



THE STATE BAR OF CALIFORNIA

OFFICE OF PROFESSIONAL COMPETENCE,
PLANNING & DEVELOPMENT

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MEMORANDUM

DATE: February 19, 2008

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

FROM: Randall Difuntorum, Director, Professional Competence Programs

SUBJECT: RAD Meeting on March 6, 2008 – 2007 Year-End Report on the Status of the Professional Competence Unit

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This memorandum provides a 2007 year-end report 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 vs. Actuals. Board members with questions may contact me at (415) 538-2161 or Lauren McCurdy at (415) 538-2107.

1. ETHICS HOTLINE

- In 2007, 20,992 member inquiries were received with a completion rate of 83%. This completion rate includes distribution of 705 copies of published ethics opinions and other written materials requested by inquirers and 5,912 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, 1,552 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.

- In 2007, 66 voluntary satisfaction surveys were received from members who utilized the Ethics Hotline service (copies available upon request). 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; usefulness of materials sent; whether the inquirer would recommend the Hotline to others; and whether they received the assistance they needed. For the most part, the surveys received gave the Hotline very high marks. In addition to the surveys, we received two calls and one letter from members who expressed favorable comments about the service received from the Hotline.

2. COPRAC

→ In 2007, COPRAC issued three formal ethics opinions. The issue statements and digests of the opinions published in 2007 are provided below.

Formal Opinion No. 2007-172 [Interim No. 05-0009]

ISSUES: 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: 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.

Formal Opinion No. 2007-173 [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 section 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 No. 2007-174 [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 e-mail correspondence, (2) an electronic version of the pleadings, (3) an electronic version of discovery requests and responses, (4) an electronic deposition and exhibit database, and/or (5) 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 e-mail correspondence, because such items come within a category subject to release; (2) an electronic version of the pleadings, because such items too come within a category subject to release; (3) an electronic version of discovery requests and responses, because such items are subject to release as reasonably necessary to the client's representation; (4) an electronic deposition and exhibit database, because such an item itself contains items that come within categories subject to release; and (5) an electronic version of transactional documents, because such items are subject to release as reasonably necessary to the client's representation. The attorney's ethical obligation to release any electronic items, however, does not require the attorney to create such items if they do not exist or to change the application (e.g., from Word (.doc) to WordPerfect (.wpd)) if they do exist. Prior to release, the attorney is ethically obligated to take reasonable steps to strip from each of these electronic items any metadata reflecting confidential information belonging to any other client.

→ In addition to the issuance of three formal ethics opinions, COPRAC's 2007 accomplishments included the following:

- 1) The 11th Annual Statewide Ethics Symposium
- 2) Four CLE programs presented at the State Bar Annual Meeting, three of which were selected for videotaping for use as self-study programs offering ethics credit
- 3) Public comment letter to the Rules Revision Commission regarding three proposed changes to the California Rules of Professional Conduct
- 4) Public comment letter to the Judicial Council regarding proposed amendments to the Code of Judicial Ethics
- 5) Public comment letter to the State Bar Office of Legal Services, Access and Fairness regarding the State Bar's proposed Frye v. THC Report
- 6) Public comment letter to the State Bar Office of the Executive Director regarding the proposed State Bar Civility Guidelines
- 7) Public comment letter to the State Bar Office of Mandatory Fee Arbitration regarding proposed revisions to the Mandatory Fee Arbitration Guidelines and Minimum Standards

→ Since the last Professional Competence status report submitted for RAD's November 9, 2007 meeting, COPRAC has met twice: on November 16, 2007 at the San Francisco State Bar office; and on January 11, 2008 at the Los Angeles State Bar office.

- The following proposed advisory opinion has been tentatively approved by COPRAC and is anticipated to be circulating for the final 30-day RAD approval period at the time of RAD's March 6th meeting.

Formal Opinion Interim No. 05-0005

ISSUE: 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.

- COPRAC's next meeting is scheduled for February 22, 2008 and will be held at the San Francisco State Bar office. Among the matters anticipated to be considered at this meeting is the public comment received on Proposed Formal Opinion Interim No. 05-0009 (re: Accepting Credit Card Payments from Clients). The public comment deadline on Interim Opinion No. 05-0009 was January 2, 2007.

- COPRAC's planning for the 2008 Annual Statewide Ethics Symposium has begun. The Symposium is schedule for Saturday, May 3, 2008 and is anticipated to be held at the University of San Francisco's Law School.

