

OPINION REQUESTS FOR CONSIDERATION AT PRESENT

G.3. New Opinion Topics
06-21-24 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: Discussed at a high level at the May 12, 2023, COPRAC meeting. Considered amending or updating the marijuana opinion to incorporate this concept and address rule 8.3 to some degree. Discussed at 12/1/23 meeting. Working group to look into BP code and report back to State Bar. Brandon, Eleanor, Sarah added to working group</p> <p>Disposition: HOLD</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>9</u>	State Bar Staff	<p>Re: ABA Model Rule 1.16</p> <p>Status: Discussed at 12/1/23 meeting. Ravi, Munoz and Banola making recommendations at next meeting</p> <p>Disposition: HOLD</p>
<u>10</u>	State Bar Staff	<p>Re: Updates to Diminished Capacity Opinion (2021-207)</p> <p>Status: Discussed at 12/1/23 meeting. Staff can present future findings</p> <p>Disposition: HOLD</p>
<u>11</u>	Attorney 03-19-24	<p>Re: Ethics implications for attorneys who provide services related to registering business organizations, particularly in light of the Corporate Transparency Act (CTA).</p> <p>Status:</p>

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Number	Requestor/ Date	Issue / Disposition
		Disposition:
<u>12</u>	Out-of-State Attorney 3/25/24	Re: Can law firm technology service pay commissions/bonuses/referral fees for sales of their service to law firms Status: Disposition:
<u>13</u>	Attorney (4/16/24)	Re: May an attorney employed by a government agency disclose documents in that attorney's possession that are subject to attorney-client communication and attorney work product privileges to that agency's auditors for disclosure in a publicly-issue audit report? Status: Disposition:
<u>14</u>	Attorney (5/29/24)	Re: What are a school's ethical duties with respect to the retention, storage, security, custody, and disposition of client files belonging to a legal clinic, when a law school closes? Does its proposed document retention policy comply with these obligations? Status: Disposition:
<u>15</u>	Attorney (5-16-24)	Re: Request to opine on if certain activities are unauthorized practice of law. Status: Disposition:
<u>110</u>	Out-of-State Attorney 08-09-21	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? 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? Status: Hold for future consideration. 12-2-22 Disposition:
111	COPRAC	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

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		and the process of turning it over. Status: Hold for future consideration. 12-2-22 Disposition:
112 (AA)	Staff	Re: How to handle mediation confidentiality (<i>Cassell</i> case) Status: Hold for future consideration. 12-2-22 Disposition:
113	COPRAC	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? Status: Hold for future consideration. 12-2-22 Disposition:
100	COPRAC	Re: Gifts to indigent clients Status: Hold for future consideration. 12-2-22 Disposition:
101	COPRAC	Re: Office sharing with people not part of the law firm and the ethical implications involved. Status: Hold for future consideration. 12-2-22 Disposition:
102	COPRAC	Re: Can a departing attorney take their work-product with them? Status: Hold for future consideration. 12-2-22 Disposition:

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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>

IN PROGRESS

Number	Requestor/ Date	Issue / Disposition
109	COPRAC (12/02/22)	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. Status: Hold for future consideration. 12-2-22 Disposition: ACCEPTED

DECLINE TO OPINE

Number	Requestor/ Date	Issue / Disposition
##	Attorney (Name) Date	Re: Status: Disposition at 7/26/19 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
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
5	Attorney (01-26-23)	Re: What are the security risks of current AI technologies and can guidelines for AI developers be created to safeguard confidential information Status: Discussed at 12/1/23 meeting Disposition: DECLINE TO OPINE

DECLINE TO OPINE

Number	Requestor/ Date	Issue / Disposition
7	Attorney (6/27/23)	<p>Re: Does an attorney, serving as elected official of a municipality, and charged with approving employment agreements submitted to city employees, have the ethical duty or legal obligation to recuse themselves from voting on employment contracts, drafted by the City Attorney, that contain language that is illegal?</p> <p>Status: Discussed at 12/2/23 meeting</p> <p>Disposition: DECLINE TO OPINE</p>
8	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: Discussed at 12/1/23 meeting</p> <p>Disposition: DECLINE TO OPINE</p>

COPRAC OPINION LOG

Interim No.	Topic	Working Group	Last Discussed	Last Action	1 st Public comment	2 nd Public comment	Comments
19-0001	Trust Accounts and Use of Credit Cards	Koss	Oct-19	Issues Outline			Converted into an MCLE article. Declined to move forward.
19-0002	Indemnity/Hold Harmless Settlement Agreements	Fields Basner	Oct-19	Issues Outline			On indefinite hold as of 10/19 meeting.
19-0003	Illegal Contract Provisions	Banola Piondexter	Dec-23	Prepare revised opinion	2/21 - 90 day	10/21 - 60 day	Declined to move forward following statutory changes.
19-0004	Client Files Release and Retention Duties	Guzman Krueger Mercado Poindexter Ravi	May-24	Opinion outlines/revised draft	8/22 - 60 day		
20-0001	Lawyer as Expert Witness	Banola (L) Krueger Mark O'Rielly	<i>May-24</i>	Pending changes after 1st round public comment	5/2023 - 90 day		
20-0002	Succession Planning	O'Rielly (L) Krueger Chivers	Jan-24	Voted out for 2nd round of public comment	6/2023 - 90 day	3/2024 - 90 day	
20-0003	Flat Fees and Termination	Mark(L) Krueger Banola	Sep-23	Revise draft			

