

The State Bar of California
FY 2009 COPRAC Work Plan

BACKGROUND
Sub-entity Name: Committee on Professional Responsibility and Conduct (COPRAC)
Chair: Dennis Peter Maio
State Bar Staff: Mark Taxy, Staff Counsel, Office of Professional Competence
Date: January 11, 2008
<p>Sub-entity Background:</p> <p>The Committee on Professional Responsibility and Conduct (“COPRAC” or “the Committee”) is composed of 16 persons appointed by the Board of Governors. Its membership consists of a chair, vice-chair, special advisor and 13 members, including, at least one public member, with expertise or an interest in attorney professional responsibility. The charge of the Committee is as follows (e.g.):</p> <p>The Committee shall assist members of the State Bar in their desire to appreciate and adhere to ethical and professional standards of conduct, which assistance shall include, but is not limited to:</p> <ul style="list-style-type: none">a. Issuing to members of the bar advisory opinions on the ethical propriety of hypothetical attorney conduct at the request of members of the State Bar or on its own initiative;b. Responding to such inquiries from members of the bar; andc. Publishing its opinions. <p>The Committee shall assist the Board of Governors by studying and recommending additions, amendments to, or repeal of Rules of Professional Conduct of the State Bar or other laws governing the conduct of attorneys, and perform such other functions as may be assigned to the Committee by the board.</p> <p>The Committee shall encourage the establishment of and provide assistance to local bar association ethics committees.</p> <p>The committee shall assist the public, including lawyers and judges, to understand the professional obligations of members of the State bar, which assistance shall include, but is not limited to, sponsoring educational programs and conferences.</p> <p>(Source: Board of Governors’ Resolution, July 1979. [The Standing Committee on Professional Responsibility and Conduct is the successor to the Committee on Professional Ethics established by resolution of the Board of Governors of the State Bar of California adopted September 29, 1964.] Board Book Tab 19, Standing & Special Committees, Section 16, Committee on Professional Responsibility and Conduct.)</p>

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Proposed Activities	
<u>Activity 1(a)</u>	<u>Status/Time Frame:</u>
<p>Meetings</p> <p>To carry out its charge, 9-10 day-long meetings will be held in FY 2009. Most of these meetings will be held in-person at the State Bar facilities in San Francisco or Los Angeles, or at an airport hotel location. Meetings scheduled later in the fiscal year will be planned as video-conference meetings. However, the Committee hopes to realize budget savings and use these savings to convert these video-conference meetings into in-person meetings. Given the nature of the Committee's work, in-person member participation is the most productive meeting format.</p>	<p>The schedule of meetings has not yet been set. Ordinarily, the meetings are scheduled about 6 – 8 weeks apart with the location alternating between northern and southern California sites.</p>

Performance Indicators for Activity 1(a)
COPRAC conducts 9-10 day-long meetings.

Proposed Activity Budget for Activity 1(a)
The proposed budget to carry out COPRAC's overall operation is found on page 16. Of the entire \$41,000 requested, approximately \$36,000 is attributable to the cost to carry out proposed Activity 1(a). This figure includes the estimated volunteer and staff travel expenses, catering, photocopying and mailing expenses associated with circulation of the assignment and agenda mailings for each meeting.

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Proposed Activities	
Activity 1(b)	Status/Time Frame:
<p>Ethics Opinions</p> <ol style="list-style-type: none"> 1. Review requests for opinions 2. Draft proposed opinions 3. Tentatively approve opinions for public comment distribution 4. Consider public comment received on tentatively approved proposed opinions 5. Submit proposed opinions to a Board Committee for final publication 	<ol style="list-style-type: none"> 1. Requests are reviewed upon receipt 2. Ongoing (inventory avg. of 12 – 18 opinions)¹ 3. Ongoing (avg. of 3 – 5 a year) 4. Ongoing (avg. of 3 – 5 a year) 5. Ongoing (avg. of 3 – 5 a year)

Performance Indicators for Activity 1(b)
COPRAC publishes between 3 – 5 formal ethics opinions.

