

**ASSESSMENT OF PERFORMANCE
OF
THE STANDING COMMITTEE
ON PROFESSIONAL RESPONSIBILITY AND CONDUCT
OF THE STATE BAR OF CALIFORNIA
2007 Year End**

Chair: Dennis P. Maio

Staff Contact: Mark Taxy (415-538-2163)

Summary of Accomplishments

The Committee on Professional Responsibility and Conduct (“COPRAC” or “the Committee”) is assigned to develop advisory ethics opinions, to conduct educational programs, and to assist the Board of Governors in matters pertaining to attorney professional responsibility. This report presents an assessment of the Committee’s 2007 activities and accomplishments.

1. Conducted 7 one-day and 1 two-day meetings.
2. Published for public comment 4 proposed opinions of which 3 were formally published by the Board of Governors.
3. Administered the 11th Annual Statewide Ethics Symposium.
4. Presented 4 ethics programs at the State Bar Annual Meeting, 3 of which were selected for videotaping for use as self-study programs offering ethics credit.
5. Issued a public comment letter to the Rules Revision Commission regarding three proposed changes to the California Rules of Professional Conduct.
6. Issued a public comment letter to the Judicial Council regarding proposed amendments to the Code of Judicial Ethics.
7. Issued a public comment letter to the State Bar Office of Legal Services, Access and Fairness regarding the proposed *Frye v. THC* Report.
8. Issued a public comment letter to the State Bar Office of the Executive Director regarding the proposed State Bar Civility Guidelines.
9. Issued a comment letter to the State Bar Office of Mandatory Fee Arbitration regarding proposed revisions to the Mandatory Fee Arbitration Guidelines and Minimum Standards.
10. Participated in 12 CLE outreach programs.

Performance Indicators and Actual Performance

1. ***[Performance Indicator from 2007 Workplan]* Meetings - To carry out its charge, 9-10 day-long meetings will be held in FY 2007. 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.**

[Actual Performance] In FY 2007, COPRAC held 7 one-day meetings and 1 two-day meeting. Budget savings enabled the Committee to conduct its final meeting of the year as an in-person one-day meeting combining the New Members' Orientation Meeting with the regularly scheduled Committee meeting into a one-day meeting.

2. ***[Performance Indicator from 2007 Workplan]* Ethics Opinions - COPRAC plans to issue 3 – 5 formal ethics opinions. 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:**
 1. **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;**
 2. **Responding to such inquiries from members of the bar; and**
 3. **Publishing its opinions.**

[Actual Performance] In FY 2007, the Committee issued 4 opinions for public comment distribution and considered the public comment received. The Committee submitted 3 opinions to RAD for final publication which were approved as State Bar Formal Opinion No. 2007-172, No. 2007-173, and No. 2007-174. The one other opinion distributed for public comment is likely to be formally published in the first quarter of FY 2008. A summary of the published opinions and the opinion published for public comment are attached. (Attachment A).

3. ***[Performance Indicator from 2007 Workplan]* Rules of Professional Conduct - COPRAC plans to work closely with State Bar Commission for the Revision of the Rules of Professional Conduct in coordinating the Board's consideration of any Rule of Professional Conduct amendments. COPRAC will review and analyze proposals to amend the Rules of Professional Conduct and monitor and comment on the work of the State Bar's Commission for the Revision of the Rules of Professional Conduct.**

[Actual Performance] The COPRAC Rules Revision Commission Subcommittee members served as Committee liaison to the Rules Revision Commission. The liaison attended and monitored the meetings of the Commission and reported to the Committee on the work of the Commission. The Subcommittee reviewed the second group of 5 proposed rules submitted by the Commission for public comment and made recommendations to the Committee regarding the Committee's response to the request for public comment. The Committee considered the recommendations of the Subcommittee and submitted 1 comment letter to the Commission commenting on 3 proposed rules in which the Committee agreed with the proposed rules only if modified. A copy of the comment letter is attached. (Attachment B).

