS

California Compendium on Professional Responsibility - The Compendium is an annually updated reference manual that contains a comprehensive collection of various ethics authorities. The Compendium includes: 1) the formal ethics opinions of the State Bar, the Bar Association of San Francisco, the San Diego County Bar Association, the Los Angeles County Bar Association, and the Orange County Bar Association; 2) a comprehensive subject matter

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index; 3) the California Rules of Professional Conduct and the State Bar Act; and 4) the Code of Judicial Ethics. This 3 volume publication is sold for \$157.00 and the annual updates cost \$50.00.

California Rules of Professional Conduct and State Bar Act (Publication 250) - Publication 250 is a desk top resource book which includes: 1) the California Rules of Professional Conduct; 2) the State Bar Act; 3) selected California Rules of Court concerning attorneys and the State Bar; 4) selected code sections relating to the practice of law; 5) the Minimum Continuing Legal Education Rules and Regulations; and 6) the Minimum Standards for a Lawyer Referral Service in California. Publication 250 can be obtained for \$20.00 by mail or \$15.00 for walk-in requests. The content of the booklet is available at the State Bar website. Both the hard copy and the on-line information are updated annually.

An e-Reader version of Publication 250 is available for Kindle e-Readers and other tablets and smartphones compatible with the Kindle App. The e-Book version of the Publication 250 includes the entire Rules of Professional Conduct, the State Bar Act and other content that is fully searchable with a results preview pane. Once downloaded, the e-Book resides on the device (Kindle, iPad, iPhone, Blackberry, Android, PC, MAC, or Windows Phone 7) and Internet access is not needed to use the e-Book. Other features include: bookmarks; highlights; notes; and sharing via Facebook and Twitter. The e-Book is sold at Amazon.com for \$6.99.

Handbook on Client Trust Accounting for California Attorneys - The Handbook is a practical guide created to assist attorneys in complying with the record-keeping standards for client trust accounts which went into effect on January 1, 1993. The handbook includes: a copy of the standards and statutes relating to an attorney's trust accounting requirements; a step-by-step description of how to maintain a client trust account; and sample forms. A full-text online version of the Handbook is posted at the State Bar website and is a popular download. The Handbook is a main feature of the [Client Trust Accounting Resources page](#).

"Ethics Information" at <http://ethics.calbar.ca.gov/> - The State Bar's website includes an "Ethics Information" area with much information about the State Bar's competence programs and a variety of ethics resources. The available resources include: the Rules of Professional Conduct (with an option for viewing individual rules or downloading the entire text as a PDF file); reports on proposed rule amendments; all of the opinions published by COPRAC (and draft opinions circulating for public comment); rosters and meeting schedules for COPRAC; and detailed information about the publications offered by OPC. Although it is not strictly a matter of legal ethics, information concerning [attorney civility and professionalism](#) also is provided.

Ethics and Technology Resources – The [Ethics & Technology Resources page](#) is a subpage at the Ethics Information area of the State Bar website and serves as a collection of resources addressing attorney professional responsibility issues that arise when lawyers use the Internet, social media, email, chat rooms and other technologies. The resources include advisory ethics opinions, articles and MCLE programs.

Senior Lawyer Resources – The [Senior Lawyers Resources page](#) is a subpage at the Ethics Information area of the State Bar website and serves as a collection of resources addressing attorney professional responsibility issues that might arise in connection with retirement, disability, and sudden illness of attorneys. The resources include rules, advisory ethics opinions, articles, publications, and MCLE programs. One key resource is [a model attorney surrogacy agreement](#) that implements the designation of an attorney to administer a lawyer's law practice in the event that the lawyer becomes disabled or incapacitated.

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Supreme Court Rule Filings - Copies of individual Supreme Court rule filings regarding proposed amendments to the California Rules of Professional Conduct are available for \$10.00 a copy by mail. As the equivalent of "legislative history," the rule filings are instructive on the purpose and intent of the rules. The archive of available rule filings encompasses the comprehensive rule amendments that were made operative in 1989 and 1992, as well as copies of rule individual filings concerning trial publicity, sexual relations with clients, and a lawyer's disclosure of confidential information to prevent a crime of death or great bodily harm.

If you need more information about OPC or any of its activities, then please feel free to call me at (415) 538-2161. You may also contact Lauren McCurdy at (415) 538-2107, the senior administrative staff person in the office.