Proposed Activity Budget for Activity 1(b)
Expenditures for this activity are covered under the proposed activity budget for Activity 1(a) above. Since the opinions are published at the Bar's website and the interested persons are notified via an electronic e-list, expenditures in the way of hardcopy mailings are no longer incurred.

¹ The size of the opinions inventory and the number of opinions published in any given year may vary because of a number of factors, including the Committee's attention to attorney-related legislative or Judicial Council matters that have prescribed deadlines. See "Legislation" and "Judicial Council," below.

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Proposed Activities	
<u>Activity 2(a)</u>	<u>Status/Time Frame:</u>
<p>Rules of Professional Conduct</p> <ol style="list-style-type: none"> 1. Review and analyze proposals to amend the Rules of Professional Conduct 2. Monitor and comment on the work of the State Bar's Commission for the Revision of the Rules of Professional Conduct 	<ol style="list-style-type: none"> 1. Ongoing (varies year to year) 2. Ongoing

Performance Indicators for Activity 2(a)
<p>COPRAC works closely with State Bar's Commission for the Revision of the Rules of Professional Conduct in coordinating the Board's consideration of any Rule of Professional Conduct amendments requested by the Legislature, the Judicial Council and others. Comment letters sent to the Commission as needed.</p>

Proposed Activity Budget for Activity 2(a)
<p>Consideration of draft COPRAC comments on Rules Revision Commission rule proposals are primarily accounted for under the meeting expenses incurred and reflected under Activity 1. Attendance at the Rules Revision Commission meetings is generally covered by a member of the subcommittee local to the meeting site to eliminate or minimize additional travel expenses. On rare occasions, travel expenditures are realized from COPRAC members attending a Rules Revision Commission meeting at a site requiring air travel or other additional travel expenditures.</p>

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Proposed Activities	
<u>Activity 2(b)</u>	<u>Status/Time Frame:</u>
<p>Legislation</p> <ol style="list-style-type: none"> 1. As assigned by the Board, review and analyze bills that relate to attorney professional responsibility 2. Serve as a technical resource to the State Bar's Office of Government Affairs 3. On an as needed basis, COPRAC may comment in its own name with a disclaimer indicating its comment does not reflect the view of the State Bar or the Board of Governors 	<ol style="list-style-type: none"> 1. As assigned (depends on legislative deadlines) 2. Ongoing 3. Ongoing

Performance Indicators for Activity 2(b)
Assistance is rendered to the Board, as needed, in reviewing and analyzing legislation concerning attorney professional responsibility matters.

Proposed Activity Budget for Activity 2(b)
Where appropriate, in consideration of <i>Keller</i> implications, staff and committee member time spent on such matters, if any, is charged to "voluntary" funds rather than "general" funds.

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Proposed Activities	
<u>Activity 2(c)</u>	<u>Status/Time Frame:</u>
<p>Judicial Council</p> <ol style="list-style-type: none"> 1. As assigned by the Board, review and analyze Rules of Court and other proposals or studies that relate to attorney professional responsibility, including proposed ethical rules for judges and arbitrators 2. On an as needed basis, COPRAC may comment in its own name with a disclaimer indicating its comment does not reflect the view of the State Bar or the Board of Governors 	<ol style="list-style-type: none"> 1. As assigned (depends on AOC comment deadlines) 2. Ongoing

Performance Indicators for Activity 2(c)
Assistance is rendered to the Board, as needed, with taking positions on Judicial Council matters.

Proposed Activity Budget for Activity 2(c)
Consideration of Judicial Council matters is primarily accounted for under the meeting expenses incurred and reflected under Activity 1. Possible additional travel expenditures may be realized, as needed, for travel to Sacramento, and/or attendance at Board Committee and Board meetings.