4. ***[Planned Activity from 2007 Workplan]*** Legislation - As assigned by the Board, COPRAC will review and analyze bills that relate to attorney professional responsibility, serve as a technical resource to the State Bar's Office of Government Affairs. 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

[Activity Report] There was no legislation referred to the Committee for consideration during FY 2007.

5. ***[Planned Activity from 2007 Workplan]*** Judicial Council - As assigned by the Board, COPRAC will 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. 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.

[Activity Report] In FY 2007, the Committee submitted a comment letter in its own name in response to a request for public comment by the Judicial Counsel on proposed amendments to the California Code of Judicial Ethics. A copy of the comment letter is attached (Attachment C).

6. ***[Planned Activity from 2007 Workplan]*** Conference of Delegates of California Bar Associations - As assigned by the Board, the Committee will review and analyze Conference resolutions that relate to attorney professional responsibility.

[Activity Report] There were no resolutions referred to the Committee for consideration during FY 2007.

7. ***[Planned Activity from 2007 Workplan]*** American Bar Association House of Delegates - As assigned by the Board, the Committee will 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). 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.

[Activity Report] The Committee fielded an inquiry from an ABA Task Force on Attorney-Client Privilege representative in FY 2006. This inquiry sought COPRAC involvement in the consideration of a California statewide body to monitor and act upon nationwide issues affecting attorney-client privilege. The inquiry was referred to staff and consideration of this matter remains pending and likely will continue into FY 2008.

8. ***[Planned Activity from 2007 Workplan]*** Annual Statewide Ethics Symposium - The Committee will plan and present a day-long statewide educational program offering a high level interactive discussion of key professional responsibility issues.

[Activity Report] COPRAC conducted its 11th Annual Ethics Symposium on May 19, 2007 at Southwestern Law School in Los Angeles. The theme of the Symposium was "Ethics Around the Edges." Four COPRAC sponsored panel discussions were presented entitled "Ethics and the Modern Transactional Lawyer," "Ethics at the Edges of Family Law," "Can a Non-Deceiver Be a Good Lawyer," and "Corporate Counsel as Counselor, Gatekeeper and Confidant." A fifth panel discussion was conducted by members of the Rules Revision Commission entitled "Rules Revision Update." A fifth presentation was given on the ABA Presidential Task Force on Attorney-Client Privilege. A keynote speech was delivered by Dean Bryant Garth of Southwestern Law School. COPRAC was fortunate to have State Bar President Sheldon Sloan present opening remarks. There were 70 paid participants and a number of other attendees registered for the Symposium. A copy of the Activity Evaluation Results is attached. (Attachment D). As indicated by the evaluation report, the Symposium received high marks in all categories from the attendees.

9. **[Performance Indicator from 2007 Workplan] State Bar Annual Meeting Programs - COPRAC plans to conduct 3 – 5 CLE programs in connection with the State Bar Annual Meeting (identification and preparation of program topics and materials begin in Spring 2007 for programs presented at the Annual Meeting in the Fall of 2007).**

[Actual Performance] The Committee participated in four programs at the State Bar Annual Meeting held in Anaheim in September, 2007. The four programs sponsored by COPRAC were entitled "Duties to third Parties," "Recent Significant Developments Affecting the Law of Lawyers," "Forming and Reforming the Attorney-Client Relationship," and "Recognizing and Avoiding Conflicts of Interest." Three of COPRAC's programs were selected for video taping to be made available as part of the State Bar's online CLE resources. All COPRAC sponsored programs were well attended and received high marks in all categories from the attendees. A copy of the Activity Evaluation Results is attached. (Attachment E).