COPRAC OPINION LOG

Interim No.	Topic	Working Group	Last Discussed	Last Action	1 st Public comment	2 nd Public comment	Comments
20-0005	Conversion Clauses in Contingency Fee Agreements	Krueger(L) Mark Ravi	May-24	Revise draft	7/2022- 90 day		
21-0001	Trail Publicity	Starr Inlender Roche	Oct-21	Opinion outline			
21-0002	Attorney as Advocate	Rowe (L) Fields	Jan-22	Issues Outline			
21-0003	Ethics of In-House Counsel	Chivers (L) Brown Krueger O'Rielly	Jan-24	Voted out for public comment	1/2024 - 90 day		
21-0004	Ethical Obligations of a Deportation Atty	Starr Chivers Fields	Jan-22	Issues Outline			
21-0005	Criminal Defense Attorney Disclosure Obligations	Starr Roche	Jan-22	Issues Outline			
21-0006	Negotiating Carve Out Provisions	Bacon Roche	Dec-21	Issues Outline			
21-0007	Cryptocurrency	Munoz Mercado	May-24	Revise draft			
21-0008	In-House Lawyer Compensation	Mark Roche	Jan-22	Issues Outline			
22-0001	Attorney as Expert Witness and Handling Retainers and Fees	Chivers(L) Mark Krueger	Sep-23	Revise draft			

COPRAC OPINION LOG

Interim No.	Topic	Working Group	Last Discussed	Last Action	1 st Public comment	2 nd Public comment	Comments
2022-0XA (1993-02)	Standard of Review in Fee Disputes Where there is a Written Fee Agreement	Mark (L) Bradley Krueger Banola (A)	May-24	Revise advisory	1/24 - 90 day		
2022-0XB (1998-03)	Determination of 'Reasonable' Fee	Bradley (L) Bacon Krueger (A)	May-24	Approved for Public Comment	5/24 - 60 day		
Rules 3.6 and 4.1		Chivers Poindexter Ravi	May-24	Prepare recommendation			
Consideration of Abortion Access		Krueger	Dec-23	Working group to meet			
ABA Model Rule 1.16		Banola, Munoz, Ravi	Dec-23	Working group to prepare recommendation			
2021-206	Colleague Impairment	Staff	June 2024				

[REDACTED]

[REDACTED]

[REDACTED]

I concur that soliciting an ethics opinion on this matter is prudent. Not only will it clarify the ethical considerations involved, but it will also serve to inform business attorneys of the pertinent issues and their significance.

I am available for a call to discuss the nuances of this case in greater detail. Kindly let me know your availability, and I will do my best to accommodate your schedule.

Best regards,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Thank you for your email. The Committee on Professional Responsibility and Conduct (COPRAC) focuses on California attorney professional ethics issues, providing advisory ethics opinions on such topics, as well as on mandatory fee arbitration matters. The committee also provides advice to the Board of Trustees on professional responsibility, and studies and recommends changes to the Rules of Professional Conduct.

Based on the information you've provided, I want to confirm that you're asking that COPRAC consider whether to issue an advisory ethics opinion on the issues related to filing a BOI on behalf of a business as required by the CTA? If so, COPRAC will be provided a redacted version of your request, as well as the relevant background materials in considering whether to take up the issue. If you have any additional information you wish to provide, please let me know.

I look forward to your confirmation that you're seeking an ethics opinion, and please let me know if you'd like to have a call to discuss this items in more detail.

Warm regards,

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I hope this email finds you well.

I am writing to request a discussion regarding the ethics implications for attorneys who provide services related to registering business organizations, particularly in light of the Corporate Transparency Act (CTA).

As you may be aware, under the CTA, attorneys who assist in registering corporations are classified as "applicants" and are required to be named in the Beneficial Ownership Information (BOI) filing. This designation raises significant concerns about the potential compromise of freedom within our legal profession.

Given the complexities and legal nuances involved in corporate registrations, it is crucial to address the ethical considerations surrounding this requirement. The inclusion of attorneys as applicants in BOI filings could inadvertently lead to conflicts of interest, erosion of client confidentiality, and challenges in upholding the attorney-client privilege.

I believe it is imperative for the Ethics Committee to convene and deliberate on the potential ethical dilemmas posed by the CTA's implications for attorneys involved in business organization registrations. Our profession's integrity and adherence to ethical standards are paramount, and proactive discussions on this matter are essential to ensure ethical clarity and compliance.

I kindly request that the Ethics Committee schedule a meeting to explore these ethics implications comprehensively. Your expertise and insights will be invaluable in navigating this complex issue and charting a path forward that upholds the highest ethical standards for attorneys in our jurisdiction.

Thank you for your attention to this matter.

I look forward to your prompt response and the opportunity to engage in meaningful discussions on this important topic.

Best regards,



[REDACTED]

I. ISSUES

What are the ethical considerations related to the Corporate Transparency Act (CTA), which require a Reporting Company to report Beneficial Ownership Information (BOI) and Company Applicant Information (CAI) to the Financial Crimes Enforcement Network (FinCEN)?

