

**THE STATE BAR OF CALIFORNIA
STANDING COMMITTEE ON
PROFESSIONAL RESPONSIBILITY AND CONDUCT
FORMAL OPINION NO. 2008-175**

ISSUES: What are a successor attorney's ethical obligations when her client in a contingency fee matter instructs her not to notify prior counsel, who has a valid lien against the recovery, of the fact or the amount of a settlement?

DIGEST:

1. When a client instructs successor counsel not to disclose a settlement to a prior counsel with a valid lien, successor counsel must advise the client of the adverse ramifications of concealing the settlement, including a potential claim by prior counsel against the client. Should the client persist, successor counsel must nevertheless disclose the settlement to prior counsel.
2. A lawyer may not reveal confidential client information except with the consent of the client or as authorized or required by the State Bar Act, the Rules of Professional Conduct, or other law. Disclosure is required by law to fulfill the attorney's fiduciary duties to prior counsel. Disclosure is also authorized by law to enable both attorneys to protect their right to recover fees.
3. While the successor attorney is both obligated and permitted to disclose the fact and the amount of the settlement to the prior attorney, successor counsel may not disclose anything more to the prior attorney, without the client's consent, including the client's demand that the fact and the amount of the settlement be concealed from the prior attorney.
4. Once prior counsel is notified, both attorneys must remain mindful of their duty of confidentiality to the client in attempting to reach an accord, amicably or through legal process, on the proper allocation of fees. Moreover, should the attorneys resort to legal process to resolve any dispute over allocation of the fee, successor counsel should provide the client with notice and an opportunity to participate. In any legal proceeding, the presiding officer will be in a position to limit the disclosure of confidential information appropriately.

**AUTHORITIES
INTERPRETED:**

Rules 3-100, 3-110, 3-500, 4-100, and 5-200 of the Rules of Professional Conduct of the State Bar of California.

Business and Professions Code sections 6068, subdivisions (d), (e), and (m), 6106, and 6147.

STATEMENT OF FACTS

Client retains Attorney A to represent him in a legal malpractice claim against Former Attorney. A written fee agreement between Client and Attorney A states that Attorney A will be paid a contingency fee of 25% of Client's recovery against Former Attorney if settled before the filing of a complaint, and 1/3 of any recovery obtained after suit is filed. Attorney A's fee agreement complies in all respects with Business and Professions Code section 6147 and includes a valid and enforceable charging lien.^{1/}

^{1/} A charging lien is an attorney's lien for compensation against the fund or judgment the attorney recovers for the client. *Fletcher v. Davis* (2004) 33 Cal.4th 61, 66 [14 Cal.Rptr.3d 58].

Attorney A undertakes an extensive review of the underlying matter in which Former Attorney represented Client. Upon completion of that review, Attorney A advises Client of problems with the case against Former Attorney, and asks Client to authorize him to settle for \$150,000 before filing suit. Client, who believes his case against Former Attorney is worth at least \$1 million, rejects Attorney A's advice, promptly terminates Attorney A, and demands the return of his file. Attorney A complies.

Thereafter, and unbeknownst to Attorney A, Client retains Attorney B to pursue the malpractice case against Former Attorney. Attorney B's fee agreement with Client also calls for Attorney B to receive 1/3 of any recovery after suit is filed and includes a valid charging lien. In the course of one of their early consultations, Client tells Attorney B about Attorney A's prior involvement in the matter.

After months of intensive litigation, Client settles his malpractice case against Former Attorney for \$150,000. Attorney A is not aware that the legal malpractice case has been filed so he has not filed a notice of lien. On the defense side, no one is aware of Attorney A's lien as he was discharged prior to suit being filed. As a result, the settlement check is made payable solely to Client and Attorney B.

Having learned of the terms of the original fee agreement between Client and Attorney A, Attorney B presents Client with an accounting showing \$100,000 payable to Client and \$50,000 in attorney's fees to be divided between Attorney B and Attorney A.

Client endorses the \$150,000 check for deposit into Attorney B's Client Trust Account ("CTA"), demands the immediate payment of the \$100,000 due him, and signs the accounting after adding the following handwritten statement: "I authorize the payment of \$50,000 in attorneys' fees to Attorney B. I prohibit payment of any fee to Attorney A, and I prohibit Attorney B to disclose the fact or the amount of the settlement to Attorney A."

