



**THE STATE BAR
OF CALIFORNIA**

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1639

**OFFICE OF PROFESSIONAL COMPETENCE,
PLANNING & DEVELOPMENT**

TELEPHONE: (415) 538-2167

MEMORANDUM

DATE: June 29, 2007

TO: Members of the Board's Regulation, Admissions & Discipline Oversight Committee

FROM: Randall Difuntorum, Director, Professional Competence Programs

SUBJECT: RAD Meeting on July 19, 2007 – Current Year Update on the Status of the Professional Competence Unit

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This memorandum provides an update on the activities of the Professional Competence Unit. In addition to this memorandum, provided are the following: (1) Professional Competence Staff List; (2) Ethics Hotline Activity Statistics; (3) Volume of Ethics Hotline Calls by Paralegal; and (4) Professional Competence Budget Summary – Authorized v. Actuals. Board members with questions may contact me at (415) 538-2161 or Lauren McCurdy at (415) 538-2107.

1. ETHICS HOTLINE

- As of May 31, 2007, 6,240 member inquiries were received with a completion rate of 83%. This completion rate includes distribution of 311 copies of published ethics opinions and other written materials requested by inquirers and 2,595 referrals to information posted at the Bar's website. (As all of the published State Bar Formal Opinions are posted in the Ethics Information Area of the website, there is a decreasing need for distribution by mail.) Of the total calls, 955 were courtesy follow-up calls to members who placed a call to the Hotline, received a call back from Hotline staff but were not available at that time to take the call from the Hotline staff person. These members receive instructions on how to call-in and receive priority handling when they choose to return the Hotline's call at their convenience. However, sometimes they do not call and in those circumstances the Hotline initiates a courtesy follow-up call.
- For the period of April 1, 2007 through May 31, 2007, 6 voluntary satisfaction surveys were received from members who utilized the Ethics Hotline service. Each survey asks for a rating on several specified categories of service, including: satisfaction with the system for handling the calls; helpfulness of receptionist; helpfulness of paralegal; promptness of response; usefulness of materials sent; whether the inquirer would recommend the Hotline to others; and whether they received the assistance they needed. The 6 surveys received gave the Hotline high marks. In addition, the Hotline received a letter of commendation for a staff person who assisted the member with an inquiry. (A copy of the surveys and the letter received are attached.)

2. COPRAC

- Since the last Professional Competence status report submitted for the Board Committee's May 10, 2007 meeting, COPRAC met on May 18, 2007 at the Los Angeles State Bar office; by teleconference on June 15, 2007; and, on June 22, 2007 at the San Francisco State Bar office.
- COPRAC responded to the following three public comment proposals: (1) proposed "California Attorney Guidelines of Civility and Professionalism;" (2) propose amendments to the "California Code of Judicial Ethics;" and (3) proposed changes to the "Mandatory Fee Arbitration Guidelines and Minimum Standards: Current Guideline II (10) and Proposed Guideline 13." (A copy of each comment letter is attached.) Regarding the third public comment matter, representatives of COPRAC worked closely with other stakeholders and the representatives and staff of the Committee on Mandatory Fee Arbitration to develop compromise language addressing concerns previously reported to the Board Committee.
- The following opinion was approved by the Board Committee and published on June 1, 2007:

Formal Opinion 2007-172 (Interim No. 05-0009)

- | | |
|---------|--|
| ISSUE: | <ol style="list-style-type: none">1. May an attorney ethically accept payment of earned fees from a client by credit card?2. May an attorney ethically accept payment of fees not yet earned from a client by credit card?3. May an attorney ethically accept payment of advances for costs and expenses from a client by credit card? |
| DIGEST: | <ol style="list-style-type: none">1. An attorney may ethically accept payment of earned fees from a client by credit card. In doing so, however, the attorney must discharge his or her duty of confidentiality.2. Likewise, an attorney may ethically accept a deposit for fees not yet earned from a client by credit card, but must discharge his or her duty of confidentiality.3. By contrast, an attorney may not ethically accept a deposit for advances for costs and expenses from a client by credit card because the attorney must deposit such advances into a client trust account and cannot do so initially because they are paid through an account that is subject to invasion. |

- At its May 18, 2007 meeting, following post public comment consideration, COPRAC approved the following two opinions for circulation to the Board Committee for the 30-day approval period prior to final publication. These opinions will be circulated to the Board Committee on July 2, 2007 with a deadline for response of August 1, 2007.

Formal Opinion Interim No. 05-0003

- ISSUES:
1. May an attorney, consistent with ethical obligations, deposit a Client's will or other testamentary documents with a private will depository, without the Client's consent?
 2. May an attorney, consistent with ethical obligations, register a Client's will or other testamentary documents with a private will registry, without the Client's consent?

DIGEST: An attorney who retains a client's will or other estate planning documents on deposit may terminate the deposit in accord with the client's instructions and/or consent. If the attorney cannot locate the client, the attorney may only terminate the deposit pursuant to Probate Code § 700, et seq. An attorney may register certain identifying information about a client's will or other estate planning documents with a private will registry if the attorney can determine, based upon knowledge of the client, the client's matter and investigation of the will registry, that registration will not violate the attorney's fiduciary duties of confidentiality and competence.

