

OPINION REQUESTS FOR CONSIDERATION AT PRES

E.1. New Opinion Requests
07-26-19 Meeting
Open Session

Number	Requestor/ Date	Issue / Disposition
83	Attorney 12-06-17	<p>Re: Proposition 63, codified as Penal Code § 29810, requires individuals convicted of a felony or qualifying misdemeanor to complete a form produced by the Dept. of Justice. The form requires the criminal defendant to “declare any firearms that he or she owned, possessed or had under his or her custody or control at the time of his or her conviction.” The declaration is made under penalty of perjury.</p> <p>The Superior Court is requiring defense attorneys to assist and counsel criminal defendants in completing this form. While there is immunity provided in the statute it is limited to simple possession of the firearm declared. There is no immunity from the use of this information or admission in other investigations. Essentially, the form infringes on a defendant’s Fifth Amendment right in that the immunity does not extend to any other crimes. In other words, admission to the possession of a firearm may expose defendants to potential liability for other criminal acts that may be linked to the firearm.</p> <p>Status:</p> <p>Disposition at 7/26/2019 meeting:</p>
84	Attorney 02-28-18	<p>Re: Request an ethics opinion stating that the rule articulated in <i>Moeller v. Sup. Ct.</i> (1997) 16 Cal.4th 1124, may not be waived, that attorneys may not seek to impose its waiver, and that any attempted or purported waiver is invalid and unenforceable.</p> <p>Bank was acting as trustee and trust beneficiaries desired its removal. Bank agreed to resign as trustee in favor of beneficiaries nominated successor, but only on terms of a settlement agreement that Bank would prepare. The settlement agreement gave Bank a full release and covenant not to sue, which the beneficiaries signed. The agreement also contained provisions which required the beneficiaries and all interested persons to waive the rule of the <i>Moeller</i> case which held that the person who currently serves in the position of trustee is the holder of the attorney-client privilege (Evid. Code § 950 <i>et seq.</i>). Under this rule, a successor trustee can demand that a prior trustee turn over communications with its counsel because, upon succession, the prior trustee is no longer the holder of the privilege.</p> <p>Status:</p> <p>Disposition at 7/26/2019 meeting:</p>

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85	Attorney 04-24-18	<p>Re: May a law firm have attorneys who work for the firm sign a contract stating the attorneys cannot solicit or handle any matters for clients of the firm if they left or were fired from the firm?</p> <p>Status:</p> <p>Disposition at 7/26/2019 meeting:</p>
86	Attorney 05-22-18	<p>Re: Contract provisions contained in fee agreements that are intended to scare the client, even if the lawyer knows such provisions are unenforceable; such as, "I have the right to withdraw at any time if you don't immediately pay" and "Your fee is non-refundable."</p> <p>Status:</p> <p>Disposition at 7/26/2019 meeting:</p>
87	Attorney 06-04-18	<p>Re: An ethics opinion on the subject of plagiarism. Requestor submitted a proposal to the Rules Revision Commission that a provision be added to Rule 3.3 stating: "A lawyer shall not: (X) knowingly use any language authored by another without attribution, unless the true author has so permitted."</p> <p>Status:</p> <p>Disposition at 7/26/2019 meeting:</p>
88	Attorney 08-27-18	<p>Re: Consider an opinion similar to North Carolina Bar Association's Opinion addressing Participation in Website Directories and Rating Systems That Include Third Party Reviews</p> <p>https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2018-formal-ethics-opinion-1/?opinionSearchTerm=lawyers%20of%20distinction#.W4QpTAiwMKE.mailto</p> <p>Status:</p> <p>Disposition at 7/26/2019 meeting:</p>