The Committee has been asked to provide guidance to Attorney B on her ethical responsibilities in this situation.

DISCUSSION

1. Attorney B's Ethical Responsibilities to Client Regarding Disbursement of the Undisputed Funds Held in Attorney B's CTA

Pursuant to Rule of Professional Conduct 4-100(B)(4),^{2/} an attorney must promptly pay, as requested by the client, any funds in the attorney's possession which the client is entitled to receive. Settlement funds in an attorney's CTA are funds in an attorney's possession.

Both Attorney A and Attorney B contracted to receive 1/3 of the recovery after suit was filed. As a result, the total due to both attorneys is limited to 1/3 of the recovery with the amount owing to Attorney A to be determined based upon a *quantum meruit* analysis. (*Fracasse v. Brent* (1972) 6 Cal.3d 785, 791 [100 Cal.Rptr. 385]; *Spires v. American Bus Lines* (1984) 158 Cal.App.3d 211, 215-216 [204 Cal.Rptr. 531]; *Cazares v. Saenz* (1989) 208 Cal.App.3d 279, 288-289 [256 Cal.Rptr. 209].) As there is no dispute as to Client's right to receive \$100,000, representing 2/3 of the recovery, Attorney B is ethically obligated to release \$100,000 to Client promptly.

The ethical dilemma concerns how Attorney B should handle the remaining \$50,000 in her CTA. We begin by analyzing Attorney B's ethical obligations to Attorney A. We then examine Attorney B's ethical obligations to Client regarding those funds.

^{2/} Unless otherwise indicated, all further references to rules are to the Rules of Professional Conduct of the State Bar of California.

2. **Attorney B's Ethical Responsibilities to Attorney A Regarding Disbursement of the Disputed Funds Held in Attorney B's CTA**

In *Johnstone v. State Bar* (1966) 64 Cal.2d 153, 155-156 [49 Cal.Rptr. 97], the Supreme Court held:

“When an attorney receives money on behalf of a third party who is not his client, he nevertheless is a fiduciary as to such third party. Thus the funds in his possession are impressed with a trust, and his conversion of such funds is a breach of the trust.”

Applying this principle, the Supreme Court disciplined a lawyer for failing to honor the lien of a workers' compensation carrier after settling a personal injury action, concluding that the attorney was guilty of commingling funds as well as dishonesty and moral turpitude in violation of Business and Professions Code section 6106. (*Id.* at p. 156.) It is also settled that an attorney who settles a personal injury action and holds funds in her or his CTA is under a fiduciary duty to the medical lienholders. (See, e.g., *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196, 200.)

Although rule 4-100(B)(4) speaks only in terms of the duty to promptly pay or deliver funds held in trust to the client, the Supreme Court and State Bar Court have both repeatedly confirmed that the rule applies to third parties, such as lienholders, as well as to clients. (See, *Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 979 [239 Cal.Rptr. 675] [Rule 8-101, the predecessor to rule 4-100, requiring an attorney to maintain complete records, to render appropriate accounts, and to promptly pay or deliver funds held in trust to a client, applies to third parties as well as clients]; *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, 10 [even though rule 8-101 refers only to meeting obligations to pay clients and not to meeting obligations to pay third parties, the attorney nonetheless violated the rule by failing to honor a medical lien]; *Baca v. State Bar* (1990) 52 Cal.3d 294, 299 (fn. 3) [276 Cal.Rptr. 169] [because attorney liens are payable out of the client's recovery, an attorney who does not honor valid liens payable to another attorney is not only guilty of conversion and acts of moral turpitude, but also violates rule 4-100]; *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17, 19 [“Where an attorney assumes the responsibility to disburse funds as agreed by the parties in an action, the attorney owes an obligation to the party who is not the attorney's client to ensure compliance with the terms of the agreement.”]; and *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622, 633 [Former rule 8-101(B)(4) applied not only to the attorney's obligations to clients, but also to the attorney's obligations to pay third parties out of funds held in trust, including the obligation to pay medical lienholders].)

