



COPRAC Guidelines for Prioritization of Proposed Topics for an Advisory Ethics Opinions Committee and Criteria for Addressing the Topic through a Formal Advisory Ethics Opinion, an Ethics Article, or Other Guidance

On a quarterly basis, COPRAC should review and reassess the prioritization of topics to ensure the committee's efforts align with evolving ethical challenges and the needs of the legal profession. By following these guidelines, the committee can effectively prioritize topics for formal advisory ethics opinions, articles, or other guidance, and provide attorneys with timely and valuable guidance on their professional responsibility obligations.

1. **Relevance to Current Legal Environment:** Prioritize proposed topics that are relevant to the current legal landscape and address emerging ethical challenges faced by attorneys, such as recent or anticipated legal and regulatory changes, including new or amended Rules of Professional Conduct, the State Bar Act, or court decisions. Questions of law are beyond the scope of COPRAC's opinions and other advice.
2. **Impact on Attorneys, the Public, and the Legal Profession:** Give priority to topics that involve potential harm or risk to clients, the public, or the legal system. Focus on issues where the absence of clear guidance may lead to harm or other adverse consequences, or compromise the integrity of the legal profession.
3. **Frequency and Recurrence:** Consider the frequency and recurrence of the proposed topic. Prioritize topics that arise frequently or consistently pose ethical challenges for attorneys. These topics may require ongoing guidance to ensure attorneys have clear guidance in navigating common ethical dilemmas that may be better suited for ethics articles or other guidance than formal advisory opinions.
4. **Complexity and Lack of Clarity:** Give priority to topics that involve complex ethical considerations and lack clear guidance or established precedent. These topics may require in-depth analysis and research to provide attorneys with practical and comprehensive guidance and may be better suited for formal advisory opinions than ethics articles or other guidance.
5. **Requests and Inquiries from Bar Associations, Legal Professional Organizations, and Attorneys:** Consider prioritizing requests and inquiries received from bar associations, legal professional organizations, and attorneys seeking guidance on specific ethical issues over committee-generated topics. These requests may indicate a need for

clarification and highlight areas of uncertainty or ambiguity that should be addressed by the committee.

The following criteria can assist the committee in evaluating the appropriateness of drafting the committee's advice in an advisory ethics opinion or other format:

1. **Significance of the Ethics Issue:** If the issue is of significant importance to the legal profession, has far-reaching implications, would be a first of its kind opinion, or will have a significant impact on attorney and the legal profession as a whole, a formal advisory ethics opinion may be warranted. On the other hand, if the issue is relatively narrow in scope or primarily of interest to a specific subset of attorneys, an article or other format might be more appropriate.
2. **Precedential Value and Continuing Applicability:** Assess whether the topic will set a precedent or could be relied upon in a disciplinary proceeding or malpractice case, leading the opinion to have more significant weight on future ethical matters. Formal advisory ethics opinions will carry more weight and be relied upon as authoritative guidance. Other formats will be informative and educational, but will not possess the same level of precedential value. Additionally, the committee should consider whether the topic is likely to change. Ideally, a formal ethics opinion should be relevant for a minimum of five years.
3. **Legal and Ethical Complexity:** Assess the level of legal and ethical complexity involved in the issue. If the topic requires a comprehensive analysis of multiple ethical rules, statutes, case law, and advisory opinions, or involves conflicts in the law or other authorities, a formal advisory ethics opinion may be more appropriate to provide clear guidance. If the issue is relatively straightforward and can be addressed through a concise analysis, another format, such as an article, may suffice.
4. **Time Sensitivity:** Consider the urgency and time sensitivity of the ethics issue balanced against the impact on legal practice. A formal advisory ethics opinion requires at least one 90-day public comment period and approval by the Regulation and Discipline Committee of the State Bar's Board of Trustees. A formal opinion typically takes one year or more from initial consideration through final adoption. Articles can be published more quickly and can be updated as needed if there are likely changes to the area of law or relevant technology.
5. **Resource Allocation:** Consider the available resources, time, and expertise within the committee, as well as other committee priorities. Drafting a formal advisory ethics

opinion requires a rigorous process of research, analysis, review, and public comment involving a considerable investment of committee resources.

6. **Target Audience:** Evaluate the target audience for the advice or information. If the primary audience is legal professionals seeking practical guidance on ethical dilemmas, an article may be acceptable. If the target audience is broader, including nonattorneys, legal scholars, and others, a formal advisory ethics opinion that provides specific recommendations and analysis will be more beneficial.

DRAFT



The State Bar of California

DRAFT COPRAC WORKPLAN

State Bar 2022-2027 Strategic Plan:

Goal 3: Protect the Public by Regulating the Legal Profession

Promote the ethical and competent practice of law and prevent misconduct by providing education, resources, and support for the legal profession.

Committee Purpose: The Committee on Professional Responsibility and Conduct (COPRAC) includes 12 members and a nonvoting advisor appointed by the Board of Trustees (Board). The charge of COPRAC is to address matters involving professional ethics to facilitate compliance by licensees with their ethical duties. The committee also addresses certain matters concerning mandatory fee arbitration under Article 13 of the State Bar Act. (Bus. & Prof Code, §§ 6200 - 6206.)

The committee's work includes:

- Drafting advisory opinions on issues of professional ethics based on questions submitted to the committee or developed by the committee on its own initiative;
- Drafting fee arbitration advisories providing guidance to fee arbitrators administering attorney-client fee disputes; conducting studies;
- Providing advice to the Board on matters concerning professional responsibility;
- Studying and recommending changes to the Rules of Professional Conduct;
- Sponsoring educational and outreach programs, including an annual ethics symposium; and
- Addressing emerging ethics issues through opinions, articles, and other guidance.
- The committee does not advise on questions of law.