Formal Opinion Interim No. 05-0006

ISSUE: Is an attorney ethically obligated, upon termination of employment, promptly to release to a client, at the client's request, (1) an electronic version of the pleadings, (2) an electronic version of discovery requests and responses, (3) an electronic deposition and exhibit database, and/or (4) an electronic version of transactional documents?

DIGEST: An attorney is ethically obligated, upon termination of employment, promptly to release to a client, at the client's request: (1) an electronic version of the pleadings, because such items come within a category subject to release; (2) an electronic version of discovery requests and responses, because such items are subject to release as reasonably necessary to the client's representation; (3) an electronic deposition and exhibit database, because such an item itself contains items that come within categories subject to release; and (4) an electronic version of transactional documents, because such items are subject to release as reasonably necessary to the client's representation. Prior to release, however, the attorney is ethically obligated to strip from each of these electronic items any metadata reflecting the confidences and secrets of any client other than the client to whom they belong.

→ COPRAC's Rules Revision Commission Subcommittee is a standing subcommittee of COPRAC that monitors the work of the Rules Revision Commission. A liaison from the subcommittee attended the Rules Revision Commission's meeting on June 8, 2007.

- COPRAC'S Eleventh Annual Statewide Ethics Symposium was held on Saturday, May 19th at Southwestern Law School. The theme was "Ethics Around the Edges," with panels on the following subjects: "Ethics and the Modern Transactional Lawyer," "Ethics at the Edges of Family Law," "Can a Non-Deceiver be a Good Lawyer?," "Corporate Counsel as Counselor, Gatekeeper and Confidant," and, a Rules Revision Commission update. State Bar President Sheldon Sloan provided welcoming remarks, and the keynote speaker was Southwestern Law School Dean Bryant Garth. There were 110 attendees and the event received high ratings. A copy of the activity evaluation form summarizing the attendees' rankings on various criteria is attached.
- COPRAC's next meeting is a two-day meeting scheduled for August 3 & 4, 2007 in Santa Monica.

3. RULES REVISION COMMISSION

- Since the last Professional Competence status report submitted for the Board Committee's May 10, 2007 meeting, the Rules Revision Commission met on June 8, 2007 at the Los Angeles State Bar office. At this meeting, the Commission completed its consideration of the written public comment and testimony received on the 27 proposed new or amended rules distributed for a 120-day public comment period that ended on October 16, 2006. The Commission also finalized a group of five rules for submission to the Board Committee for public comment authorization (see RAD Open Agenda, Consent Item II.F). These five rules would be the Commission's second batch of rule amendments. The table below identifies each of the five proposed rules, the current California rules, and the related ABA Model Rule counterparts, if any.

PROPOSED RULE	CURRENT CALIFORNIA RULE	ABA MODEL RULE
Rule 1.8.3 Gifts from Client	Rule 4-400 Gifts from Client	Rule 1.8(c) Conflicts of Interest: Current Clients: Specific Rules
Rule 1.8.5 Payment of Personal or Business Expenses Incurred by or for the Client	Rule 4-210 Payment of Personal or Business Expenses Incurred by or for the Client	Rule 1.8(e) Conflicts of Interest: Current Clients: Specific Rules
Rule 1.8.11 Relationship with Other Party's Lawyer	Rule 3-320 Relationship with Other Party's Lawyer	(No precise ABA Model Rule counterpart, but see Comment [11] to ABA Model Rule 1.7.)
Rule 1.8.12 Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review	Rule 4-300 Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review	(No precise ABA Model Rule counterpart.)
Rule 8.4.1 Prohibited Discrimination in Law Practice Management and Operation Review	Rule 2-400 Prohibited Discriminatory Conduct in a Law Practice	(No precise ABA Model Rule counterpart, but see Comment [3] to ABA Model Rule 8.4.)

- Among the visitors who attended the June 8, 2007 Rules Revision Commission meeting were the following: George Cardona (Acting U.S. Attorney, C.D. California); Hershel Elkins (Office of the California Attorney General); Kate Flaherty (San Diego District Attorneys Office); and Michael Judge (Los Angeles Public Defender).
- The Commission's next meeting is scheduled for July 20, 2007 and will be held at the Los Angeles State Bar office. Among the items anticipated to be considered at that meeting is proposed amendments to rule 3-300 (Avoiding Interest Adverse to a Client) and rule 4-100 (Preserving the Identity of Funds and Property of Client).
- The Commission participated in COPRAC'S Eleventh Annual Statewide Ethics Symposium held on Saturday, May 19th at Southwestern Law School. Of the five panel presentations, the Commission's presentation received the highest ratings from attendees. The attendees gave the panel an average rating of 4.5 out of a possible 5, in the categories of "Overall Effectiveness;" "Effectiveness of Teaching Methods;" and "Significant Current Intellectual or Practical Content." Among the rule amendment issues highlighted during the presentation was the issue of advanced waivers of conflicts of interest and the issue of maintaining client trust bank accounts in financial institutions located outside of California.