In California State Bar Formal Opinion No. 1988-101, this Committee addressed the ethical issue posed when a client instructs an attorney not to disburse funds to satisfy a health care provider's lien, but instead to disburse the funds to the client. In that opinion, the Committee cited the comment to ABA Model Rule 1.15 to the effect that a lawyer may have a duty under applicable law to protect third-party claims against funds in the attorney's possession from “wrongful interference by the client” and that lawyer's duties with respect to trust funds held in the lawyer's possession “go beyond those limited solely to the client.” The Committee then concluded that this commentary was “consistent with California law” that an attorney who holds funds on behalf of a non-client third party “is a fiduciary as to that party and is governed by the California Rules of Professional Conduct, even when not acting as an attorney per se in the transaction.” (Citations omitted.) In that regard, the Committee specifically noted that without the consent of both parties who had an interest in the funds (the client and the medical lienholder), the attorney was not authorized to hold the funds in his or her client trust account. The Committee therefore opined that the safest course was for the attorney to interplead the funds so that ownership could be determined by a court.

Consistently, the State Bar Court Review Department (“Review Department”) has stated that in order to meet the fiduciary duty owed to a third party for whom the lawyer holds funds in trust, the attorney has a duty to communicate with the lienholder as to the subject of the fiduciary obligation. (*In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196, 200-201.) (See also Bus. & Prof. Code § 6068, subd.(m) and rule 3-500.)

Additionally, in *In Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91, 111-115, the Review Department found that: (a) an attorney's duty to the lienholder is not limited to withholding funds for the benefit of the lienholder, but also includes a duty to notify the lienholder if a judgment, award or settlement is pending; (b) failure to pay a third-party lien promptly, without justification, constitutes a violation of rule 4-100(B)(4); (c) where a dispute over a lien cannot be resolved through negotiations, the attorney must either pay the lien in full or take

appropriate steps to resolve the dispute promptly, leaving the disputed funds in trust during the pendency of the dispute; and (d) a client's wrongful act, in that case deception, does not justify a failure to promptly resolve a lienholder's claim.

In *Virtanen v. O'Connell* (2006) 140 Cal.App.4th 688 [44 Cal.Rptr.3d 702], the court of appeal addressed a conflict arising from an attorney's duty to a client, on the one hand, and to a client's adversary, on the other hand, when the attorney took on the fiduciary obligations of an escrow holder to both parties.

"The fact that [the attorney] owed duties to his clients does not excuse him for violating his duty to [the third party] . . . [I]f [the attorney] believed that no joint resolution of the conflicting demands was forthcoming, he could have filed an interpleader action. He had a statutorily sanctioned method for dealing with conflicting demands, even when one of those demands came from his own clients. He just chose not to take advantage of that method." (*Id.* at pp. 701-702.)

The attorney in *Virtanen* also claimed that he should not be held liable for breach of his duty to the third party for whom he held funds in trust because he could not defend against the third party's claim without breaching his duty not to reveal confidential communications with his client. The *Virtanen* court rejected that argument, noting that no disclosure of confidential information was necessary for the attorney to address whether he (a) owed a fiduciary duty to the third party with regard to property held in trust, and (b) breached that duty. (*Id.* at p. 702.)

A valid attorney's charging lien in a contingency fee case survives discharge of the lawyer by the client, to the extent of the reasonable value of services rendered prior to discharge. (*Weiss v. Marcus* (1975) 51 Cal.App.3d 590, 598 [124 Cal.Rptr. 297].) Thus, a discharged attorney who obtains a lien in a contingency fee case may maintain claims for money had and received, conversion, constructive trust, and intentional interference with a contractual relationship against the client's successor attorney who fails to honor the charging lien. (*Id.*)

We also note that it is the duty of an attorney to employ, for those matters confided to him or her, those "means only as are consistent with truth." (Bus. & Prof. Code, § 6068, subd. (d); rule 5-200(A).) Thus, an attorney in a fiduciary or confidential relationship with a third party not only must refrain from affirmative misrepresentations, but also has a duty not to conceal material facts. (Civ. Code § 1710, subd. (3); *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 346-347 [134 Cal.Rptr. 375]; *Hobart v. Hobart Estate Co.* (1945) 26 Cal.2d 412 [159 P.2d 958].)