II. AUTHORITIES

Rules of Professional Conduct (RPC) 1.1, 1.2, 1.2.1, 1.4, 1.5
[Beneficial Ownership Information Report Filing Instructions](#)
[Beneficial Ownership Information Reporting Frequently Asked Questions](#) (FAQ)
[An Ethics Primer on Limited Scope Representation](#) (Ethics Primer)
Nichols v. Keller (1993) 15 Cal.App.4th 1672 [19 Cal.Rptr.2d 601]
Sheppard, Mullin, Richter & Hampton, LLP v. J-M Manufacturing Co., Inc., (2018) 6 Cal. 5th 59 [237 Cal.Rptr.3d 424]
Banning Ranch Conservancy v. Superior Court (2011) 193 Cal.App.4th 903 [123 Cal.Rptr.3d 348]

III. HISTORICAL INFORMATION/LEGAL POSTURE

In 2021, Congress passed the Corporate Transparency Act (CTA), which created a new Beneficial Ownership Information (BOI) reporting requirement for businesses starting on January 1, 2024. The goal of the CTA is part of the U.S. Government's effort to "make it harder for bad actors to hide or benefit from their ill-gotten gains through shell companies or other opaque ownership structures." The Financial Crimes Enforcement Network (FinCEN) has been tasked with compliance and enforcement associated with the CTA.

On November 15, 2022, the National Small Business Association (NSBA) and a majority shareholder of the NSBA (Plaintiffs), filed suit against U.S. Department of the Treasury (Treasury) and the U.S. Government to prevent the enforcement of the CTA on the grounds that it is unconstitutional. On March 1, 2024, the U.S. District Court for the Northern District of Alabama (Court) issued an opinion declaring the CTA unconstitutional and enjoined the Treasury from enforcing the CTA as to the named plaintiffs. On March 11, the Treasury filed a notice of appeal of the Court's ruling. At this point, the only immediate impact is to the named plaintiffs, such that Plaintiffs may not be required to report any BOI. However, the U.S. Government will likely seek a stay of the Court's ruling, thereby allowing the CTA to remain in effect without limitation.

IV. CTA SPECIFICS

The CTA requires various domestic and foreign corporate companies that conduct business in the United States (known as a "Reporting Company"), to report personal identifying information about their owners (known as a "Beneficial Owner"). In addition, the CTA requires a Reporting Company to report personal

identifying information about an individual who directly filed the document that creates or registers the company (known as a “Company Applicant”).

Question E.3. of the FAQ discusses that a lawyer “could be a company applicant, depending on their role in filing the document that creates or registers a reporting company.” Furthermore, a lawyer “may be a company applicant if they directly filed the document that created or registered the reporting company.” The overarching concept is that a Company Applicant is someone who is primarily responsible for directing or controlling the filing, which in many instances, will be a lawyer.

If there are any changes related to a new business name, a change in beneficial owners, a sale that changes who meets the ownership interest threshold of 25%, or any changes to a beneficial owner’s personal identifying information, the Reporting Company must file an updated report no later than 30 days after the date of the change. However, a Reporting Company is not required to file an updated report for any changes to previously reported information about a Company Applicant.

Question K.3 of the FAQ discusses who can be held liable for violating BOI reporting requirements. This section discusses that both individuals and corporate entities may be liable for willfully failing to report complete or updated BOI. However, the FAQ does not address to what extent liability reaches a Company Applicant (lawyer), who provided legal services to Reporting Company strictly for the initial filing. This brief is meant to address the ethical issues related to the aforementioned concern.

V. ATTORNEY ETHICAL CONSIDERATIONS ASSOCIATED WITH INITIAL BOI DISCLOSURE AND CLIENT FAILURE TO SUBSEQUENTLY UPDATE BOI AFTER REPRESENTATION HAS BEEN TERMINATED

At first impression, the question as to whether liability for a Reporting Company for failing to update its BOI would extend to a Company Applicant (i.e., lawyer), is more of a legal question. With that said, please see the following ethical considerations.

A. Limited Scope Representation/Fee Agreement

RPC 1.2 discusses an attorney’s scope of representation. Specifically, RPC 1.2(b) describes that the scope of the representation can be limited, provided limiting the scope is reasonable under the circumstances, is not otherwise prohibited by law, and the client gives informed consent. Furthermore RPC 1.5 discusses that fees for legal services, and any agreement for such legal services, shall not be unconscionable. RPC 1.5(b) discusses various factors to be considered in determining the unconscionability of a fee agreement. While the list in RPC 1.5(b) is not exhaustive, it does provide various factors to consider when coupled with an attorney who is seeking to limit the scope of their representation. This can be memorialized in the engage agreement or an additional memorandum, illustrating that the attorney has fully explained the nature and risks of the arrangement. Once the client understands the consequences of limiting the scope of representation and its potential ramifications, the client can then provide their informed written consent.

Based on the above analysis, an attorney may limit the scope of their representation to the initial BOI filing, provided they adhere to the language in RPC 1.2(b). Based on the vague language in Section K of the FAQ, we are unable to ascertain (nor would we be able to in an ethics opinion) if an attorney assumes any legal liability to Reporting Company if Reporting Company fails to update their BOI.

80 **B. The Duty of Competence**

81 After an attorney has determined that limiting the scope of representation is a viable option, the
82 attorney should consider their competency as it relates to the subject matter of the representation.
83 Generally, RPC 1.1 states that a lawyer shall not intentionally, recklessly, with gross negligence, or
84 repeatedly fail to perform legal services with competence. As discussed in the Ethics Primer, “The
85 competence of an attorney’s performance can become an issue in limited scope matters when the client
86 and attorney disagree over whether the attorney has performance (a) as agreed or (b) as otherwise
87 required.” The latter issuer is analyzed in the case *Nichols v. Keller* (1993) 15 Cal.App.4th 1672 [19
88 Cal.Rptr.2d 601], where an attorney limited the scope of his representation in a workers’ compensation
89 claim but did not include any language related to a liability associated with a potential third-party tort
90 claim. When the client became aware that his tort claim was time barred, he sued his attorney for
91 malpractice.