10. **[Planned Activity from 2007 Workplan] Local Bar Outreach Programs - As opportunities arise, the Committee will coordinate with local and specialty bar associations in developing professional responsibility CLE programs tailored to local/specialty interests.**

[Activity Report] During FY 2007, members of COPRAC responded to 12 requests to present CLE programs in legal ethics. Generally, at these programs the speakers' role as a member of COPRAC is to publicize the work of the Committee and to encourage members of the bar to submit opinion requests, to comment on proposed opinions and to apply to serve on the Committee. A table listing COPRAC member participation in outreach programs during FY 2007 is attached. (Attachment F).

11. **[Planned Activity from 2007 Workplan] Coordination with other State Bar Entities - On matters of mutual interest, COPRAC will coordinate with State Bar entities.**

[Activity Report] During FY 2007, members of the Committee served as liaison to the State Bar Commission for the Revision of the Rules of Professional Conduct (see item #3, above).

In response to a request for public comment, COPRAC submitted an informal comment letter to the State Bar Office of Mandatory Fee Arbitration regarding proposed revisions to the State Bar Mandatory Fee Arbitration Guidelines and Minimum Standards. A copy of the comment letter is attached. (Attachment G). At a Board Committee meeting during which this matter was considered a member of COPRAC was present and addressed the Committee and answered questions.

In response to a request for public comment, COPRAC submitted a comment letter to the State Bar Office of Legal Services, Access and Fairness relating to the proposed report on nonprofit entity legal practice (*Frye v. Tenderloin Housing Clinic*). A copy of the comment letter is attached. (Attachment H).

In response to a request for comment, COPRAC submitted a comment letter to the State Bar Office of the Executive Director relating to the proposed new California Attorney Guidelines of Civility and Professionalism. A copy of the comment letter is attached. (Attachment I).

12. **[Planned Budget from 2007 Workplan] COPRAC budgeted expenses of \$40,300 for calendar year 2007.**

[Budget Report] Based on the operating statement issued by the Office of Finance as of December 31, 2007, COPRAC's 2007 expenses were under budget by \$2,617.

Attachment A

SUMMARY OF PUBLISHED OPINIONS

OFFICIALLY PUBLISHED OPINIONS

FORMAL OPINION NO. 2007-172

- 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.

AUTHORITIES INTERPRETED: Rules 1-320, 3-100, 3-700, 4-100, and 4-200 of the Rules of Professional Conduct of the State Bar of California.
Business and Professions Code section 6068.

FORMAL OPINION NO. 2007-173

- 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.

AUTHORITIES INTERPRETED: Rules 3-100 and 3-110 of the Rules of Professional Conduct of the State Bar of California
Business and Professions Code section 6068, subdivision (a) and (e)
Evidence Code section 912(d)
Probate Code sections 700, et seq.

FORMAL OPINION NO. 2007-174

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.

AUTHORITIES Rule 3-700(D) of the Rules of Professional Conduct of the State Bar of California.

INTERPRETED: Business and Professions Code section 6068, subdivision (e)(1).

OPINIONS PUBLISHED FOR PUBLIC COMMENT

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.

**AUTHORITIES
INTERPRETED:**

Rules 3-100, 3-110, 3-500, 3-700, 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.



October 18, 2007

Harry B. Sondheim, Chair
The Commission for the Revision of the Rules of Professional Conduct
The State Bar of California
180 Howard Street, 10th Floor
San Francisco, CA 94105

Dear Mr. Sondheim:

The Committee on Professional Responsibility and Conduct (COPRAC) submits the following comment on the proposed Rules of Professional Conduct.

Rule 1.8.11 – Relationship with Other Party’s Lawyer

COPRAC believes that a client should not only be “informed” of the existence of a relationship with another party’s lawyer, but also should be told of the potential consequences of such a relationship. Although not unanimous, it was COPRAC’s consensus that the rule should require “disclosure,” as that term is defined in Rule 3-310(A)(1), and also that the client should be required to give written consent to the types of conflicts that are described therein. In COPRAC’s view, the existence of a relationship with another party’s lawyer is of such significance that a greater safeguard is appropriate for purposes of client protection. Accordingly, COPRAC proposes that the final phrase of this rule be rewritten to read:

... unless the lawyer provides written disclosure of the relationship to the client and obtains the client’s informed written consent.