3. Attorney B's Ethical Responsibilities to Client Regarding the Disputed Funds

A. Duty to Advise Client of Reasonably Foreseeable Adverse Consequences of Concealing the Settlement from Attorney A

In the *Matter of Riley*, *supra*, the Review Department held that an attorney who fails to ensure the payment of medical liens breaches ethical duties owed to the lienholders. In that decision, the Review Department also held that the attorney breaches an ethical duty to the client to perform services competently (rule 3-110) by exposing the client to the lienholder's collection efforts. Similarly, in Opinion 1989-1 of the Legal Ethics Committee of the Bar Association of San Francisco, that Committee concluded (citing *Weiss v. Marcus*, *supra*) that a successor attorney should alert the client to the risk of being sued by a discharged attorney should the discharged attorney's lien not be satisfied. (*Id.* at p.2.)

In *Nichols v. Keller* (1993) 15 Cal.App.4th 1672, 1683-1684 [19 Cal.Rptr.2d 601], the court stated:

"One of an attorney's basic functions is to advise . . . Not only should an attorney furnish advice when requested, but he or she should also volunteer opinions when necessary to further the client's objectives. The attorney need not advise and caution of every possible alternative, but only of those that may result in adverse consequences if not considered."

The holding in *Nichols* is consistent with the attorney's ethical duty to keep a client reasonably informed about significant developments relating to the representation. (Bus. & Prof. Code, § 6068, subd. (m); rule 3-500.) Based on these authorities, as well as the authorities discussed with respect to Issue No. 2 above, we conclude that

Attorney B has a duty to inform Client of the risks to Client inherent in the Client's demand to conceal the settlement from Attorney A.

Attorney B should therefore attempt to persuade Client to permit disclosure, explaining the applicable legal and ethical principles, the policies underlying those principles, and the potential adverse ramifications to Client and Attorney B of pursuing the proposed course of conduct. In most cases, a client will heed the attorney's advice and grant permission for the settlement to be disclosed to the discharged attorney, thus resolving the matter. We next examine the ethical considerations at play in the situation where Client, having received Attorney B's advice, nevertheless persists in his demand that Attorney B conceal the settlement from Attorney A.

B. Attorney B's Duty to Maintain Client Secrets and Confidences

Pursuant to Business and Professions Code section 6068, subdivision (e)(1), attorneys have a duty "To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client." The statutory duty of attorneys to preserve client secrets was first codified in California in 1872, and was not qualified by a statutory exception until 2004, when the Legislature carved out an exception permitting disclosure when an attorney reasonably believes disclosure is necessary to prevent a crime the attorney reasonably believes is likely to result in death or serious bodily harm. (Bus. & Prof. Code, § 6068, subd. (e)(2); see also rule 3-100.)

In 2004, the California Supreme Court approved the following language limiting the attorney's ethical duty of confidentiality by approving paragraph [2] of the Discussion of newly adopted rule 3-100: "[A] member may not reveal . . . [confidential] information except with the consent of the client or as authorized *or required by the State Bar Act, these rules, or other law.*" (Emphasis added.)

Although recent, rule 3-100's Discussion paragraph [2] is hardly novel. It has long been recognized that attorneys are authorized by law—specifically, decisional law—to disclose confidential information in aid of their defense to a client malpractice action (e.g., *Glade v. Superior Court* (1978) 76 Cal.App.3d 738, 746-747 [143 Cal.Rptr. 119]), in support of a claim for unpaid legal fees against a client (e.g., *Carlson, Collins, Gordon & Bold v. Banducci* (1967) 257 Cal.App.2d 212, 227-228 [64 Cal.Rptr. 915]), and in defense of a client-initiated disciplinary proceeding (e.g., *Brockway v. State Bar* (1991) 53 Cal.3d 51, 63-64 [278 Cal.Rptr. 836]).

4. Is Disclosure of the Receipt of Settlement Proceeds to Attorney A, Who Has A Valid Lien Against Those Proceeds, Authorized or Required by the State Bar Act, the Rules of Professional Conduct or Other Law?