92 The court addressed an attorney’s duty to advise clients by articulating that an attorney does not need
93 to advise of every possible alternative. However, an attorney should discuss those that may result in
94 adverse consequences if they are not considered as the attorney’s professional advice is being sought
95 specifically for legal matters. To that end, the court stated, “if counsel elects to limit or prescribe his
96 representation of the client, i.e., to a workers’ compensation only without reference or regard to any
97 third party or collateral claims which the client might pursue if adequately advised, then counsel must
98 make such limitations in representation very clear to his client.” Unless such limitations are expressly
99 made to the client and the client’s understanding is memorialized, an attorney likely owes their client a
100 duty of care to advise on available remedies, including third party actions.

101 Please note that a framework agreement between law firm and client that created a “structure for
102 establishing future attorney-client relationships on an ‘as-requested’ basis by the client, and subject to
103 confirmation by the...firm,” does not “create an attorney-client relationship absent an actual request,
104 and acceptance, for representation on a particular matter.” (*Banning Ranch Conservancy v. Superior*
105 *Court* (2011) 193 Cal.App.4th 903 [123 Cal.Rptr.3d 348]). However, “an agreement governing a
106 continuing engagement involving occasional work on employment matters as needed” falls outside the
107 scope of a framework agreement, thereby providing a basis for the attorney-client relationship to
108 continue. (*Sheppard, Mullin, Richter & Hampton, LLP v. J-M Manufacturing Co., Inc.*, (2018) 6 Cal. 5th 59
109 [237 Cal.Rptr.3d 424]).

110
111 When considering the initial issue, an attorney who engages services with a Reporting Company can
112 specify in the engagement agreement as to the exact services being provided. *Nichols* illustrates that
113 while an attorney can limit the scope of their representation to the initial BOI filing, it may be prudent
114 for an attorney to discuss potentially adverse consequences related to the representation, like failing to
115 update a BOI may result in some sort of penalties outlined in the FAQ. *Sheppard* and *Banning Ranch*
116 provide additional context as to whether the attorney-client relationship continues after the initial
117 engagement has completed. The court will evaluate the structure of the engagement agreement to
118 ascertain whether or not there is an ongoing attorney-client relationship.

119 **C. Duty of Communication**

120 With respect to RPC 1.4(b), a lawyer “shall explain a matter to the extent reasonably necessary to permit
121 the client to make informed decisions regarding the representation.” In addition to disclosures related

to limiting the scope of the representation, it may be prudent for an attorney to discuss the potential legal consequences associated with failing to provide an updated BOI, per RPC 1.2(b), Section H and K of the FAQ. This will provide additional context to the client as to further obligations they might have if the representation ends following the initial BOI disclosure.

D. Willfully Failing to Report

Question K.3 of the FAQ describes that “both individuals and corporate entities can be held liable for willful violation” of BOI reporting requirements. Furthermore, question K.3.ii describes that a Company Applicant (i.e., lawyer) could be held liable if the “willfully causes a reporting company’s failure to submit, complete, or update beneficial ownership information to FinCEN.” It remains unclear as to whether a Company Applicant (i.e., lawyer) would remain liable absent a scenario where there is some sort of willful action taken by the attorney that prevents Reporting Company to update their BOI.

VI. CONCLUSION

Ultimately, an attorney may limit the scope of their representation as it relates to the initial BOI filing. It is important to consider *Nichols, Sheppard, and Banning Ranch* when analyzing scope of the representation and an attorney’s duty of competence. In addition, it may be prudent to discuss with the client, any potential ramifications associated with the initial filing of the BOI and any circumstances in which Reporting Company should provide an updated BOI. However, it remains unclear as to whether an attorney will be liable in an enforcement action outside of an instance when a Company Applicant (i.e., lawyer) refuses to provide information to a reporting company or when the Company Applicant (i.e., lawyer) willfully causes the reporting company’s failure to submit an updated BOI.

Allow me to introduce myself: my name is [REDACTED] and I am a member of the California Bar [REDACTED]. I reside in Arizona and am not a member of any local bar associations that provide written opinions. I hope to engage with Omnus Technologies, Inc. and desire an ethics opinion regarding the use of Omnus Technologies, Inc. services in the State of California for lawyers to manage and support their own practices. I have researched this issue in California and found no legal authority that would prevent use of Omnus Technologies, Inc. services in California, saw no authority of any kind precluding these kind of service providers from operating in California and note that similar organizations like CLIO and FileVine already do. Along the same lines, I found no published disciplinary rules or opinions in the State of California that would preclude use of their services and technology platform as depicted herein and no aspect of what is asked below is pending before any Court in the State of California.

I would note that there is an opinion from Utah on this matter and it is attached hereto as an exhibit. Also, I have requested an opinion from Texas, which they have assigned the number PEC No. 24-2.

The specific scenario and background facts for this opinion request are as follows:

Legal Structure & Context.