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89	Attorney 09-05-18	<p>Re: Guidance regarding a recent amendment to CCP § 1002, which concerns confidentiality provisions in civil settlements related to certain sexual offenses. Section 1002(e) states violation of section 1002 “may be ground for professional discipline and the State Bar of California shall investigate and take appropriate action in any such case brought to its attention.”</p> <p>Before the 2016 amendment, section 1002(c) expressly stated that settlement sums could remain confidential. The settlement sum exception in section 1002(c) was eliminated as a result of the 2016 amendment, but the language of the statute was changed under section 1002(a) to only prohibit “a provision within a settlement agreement that prevents the disclosure of <i>factual information</i> related to the action.” Does the Committee consider the settlement sum to be “factual information” under current section 1002 such that settlement sums cannot be made confidential in civil actions related to the enumerated sexual offenses thereunder?</p> <p>Status:</p> <p>Disposition at 7/26/2019 meeting:</p>
90	Attorney 11-28-18	<p>Re: Is it ethical for two lawyers who are the sole shareholders of an active law firm in California to be the sole owners of a separate company that markets their law firm through social media and on radio and television shows?</p> <p>Status:</p> <p>Disposition at 7/26/2019 meeting:</p>

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91	Attorney 02-20-19	<p>Re: Class action ethics opinion addressing the following topics:</p> <p>(1) How far can an attorney go to solicit plaintiff class members?</p> <p>(2) May an attorney make a deal with a law firm to help finance the case; including promises to co-counsel with the law firm, exclusively refer all plaintiffs who want to join the class to the financing firm? Is this permissible so long as disclosure is provided to clients and would the court need to be notified separately?</p> <p>(3) What if the attorney is offered a \$5M settlement in the form of (i) coupons to the urban store class clients worth \$250, and (ii) coupons worth only \$50 for rural store class clients, as the rural stores do not have the financial ability to give out coupons of a higher amount; may the attorney accept this offer?</p> <p>(4) Are any of the answers different in a mass action vs. class action?</p> <p>Status:</p> <p>Disposition at 7/26/2019 meeting:</p>
92	Ethics Hotline Request 02-25-19	<p>Re: Defense counsel makes a settlement offer requires the plaintiff's counsel to agree to indemnify and hold harmless the defendant and the defense counsel for any liens on the settlement.</p> <p>See: Maryland State Bar Ethics Opinion 2012-03 – “As part of the settlement of an automobile accident claim, the insurer requires that the lawyer for the plaintiff hold harmless and indemnify both the carrier and the defendant from any claim for any of plaintiff's medical bills, or from medical liens or workers compensation liens, arising out of the accident or the action filed by plaintiff. The question is whether this violates the Maryland Rules of Professional Conduct.”</p> <p>Status:</p> <p>Disposition at 7/26/2019 meeting:</p>

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Number	Requestor/ Date	Issue / Disposition
93	Attorney 05-08-19	<p>Re: Lawyer is in-house counsel and negotiates his own employment, and writes them, which are written in a confusing manner and include a provision that extends his severance to 16 years. Is there a rule 1.8.1 obligation for in-house lawyers?</p> <p>Lawyer commits bad acts against his client, a company, for whom lawyer is acting as in-house counsel. Is Lawyer entitled to severance compensation under the employment agreement as a contract provision, as opposed to a disgorgement of attorney's fees for performing services in violation of the rules of professional conduct?</p> <p>See, <i>Chism v. Tri-State Construction</i> (Washington, 2016) – “Following a month-long jury trial, attorney Geoffrey Chism was awarded \$750,000 for breach of two compensation contracts by his former employer, Tri-State Construction, Inc., and exemplary damages for unlawful wage withholding. The trial court then dramatically reduced Chism's recovery, premised on findings that Chism violated Washington's Rules of Professional Conduct (RPCs) during his time as Tri-State's in-house general counsel. By ordering disgorgement of Chism's wages based on novel interpretations of several RPCs, the trial court exceeded the disciplinary authority delegated to it by our Supreme Court. Moreover, the trial court disregarded the strong legislative policy preference in favor of payment of earned wages by failing to even acknowledge that, unsupported by precedent, it was ordering disgorgement of an attorney's wages, as opposed to an attorney's fee. Accordingly, we reverse the trial court's challenged rulings and remand the cause for entry of judgment consistent with the jury's verdict.”</p> <p>Status:</p> <p>Disposition at 7/26/2019 meeting:</p>
94	Attorney 05-16-19	<p>Re: Attorney has an IOLTA account that is rarely used. When no transactions have occurred for some time, the bank unilaterally closes the account, whether there is any money in there or not. The bank refuses to change its policy on accounts where there has been no activity for a certain period of time. Is it permissible for Attorney to, from time to time, put some money in the account and then remove it, so that there is some activity resulting in the account remaining active?</p> <p>Status:</p> <p>Disposition at 7/26/2019 meeting:</p>

