

**OFFICE OF PROFESSIONAL COMPETENCE
JANUARY – SEPTEMBER 2017 METRICS**

The Office of Professional Competence administers the Ethics Hotline, the Committee on Professional Responsibility and Conduct (COPRAC), statutory ADA construction-related accessibility claims demand letter monitoring; and OPC Ethics Information online resources. Key indicators are provided for each of these activities and Board members may contact Randall Difuntorum at (415) 538-2161 or Lauren McCurdy at (415) 538-2107 for further information.

1. ETHICS HOTLINE

Ethics Hotline: Activity Statistics 2017

	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.	Total to Date	Total 2016
<i>Work Days</i>	20	19	22	20	22	22	20	23	20				188	267
<i>Incoming Calls</i>	1,046	1,034	1,146	954	1114	1208	957	1111	984				9,554	12,350
<i>Completed Calls</i>	875	828	958	767	901	945	795	898	770				7,737	10,399
<i>Left Messages</i>	171	206	188	187	213	263	162	213	214				1,817	2,011
<i>Percentage of Incoming Calls that are Completed Calls</i>	84%	80%	84%	80%	81%	78%	83%	81%	78%				81%	84%
<i>Percentage of Incoming Calls that are Left Messages</i>	16%	20%	16%	20%	19%	22%	17%	19%	22%				19%	16%
<i>Resources Mailed/Faxed</i>	10	5	8	1	6	2	6	7	12				57	140
<i>Internet Resource Referrals</i>	217	220	234	209	232	257	277	285	196				2,127	2,746

EXPLANATIONS

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

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

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

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

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

Key Hotline Activity Averaged by Day and Month (2017)

Daily:	Incoming Calls:	65
	Completed Calls:	47
Monthly:	Incoming Calls:	1,365
	Completed Calls:	978

2017 Aggregate Outgoing Calls

Average Per Month:	1,365
Cumulative to Date:	12,282

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

Ethics Hotline: Primary Issues 2017

Issues	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.	Average % 2016
<i>Communications with Clients, Adverse Party and Others</i>	18%	18%	20%	18%	21%	20%	23%	19%	23%				20%
<i>Fees and Costs for Legal Services</i>	19%	18%	18%	17%	21%	18%	21%	18%	16%				18%
<i>Conflicts of Interest</i>	13%	15%	16%	13%	14%	13%	13%	15%	16%				14%
<i>Client Confidential Information</i>	11%	11%	11%	13%	10%	9%	9%	11%	11%				10%
<i>Attorney Advertising and Solicitation</i>	12%	11%	10%	11%	11%	13%	10%	11%	8%				11%
<i>Misconduct / Moral Turpitude / Trial Conduct</i>	10%	7%	7%	9%	7%	8%	7%	9%	6%				8%

Ethics Hotline: Member Feedback Received via Satisfaction Surveys in 2017

Rated on a Scale of 1 to 5 with 1 Lowest and 5 the Highest

	Jan. (Avg. of 2 surveys)	Feb. (1 survey)	Mar. (0 surveys)	Apr. (Avg. of 6 surveys)	May (Avg. of _ surveys)	Jun. (Avg. of _ surveys)	Jul. (Avg. of _ surveys)	Aug. (Avg. of _ surveys)	Sep. (Avg. of _ surveys)	Oct. (Avg. of _ surveys)	Nov. (Avg. of _ surveys)	Dec. (Avg. of _ surveys)
Rate overall satisfaction with the Ethics Hotline experience.	5.0	5.0	N/A	4.3	N/A	N/A	N/A	4.5	N/A			
How satisfied are you with the information our staff provided.	5.0	5.0	N/A	4.3	N/A	N/A	N/A	5.0	N/A			
How helpful was the ethics research paralegal.	5.0	5.0	N/A	4.3	N/A	N/A	N/A	5.0	N/A			
How helpful was the receptionist.	3.5	5.0	N/A	4.5	N/A	N/A	N/A	5.0	N/A			
How satisfied are you with our system for receiving calls.	4.0	5.0	N/A	4.5	N/A	N/A	N/A	4.0	N/A			
Rate your overall satisfaction with the State Bar website	NA	5.0	N/A	4.3	N/A	N/A	N/A	4.0	N/A			
I would recommend this service to others.	5.0	5.0	N/A	4.3	N/A	N/A	N/A	5.0	N/A			
Combined Rating of All Survey Responses	4.58	5.0	N/A	4.3	N/A	N/A	N/A	4.64	N/A			

NOTE: Not all respondents fill in a response to every survey question. The entry NA reflects instances where no survey response was given for a particular question. No surveys were submitted in March, May, June, July and September.