4. COMPETENCE PUBLICATIONS

- Handbook on Client Trust Accounting for CA Attorneys:
As of May 31, 2007, 52 copies have been sold and the online version of the handbook posted at the Bar's website was downloaded 59,968 times.
- California Compendium on Professional Responsibility:
As of May 31, 2007, 61 copies of the Compendium updates were sold. The 2007 Compendium update is in production, with an anticipated publication date of late Summer.
- CA Rules of Professional Conduct & State Bar (a.k.a Publication No. 250):
The 2007 Publication 250 was published and as of May 31, 2007, 853 copies of the 2007 Publication 250 were sold and the online version of the Rules of Professional Conduct posted at the Bar's website was downloaded 7,208 times.

5. COMPETENCE RESOURCES AT CALBAR.CA.GOV

- Newly published Formal Opinion No. 2007-172 was posted at the website.
- The meeting materials for the Rules Revision Commission's June 8, 2007 meeting were posted at the website.
- Updated copy of the *Compendium* index was posted to the website.

cc: Marie M. Moffat
Robert A. Hawley
Doug Hull

Professional Competence Staff List

Professional Competence Staff Positions as of May 31, 2007	
Number of Positions Authorized	14.5
Number of Positions Filled	13.0

Professional Competence Employees as of May 31, 2007	
	Grade & Classification
	56EA – Director
VACANT	17A – Sr. Attorney
	16A – Attorney
	40C – Sr. Administrative Specialist
VACANT - position posted	9 – Program/Court Systems Analyst (PCSA)
	8 - Sr. Administrative Assistant
	8 – Paralegal
	8 – Paralegal
	8 – Paralegal
	8 – Paralegal
	8 – Paralegal
	8 – Paralegal
	8 – Paralegal
	6 – Administrative Secretary
	4 – Data Analyst III
NOTES: The TSAT position has been vacated and a new PCSA position has been posted to replace this position. We anticipate conducting interviews in the coming month. It is a shared position between the Office of General Counsel and the Office of Professional Competence. In addition, though not represented in the above chart, casual hourly law clerks are used from time to time.	

ETHICS HOTLINE ACTIVITY STATISTICS - 2007

Month	Work Days	Incoming Calls	Completed Calls	Left Messages	Percentage of Incoming Calls that are Completed Calls	Percentage of Incoming Calls that are Left Messages	Resources Mailed/Faxed	Internet Resource Referrals
January	21	1324	1116	208	84%	16%	45	556
February	18	1100	859	241	78%	22%	57	481
March	21	1255	1107	148	88%	12%	73	545
April	21	1254	1061	193	85%	15%	76	516
May	22	1307	1062	245	81%	19%	60	497
Cumulative Totals	103	6240	5205	1035	83%	17%	311	2595

EXPLANATIONS

Incoming Calls: Total member inquiries to the Hotline received during that month.

Completed Calls: Member inquiries received in that month which were handled and resolved by staff during that month.

Left Messages: Member inquiries received that month where staff left an initial message or courtesy follow-up message, but did not reach the member to resolve the inquiry.

Percentage of Incoming Calls that are Completed Calls: Proportion of Incoming Calls that were Completed Calls handled and resolved by the staff.

Percentage of Incoming Calls that are Left Messages: Proportion of Incoming Calls where staff left a message but the member did not return the call.

Key Hotline Activity Averaged by Day and Month (through May 31, 2007)

Daily: Incoming Calls: 61
Completed Calls: 51

Monthly: Incoming Calls: 1248
Completed Calls: 1041

Aggregate Outgoing Calls

Current Month: 2094

Cumulative to Date: 9585

This figure accounts for all calls placed by staff, including: Completed Calls, Left Messages and courtesy follow-up messages. Due to "telephone tag" with members, staff may place multiple calls and leave multiple messages prior to completing a call.

Ethics Hotline
2007 Monthly and Cumulative
Individual Paralegal Call Statistics

JAN					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	319	112	207	94	4
2	431	206	225	65	45
3	340	126	214	74	0
4	491	192	299	89	0
5	202	58	144	93	0
6	53	33	20	0	53
JAN TOTALS	1,836	727	1,109	415	102

FEB					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	245	91	154	49	3
2	336	145	191	58	0
3	338	129	209	76	0
4	462	203	259	93	1
5	189	58	131	94	0
6	95	49	46	0	95
FEB TOTALS	1,665	675	990	370	99

MAR					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	350	130	220	95	1
2	379	199	180	67	36
3	451	172	279	109	0
4	456	176	280	98	0
5	208	59	149	106	0
6	98	53	43	0	98
MAR TOTALS	1,940	789	1,151	475	133

APR					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	243	83	160	74	3
2	371	169	202	91	0
3	408	167	241	91	0
4	483	186	297	113	1
5	235	79	166	92	0
6	63	57	26	0	83
7	217	117	100	2	215
APR TOTALS	2,050	858	1,192	463	302

MAY					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	328	130	198	107	0
2	397	191	206	76	0
3	381	152	229	104	0
4	637	210	327	118	0
5	124	38	86	60	0
6	62	41	21	1	61
7	265	166	109	7	258
MAY TOTALS	2,094	918	1,176	473	319

Y-T-D					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	1,485	548	939	419	11
2	1,914	910	1,004	357	81
3	1,918	746	1,172	454	0
4	2,429	967	1,462	511	2
5	968	292	676	445	0
6	369	233	156	1	388
7	482	273	209	9	473
Y-T-D TOTALS	9,585	3,967	5,618	2,196	955

NOTE: Paralegal 6 & 7 entry reflects statistics for Ethics Hotline call work performed by paralegal in training.