Omnus Technologies, Inc. ("Omnus") has developed a comprehensive case management, back office, legal support services and technology platform (the "Omnus Platform") for lawyers and law firms that eliminates the day-to-day operational burdens of running a law firm. Its purpose is to empower practitioners by giving them more time, allow a more efficient use of resources and greater focus on serving their Clients, all while improving the quality of their personal and professional lives. Omnus is not a law firm, nor will it provide legal services directly to any Clients. The Omnus Platform will be engaged and operated by an intermediary entity - an Affiliate - licensed by Omnus called Omnus Law Service Co., LLC ("Omnus Services"). Omnus Services is not a law firm and will not provide legal services directly to any Clients. Each lawyer or law firm will direct and oversee use of the Omnus Platform as he/she/it deems appropriate in service of their Client's; neither Omnus or Omnus Services will ever independently advise any client or direct any attorney or law firm as to the practice of law and the representation of their Clients. The Omnus Platform will not be marketed or offered directly to clients or individuals seeking legal services.

It is clear that Omnus is similar in structure to (for example) CLIO FileVine, and other vendors for law firms; it is just more comprehensive in the scope of its offerings but it would always steer clear of the actual practice of law and will never be a law firm and would never interfere in any way with the attorney/client representation.

The Question(s) Presented. Given the foregoing, I seek an Ethics Opinion on the following questions:

Question No. 1. Omnus has advised me and I am aware that other law firm vendors receive referral fees, sales and marketing commissions, and bonus compensation for business development efforts. May Omnus pay - lawyers and non-lawyers alike - referral fees, sales and marketing commissions, and bonus compensation on a recurring basis for successfully selling or facilitating the sale/license of the Omnus Platform for use by Customers (lawyers and law firms) who enter into Services Agreements as Omnus Services Customers who will thereafter use the Omnus Platform to support their practice?

Question No. 2. With respect to Question No. 1, Omnus Services intends to assess recurring subscription or services fees which shall be calculated on a recurring basis based

on law firm gross revenues or dollar volume. Revenues subject to our fee assessment will be pooled and anonymized (there is no mechanism for Omnus Services to discover or associate any revenue with fees paid by any particular Client or know the identity of any Client represented by an Omnus Services Customer (lawyer or law firm)). Would Omnus be at risk by entering into variable and recurring based compensation contracts with lawyers and law firms in exchange for use of the Omnus Platform? Would the attorney?

Question No. 3. Based upon the foregoing circumstances, are there any restrictions that would prevent lawyers and non-lawyers from having equity ownership participation in Omnus Technologies, Inc. or its affiliates?

I thank you for your time and attention to this matter. Please feel free to contact me with any questions.

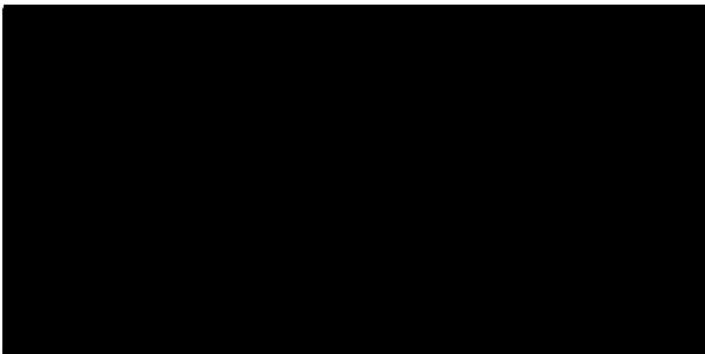


EXHIBIT "A"

Utah Ethics Opinion

Subject: Re: Ethics Question -- Omnus Law Technologies, Inc.

Hello [REDACTED]

Thank you for your email. Before getting to the response, I would like to provide a few reminders. The opinion below is based on my reading of the Utah Rules of Professional Conduct and the limited facts provided. You should read the rules yourself and, if necessary, consult a lawyer of your choice in private practice. In providing this response, no attorney-client relationship is established between you and any lawyer employed by the Utah State Bar.

The short answer is that I believe all of these proposals are permissible because the rules of professional conduct, which govern lawyers, do not apply to your company.

Your first two questions concern whether your company can pay referral fees or variable compensation to lawyers. I believe this is permissible.

The Rules of Professional Conduct govern the situations in which lawyers can share legal fees. For example, rule 5.4(c) provides the conditions under which a lawyer may share legal fees with nonlawyers.

The advisory committee is considering revisions to these rules, but all of the proposed revisions govern what lawyers may do—none of the proposed revisions regulate non-lawyers.

I therefore do not believe the rule applies to your company for two reasons. First, the referral fees or compensation your company would pay are not legal fees because they were not generated from legal work. And second, the rules regulate only lawyers, not nonlawyer companies.

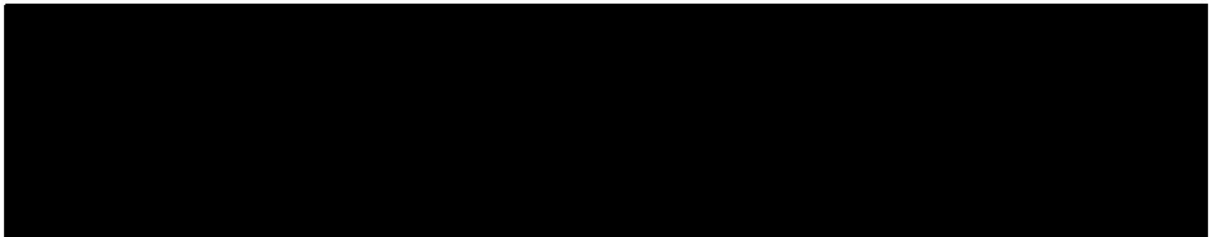
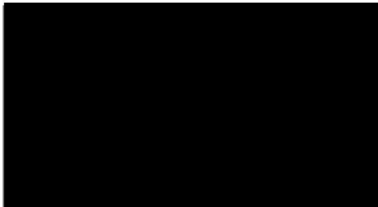
I therefore believe your proposals are similar to credit card companies that reward law firms with points, or legal research services whose price per user is reduced when firms sign larger contracts. Each of these practices is permissible.