2. COPRAC

Overview of activity at COPRAC meetings.

The table below indicates the status of proposed ethics opinions on COPRAC's inventory of pending matters.

***Status of Ethics Opinions Considered During Current Committee Year
(November 2016 – October 2017)***

Opinion # (Topic or Issue)	11/04/16	12/09/16	01/06/17	03/03/17	04/22/17	06/02/17	07/21/17	08/25/17	10/13/17
12-0003 (Attorney Directory and Rating Websites)	PRE	PRE	PRE	PRE	PRE	CPC	CPC	CPC	PPC
12-0005 (Law Firm In-House Counsel)	PRE	PRE	PRE	PRE	PRE	PRE	PRE	PCC	CPC
13-0002 (Attorney with a Vulnerable Client)	PRE	PRE	PRE	PRE	PRE	PRE	PRE	PRE	PRE
13-0003 (Ethical Obligations When Departing Firm)	PRE	PRE	PRE	PRE	PRE	PRE	PRE	PRE	PRE
13-0004 (Collecting Unpaid Fees)	PRE	PRE	PRE	PRE	PRE	PRE	PRE	PRE	PRE
14-0001 (Colleague Impairment)	PRE	PRE	PRE	PRE	PRE	PRE	PRE	PRE	PRE
14-0001 (Colleague Impairment)	PRE	PRE	PRE	PRE	PRE	PRE	PRE	PRE	PRE
14-0002 (Alternative Litigation Funding)	PRE	PRE	PRE	PRE	PRE	PRE	PRE	PRE	PRE
14-0003 (Settling Before Withdrawal)	PRE	PRE	PRE	PRE	PRE	PRE	PRE	PRE	PRE
14-0004 (Witness Perjury)	PRE	PRE	PRE	PRE	PRE	PRE	PRE	PRE	PRE
16-0001 (Practice in Multiple Firms)	PRE	PRE	PRE	PRE	PRE	PRE	PRE	PRE	PRE
16-0002 (Lost or Stolen Laptop or Briefcase)	PRE	PRE	PRE	PRE	PRE	PRE	PRE	PRE	PRE
16-0003 (Ancillary Business)	PRE	PRE	PRE	PRE	PRE	PRE	PRE	PRE	PRE
17-0001 (Advising a Marijuana Business)							PRE	PRE	PRE
17-0002 (PTO Disclosure Requirements)							PRE	PRE	PRE
17-0003 (Duty of Confidentiality to Prospective Client)							PRE	PRE	PRE

Legend: PRE = Pre-Public Comment Consideration; PCC = Approved for Public Comment Consideration;
CPC = Circulating for Public Comment; POST = Post-Public Comment Consideration;
RAD = Opinion Submitted to RAD for Approval

A. Other Notable COPRAC Activities

COPRAC provided written comment on proposed amended rule 5-110(D) following the Supreme Court's May 1, 2017 order directing the State Bar to reconsider that rule.

3. **STATUTORY ADA CONSTRUCTION-RELATED ACCESSIBILITY CLAIMS DEMAND LETTERS (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 2015/2016 report was filed with the legislature on July 28, 2016 and is posted at the State Bar's website: <http://www.calbar.ca.gov/AboutUs/Reports.aspx>.

The table below reflects the number of ADA demand letters received by Professional Competence staff and the number of letters referred to Enforcement with potential compliance issues.

ADA Letters Received-Referred to Enforcement in 2017

Letters	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.	Total to Date	Total 2016
Received by OPC	33	22	71	2	87	65	50	75	56				280	350
Referred to Enforcement	0	0	1	0	0	1	0	0	5				7	149

The table below lists the potential compliance issues identified by Professional Competence staff and shows the numbers of compliance issues referred to Enforcement staff.

2017 Compliance Issues Referred to Enforcement*

Issues	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.	Total to Date	Total 2016
Failure to Copy the CCDA within 5 Business Days	0	0	1	0	0	0	0	0	5				6	3
Failure to Copy the State Bar within 5 Business Days	0	0	1	0	0	0	0	0	5				6	3
Failure to Include Mandatory Advisory	0	0	0	0	0	0	0	0	0				0	54
Possible Prohibited Statement of Recipient's Specific Monetary Liability	0	0	0	0	0	0	0	0	0				0	17
Possible Prohibited Request/Demand for Money or Offer/Agreement to Accept Money	0	0	0	0	0	0	0	0	0				0	1
Failure to Include Verified Answer Form (new requirement effective on July 2016)	0	0	0	0	0	1	0	0	0				1	51

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

4. OPC ETHICS INFORMATION ONLINE RESOURCES

The State Bar tracks the web activity for all html website pages accessed.¹ The chart below lists selected web pages administered by OPC and the January – May 2017 activity in terms of visits.

