

OPINION REQUESTS FOR CONSIDERATION AT PRESENT

G.1. New Opn. Requests
10-20-23 Meeting
Open Session

Number	Requestor/ Date	Issue / Disposition
<u>2</u>	Attorney (10-03-22)	<p>Re: Can California lawyers aid out-of-state pregnant individuals with seeking abortion care in or involving states that permit abortion access?</p> <p>Status:</p> <p>Disposition:</p>
<u>5</u>	Attorney (01-26-23)	<p>Re: What are the security risks of current AI technologies and can guidelines for AI developers be created to safeguard confidential information</p> <p>Status:</p> <p>Disposition:</p>
<u>6</u>	Attorney (8-22-22)	<p>Re: Amendment to Rule 7.2 “Advertising” with bolded language:</p> <p>"This rule permits public dissemination of accurate information concerning a lawyer and the lawyer's services, including for example.....; .and other information that might invite the attention of those seeking legal assistance; when advertising or reporting results, cite client actual results net of fees and costs. This rule also prohibits the dissemination of false or misleading information, for example, an advertisement that sets forth a specific fee or range of fees for a particular service where, in fact, the lawyer charges or intends to charge a greater fee than that stated in the advertisement or, for example, that guarantees results.</p> <p>Status:</p> <p>Disposition:</p>
<u>8</u>	Attorney (8-30-23)	<p>Re: I would like to propose a rule that requires attorneys, when discussing a case publicly, to disclose if they represent, or are likely to be representing one of the parties. I think this is in line with attorneys’ ethical responsibility of professionalism and candor to the public. Well-known attorney may be offering what is presented as an impartial expert opinion, when in fact they may be trying to sway public opinion, or perhaps even influence the sentiments of potential jurors in high profile cases.</p> <p>Status:</p> <p>Disposition:</p>
<u>110</u>	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</p>

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		<p>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: Hold for future consideration. 12-2-22</p> <p>Disposition:</p>
111	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: Hold for future consideration. 12-2-22</p> <p>Disposition:</p>
112 (AA)	Staff	<p>Re: How to handle mediation confidentiality (<i>Cassell</i> case)</p> <p>Status: Hold for future consideration. 12-2-22</p> <p>Disposition:</p>
113	COPRAC	<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: Hold for future consideration. 12-2-22</p> <p>Disposition:</p>
100	COPRAC	<p>Re: Gifts to indigent clients</p> <p>Status: Hold for future consideration. 12-2-22</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: Hold for future consideration. 12-2-22</p> <p>Disposition:</p>
102	COPRAC	<p>Re: Can a departing attorney take their work-product with them?</p> <p>Status: Hold for future consideration. 12-2-22</p> <p>Disposition:</p>

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<u>104</u>	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: Hold for future consideration. 7-26-19</p> <p>Disposition:</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>
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: Hold for future consideration. 6-2-17</p> <p>Disposition:</p>
XXX	COPRAC (12/02/22)	<p>Re:</p> <p>Status:</p> <p>Disposition:</p>

IN PROGRESS

Number	Requestor/ Date	Issue / Disposition
2	COPRAC	<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: In Progress (meeting date)</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: In Progress (meeting date) move off of list</p>
109	COPRAC (12/02/22)	<p>Re: Scope of mediation privilege and what use can be made of information that only comes from mediation and other proceedings such as a State Bar Complaint.</p> <p>Status: Hold for future consideration. 12-2-22</p> <p>Disposition: ACCEPTED</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 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.</p>

IN PROGRESS

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		<p>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: In Progress (21-0003) remove</p>
<u>103</u>	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: In Progress (meeting date) remove</p>

DECLINE TO OPINE

Number	Requestor/ Date	Issue / Disposition
##	Attorney (Name) Date	Re: Status: Disposition at 7/26/19 meeting: DECLINE TO OPINE
3	Attorney (01-26-23)	Re: If Party A makes the submission that the arbitration cannot be completed in 4 hours, and if the arbitration panel agrees, and the other party (Party B) believes that the arbitration will not take longer than 4 hours to complete, and refuses to pay the compensation to the panel; has Party B failed to participate as required under the Rules and therefore is deprived of his right to arbitration? Or, alternatively, if Party A pays for the compensation of all arbitration panel members in order to proceed with the arbitration, does Party B's share of the compensation merely become part of the calculations for the Award? Does the panel have jurisdiction to make such an Award. Status: Disposition: 5/12/23 meeting DECLINE TO OPINE
5	Attorney (4-3-23)	Re: Is an attorney acting within ethical guidelines if he discloses information learned through the representation of a deceased client, a convicted murderer, in order to prevent the ongoing hard and wrongful execution of a death row inmate, whose conviction and death judgment resulted from a murder potentially committed by the deceased client and/or aided by her false testimony at his trial? Status: Disposition: 5/12/23 meeting DECLINE TO OPINE
1	Attorney (09-26-22)	Re: If a mechanism for allocating overhead charges in a written fee agreement is arbitrary, in that the mechanism is not rationally related to the actual overhead incurred by an attorney, is it unethical to include that mechanism in a fee agreement, even if the fee agreement is agreed to beforehand by a client? Status: Disposition: 5/12/23 meeting DECLINE TO OPINE