Professional Competence Budget Summary

Authorized vs. Actual

Year-to-Date as of May 31, 2007	
Budget (Actual)	\$1,575,201
Budget (Authorized)	\$1,971,563
Savings	\$396,362

Monthly as of May 31, 2007						
	<u>January</u>	<u>February</u>	<u>March</u>	<u>April</u>	<u>May</u>	<u>June</u>
Budget (Actual)	\$160,302	\$200,448	\$166,082	\$181,163	\$867,206	
Budget (Authorized)	\$177,724	\$233,911	\$271,511	\$196,572	\$1,091,845	
Savings	\$17,422	\$33,463	\$105,429	\$15,409	\$224,639	\$0
	<u>July</u>	<u>August</u>	<u>September</u>	<u>October</u>	<u>November</u>	<u>December</u>
Budget (Actual)						
Budget (Authorized)						
Savings	\$0	\$0	\$0	\$0	\$0	\$0

NOTE: In part, year-to-date savings are attributed to salary savings from vacant budgeted positions that are not filled or have not been approved for filling by the Executive Director.



Ethics Hotline

Customer Satisfaction Survey

Thank you for taking the Customer Satisfaction Survey. Fax completed survey to (415) 538-2171 or click the "Submit by Email" button

Please rate your satisfaction level with each of the following statements.

- 1 = very dissatisfied
2 = somewhat dissatisfied
3 = neutral
4 = somewhat satisfied
5 = very satisfied

5 = very satisfied	1	2	3	4	5
1. Rate your overall satisfaction with the hotline experience.	☐	☐	☐	☐	☒
2. How satisfied are you with the information our staff provided?	☐	☐	☐	☒	☐
3. How helpful was the paralegal?	☐	☐	☐	☐	☒
4. How helpful was the receptionist?	☐	☐	☐	☐	☐
5. How satisfied are you with our system for receiving calls?	☐	☐	☐	☐	☒
6. Rate your overall satisfaction with the Calbar ethics website.	☐	☐	☐	☐	☒
	strongly disagree			strongly agree	
7. I would recommend the Ethics Hotline to others.	☐	☐	☐	☐	☒
8. Comments / Suggestions:					

Name of the paralegal you spoke with (optional)

Your Name

iphone

Address

31

com

For completed survey:

'by Email' button



Ethics Hotline Customer Satisfaction Survey

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2. How satisfied are you with the information our staff provided?	☐	☐	☐	☐	☒
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4. How helpful was the receptionist?	☐	☐	☐	☐	☒
5. How satisfied are you with our system for receiving calls?	☐	☐	☐	☐	☒
6. Rate your overall satisfaction with the Calbar ethics website.	☐	☐	☐	☐	☒
	strongly disagree			strongly agree	
7. I would recommend the Ethics Hotline to others.	☐	☐	☐	☐	☒
8. Comments / Suggestions:					

Highly knowledgeable and
courteous.
An absolute pleasure

Name of the paralegal you spoke with (optional) ELBERT LEE

Your Name _____

Telephone _____

Address _____

Email _____

THANK YOU!

Fax completed survey to (415) 538-2171 or click the "Submit by Email" button

MAY-07-2007 13:50

STATE BAR OF CALIFORNIA

415 538 2171

P.03



Ethics Hotline

Customer Satisfaction Survey

Thank you for taking the Customer Satisfaction Survey. Fax completed survey to (415) 538-2171 or click the "Submit by Email" button

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3. How helpful was the paralegal?	☐	☐	☐	☐	☒
4. How helpful was the receptionist?	☐	☐	☐	☒	☐
5. How satisfied are you with our system for receiving calls?	☐	☐	☐	☒	☐
6. Rate your overall satisfaction with the Calbar ethics website.	☐	☐	☐	☐	☒
	strongly disagree				strongly agree
7. I would recommend the Ethics Hotline to others.	☐	☐	☐	☐	☒

8. Comments / Suggestions:

Elbert was great.

Name of the paralegal you spoke with (optional) Elbert Lee

Your Name _____

Telephone _____

Address _____

A Email _____

THANK YOU!

Fax completed survey to (415) 538-2171 or click the "Submit by Email" button

Fax completed survey to (415) 538-2171 or click the "Submit by Email" button



Ethics Hotline Customer Satisfaction Survey

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Please rate your satisfaction level with each of the following statements.