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Proposed Activities	
<u>Activity 2(d)</u>	<u>Status/Time Frame:</u>
<p>Conference of Delegates of California Bar Associations</p> <p>1. As assigned by the Board, review and analyze Conference resolutions that relate to attorney professional responsibility</p>	<p>1. As assigned (depends on Conference deadlines)</p>

Performance Indicators for Activity 2(d)
<p>Assistance is rendered to the Board, as needed, with taking positions on Conference of Delegates resolutions.</p>

Proposed Activity Budget for Activity 2(d)
<p>Where appropriate, in consideration of <i>Keller</i> implications, staff and committee member time spent on such matters, if any, is charged to “voluntary” funds rather than “general” funds.</p>

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Proposed Activities	
<u>Activity 2(e)</u>	<u>Status/Time Frame:</u>
<p>American Bar Association House of Delegates</p> <ol style="list-style-type: none"> 1. As assigned by the Board, review and analyze ABA studies and proposals that relate to attorney professional responsibility (e.g., recent developments have included the ABA's study and revision of the Model Rules of Professional Conduct and the ABA's Report on Multidisciplinary Practice) 2. On an as needed basis, COPRAC may comment in its own name with a disclaimer indicating its comment does not reflect the view of the State Bar or the Board of Governors 	<ol style="list-style-type: none"> 1. As assigned (positions usually taken in connection w/ABA Mid-Year Meeting in February and ABA Annual Meeting in August) 2. Ongoing

Performance Indicators for Activity 2(e)
Assistance is rendered to the Board, as needed, with taking positions on ABA proposals.

Proposed Activity Budget for Activity 2(e)
Where appropriate, in consideration of <i>Keller</i> implications, staff and committee member time spent on such matters, if any, is charged to "voluntary" funds rather than "general" funds.

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Proposed Activities	
<u>Activity 3(a)</u>	<u>Status/Time Frame:</u>
<p>Annual Statewide Ethics Symposium</p> <p>1. Plan and present a day-long statewide educational program offering a high level interactive discussion of key professional responsibility issues</p>	<p>1. Planning begins in Fall/Winter with program held in the Spring/Summer</p>

Performance Indicators for Activity 3(a)
<p>COPRAC successfully conducts Annual Statewide Ethics Symposium in Spring/Summer of 2009.</p>

Proposed Activity Budget for Activity 3(a)
<p>The proposed budget to carry out COPRAC's overall operation is found on page 16. Of the entire \$41,000 requested, approximately \$10,500 is attributable to the cost to carry out proposed Activity 3(a), which is significantly offset by anticipated revenue from registration fees of \$8,000, for a total expenditure of \$2,500. The expenses include estimated volunteer, outside speakers' and staff travel expenses, catering, publicity, invitation and registration packet mailings, and production of program course book.</p> <p>Staff and the Committee are continuing to explore ways to reduce expenditures. The last several Symposiums have been co-sponsored by law schools and other educational organizations with the meeting space being provided at nominal cost, or free of charge, and the 2009 budget includes this assumption.</p>

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Proposed Activities	
<u>Activity 3(b)</u>	<u>Status/Time Frame:</u>
<p>State Bar Annual Meeting Programs</p> <p>1. Plan and administer CLE programs in connection with the State Bar's 2009 Annual Meeting</p>	<p>1. Planning begins in Spring for 3 – 5 programs held in early Fall</p>

Performance Indicators for Activity 3(b)
<p>COPRAC successfully conducts 3 – 5 CLE programs in connection with the 2009 State Bar Annual Meeting.</p>

Proposed Activity Budget for Activity 3(b)
<p>The proposed budget to carry out COPRAC's overall operation is found on page 16. Of the entire \$41,000 requested, approximately \$2,500 is attributable to the cost to carry out proposed Activity 3(b). The expenses include the lodging costs incurred by Committee members who participate in various CLE programs throughout the Annual Meeting, the cost of photocopying the program materials, and additional audio-visual equipment needed for these programs.</p>