Your third question concerns whether lawyers may share ownership in the company. I believe this, too, is permissible.

Rule 5.4(d) is the closest to being on point. Under the rule, lawyers and nonlawyers may share ownership of law-practice organization only if the organization has been approved by Standing Order No. 15 (the Utah Office of Legal Services Innovation).

But again, the rule regulates only what lawyers can do. And it applies only to organizations where lawyers will practice law. Your company does not employ lawyers and does not provide legal services. I therefore do not believe any of the rules of professional conduct purport to regulate who can have equity ownership in your company or its affiliates.

I hope this helps. Please feel free to reach out with any questions. I'm also happy to talk it through if I've misunderstood something.





On behalf of the [REDACTED], I am writing to you in your capacity as the Chair of the California State Bar's Committee on Professional Responsibility and Conduct ("COPRAC") to respectfully request a formal opinion on the following question:

May an attorney employed by a government agency disclose documents in that attorney's possession that are subject to attorney-client communication and attorney work product privileges to that agency's auditors for disclosure in a publicly-issued audit report?

The City [REDACTED] ("City") has an independent City Auditor ("Auditor") whose office is a department within the City. However, under CRPC Rule 1.13, the City as a municipal corporation (either through the City Council or the Mayor depending on the subject matter) is the client of the government law firm. The Auditor has a City Charter-mandated duty to conduct performance audits and fraud hotline investigations of City departments and programs. For example, there may be an audit on the City's public liability risk where the goal of the Auditor is to publicly report findings and recommendations on ways that the City can

mitigate its public liability risk such as by approaching sidewalk repair using a more systematic and prioritized approach. The Auditor has the authority to issue both confidential and public reports.

To gather information for such an audit, Auditor staff may request confidential litigation reports that our attorneys prepare to advise City departments on legal liability risk. Such reports advise on the status of a litigation case by setting forth the attorney's advice on how to proceed as well as the procedural history and facts of the case obtained from discovery. The description of the facts along with other sections of the litigation report may include the attorney's impressions and opinions of the matter, such as regarding the veracity of a disputed fact or how likely the City is to prevail. Some of the information found in these confidential reports can also be found in files of other City departments such as records indicating when the City may have repaired a sidewalk. Litigation reports and other information contained in litigation files may include the attorney's suggestions for avoiding future liability by, for instance, undertaking certain corrective actions.

This Office is concerned that disclosure of otherwise confidential information to the Auditor in this type of circumstance would violate an attorney's duty to maintain the confidentiality of this information under the California Rules of Professional Conduct (CRPC). We are also concerned that it could possibly result in the waiver of any confidentiality privileges such that the actual documents themselves may have to be publicly disclosed in the event that a Public Records Act request were made seeking documentation that the Auditor reviewed to reach its findings and recommendations in the Auditor's public report. In addition, our attorneys are concerned that they could be subject to discipline by the State Bar if they violate the CRPC in any way by complying with such Auditor requests.

In case it is helpful to COPRAC's consideration, City Charter section 39.2 states: "The City Auditor shall have access to, and authority to examine any and all records, documents, systems, and files of the city and/or other property of any City department, office or agency, whether created by the Charter or otherwise. It is the duty of any officer, employee or agent of the City having control of such records to permit access to, and examination thereof, upon the request of the City Auditor or his or her authorized representative." As part of COPRAC's analysis, it may be helpful to opine on whether the City Charter or the California Rules of Professional Conduct take precedent in directing the actions of an attorney subject to both.

In addition, when we say in the question posed that confidential information may be included in a public audit report, we mean that confidential documents of the governmental law firm may themselves be used by the government auditor to locate public documents containing the same information to then reference in the public report. The government auditor would not retain any of the confidential documents. Should it be relevant to your analysis, there is a provision in Gov't Code section 36525, detailing under what circumstances such documents

must be disclosed or may be kept confidential. In general, it states that all books, papers, and correspondence of the governmental auditor are public records. It sets forth three exceptions to their being public record, including when such documents are not used in support of any report resulting from the audit. There is very little case law interpretation of Gov't Code section 36525. Government Auditing Standards describe "support" as audit documentation including evidence that supports the auditor's significant judgments and conclusions. The quantity, type, and content of audit documentation is subject to the auditors' professional judgement. (Government Auditing Standards (2018 Revision Technical Update April 2021), Fieldwork Standards for Performance Audits - Audit Documentation, at 8.134, <https://www.gao.gov/assets/gao-21-368g.pdf>).

Please note that consistent with COPRAC's procedures, we have previously presented this question to the [REDACTED] and they have declined to respond, but indicate that this matter can be submitted to COPRAC for consideration per their attached letter. There is also no pending action or matter regarding this issue that would preclude COPRAC from opining on the question at hand. If you have questions regarding the consideration provided by the [REDACTED], please feel free to reach out to their chair, [REDACTED].

Thank you in advance for your consideration and that of COPRAC. We hope that COPRAC is willing to provide guidance on this important issue. Please let me know if there is any additional information that you would like me to provide. Please also keep me informed of any status updates. If you have any questions, please do not hesitate to contact me.