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95	Organization 06-05-19	<p>Re: Whether drafting, reviewing (without objection), approving, and/or causing to be signed an employment contract or agreement between a business and worker that contains contractual provisions that the lawyer knows or should know are unambiguously illegal and unenforceable, violates rule 8.4(c) prohibiting “conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation;” rule 1.2.1 prohibiting “counsel[ing] a client to engage, or assist[ing] a client in conduct that the lawyer knows is criminal, fraudulent, or a violation of any law, rule or ruling of a tribunal;” or any other ethical rule.</p> <p>The opinion should also make clear whether including noncompete agreements, clauses allowing the employer to unilaterally choose an arbitrator, out-of-state forum selection clauses, and other obviously unenforceable terms in employment contexts would violate the California Rules of Professional Conduct.</p> <p>Status:</p> <p>Disposition at 7/26/2019 meeting:</p>
96	Legislative Request 06-07-19	<p>Re: Client file release and retention duties in the context of post-conviction discovery.</p> <p>Status:</p> <p>Disposition at 7/26/2017 meeting:</p>
97	Attorney 07-08-19	<p>Re: An opinion on Bitcoin, Libra, or other cryptocurrencies. Some of the issues include: when does the value of the Bitcoin set? Who keeps the gain if it shoots up in a week? Can a lawyer take it and hold it and put his own cash in the trust account to ride the Bitcoin tide?</p> <p>Status:</p> <p>Disposition at 7/26/2017 meeting:</p>
98	Attorney 07-12-19	<p>Re: May a law firm serve as general counsel for a prospective subsidiary whom a parent company sought, but failed, to acquire, if the law firm previously served as general counsel for the parent company and if the subjects of the representation are different and confidential information obtained from the parent company is not needed or used to adequately represent the subsidiary, and the companies’ interests are not adverse?</p> <p>Status:</p> <p>Disposition at 7/26/2017 meeting:</p>

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63	COPRAC Request 5/16/14	<p>Re: Adoption agency or surrogate parenting agency. Attorneys representing parties in a transaction and owning the agency facilitating the transaction.</p> <p>Status:</p> <p>Disposition at 6/2/2017 meeting: Hold for future consideration</p>
64	COPRAC Request	<p>Re: If client comes to you but you have a conflict, can you refer the client to another lawyer without violating your duties?</p> <p>Status:</p> <p>Disposition at 6/2/2017 meeting: Hold for future consideration.</p>
65	COPRAC Request	<p>Re: Patent office requires all disclosure. California and PTO have reciprocal Patent rules that are disciplinable.</p> <p>Status:</p> <p>Disposition at 6/2/2017 meeting: HOLD for future consideration.</p>
69	Mediator Request (Yeend) 02-16-15	<p>Re: When engaging in mediation while representing a client, what duty does an attorney have to point out that their malpractice is protected? Should a written acknowledgement by the client be required prior to participating in mediation?</p> <p>Status:</p> <p>Disposition at 6/2/2017 meeting: HOLD for future consideration.</p>
29	Ethics Hotline 11-09-11	<p>Re: Credit Card Processing companies such as Lawpay.com who allocate funds to the appropriate accounts (CTA or attorney business accounts) without commingling funds.</p> <p>Status:</p> <p>Disposition at 1/6/2011 meeting: Article, not opinion</p>