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Proposed Activities	
<u>Activity 3(c)</u>	<u>Status/Time Frame:</u>
<p>Local Bar Outreach Programs</p> <p>1. As opportunities arise, coordinate with local and specialty bar associations in developing professional responsibility CLE programs tailored to local/specialty interests. COPRAC will increase its effort to contact non-metropolitan local/specialty bars to expand awareness of COPRAC's educational activities.</p>	<p>1. Programs planned as requests are received. As appropriate, outreach letters sent to stimulate requests for presentations.</p>

Performance Indicators for Activity 3(c)
<p>Programs arranged and presented in response to requests received. The number of programs to be determined by available committee resources and the nature of the programs requested. As appropriate, outreach letters sent to local/specialty bars.</p>

Proposed Activity Budget Activity 3(c)
<p>Only nominal ground transportation expenses may be incurred, as these programs are generally conducted by Committee members residing in close proximity to the program location.</p>

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Proposed Activities	
<u>Activity 4</u>	<u>Status/Time Frame:</u>
<p>Coordination with other State Bar Entities</p> <ol style="list-style-type: none"> 1. On matters of mutual interest, COPRAC coordinates with State Bar entities such as the State Bar ADR Committee and the State Bar Standing Committee on the Delivery of Legal Services 2. A member of COPRAC is a liaison/member of the Limited Representation Committee of the Commission on Access to Justice 3. A member of COPRAC is a liaison to the State Bar Commission for the Revision of the Rules of Professional Conduct 4. A member of COPRAC is a liaison to the Discovery Accommodations Working Group, a joint project of the State Bar and the Judicial Council/AOC. 	<p>Coordination with other State Bar entities is an ongoing activity. Any relevant deadline is determined by the particular issue of mutual interest. For example, if the issue is proposed legislation the deadline is set by the legislative timetable.</p>

Performance Indicators
<p>Matters of mutual interest amongst State Bar committees are coordinated. Assistance rendered to the Board, as needed, in considering professional responsibility components of matters involving other committees of the Board.</p>

Proposed Activity Budget
<p>Coordination with other State Bar entities is primarily accounted for under the meeting expenses incurred and reflected under Activity 1. Additional nominal travel expenditures may be realized by Committee members attending other State Bar committee meetings.</p>

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How Activities Address Sub-entity Charge	
Activity	Furthers Charge by:
Issuance of ethics opinions (Activities 1(a) and (b))	Offering guidance on attorney professional responsibility to members, judges and the public
Consideration of professional responsibility proposals by the Legislature, the Judicial Council, the ABA and others (Activities 2(a)-(e))	Assisting the Board in taking positions on such proposals
Continuing education (Activities 3(a)-(c))	Assisting members, judges and the public in understanding the professional responsibilities of lawyers
Coordination with other State Bar entities (Activity 4)	Assisting the Board in considering professional responsibility components of other matters overseen by the Board

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How Activities Address State Bar Strategic Plan

The Committee on Professional Responsibility and Conduct particularly furthers the following goals and strategies:

Goal 1: The public is protected and served by attorneys and other legal service providers that meet the highest standards of competency and ethics.

Strategy 1.4 Competence and Ethical Standards. Ensure the high levels of competency and ethics of all attorneys and others regulated by the State Bar.

Goal 2: The State Bar provides a wide array of services and benefits to members that meet their professional development, business, and personal needs.

Strategy 2.2 Professional Development Services. Seek ways to improve and inform members about professional development opportunities and services, including continuing legal education (MCLE), the Ethics Hotline, Alternative Dispute Resolution, Fee Arbitration and Lawyer Assistance programs.

Strategy 2.3 Communications with Members. Use technology to improve the quality of quantity of methods for receiving information from and providing information to members and member groups.

Re: Goals 1 & 2, publication of proposed and final versions of formal ethics opinions (posted on the State Bar website), assisting the Board in considering rule amendment proposals, holding the Annual Ethics Symposium and other CLE activities (such as the Annual Meeting programs and local/specialty bar outreach programs) protects the public by assisting attorneys in maintaining high ethical standards.