1 = very dissatisfied

2 = somewhat dissatisfied

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5 = very satisfied

	1	2	3	4	5
1. Rate your overall satisfaction with the hotline experience.	☐	☐	☐	☒	☐
2. How satisfied are you with the information our staff provided?	☐	☐	☐	☐	☒
3. How helpful was the paralegal?	☐	☐	☐	☐	☒
4. How helpful was the receptionist?	☐	☐	☐	☐	☒
5. How satisfied are you with our system for receiving calls?	☐	☐	☐	☒	☐
6. Rate your overall satisfaction with the Calbar ethics website.	☐	☐	☐	☒	☐
	strongly disagree			strongly agree	
7. I would recommend the Ethics Hotline to others.	☐	☐	☐	☐	☒

8. Comments / Suggestions:

I wish I would have received a call back the same day. The attorney I was working with was hoping for an answer right away. Once I did receive the call back I was very pleased with the information provided.

Name of the paralegal you spoke with (optional) _____

Your Name _____ Telephone _____

Address _____ Email _____

THANK YOU!

Fax completed survey to (415) 538-2171 or click the "Sub



Ethics Hotline Customer Satisfaction Survey

Thank you for taking the Customer Satisfaction Survey. Fax completed survey to (415) 538-2171 or click the "Submit by Email" button

Please rate your satisfaction level with each of the following statements.

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3 = neutral
4 = somewhat satisfied
5 = very satisfied

	1	2	3	4	5
1. Rate your overall satisfaction with the hotline experience.	☐	☐	☐	☒	☐
2. How satisfied are you with the information our staff provided?	☐	☐	☒	☐	☐
3. How helpful was the paralegal?	☐	☐	☐	☐	☒
4. How helpful was the receptionist? <i>Recorded msg?</i>	☐	☐	☒	☐	☒
5. How satisfied are you with our system for receiving calls?	☐	☐	☐	☒	☐
6. Rate your overall satisfaction with the Calbar ethics website.	☐	☐	☐	☒	☐
	strongly disagree			strongly agree	
7. I would recommend the Ethics Hotline to others.	☐	☐	☐	☒	☐
8. Comments / Suggestions:					

Name of the paralegal you spoke with (optional) Lynn

Your Name ht Telephone _____

Address _____ Email _____

THANK YOU!

Fax completed survey to (415) 538-2171 or click the "Submit by Email" button



April 25, 2007

**The State Bar of California
180 Howard St
San Francisco CA 94105-1614**

Re: *Ethics Hot Line*

Dear Administrator:

I wish to report an excellent job by "Ricardo" of your Ethics Hot Line. My call was returned, even more promptly than promised. Ricardo was a consummate professional, answering all my questions (without providing legal advice, of course). He clearly and quickly understood the issues, and was efficient, without making me feel rushed.

My compliments to you, for retaining such a fine colleague.

Very truly yours,



**THE STATE BAR
OF CALIFORNIA**

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1639

**COMMITTEE ON PROFESSIONAL
RESPONSIBILITY AND CONDUCT**

TELEPHONE: (415) 538-2163

June 14, 2007

Teri Greenman
Office of the Executive Director
State Bar of California
180 Howard Street, 10th Floor
San Francisco, CA 94105

Re: Comments on Draft "California Attorney Guidelines of Civility and Professionalism"

Dear Ms. Greenman:

The State Bar's Standing Committee on Professional Responsibility and Conduct (COPRAC) appreciates the opportunity to provide further comment on the proposed "California Attorney Guidelines of Civility and Professionalism," which the Board Committee on Member Oversight released for a 30-day comment period ending on June 12, 2007. We thank you for the extension of the deadline to June 15 to permit all of our members to review and approve this letter.

COPRAC had an opportunity to discuss the new version ("Guidelines") at our May meeting, our annual statewide ethics symposium, and in subsequent communications among our members. As stated in our first comment letter dated March 27, 2007, we applaud efforts to foster civility and professionalism, a topic in which our Committee is particularly interested. We generally support the changes made in the text of the prior ("Standards") version, many of which were made in response to the comments by our Committee. The changes help clarify and simplify the text while obviating many concerns about the prior version.

Nevertheless, COPRAC believes that the current document is still too long, and is both too detailed in some respects and too general in other respects, particularly since it purports to address many topics already covered by the California Rules of Professional Conduct, the State Bar Act, and existing civility codes promulgated by State Bar sections, county bar associations, and local state and federal courts. We strongly support the goals of civility and professionalism, but the detailed Guidelines appear to create duties of attorneys that are inconsistent and confusing, and may lead to unintended consequences.

Several members of our Committee remain concerned that the Guidelines reflect vague aspirational goals, typically found in older versions of ethical codes, which have long since been superseded by modern rules of professional conduct that provide more specificity and predictability to practitioners. Regardless of the recitals and disclaimers in the Introduction, it is inevitable that some judges will rely on the published Guidelines to impose sanctions, discipline and civil liability on lawyers, rather than relying on applicable rules of law. Given the vagueness of some of the Guidelines, this would be unfortunate.