Based upon the authorities cited in our discussion of Issue No. 2 above, we conclude that disclosure to Attorney A of the fact and amount of the settlement between Client and Former Attorney is both authorized and required under applicable ethical rules and case law.

First, Attorney B is required by law to take affirmative steps to permit Attorney A to assert any claims he has pursuant to his valid lien against the \$50,000 attorney's fee recovery. In this regard, Attorney B is required by law to disclose the fact and the amount of the settlement to Attorney A because, as a fiduciary to Attorney A, Attorney B has an affirmative duty to notify the lienholder of the settlement (*In the Matter of Riley, supra*, 3 Cal. State Bar Ct. Rptr. at pp. 111-115; *In the Matter of Nunez, supra*, 2 Cal. State Bar Ct. Rptr. at pp. 200-201) as well as an affirmative duty not to conceal material facts from Attorney A (Bus. & Prof. Code, § 6068, subd. (d); Civ. Code, § 1710, subd. 3; rule 5-200(A); *Johnstone v. State Bar, supra*, 64 Cal. 2d at pp. 155-156; *Goodman v. Kennedy, supra*, 18 Cal. 3d at pp. 346-347).

Second, disclosure of the fact and amount of settlement to Attorney A is authorized by law. Attorney B cannot unilaterally decide what portion of the \$50,000 total fee can be disbursed from trust to pay her own fee. Thus, without disclosure to Attorney A, Attorney B has no basis upon which to calculate and to remove from trust the portion of the fee she earned, leaving both attorneys uncompensated. In that regard, we note that under California law attorneys are expressly released from the duty to maintain client secrets in order to obtain compensation for services rendered. (See, e.g., *Carlson, Collins, Gordon & Bold v. Banducci, supra*, 257 Cal.App.2d at pp. 227-228.)

While Attorney B is both authorized and required to disclose the fact and the amount of the settlement, there is no justification for her to disclose to Attorney A, without Client's consent, privileged confidential information such as the Client's demand that the fact and the amount of the settlement be concealed from Attorney A. Thus, Attorney B must keep that statement confidential even though it could potentially work to Attorney B's advantage in negotiating with Attorney A over his *quantum meruit* claim.

Once Attorney A has been notified of the settlement, both attorneys must remain mindful of their duty of confidentiality to Client in attempting to reach an accord, amicably or through legal process, on the proper allocation of fees. Moreover, should the attorneys resort to legal process to resolve any dispute over allocation of the fee, Attorney B should provide Client with notice and an opportunity to participate should Client so desire. In any legal proceeding, the presiding officer will be in a position to limit the disclosure of confidential information to the greatest extent possible.

In reaching our conclusion we have undertaken a thorough review of the Committee's prior ethics opinions. Those opinions support our conclusion here as they adopt approaches designed to ensure the attorney is not pressured by a client to engage in conduct that violates the State Bar Act, the rules, or other law in order to preserve client confidential information. (See, e.g., Cal. State Bar Formal Opn. No. 1981-58 [attorneys who found their client's decision not to disclose defects in a building to the tenants morally repugnant (a) owed no fiduciary duty to the tenant/adversaries, and (b) could avoid any perceived risk of complicity in the client's wrongdoing by withdrawing from the representation]; Cal. State Bar Formal Opn. No. 1983-74 (attorney who learns of client's testimonial perjury is ethically obligated to pursue remedial action promptly, and absent a correction by the client must (a) move to withdraw, and (b) if withdrawal is not permitted is precluded from relying upon the perjured testimony);^{3/} Cal. State Bar Formal Opn. No. 1986-87 [attorney concerned that a failure to respond to a court's inquiry regarding a client's prior criminal record could mislead the court could (a) advise the court that his/her silence was not intended as an affirmation of no prior record, and (b) deflect further questions to the prosecutor]; Cal. State Bar Formal Opn. No. 1988-96 [attorney who originally represented both mother and child, learns while representing child only that mother previously misappropriated trust funds (a) may not disclose the information to the court, (b) would ordinarily be required to disclose the information to the child, but (c) had to withdraw from representing the child because the child was not capable of comprehending the disclosure]; Cal. State Bar Formal Opn. No. 1995-139 (in the unique setting of the tripartite relationship in which the attorney has limited duties to the insurer and primary duties to the insured, the attorney may not disclose client confidential information to the insurer, but must withdraw to avoid perpetuating a fraud against the insurer].)