Professional Competence Web Resources – 2017 Activity Detail*
(Approximate Number of Visits)

Webpages	Jan.	Feb.	Mar.	Apr.	May	Jun.*	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.	Total to Date	Total 2016
Rules of Professional Conduct	46,590	45,695	50,056	46,113	33,312	-	-	-	-				221,766	585,250
The State Bar Act	2,985	2,577	1,591	2,271	1,452	-	-	-	-				10,876	27,400
Ethics Opinions	2,927	2,553	2,726	2,617	1,824	-	-	-	-				12,647	36,690
Ethics Information	5,978	4,415	4,260	4,207	3,193	-	-	-	-				20,053	171,160
Ethics & Technology Resources	1,248	1,086	1,278	1,157	780	-	-	-	-				5,549	19,050
Client Trust Accounting Resources	418	1,220	864	1,143	784	-	-	-	-				4,429	12,000
Senior Lawyer Ethics Resources	1,342	1,129	1,129	935	610	-	-	-	-				5,145	11,890
Judicial Campaign Ethics Resources	280	208	303	386	217	-	-	-	-				6,539	3,070

* Due to the transition to the State Bar's new website the analytic reports for this content are presently unavailable. Once the analytic reports are available the data for approximate number of visits will be provided.

¹ Web download statistics are not available for web content posted as Adobe PDF documents.

In July – September, the following updates were made to the Professional Competence information and resources maintained at the State Bar website, primarily located under the Ethics Information area of the site:

COPRAC

- Meeting agenda posted for 3 COPRAC meetings (July 21, 2017, August 25, 2017 and October 13, 2017)
- Updated roster of members for 2017/2018 committee composition.
- Updated posting of COPRAC's Rules of Procedure.
- Posted Proposed Formal Opinion Interim No. 12-0005 re seeking advice about current clients for a 90-day public comment period ending on December 11, 2017.

Rules Revision Commission Information

- Posted meeting agenda and materials for 1 Commission meeting (October 24, 2017).
- Posted 30-day public comment notice for possible proposed rule concerning issuance of a subpoena to an attorney (proposed Rule 5-110(E)), further considered and revised by the Commission following consideration of the May 1, 2017 order issued by the Supreme Court.
- Posted July Board agenda materials for Rule of Professional Conduct 5-110(E) rule options requesting authorization for public comment at the State Bar Meeting page.
- Updated content on the Proposed Rules page to add updated draft of Rule 5-110(D) following Court's action, and Commission Report and Recommendation background documents for each proposed rule.

Rules of Professional Conduct and Other Statutes

- Updated 2017 State Bar Act posted to the State Bar's Rules page.

Ethics and Technology Resources

- ABA Formal Opinion 477R: Securing Communication of Protect Client Information
- Philadelphia Bar Association Professional Guidance Committee Opinion 2015-6: Attorney's Fees and Crowdfunding
- Nebraska Ethics Advisory Opinion for Lawyers No. 17-03: Digital Currencies such as Bitcoin as Payment
- *Lawyers Must Secure Client Communications From Cyber Breaches*, ABA Journal, July 2017, David Hudson Jr.
- *The Ethics of Crowdfunding for Lawyers: Uncharted Territory or Familiar Terrain?*, Justia, June 2017, Sarah Andropoulos
- *Lawyer's 'Inadvertent' E-Discovery Failures Led to Wells Fargo Data Breach*, New York Law Journal, July 2017, Christine Simmons

Judicial Ethics Resources

- Social Media and Judicial Ethics: Part 1 - Friending, Judicial Conduct Reporter, National Center for State Courts Center for Judicial Ethics
- *Judge's Facebook Friendship With Attorney Doesn't Require Recusal*, Court Rules, Daily Business Review, August 2017

5. OTHER NOTABLE OPC ACTIVITIES

- On August 31, 2017, following Board action to approve a further revised draft of Rule 5-110(D) in response to the Supreme Court's May 1, 2017 order, staff submitted a supplemental filing to the Supreme Court conveying the further revised, Board approved rule for adoption. In October, the Rules Revision Commission met to consider the public comments received on 3 proposed alternative rule drafts addressing the conditions that must be present before an attorney may issue a subpoena to a lawyer to present evidence about a current or former client (previously contained in proposed Rule 5-110(E)), circulating for a 45-day public comment period. At the Board's November meeting, the Commission will be recommending that no rule regulating subpoenas of lawyers should be adopted and transmitted to the Supreme Court for approval. (See Board agenda item 703 NOV 2017.)