3. RULES REVISION COMMISSION

- In 2007, the Commission considered the following rules: 1-100 (1.0); 1-110 (8.1.1); 1-120 (8.4); 1-300 (5.5); 1-310 (5.4); 1-400 (7.1, 7.2, 7.3); 1-500 (5.6); 1-600 (5.4); 1-700 (2.4.2); 1-710 (2.4.1); 1-720 (2.4); 2-100 (4.2); 2-200 (1.5.1); 2-300 (1.17); 3-100 (1.6); 3-110 (1.1); 3-120 (1.8.10); 3-210 (1.2.1); 3-300 (1.8.1); 3-310 (1.7); 3-500 (1.4); 3-510 (1.4); 3-600 (1.13); 3-700 (1.16); 4-100 (1.15); 4-200 (1.5); 4-210 (1.8.5); 5-100; 5-110 (3.8); 5-200 (3.3); 5-210 (3.7); 5-220 (3.4); 5-300 (3.5); and proposed new rules comparable to ABA Model Rules 1.14; 2.4; 5.1; 5.2; 5.3.; and 8.3. Also considered was a class action subcommittee recommendation on a proposed comment to rule 3-310 (1.7).
- The Commission tentatively approved 12 draft rule amendments. A group of 5 draft rules was distributed for public comment with a deadline of October 26, 2007 and 24 written public comments were received. In addition, on September 29, 2007, a public hearing on the five draft rules was held in connection with the State Bar's Annual Meeting.
- The Commission's E-List, an e-mail distribution group used by the Commission members, liaisons, and other subscribers, had the following activity: 213 postings to 93 subscribers for a total of over 19,800 messages. These messages included meeting notices and materials, as well as, information on recent developments in legal ethics, and informal comments and discussions about the Commission's draft rules. Of the 93 total subscribers, 12 were added in 2007.
- In addition to the e-mail messages, the Commission received 7 informal comment letters on various open agenda items, including comments from the California Attorney General; the California District Attorneys Association; the Los Angeles Public Defender; and Latham & Watkins.
- As part of the 2007 State Bar Annual Ethics Symposium held on May 19, 2007 at Southwestern Law School in Los Angeles, the Commission presented an educational program on several rule amendment issues under consideration including trust accounting duties and advance waivers of conflicts of interests. The program evaluation forms submitted by the symposium attendees gave the Commission's panel the highest marks of all of the event's programs, including an average mark of 4.5 (out of 5) for significant intellectual or practical content.
- Since the last Professional Competence status report submitted for RAD's November 9, 2007 meeting, the Rules Revision Commission met twice: on December 7, 2007; and on January 18, 2008. The meetings were held respectively, at the San Francisco and Los Angeles State Bar offices.
- Among the visitors present at the Commission's December 7, 2007 meeting were the following: John Amberg (COPRAC); David Bell (Morrison & Foerster); George Cardona (Acting U.S. Attorney, C.D. California); Doug Hendricks (Morrison & Foerster); Diane Karpman (Beverly Hills Bar Association Liaison); Toby Rothschild (LACBA & Access to Justice Commission Liaison)
- Among the visitors present at the Commission's January 18, 2008 meeting were the following: George Cardona (U.S. Atty's., C.D. Cal.); Board Liaison William Herbert; Meg Lodise (Executive Committee, Trusts & Estates Section); Board Liaison Michael Marcus; Jon Rewinski (COPRAC Liaison); Toby Rothschild ((LACBA & Access to Justice Commission Liaison).
- The Commission's next meeting is scheduled for February 29 & March 1st and will be held at the Los Angeles State Bar office. Among the items on the Commission's agenda is the consideration of the public comments received on the five proposed rules circulated for a public comment period with a deadline of October 26, 2007.

4. COMPETENCE PUBLICATIONS

- Handbook on Client Trust Accounting for CA Attorneys:
In 2007, 180 copies were sold and the online version of the handbook posted at the Bar's website was downloaded 153,800 times.
- California Compendium on Professional Responsibility:
In 2007, 284 copies of the Compendium updates and 5 complete new sets were sold, with more 2007 update sales expected to post in early 2008.
- CA Rules of Professional Conduct & State Bar (a.k.a Publication No. 250):
In 2007, 2,300 copies of the 2007 Publication 250 were sold and the online version of the 2007 Rules of Professional Conduct posted at the Bar's website was downloaded 13,686 times. The 2008 Publication 250 is in production and is anticipated to be available in early April.

5. COMPETENCE RESOURCES AT CALBAR.CA.GOV

- The State Bar tracks the web activity for all website pages accessed. The chart below lists selected web pages administered by Professional Competence and the 2007 activity in terms of downloads and visits (a.k.a. "hits").

2007 Professional Competence Web Resources – Activity Detail	
Webpage	Number of Downloads/Visits
2006 Trust Accounting Handbook pdf	153,856 downloads
Related Statutes html pages	38,292 visits
Rules of Professional Conduct html pages	33,281 visits
The State Bar Act html pages	30,375 visits
Ethics Hotline html pages	21,322 visits
Ethics Opinions html pages	18,023 visits
2007 California Rules of Professional Conduct pdf	13,686 downloads

- The Business and Professions Code State Bar Act provisions posted at the website have been updated with the legislative changes which became operative in 2008.
- Updated COPRAC and Rules Revision Commission rosters and the 2007-2008 meeting schedules have been posted at the website.
- The meeting materials for the Rules Revision Commission's December 7, 2007 and January 18, 2008 meetings were posted at the website.

