

OPINION REQUESTS FOR CONSIDERATION AT PRESENT

F.1. New Opinion Topics
10-23-20 Meeting
Open Session

Number	Requestor/ Date	Issue / Disposition
1	Attorney 09-29-20	<p>Re: When is the flat fee earned and does the attorney have to refund a portion of the flat fee if terminated by the client.</p> <p>Status:</p> <p>Disposition:</p>
2	Staff 10-15-20	<p>Re: Ethical Obligations for Lawyers Working Remotely https://www.lawsitesblog.com/wp-content/uploads/sites/509/2020/04/PBA-Formal-Opinion-2020-300-Ethical-Considerations-for-Attorneys-Working-Remotely.pdf</p> <p>Status:</p> <p>Disposition:</p>
3	Staff 10-15-20	<p>Re: Ethical Obligations Related to Disasters (Communication, file retention, competence in using technology, safekeeping of property, duty to supervise, advertising to disaster victims) https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_formal_opinion_482.pdf</p> <p>Status:</p> <p>Disposition:</p>
4	Attorney 02-05-20	<p>Re: Lawyers creating profit centers that divide up clients into have and have nots. An example is there is the Legal Assistance Law Firm, and some of those attorneys also create the Legal Assistance Law Group. The Law Group services people with no money who want forms and some advice. Law Firm is for big corporations or clients with a lot of money. Those people get a real lawyer. Request for an opinion addressing the ethical pitfalls of this.</p> <p>Status:</p> <p>Disposition:</p>

OPINION REQUESTS FOR CONSIDERATION AT PRESENT

Number	Requestor/ Date	Issue / Disposition
5	Attorney 08-10-20	<p>Re: Injured worker plans major surgery requiring a month of post-operative recovery time. Defense and Applicant's counsel undergo negotiations prior to the surgery to determine an appropriate amount to pay Applicant for food and lodging as she wishes to seek her own post-recovery living situation. The parties are close to agreement, however, the Applicant is interested in slightly nicer accommodations than the Defense is willing to provide and rather than entering into litigation regarding that, Applicant's counsel offers to agree to a medical examiner, with a benefit to both parties of expedited litigation and a reduction in costs, in return for allowance of the payment for the nicer living arrangement.</p> <p>If the parties agree to this, are they running afoul of Labor Code Section §139.3, §4906(h), §3215, §3217, and/or §3820? Those provisions of the Labor Code relate to prohibited referrals for compensation, however, the intent of the statutes appears to be to prohibit fraudulent claims in return for compensation rather than to prevent negotiating agreements between parties where there are trade-offs with respect to which both parties deem themselves to be better off.</p> <p>Is there any change with respect to this decision if there were another potentially liable carrier involved in the disputed matters, also represented by counsel, against whom the Agreed Medical Examiner reporting is expected to be admissible, however this carrier can also obtain its own medical examiner reporting? Does it change any adverse determination if the other carrier is informed of the facts, or if the other carrier also agrees to the medical examiner?</p> <p>Status:</p> <p>Disposition:</p>
100	COPRAC	<p>Re: Gifts to clients</p> <p>Status:</p> <p>Disposition:</p>
98	COPRAC	<p>Re: Office sharing with people not part of the law firm and the ethical implications involved.</p> <p>Status:</p> <p>Disposition:</p>

OPINION REQUESTS FOR CONSIDERATION AT PRESENT

Number	Requestor/ Date	Issue / Disposition
99	COPRAC	<p>Re: Can a departing attorney take their work-product with them?</p> <p>Status:</p> <p>Disposition:</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: HOLD FOR FUTURE CONSIDERATION</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: HOLD FOR FUTURE CONSIDERATION</p> <p>Andrew's Note: see also, <i>Morgan v. Superior Court</i> (2018) 23 Cal.App.5th 1026 – “trust provision stating trustee was free of any duty to disclose communications with legal counsel to successor trustee was void as against public policy; and former trustee was not entitled to withhold communications with trust’s former counsel on ground of attorney-client privilege.”</p>

OPINION REQUESTS FOR CONSIDERATION AT PRESENT

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: 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>

DECLINE TO OPINE

Number	Requestor/ Date	Issue / Disposition
##	Attorney (Name) Date	Re: Status: Disposition at 7/26/19 meeting: DECLINE TO OPINE