Thanks,

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]



Via Certified Mail

May 14, 2024



Request for Opinion on Ethical Responsibilities with Respect to Client Files

Dear Committee on Professional Responsibility and Conduct (COLPRAC):

The Women's Employment Rights Clinic of Golden Gate University School of Law requests an opinion on California attorneys' ethical responsibilities with respect to client files. Below please find the hypothetical question posed and a hypothetical description of facts:


Hypothetical Question

What are a school's ethical duties with respect to the retention, storage, security, custody, and disposition of client files belonging to a legal clinic, when a law school closes? Does its proposed document retention policy comply with those obligations?

Hypothetical Facts

A law school closes along with the legal clinics housed within the law school. The clinic has operated for over 30 years and stores both physical and electronic client files. The law clinic's client retainer agreements contain the following language:

The Clinic will retain my file in storage for a period not longer than five (5) years after either the conclusion of the matter described in Section I, above or the termination of the attorney-client relationship, whichever occurs first. I understand that I am entitled to possession of the file at any time, but understand and agree that the file, documents, records, and writing related to the matter described above may be destroyed five years after the conclusion of the matter or the termination of the attorney-client relationship. Any expenses for copying and/or producing the file at my request will be my responsibility.



In light of the clinic's closure and its retainer agreement language, the law school has proposed the following document retention policy:

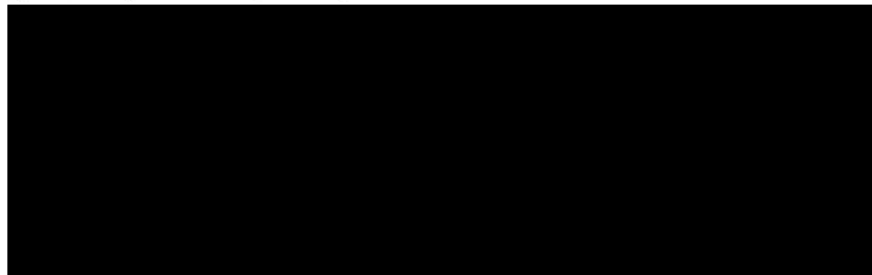
At the close of a client file, all original or intrinsically valuable documents are returned to the former client. Therefore, the university should not have any original or intrinsically valuable documents in its possession. Nonetheless, if any are found, the university will return them to the former client.

The university will purge all other documents pre-dating June 1, 2017. The university will destroy physical and electronic records using a method of destruction that will ensure no breach of confidentiality.

The university will scan all physical files that were closed after June 1, 2017, save electronic copies of them, and retain them for a period of five (5) years from the date of notice to clients about clinic closure and destruction of files or seven years from the date of file closure whichever date is earlier.

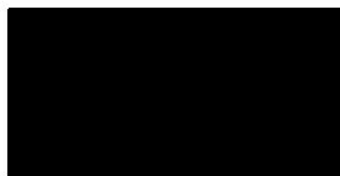
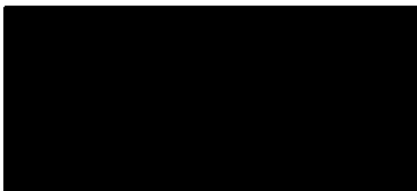
The university will designate a custodian of records and a secure electronic space for the storage of former client files and will ensure confidentiality of client records. Former clinic clients will be provided a notice via certified mail containing the contact information of the custodian of records to request their files. However, no former client will be denied a copy of their file due to non-payment. The custodian of records' information will also be available on the clinic's website which will be maintained by the University for a period of five years.

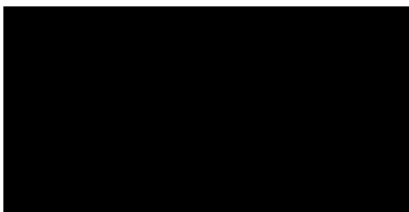
Please let us know if you require any additional information. All follow-up communication regarding this request for opinion, should be directed to:



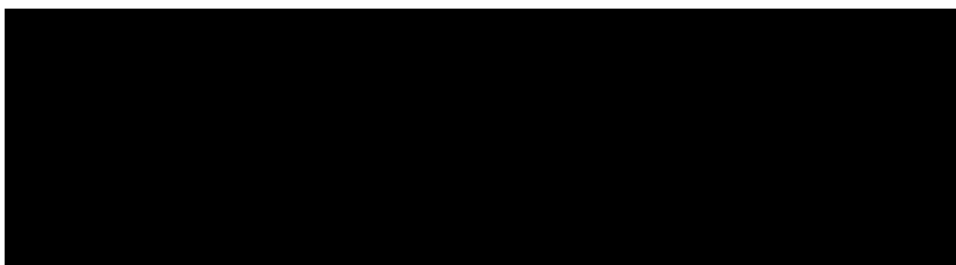
Thank you for your consideration of this request.

Sincerely,





May 16, 2024



Re: Request for Formal Opinion Regarding Potential Unauthorized Practice of Law

Dear Committee on Professional Responsibility and Conduct (COPRAC),

I am a licensed California attorney employed by [REDACTED], which provides a technology platform assisting pro se litigants in small claims court. As part of my ethical duties as an attorney, I have acted to prevent [REDACTED] and its employees from offering individualized responses to client questions that I believe California might consider to be the unauthorized practice of law. I do not, in my role at [REDACTED], have time to review all of our staff's correspondence with our clientele, and so I have warned [REDACTED] and its staff not to provide individualized responses. Sometimes, [REDACTED]'s staff receives questions from our clients to which there are uncontroversial and correct answers, but I have taken the position that our staff may not provide these sorts of individualized answers because I believe I have a duty to prevent them from engaging in what California may believe is the unauthorized practice of law.