Substantial bodies of existing rules of law and statutes already occupy this field, e.g., sanctions imposed under the Civil Discovery Act of 2004, particularly Code of Civil Procedure §§ 2023.010 et seq.; the state's general sanctions statute, CCP §128.7; sanctions in federal court, including attorneys' fees under 42 U.S.C. §12205, 28 U.S.C. §1927, and Rule 11 of the Federal Rules of Civil Procedure; Local Rules of Court, including, for example, Los Angeles County Superior Court Rules 7.12, 7.13 and 7.14 and Southern District of California Local Rule 83.4(a)(1)(b); the State Bar Act, especially Business & Professions Code §6068, codifying seven duties to judges, courts and the judicial system, five duties to the State Bar and three duties to clients—and note that B&P Code §6103 makes any violation of duties of attorneys cause for disbarment or suspension. The courts are already amply armed if they choose to police the conduct of the lawyers appearing before them.

Because of such existing laws, members of our Committee are concerned that the new Guidelines will be a trap for unwary lawyers. Some lawyers, unsure of their existing duties, may be confused by the conflicting rules and guidelines. Still other lawyers may seek to exploit the new Guidelines for tactical advantage and enforce them as a means of punishing opponents and deflecting the time and attention of the courts from substantive issues. To the extent these Guidelines duplicate existing rules of law, they will be confusing and counterproductive.

The Guidelines also purport to set standards of acceptable communication and behavior towards opposing counsel, the courts, and third parties that, under the circumstances, may be fundamentally inconsistent with lawyers' paramount fiduciary duties to their clients and to the law. Our Committee believes it is neither realistic nor desirable for our profession to attempt to curtail the free speech and time-honored advocacy of lawyers on behalf of their clients. Since each member of the State Bar has taken a sworn oath to uphold the Constitution and the laws of the State, the proposed "Attorney's Pledge" is unnecessary.

Assuming, nevertheless, that some version of the Guidelines will be adopted with additional changes, COPRAC respectfully suggests the following changes to the long version of the current draft, with similar changes to the short version:

1. In the Introduction, in the third paragraph, the first word in the second line of that paragraph should be "minimum" rather than "minimal".
2. At the end of the last sentence of that same (third) paragraph of the Introduction, after the word "negligence" insert "or breach of fiduciary duty."

3. In the fourth paragraph of the Introduction, after the first word of the second line (“associations”) insert “and courts”.
4. We do not object to Section 2 / Responsibilities to the Public and the Profession, but such duties are secondary to the lawyer’s responsibilities to his or her client. Sections 2 and 3 should be reversed to reflect this priority, with Responsibilities to the Client and Client Representation preceding the other section.
5. Re Section 4 / Communications: Any efforts by the State Bar to impose standards of what is acceptable or “becoming” speech and thought regarding the legal system, the court, or other counsel should be rejected as anathema to our legal system and form of government, unless such expressions are immediately disruptive to court proceedings, in which case they would be subject to the court’s inherent powers to control its own proceedings, including the contempt power. The attempt in subparagraph b. to create a safe harbor for criticism by considering the motives of the speaker (“for the purpose of improving the legal system or profession, or addressing perceived inadequacies”) is no less objectionable as an attempt to control the content of the offensive speech.

The Section should be deleted. If it is not, however, it should be edited as follows: in the second paragraph (the line that begins, “For example . . .”) after the last word in that line (“adversaries”) insert a comma and after that comma insert “the court and other parties” before the colon.

6. Re Section 6 / Scheduling, Continuances and Extensions of Time: The paragraph beginning “Consistent with existing law and court orders, . . .” properly recognizes the lawyer’s duty to weigh a request for an extension of time against his or her client’s interests. However, the examples given in subparagraphs e. and f. are objectionable because they are vague and ambiguous (any conditions must be “fair and essential”) and because they fail to respect the paramount duty of loyalty owed by the lawyer to the client and improperly suggest that the lawyer must act on behalf of the adversary, even to the point of disclosing his or her strategy to the other side. Representing one’s client competently and expecting the other side to do likewise is not acting uncivilly. These examples should be deleted.
7. In Section 9 / Discovery, delete subparagraph a. 9. as it adds nothing to what is already covered by subparagraph a. 7.
8. In Section 11 / Dealing with Nonparty Witnesses, the introductory paragraph fails to acknowledge that a nonparty witness may have a real stake in the matter in dispute, and may not be an innocent bystander. Instead of dictating that the nonparty witness should be treated by the lawyer with the “highest standards of civility,” it would be more reasonable to say that the nonparty witness should be treated in a civil manner consistent with the circumstances under which he or she is appearing.