Goal 3: All people have access to high quality legal services regardless of financial or other circumstances.

Strategy 3.4 Alternative Dispute Resolution. Support the appropriate use of alternative dispute resolution processes, particularly mediation, and actively participate in the providing of those alternatives to all court users including self-represented litigants.

Strategy 3.5 Limited Scope Representation Legal Services. Identify ways in which attorneys can appropriately provide “unbundled” legal services to provide limited and specific services to litigants without undertaking full case representation.

Re: Goal 3, comments made to the Judicial Council on its proposed rules and guidelines, including ethical guidelines for contract arbitrators, ethical guidelines for mediators, and rules concerning the provision of limited scope of representation to litigants help ensure not only that these important initiatives are achieved, but that the services are delivered with the highest ethical standards.

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How Activities Address State Bar Strategic Plan

Goal 4: The State Bar fulfills its mission through effective and supportive relationships with all stakeholders.

Strategy 4.2 Court/Bar Collaboration. Actively encourage and support member participation in bench-bar efforts to improve the administration of justice and access to the legal system for low and moderate income Californians.

Strategy 4.3 Public Information. Actively inform the public, members and all key stakeholders about the effective operation and activities of the State Bar through the use of technology, written materials and in-person communication, and seek input from stakeholders about the operation and activities of the Bar.

Re: Goal 4, public comment distribution of proposed formal ethics opinions by the State Bar's "E-list" group e-mail distribution system, by mail, and by posting on the State Bar website, posting of the final published version of formal ethics opinions on the State Bar website, CLE programs (especially local/specialty bar outreach programs), coordination with the Judicial Council, the Rules Revision Commission and other groups, and consideration of Conference of Delegates of California Bar Associations proposals and other similar activities all support the State Bar's goal of effective relationships with stakeholders.

Recommended New Strategic Initiatives For Board Consideration

Name of Initiative: [Note: At this time, there are no new initiatives contemplated for 2009.]

Purpose:

Responsible Entity:

Connection to Strategic Plan:

Desired Outcome(s):

Fiscal and Staff Implications:

Proposed Performance Measures:

Are activities within legislative and judicial restrictions imposed on the State Bar (Keller, Hudson, Brosterhous, etc.)?

Yes [X] No [] If no, please explain.

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PROPOSED BUDGET				
<i>(Combined Proposed Activity Budgets plus Staff Costs)</i>				
Items	2007 Budget	2007 Outlook	2008 Budget	2009 Proposed
Estimated Staff Time Required FTE:				
Director	.10	.10	.10	.10
Attorney	.30	.30	.30	.30
Sr. Admn. Spec.	.15	.15	.15	.15
Sr. Admn. Asst.	.10	.10	.10	.10
Admn. Sec.	.15	.15	.15	.15
Paralegal	.15	.15	.15	.20
TSAT	.15	.15	.15	.15
	TOTAL: 1.1 FTE	TOTAL: 1.1 FTE	TOTAL: 1.1 FTE	TOTAL: 1.15 FTE
Travel Staff	1,700	3,600*	1,700	4,000
Travel Volunteer	25,300	27,100	25,500	28,300
Travel Others (e.g. Annual Meeting speakers for MCLE presentations)	[N/A]	550	[N/A]	[N/A]
Meeting Room Rental/Security Guard/Janitorial Services/HVAC	1,400	250	1,400	700
Catering	7,800	9,400	7,800	9,300
Supplies/Postage/ Delivery Serv./Prof. Serv./Audio Visual	3,800	2,600	2,800	3,200
Telephone (Committee Conference Calls)	2,000	500	1,200	800
Copier Allocation & In-House Printing	5,500	1,650	5,000	2,700
Revenue (Symposium Reg. Fee)	-7,200	-7,967	-7,200	-8,000
TOTAL Operating Expense	40,300	37,683	37,700	41,000

* In 2007 an additional person was added to assist in staffing committee meetings, resulting in increases in staff travel expenses. It is anticipated that the additional assistance will continue to be required in 2009.