Workplan Purpose: In furtherance of COPRAC's purpose, this workplan sets milestones and intermediary deadlines to ensure efficient and effective functioning of the committee and to increase the production of ethical guidance for lawyers concerning their ethical obligations.

Workplan Goals:

1. Annually:
 - Establish Committee Roles and Responsibilities:
 - Seek volunteers for specific, recurring tasks

- Consider drafting teams for Emerging Issues (Ethics Alerts, MCLE Self-Study Articles) and Education/Outreach (including Ethics Symposium)
 - Define Priorities and Topics: Set annual goals for publication of formal opinions, Ethics Alerts, and Self-Study Articles.
 - 2 Formal Opinions
 - Quarterly Ethics Alerts
 - 3-5 Self-Study Articles
2. Quarterly:
- Identify key priority areas and topics for the committee's opinions, articles, and other guidance and determine preferred format for topic.

OPINION DRAFTING

THIS IS THE COMMITTEE'S PRIMARY MISSION AS DEFINED BY BOARD OF TRUSTEES. OPINIONS SHOULD BE RESERVED FOR SIGNIFICANT TOPICS THAT ARE UNLIKELY TO EVOLVE IN 5 OR MORE YEARS, TOPICS OF GENERAL APPLICABILITY, TOPICS REQUIRING SIGNIFICANT ANALYSIS.

The process: recommended timeline approximately 1 year

- (1) Review Proposed Topic and Staff Recommendation – Purpose is to determine whether the committee desires to take up the proposed topic as a formal opinion, address in another format, or decline to opine. Topics will be considered on a quarterly basis unless there is a need for more immediate consideration.
- (2) Issue Outline (at next meeting following initial assignment) – Purpose is to determine whether the committee should consider preparing a formal opinion (if not, "decline to opine"), and to determine what facts and issues to consider. Staff, in collaboration with the drafting team, will prepare an issue outline. The issue outline is submitted for inclusion on the next meeting agenda for discussion and consideration of other committee members' comments at meeting.
- (3) Opinion Outline – Purpose is to allow the committee to decide if the opinion is going in the right direction before the full opinion is drafted. Staff, in collaboration with and input from the drafting team, will prepare an opinion outline. The opinion outline is submitted for inclusion on the next meeting agenda for discussion and consideration of other committee members' comments at next meeting.
- (4) Initial Draft of Opinion – Staff and the drafting team will determine who will lead drafting of the opinion. The opinion will be shared with the full committee for advanced input,

provided to staff by email, and discussed at the meeting. Substantive revisions will be incorporated into the revised draft opinion for the next meeting.

- (5) Revised Draft Opinion – Staff and the drafting team will incorporate committee revisions from prior meeting and any other drafting team revisions. The opinion will be shared with the full committee for advanced input, provided to staff by email, and discussed at the meeting. The committee should seek to issue the revised draft opinion for an initial public comment period.
- (6) Summary of Public Comment and Drafting Team Response/ Proposed Revised Opinion – Staff will compile and summarize, if necessary, the public comments and provide such comments to the drafting team. Staff and the drafting team will meet and work on the opinion to incorporate public comment revisions and committee input. The full committee will receive a public comment summary/response and the revised opinion at the meeting immediately after the end of the public comment period. If there are substantive revisions, the committee will vote to recirculate the opinion for a second public comment, typically 30 days. The State Bar Office of General Counsel assists in considering whether further public comment is warranted.
- (7) Summary of Public Comment and Drafting Team Response/ Proposed Revised Opinion – Staff will compile and summarize, if necessary, the public comments and provide such comments to the drafting team. Staff and the drafting team will meet and work on the opinion to incorporate public comment revisions and committee input. The second public comment summary/ response and the revised opinion should be provided to the full committee at the meeting immediately after the end of the public comment period. If there are substantive revisions, the opinion is recirculated for third public comment. The State Bar Office of General Counsel assists in considering whether further public comment is warranted.
- (8) Posting on a Board Committee Agenda. Formal publication requires Board of Trustees Committee approval. Staff will coordinate the approval process, including preparing the request for adoption memo, once COPRAC has approved an opinion for publication.

Example Opinion Timeline (2022 – 2023 meeting calendar):

October 2022	December 2022	January 2023	March 2023	May 2023
Topic Considered	Issue Outline Considered	Opinion Outline Considered	Draft Opinion Considered	Revised Draft Opinion Considered/Issued for 90-day public comment

June 2023	July 2023	September 2023	October 2023	December 2023
Out for Public Comment	Out for Public Comment	Revised Opinion Considered / Issued for Second Public Comment	Out for Public Comment	Revised Opinion Considered for COPRAC approval

ETHICS ALERT AND MCLE SELF-STUDY ARTICLES

FOR TOPICAL ADVICE THAT IS SUBJECT TO REVISION, IMPACT A SUBSET OF ATTORNEYS, OR ADDRESS URGENT CONCERNS

The process: recommended timeline 3 months

- (1) Review Proposed Topic and Staff Recommendation – Purpose is to determine whether the committee wishes to take up the proposed topic as an advisory opinion or article. Will be considered on a quarterly basis unless there is a need for more immediate consideration.
- (2) Initial Draft of Article – Submit; consider members' comments at meeting.
- (3) Revised Article Published – Incorporate committee revisions from prior meeting and other drafting team revisions.

NEXT STEPS:

- Conduct a thorough analysis of the pending opinions and approved topics to determine their status, relevance, and significance to the profession and to allow for committee prioritization.