However, I find myself with a conundrum: I do not wish to violate my duties as an attorney, but I also have a duty to advocate for [REDACTED] and allow it to exercise its full legal rights. Recently, outside attorneys have raised questions about whether my approach is correct, opining that some of the responses I have prevented [REDACTED] from giving is not the unauthorized practice of law at all. I therefore seek this committee's guidance. I have attached to this letter (as Appendix A) actual consumer questions [REDACTED] has received, along with draft responses from non-lawyer staff at [REDACTED] that I believe would have been considered the unauthorized practice of law. **To be clear, these responses were never sent because of concerns about the unauthorized practice-of-law.** I am seeking the committee's opinion on

whether I was correct in believing I had a duty to prevent [REDACTED] from sending these responses or whether I should instead permit [REDACTED] to provide substantially similar responses to substantially similar questions in the future.

Your expertise would be invaluable in guiding us to provide accessible legal information while upholding legal standards. In the absence of the committee's advice, I will face an irreconcilable dilemma between my duty to prevent the unauthorized practice of law on the one hand and my duty to [REDACTED] on the other.

[REDACTED]

APPENDIX A

Example 1: Do I Have Enough to Sue?

[REDACTED]

"I have a question regarding whether I have enough information for file a claim or sue someone. My spouse lost his keys at his workplace. He then proceeded to call me so that I could pick him up and find out a solution. He owns a Chrysler 300, 2011. We searched online and found that a locksmith website called [REDACTED] gives you the option for a locksmith to go to your vehicle and make an extra key. We then decided to call this website and they had said to go to our car costs 29.99. Soon after the locksmiths arrived, they made us a key but the problem was that it did not start the vehicle, just lock and unlock the doors. They charged us \$480 for this service even though it did not work. At the moment, we felt as if we needed to pay that amount but now, it feels like we were taken advantage of. Also, when looking at the receipt, the total of all items does not add up to \$480. Before the locksmiths gave us our receipt, they had told us to sign on a dotted line to be able to get a receipt. We did not see that it said "no refunds." In an intense and desperate moment, we followed all instructions. Is it possible to get file a claim for a refund for this situation?"

Draft response [REDACTED] **did not provide:** Based on your description, it appears that you may be able to claim one, several, or all of the following: 1. While you agreed to pay \$29.99 for them to go to your car, they failed to disclose the terms of the agreement for the actual making of the key and therefore there's no agreement. 2. They breached the agreement by charging you inappropriate fees. 3. They falsely told you that the key would start the car when it wouldn't. Whether these claims are valid or not would depend on your ability to prove them in a court of law. You can use our system to help you learn more about these claims, and any additional claims that may apply to your case. You can start by clicking on this link.

Example 2: Venue Advice

[REDACTED]

"The person who owns the business that has failed to return my payment for construction materials after I canceled the order within (a matter of less than three hours I believe) lives in Oakdale where his business is located . I live in [REDACTED]. Can I file the action for a hearing here in [REDACTED] county and he would be required to appear here for that hearing? I can only imagine how busy you are. Thank you for your time with this. In my 83rd year of life and battling multiple health issues , it would be too much for me to go to [REDACTED] if I need to file the action there."

Draft response [REDACTED] **did not provide:** The jurisdiction depends on the terms of the agreement that was signed. Some agreements specify the jurisdiction where lawsuits must be filed. If a jurisdiction is not specified, then you would need to identify a justification for the [REDACTED] county court to exercise jurisdiction over that business. Our website contains educational articles on jurisdiction. Even if you have to file in [REDACTED], some courts may be willing to accommodate remote hearings. You would need to check with the court clerk in that court to find out if you can get accommodation.

Example 3: Accused of Uninhabitable Rental

[REDACTED]

“I filed an unlawful detainer against a tenant who has not paid for 6 months, the answer accused me of not maintaining a habitable rental , retaliation repair and deduct , and that they have medical bills i should pay for, all are lies but ,i am struggling to know what to do next. it is very disappointing to finally find a site like yours, but have no help available.”

Draft response [REDACTED] **did not provide:** What the tenant has responded with are called defenses. These are arguments that a defendant can raise in court to mitigate your claim or the amount of damages they would have to pay. You can use our system to learn about the counter-arguments that you can make to some or all of these defenses.

Example 4: Unpaid Child Support

[REDACTED]

“I only have verbal dates that I remember when my ex bf and I made an agreement that if he wanted to see his daughter he must help out financially. I can show bank statements as to when he first paid and as to when he suddenly stopped when his lawyer told him he doesn’t ever have to pay me child support again. He hasn’t paid for over a year and is fighting child support now. I have my mother as a witness to when we made our agreement but again that’s it w/ bank statements. Is this enough to take my ex to small claims court?”

Draft response [REDACTED] **did not provide:** Verbal agreements are valid agreements. You can use your testimony, your mother’s testimony, and evidence of your ex bf performing to demonstrate that there was an agreement. There’s also child support laws that you can use to pursue child support claims even if there was no agreement.

Example 5: Room Rental Agreement

“This our contract, i just stayed 30 days, and verbally told her that i was gonna be the rest of the mint 15 days before, Do I have to let her know 1 month in advance??

[Client attached agreement to the email]

Draft response [REDACTED] **did not provide**: I assume that you’re asking if you have to give her 30 days advance notice of the rental agreement termination. According to the agreement, it does say so unless you two have another written agreement saying otherwise.