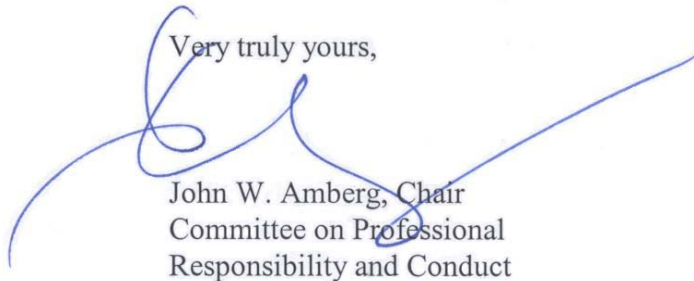
9. Re Section 12 / Ex Parte Communication With The Court: Since ex parte contacts with the court are already prohibited by Rule 5-300(B) of the Rules of Professional Conduct, Canon 3(B)(7) of the Cal. Code of Judicial Ethics, and by the court rules of every court in the state, Section 12 is unnecessary and should be deleted.

If Section 12 is not deleted, however, the following edit should be made: in the phrase after the comma (“, except where permitted by law and where the lawyer’s client will be seriously prejudiced . . .”) the word “and” should be changed to “or”.

10. Re Section 16 / Social Relationships with Judicial Officers, etc.: The section is another example of the Guidelines misconstruing a lawyer’s fiduciary duties. The section improperly seeks to impose the duty of a court to “avoid even the appearance of bias” on the attorney. The lawyer may owe a duty of disclosure to his clients and, under some court rules, to the court, but he or she does not owe a duty of impartiality to opposing counsel. It should be deleted.
11. Section 19 should be deleted since it is vague and also inconsistent with well-settled common law requiring attorneys to represent their clients with undivided loyalty: the most fundamental quality of the attorney-client relationship is the absolute and complete fidelity owed by the attorney to his or her client. *Flatt v. Superior Ct. (Daniel)* (1994) Cal.4th 275, 289.

Thank you for your consideration of COPRAC’s comments and suggestions.

Very truly yours,

A handwritten signature in blue ink, appearing to read "John W. Amberg", is written over the typed name and title.

John W. Amberg, Chair
Committee on Professional
Responsibility and Conduct

copy: Committee on Professional Responsibility and Conduct
Mark Taxy, Esq. (Staff Counsel)



**THE STATE BAR
OF CALIFORNIA**

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1639

**COMMITTEE ON PROFESSIONAL
RESPONSIBILITY AND CONDUCT**

TELEPHONE: (415) 538-2163

June 20, 2007

Geraldine Dungo
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102

Re: Public Comment on Proposed Amendment to Code of Judicial Ethics

Dear Ms. Dungo:

The California State Bar's Committee on Professional Responsibility and Conduct ("COPRAC") appreciates this opportunity to submit its views regarding the proposed amendment of Canons 6D and 6E of the Code of Judicial Ethics. COPRAC is an appointed statewide body of lawyers, law teachers, and non-lawyer public citizens whose mission includes commenting on proposed changes to the law affecting professional responsibility. Rules 1-700 ("Member as Candidate for Judicial Office") and 1-710 ("Member as Temporary Judge, Referee, or Court-Appointed Arbitrator") of the Rules of Professional Conduct, which were adopted by the Supreme Court, refer specifically to Canons 5 and 6D of the Code of Judicial Ethics.

The Supreme Court Advisory Committee proposes to change the subjective tone of Canon 6E(2) to an objective one. Currently, Canon 6E requires judges to disclose on the record "information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification." The proposed amendment reads: "A judge shall disclose on the record information that is reasonably relevant to the question of disqualification under Section 170.1." Canon 6D(5)(a) tracks Canon 6E and would also reflect the change.

COPRAC supports the proposed amendment substituting a reasonable person standard for a subjective standard. To enable the parties and their counsel properly to evaluate whether there are grounds for disqualification of the judge, the court would disclose information not merely on the basis of its subjective belief as to what might be relevant to the parties and their lawyers, but rather based on an objective standard of reasonableness. Substituting an objective "reasonableness" standard for an undefined subjective belief would provide better guidance to the Court in the discharge of its ethical

Geraldine Dungo

June 20, 2007

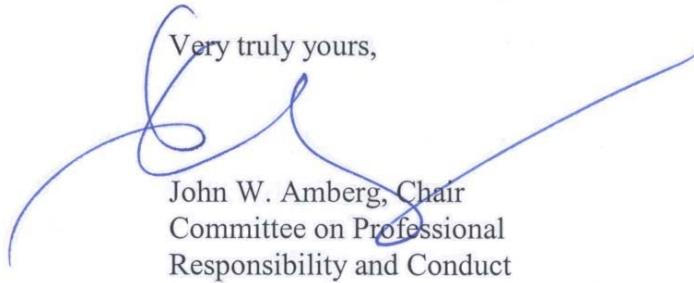
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duties, encourage greater disclosure of information, and protect both the parties and the Court by providing a standard subject to testing and review.

We appreciate the opportunity to comment on the amendment to the Code of Judicial Ethics.

This position is only that of the State Bar of California's Standing Committee on Professional Responsibility and Conduct. This position has not been adopted by the State Bar's Board of Governors or overall membership and should not be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.

Very truly yours,

A handwritten signature in blue ink, appearing to be "John W. Amberg", is written over the typed name and title.