COPRAC believes that the comments to this rule should clarify that disclosure is intended to refer to the definition of disclosure contained in Rule 1.7.

Rule 8.4.1 – Prohibited Discrimination in Law Practice Management or Operation

First, and most importantly, COPRAC wishes to emphasize its agreement with the policy expressed in this rule that lawyers managing or operating law firms should be subject to discipline if it is adjudicated that they have unlawfully discriminated as described.

That said, COPRAC has several concerns with the manner in which this rule is drafted, and requests changes to clarify its application. First, COPRAC believes that subpart (b) of the rule as drafted is ambiguous. The first phrase, “In the management or operation of a law

practice,” creates a limitation that is arguably eliminated by the last clause, “whether or not the lawyer is a partner or shareholder or serves in a management role.” From the substance of Comment [2], COPRAC has speculated that the distinction the Commission is attempting to draw is between formal managers of a law firm and lawyers who may be managing informally, for example, lawyers managing a project or case. The matter, however, is not entirely clear.

Some members of COPRAC are also concerned with the possibility that a lawyer who is not a manager, shareholder, or partner would be subject to discipline under subpart (b) of this rule for “knowingly permitting” unlawful discrimination as defined under subpart (a)(1). “Knowingly permitting” is broadly defined to include failing to advocate corrective action when the lawyer knows of a discriminatory practice resulting in the unlawful discrimination. COPRAC believes that non-manager lawyers should be subject to discipline for unlawful discrimination (following the required adjudication), but that non-manager lawyers who are aware of unlawful discrimination and do not advocate corrective action should not be. Imposing discipline in the latter case seems too great a penalty to impose on a co-worker who may observe discrimination, and therefore know of it, yet not be in a position to act without substantial risk, real or perceived, of jeopardizing his or her own career relationships.

To resolve this concern, COPRAC proposes that subpart (b) of this rule be broken down thus:

(b) a lawyer shall not:

- (1) unlawfully discriminate on the basis of race, national origin, sex, sexual orientation, religion, age or disability, whether or not the lawyer is a partner or shareholder or serves in a management role;
- (2) in the management of a law practice, knowingly permit unlawful discrimination on the basis of race, national origin, sex, sexual orientation, religion, age or disability.

If this rule is restructured in this way, all lawyers will be subject to discipline after an adjudication finding them liable for unlawful discrimination. But only lawyers acting in a management role (formal or informal) will be subject to discipline for knowingly permitting discrimination, i.e., failing to advocate corrective action after knowing of unlawful discrimination. COPRAC would also delete the phrase “or operation,” which it believes inappropriate, since the phrase raises an ambiguity possibly extending the rule to non-managers.


Rule 1.8.5 – Payment of Personal or Business Expenses Incurred by or for a Client

The consensus among COPRAC members is that this rule should not permit lawyers to lend money to their clients. Although COPRAC recognizes the existence of compassionate need, it believes that the lawyers should not be able to get cases and clients based on their willingness to lend money to clients. COPRAC also believes that lawyers’ loans to clients dilute lawyer’s independence, and diminish clients’ ability to control settlement. Although some

COPRAC members believe that requiring compliance with Rule 3-300 adequately protects the interests of clients, the consensus is that loans to clients involve greater risks than warranted. Accordingly, COPRAC recommends that the Commission delete subpart (a)(2) of the rule.

COPRAC appreciates the opportunity to comment on the work of the Commission, and stands ready to provide any such further comment that the Commission may desire.