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

Professional Competence Staff List

Professional Competence Staff Positions as of December 31, 2007	
Number of Positions Authorized	14.5
Number of Positions Filled	13.5

Professional Competence Employees as of December 31, 2007	
	Grade & Classification
	56EA – Director
VACANT	17A – Sr. Attorney
	16A – Attorney
	40C – Sr. Administrative Specialist
	9 – Program/Court Systems Analyst (P/CSA)
	8 - Sr. Administrative Assistant
	8 – Paralegal
	8 – Paralegal
	8 – Paralegal
	8 – Paralegal
	8 – Paralegal
	8 – Paralegal
Filled on 11-19-07	8 – Paralegal
	6 – Administrative Secretary
	4 – Data Analyst III
<p>NOTES: The P/CSA 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.</p>	

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
June	21	1178	977	201	83%	17%	45	467
July	21	1090	908	182	83%	17%	62	509
August	23	1204	978	226	81%	19%	68	516
September	19	1034	880	154	85%	15%	66	478
October	22	1233	1038	195	84%	16%	53	505
November	19	1066	883	183	83%	17%	43	451
December	19	865	706	159	82%	18%	57	391
Cumulative Totals	247	13,910	11,575	2,335	83%	17%	705	5,912

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 December 31, 2007)

Daily: Incoming Calls: 56
Completed Calls: 47

Monthly: Incoming Calls: 1,159
Completed Calls: 965

Aggregate Outgoing Calls

Current Month: 1,350

Cumulative to Date: 20,992

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	96	53	43	0	96
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	245	79	166	92	0
6	83	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	537	210	327	118	0
5	124	38	86	60	0
6	62	41	21	1	61
7	265	156	109	7	258
MAY TOTALS	2,094	918	1,176	473	319

JUNE					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	231	87	144	68	2
2	299	130	169	56	1
3	370	143	227	110	1
4	507	214	293	91	0
5	52	13	39	23	0
6	48	28	20	0	48
7	133	41	92	36	68
JUNE TOTALS	1,640	656	984	384	120

**Ethics Hotline
2007 Monthly and Cumulative
Individual Paralegal Call Statistics**

JULY					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	311	127	184	72	0
2	145	66	79	35	20
3	390	165	225	102	11
4	449	173	276	78	13
5	229	80	149	65	0
6	62	38	24	0	62
7	145	69	76	13	53
JULY TOTALS	1,731	718	1,013	365	159

AUG					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	314	127	187	87	9
2	229	103	126	36	10
3	382	164	218	94	10
4	530	219	311	104	11
5	358	112	246	140	0
6	0	0	0	0	0
7					
AUG TOTALS	1,813	725	1,088	461	40

SEPT					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	318	128	190	89	10
2	230	105	125	31	58
3	294	104	190	77	10
4	435	176	259	83	6
5	291	107	184	95	10
6	0	0	0	0	0
7	0	0	0	0	0
SEPT TOTALS	1,568	620	948	375	94

OCT					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	268	99	169	92	0
2	301	142	159	69	0
3	319	138	181	78	0
4	559	246	313	129	0
5	242	92	150	84	0
6	39	22	17	0	39
7	126	79	47	12	95
OCT TOTALS	1,854	818	1,036	464	134

NOV					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	291	105	186	103	0
2	132	48	84	32	0
3	362	142	220	75	0
4	434	194	240	79	0
5	221	66	155	77	0
6	0	0	0	0	0
7	11	3	8	5	0
NOV TOTALS	1,451	558	893	371	0

DEC					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	207	76	131	66	0
2	116	49	67	20	0
3	344	144	200	89	0
4	454	201	253	78	0
5	179	53	126	79	0
6	0	0	0	0	0
7	50	30	20	0	50
DEC TOTALS	1,350	553	797	332	50

Y-T-D					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	3,425	1,295	2,130	996	32
2	3,366	1,553	1,813	636	170
3	4,379	1,746	2,633	1,079	32
4	5,797	2,390	3,407	1,153	32
5	2,540	815	1,725	1,008	10
6	538	321	217	1	537
7	947	495	452	75	739
Y-T-D TOTALS	20,992	8,615	12,377	4,948	1,552

NOTE: The entries for paralegal 6 and 7 reflect statistics for Ethics Hotline call work performed by paralegals in training.

Professional Competence Budget Summary Authorized vs. Actual

Year-to-Date as of December 31, 2007	
Budget (Actual)	\$2,226,752
Budget (Authorized)	\$2,638,210
Savings	\$411,458

Monthly as of December 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	\$159,211	\$237,306
Budget (Authorized)	\$177,724	\$233,911	\$271,511	\$196,572	\$212,127	\$262,429
Savings	\$17,422	\$33,463	\$105,429	\$15,409	\$52,916	\$25,123
	<u>July</u>	<u>August</u>	<u>September</u>	<u>October</u>	<u>November</u>	<u>December</u>
Budget (Actual)	\$167,115	\$205,371	\$148,609	\$182,933	\$194,261	\$223,951
Budget (Authorized)	\$236,181	\$195,464	\$169,874	\$195,466	\$307,182	\$179,769
Savings	\$69,066	-\$9,907	\$21,265	\$12,533	\$112,921	-\$44,182

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.