

# OPINION REQUESTS FOR CONSIDERATION AT PRESENT

D.1. New Opinion Requests  
06-11-21 Meeting  
Open Session

Number	Requestor/ Date	Issue / Disposition
1	Staff 10-15-20	<p><b>Re:</b> Ethical Obligations Related to Disasters (Communication, file retention, competence in using technology, safekeeping of property, duty to supervise, advertising to disaster victims)  <a href="https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_formal_opinion_482.pdf">https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_formal_opinion_482.pdf</a></p> <p><b>Status:</b> Staff asks: is this topic being addressed by draft opinion 20-0004?</p> <p><b>Disposition:</b></p>
2	Attorney 02-05-20	<p><b>Re:</b> 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.</p> <p>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><b>Status:</b></p> <p><b>Disposition:</b></p>
3	Attorney 08-10-20	<p><b>Re:</b> 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</p>

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		<p>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><b>Status:</b></p> <p><b>Disposition:</b></p>
4	COPRAC	<p><b>Re:</b> Gifts to indigent clients</p> <p><b>Status:</b></p> <p><b>Disposition:</b></p>
5	COPRAC	<p><b>Re:</b> Trial publicity</p> <p><b>Status:</b></p> <p><b>Disposition:</b></p>
6	Anonymous	<p><b>Re:</b> We are seeking COPRAC’s advisory opinion on whether it would be ethical for an attorney to identify themselves as an advocate in situations when the term “advocate” is separate and distinct from that of “attorney.” Following a 2017 Attorney General Opinion (No. 14-101), a clear distinction was made between advocates and attorneys—the former could no longer represent families in certain Office of Administrative Hearings disputes, usually concerning special education. Prior to this Opinion, advocates would routinely represent families at administrative proceedings involving special education disputes. The advocates were not attorneys, and they were allowed to represent families in these matters up until the 2017 Opinion.</p> <p>Given this distinction between attorneys and advocates, identifying oneself as an advocate, when they are actually an active attorney, could easily deceive the opposing party. An unrepresented party that shows up to a meeting or dispute with an “advocate”, not knowing that the advocate is also an active attorney, could result in them sharing information that would not have been disclosed in the presence of an opposing attorney. This scenario appears to be akin to an ethical violation of Rules of Professional Conduct 8.4(c):</p> <p style="padding-left: 40px;">“It is professional misconduct for a lawyer to: (c) engage in conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation.”</p> <p>Therefore, based on this distinction described above, is it ethical for an active attorney to identify themselves as an advocate, as opposed to an attorney in these circumstances?</p>

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100	COPRAC	<b>Re:</b> Gifts to clients  <b>Status:</b>  <b>Disposition:</b>
101	COPRAC	<b>Re:</b> Office sharing with people not part of the law firm and the ethical implications involved.  <b>Status:</b>  <b>Disposition:</b>
102	COPRAC	<b>Re:</b> Can a departing attorney take their work-product with them?  <b>Status:</b>  <b>Disposition:</b>
103	Attorney 07-08-19	<b>Re:</b> 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?  <b>Status:</b>  <b>Disposition at 7/26/2017 meeting:</b> HOLD FOR FUTURE CONSIDERATION
104	Attorney 02-28-18	<b>Re:</b> Request an ethics opinion stating that the rule articulated in <i>Moeller v. Sup. Ct.</i> (1997) 16 Cal.4 <sup>th</sup> 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.  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

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		<p>trustee is no longer the holder of the privilege.</p> <p><b>Status:</b></p> <p><b>Disposition at 7/26/2019 meeting:</b> HOLD FOR FUTURE CONSIDERATION</p> <p><b>Andrew's Note:</b> see also, <i>Morgan v. Superior Court</i> (2018) 23 Cal.App.5<sup>th</sup> 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>
105	Attorney 05-08-19	<p><b>Re:</b> 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><b>Status:</b></p> <p><b>Disposition at 7/26/2019 meeting:</b> HOLD FOR FUTURE CONSIDERATION</p>

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106	COPRAC Request	<p><b>Re:</b> If client comes to you but you have a conflict, can you refer the client to another lawyer without violating your duties?</p> <p><b>Status:</b></p> <p><b>Disposition at 6/2/2017 meeting:</b> HOLD FOR FUTURE CONSIDERATION.</p>

**DECLINE TO OPINE**

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