

OPINION REQUESTS FOR CONSIDERATION AT PRESENT

E.3. New Opinions
12-02-22 Meeting
Open Session

Number	Requestor/ Date	Issue / Disposition
1	Out-of-State Attorney 08-09-21	<p>Re: What are the deportation attorney's ethical duties in relation in admitting or denying the deportation allegations? Should the deportation attorney explain to the client the right to admit or deny? Where the deportation attorney waives the advisals, does not explain [to] the client the right to admit or deny, and admits everything, does the attorney acts [sic] unethically?</p> <p>Where the attorney waives, does not inform his client the right to challenge the alienage allegations, and waives the defense, doesn't the attorney act unethically or ineffectively?</p> <p>Status:</p> <p>Disposition:</p>
2	COPRAC (Mark)	<p>Re: In light of the recent case of <i>Pech v. Morgan</i> (2021) 61 Cal.5th 841, Advisory 1993-02 really should be updated to include a discussion of the points where the <u>Pech</u> case makes some of the Advisory's advice "just a little off.</p> <p>Status:</p> <p>Disposition:</p>
3	Attorney 08-11-22	<p>Re: Whether a lawyer needs to put expert witness retainers and advance fees in the trust account</p> <p>Status:</p> <p>Disposition:</p>
8	COPRAC	<p>Re: <i>People vs. Meredith</i>. What a defense lawyers obligations in respect to evidence in a case. Investigator took evidence, lawyer should turn it over and disclose where it was found. Criminal defense attorneys on how to investigate and the process of turning it over.</p> <p>Status:</p> <p>Disposition:</p>
9 (AA)	Staff	<p>Re: How to handle mediation confidentiality (<i>Cassell</i> case)</p> <p>Status:</p> <p>Disposition:</p>

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10 (AA)	Staff	<p>Re: Carve outs for workers comp/union. Lawyers who have negotiated these carve out provisions for the unions are then acting in these positions where they are administering carve out programs. Conflicts on how agreements are being drafted and administering these programs.</p> <p>Status:</p> <p>Disposition:</p>
11	CORPAC	<p>Re: Lawyers soliciting favorable online reviews from clients. Similar but a different context to 2019-199. Can you ask clients to post a favorable review for you and issues related to that?</p> <p>Status:</p> <p>Disposition:</p>
100	COPRAC	<p>Re: Gifts to indigent clients</p> <p>Status:</p> <p>Disposition:</p>
101	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>
102	COPRAC	<p>Re: Can a departing attorney take their work-product with them?</p> <p>Status:</p> <p>Disposition:</p>
103	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>

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104	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>
105	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</p>

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		<p>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>
106	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>
107	Attorney (9/26/22)	<p>Re: If a mechanism for allocating overhead charges in a written fee agreement is not related to the overhead incurred by the attorney, is it unethical to include it in the fee agreement even if the agreement is approved by the client.</p> <p>Status:</p> <p>Disposition:</p>
108	Attorney (11/21/22)	<p>Re: Proposed rule change for 7.2</p> <p>Status:</p> <p>Disposition:</p>

DECLINE TO OPINE

Number	Requestor/ Date	Issue / Disposition
2	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.</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>Status:</p> <p>Disposition:</p>
3	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>

DECLINE TO OPINE

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