John W. Amberg, Chair
Committee on Professional
Responsibility and Conduct

copy: Committee on Professional Responsibility and Conduct
Mark Taxy, Esq. (Staff Counsel)



**THE STATE BAR
OF CALIFORNIA**

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1639

**COMMITTEE ON PROFESSIONAL
RESPONSIBILITY AND CONDUCT**

TELEPHONE: (415) 538-2163

June 14, 2007

Jill Sperber, Director
The State Bar of California
Office of Mandatory Fee Arbitration
180 Howard Street, 6th Fl.
San Francisco, CA 94105

Re: Public Comment to Proposed Changes to MFA Guidelines and Minimum Standards: Current Guideline II (10) and Proposed Guideline 13.

Dear Ms. Sperber:

The State Bar's Standing Committee on Professional Responsibility and Conduct ("COPRAC") appreciates this opportunity to submit its views regarding the proposed further modification of paragraph 13 of the new Guidelines and Minimum Standards for Mandatory Fee Arbitration ("Guidelines").

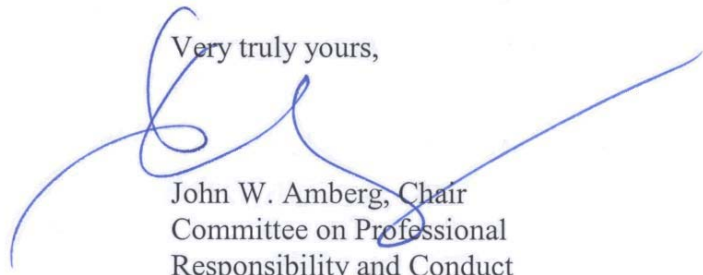
Given the further modifications that have been made, COPRAC supports proposed new paragraph 13 of the Guidelines with one caveat. We would recommend that the word "person" be substituted for the word "party" and that the phrase "arbitration with a non-client" be substituted for "third-party arbitration." We make this recommendation because the term "party" is usually interpreted to mean a person who is a party to litigation or to a transaction, as opposed to a person who is not a party to the matter. With this change, paragraph 13 would read as follows:

13. The request for arbitration may be made by (i) a person who is not the client but who may be liable for or entitled to a refund of attorney's fees or costs ("non-client"), or (ii) the attorney against a non-client. A fee arbitration between an attorney and a non-client is not intended to abrogate the requirement that the attorney exercise independence of professional judgment on behalf of the client or the protection of client confidences and secrets. Absent the client's written consent to disclosure of confidential information, a fee arbitration with a non-client is not intended to abrogate the attorney's duty to maintain client confidences and secrets, unless such disclosure is otherwise permitted by law. Absent the client's signature on the request for arbitration, when an arbitration with a non-client is initiated, notice of the request must be sent to the client by first class mail at the client's last known address. The programs shall adopt procedures to insure that such notice has been sent to the client.

Jill Sperber
June 14, 2007
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We also want to take this opportunity to express our gratitude to the Board Committee on State Bar Regulation, Admissions and Discipline Oversight as well as to the Committee on Mandatory Fee Arbitration for carefully considering our earlier comments and for including us in the process of developing the proposed further revisions. Thank you.

Very truly yours,



John W. Amberg, Chair
Committee on Professional
Responsibility and Conduct

copy: Committee on Professional Responsibility and Conduct
Mark Taxy, Esq. (Staff Counsel)

ACTIVITY EVALUATION RESULTS FROM THE 11th ANNUAL ETHICS SYMPOSIUM - May 19, 2007

On a scale of 1 - 5 (5 being the highest, 1 being the lowest)

5 4 3 2 1 Avg

To what extent were your personal objectives satisfied?

11 12 0 0 0 4.5

To what extent did the environment contribute to the learning experience?

15 7 0 1 0 4.6

To what extent did the materials contribute to the learning experience?

5 11 5 2 0 3.8

To what extent were the objectives stated in the promotional literature or those stated at the beginning of the activity satisfied?

10 11 1 1 0 4.3

To what extent did the activity contain significant current intellectual or practical content?

14 7 0 2 0 4.4

Overall Effectiveness

Effectiveness of Teaching Methods

Significant Current Intellectual or Practical Content

5 4 3 2 1 Avg

5 4 3 2 1 Avg

5 4 3 2 1 Avg

Panel One: Ethics and the Modern Transactional Lawyer

8 8 5 0 0 4.1

7 6 8 0 0 4.0

8 8 5 0 0 4.1

Panel Two: Ethics at the Edges of Family Law

10 9 2 0 0 4.4

9 10 2 0 0 4.3

9 11 1 0 0 4.4

Panel Three: Can a Non-Deceiver be a Good Lawyer?

9 8 1 0 0 4.4

9 8 1 0 0 4.4

9 7 2 0 0 4.4

Panel Four: Corporate Counsel as Counselor, Gatekeeper and Confidant

5 13 2 1 0 4.0

6 11 3 1 0 4.0

9 7 4 1 0 4.1

Panel Five: Rules Revision Update

11 7 1 0 0 4.5

11 7 1 0 0 4.5

11 7 1 0 0 4.5

NOTE:

Paid Evaluations
Attendees Received
70 23 33%