Finally, and of particular significance here, we note that in California State Bar Formal Opinion No. 1996-146, the Committee stated that: (1) a lawyer may not disclose a client's fraudulent conduct; but (2) the lawyer also may not participate in or further such conduct, citing Business and Professions Code section 6068, subdivision (d). (See also rule 5-200(D).) The Committee further found that when a client is engaging in an ongoing fraud, the attorney "must be careful to avoid furthering the fraud in any way." Finally, the Committee concluded that where the fraud persists, the attorney must either limit the scope of the representation to matters that do not involve participation in or furthering of the fraud, or withdraw.

Of course, in our hypothetical, unlike the hypotheticals in most of the Committee's earlier opinions, withdrawal does not prevent Attorney B from participating in or furthering the client's fraud as: (1) there is no representation from which to withdraw as Attorney B has completed her handling of Client's case; and (2) even though Attorney B is no longer attorney of record for Client, she continues to further the fraud by holding attorneys' fees subject to Attorney A's lien in her client trust account without so advising Attorney A or providing him with an accounting.

Applying these authorities to the facts of our hypothetical, it follows that Attorney B had both a legal and an ethical duty to notify Attorney A of the pendency of the lawsuit against Former Attorney once it was filed and now has both

^{3/} In *People v. Johnson* (1998) 62 Cal.App.4th 608 [72 Cal.Rptr.2d 805], the court concluded that if withdrawal is not permitted in this circumstance (a) the attorney should advise the court, in camera, that it would be unethical to put the client on the stand, (b) the court should then allow the client to provide narrative testimony, and (c) the attorney could make no reference to the perjured testimony in closing argument.

a legal and an ethical duty to notify Attorney A of the receipt of funds subject to Attorney A's valid lien so that he may assert his rights to the funds Attorney B is holding in trust for his benefit.

While Attorney B must account to Attorney A for the funds held in trust, she may not disclose to Attorney A, Client's confidential communications regarding Client's desire to conceal all information about the settlement. (Cal. State Bar Formal Opn. No. 1996-146.)

CONCLUSION

A lawyer may not reveal client confidential information except with the consent of the client or as authorized or required by the State Bar Act, the rules, or other law.

An attorney cannot follow a client's direction not to pay a lienholder from settlement proceeds because to do so would be a breach of the attorney's fiduciary duty to the lienholder. The fact that the client directs the attorney not to tell the lienholder about the settlement does not change the result. The attorney is ethically prohibited from concealing from the lienholder funds she holds in trust. The attorney has a duty to render an accounting to the lienholder.

We conclude that disclosure of the fact and amount of the settlement to Attorney A is required by law. More specifically, Attorney B cannot conceal the settlement from Attorney A because in doing so she would be in breach of her own independent ethical duties: (1) not to conceal material information she has a duty to disclose as a fiduciary to Attorney A; (2) to render an accounting disclosing the fact and the amount of the settlement to Attorney A, in his capacity as a lienholder; (3) to pay Attorney A's lien or to take appropriate steps to resolve any dispute over Attorney A's lien promptly so long as the disputed fees remain in her client trust account. (See Bus. & Prof. Code, §§ 6068, subd. (d), 6106, rules 4-100 and 5-200, and other law, including the case law and Review Department authorities cited above.)

We also conclude that disclosure is *authorized* by law because Attorney B cannot unilaterally determine what portion of the \$50,000 held in trust belongs to Attorney A and what portion belongs to her, and thus disclosure of the settlement represents the only way that Attorney A and Attorney B can protect their respective rights to recover unpaid fees.

Finally, Attorney B cannot disclose the privileged confidential information disclosed to her by Client to the effect that Client sought to defraud Attorney A by concealing the settlement from him

This opinion is issued by the Standing Committee on Professional Responsibility and Conduct of the State Bar of California. It is advisory only. It is not binding upon the courts, the State Bar of California, its Board of Governors, any persons, or tribunals charged with regulatory responsibilities, or any member of the State Bar.