Very Truly Yours,



Dennis Peter Maio

Chair

Attachment C



THE STATE BAR OF CALIFORNIA

COMMITTEE ON PROFESSIONAL
RESPONSIBILITY AND CONDUCT

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1639

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

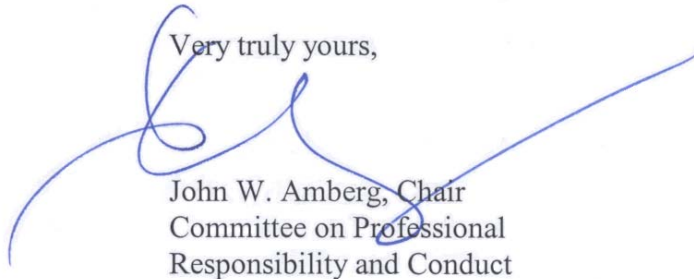
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duties, encourage greater disclosure of information, and protect both the parties and the Court by providing a standard subject to testing and review.

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 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)

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

Attachment D

| | | 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 Received 70 23 33%

#59 - Duties to Third Parties (22 responses)

(70 attendees)

Attachment E
COPRAC 2007
Annual Meeting Programs

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? | 17 | 5 | 0 | 0 | 0 | 4.6 |
| To what extent did the environment contribute to the learning experience? | 13 | 4 | 3 | 1 | 1 | 4.0 |
| To what extent did the materials contribute to the learning experience? | 12 | 5 | 4 | 1 | 0 | 4.1 |
| To what extent were the objectives stated in the promotional literature or those stated at the beginning of the activity satisfied? | 16 | 6 | 0 | 0 | 0 | 4.5 |
| To what extent did the program contain significant current intellectual or practical content? | 18 | 4 | 0 | 0 | 0 | 4.6 |

| <u>Instructor</u> | Overall Teaching 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. |
| Willis Baughman | 14 | 5 | 0 | 0 | 0 | 4.7 | 13 | 5 | 0 | 0 | 0 | 4.7 | 13 | 5 | 0 | 0 | 0 | 4.7 |
| James Fischer | 14 | 5 | 0 | 0 | 0 | 4.7 | 12 | 6 | 0 | 0 | 0 | 4.7 | 12 | 6 | 0 | 0 | 0 | 4.7 |
| John Steele | 13 | 6 | 0 | 0 | 0 | 4.7 | 12 | 5 | 0 | 0 | 0 | 4.7 | 13 | 4 | 0 | 0 | 0 | 4.8 |

#99 - Recent Developments Affecting the Law of Lawyers (23 responses)

(95 attendees)

Attachment E
COPRAC 2007
Annual Meeting Programs

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? | 19 | 3 | 1 | 0 | 0 | 4.8 |
| To what extent did the environment contribute to the learning experience? | 16 | 2 | 5 | 0 | 0 | 4.5 |
| To what extent did the materials contribute to the learning experience? | 17 | 3 | 3 | 0 | 0 | 4.6 |
| To what extent were the objectives stated in the promotional literature or those stated at the beginning of the activity satisfied? | 18 | 1 | 2 | 0 | 0 | 4.8 |
| To what extent did the program contain significant current intellectual or practical content? | 20 | 1 | 2 | 0 | 0 | 4.8 |

| <u>Instructor</u> | Overall Teaching 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. |
| John Amberg | 16 | 4 | 2 | 0 | 0 | 4.6 | 13 | 4 | 2 | 0 | 0 | 4.6 | 16 | 1 | 2 | 0 | 0 | 4.7 |
| Steven Lewis | 19 | 1 | 2 | 0 | 0 | 4.8 | 16 | 1 | 2 | 0 | 0 | 4.7 | 16 | 1 | 2 | 0 | 0 | 4.7 |
| Dennis Maio | 16 | 4 | 2 | 0 | 0 | 4.6 | 13 | 4 | 2 | 0 | 0 | 4.6 | 14 | 2 | 3 | 0 | 0 | 4.6 |
| Suzanne Mellard | 18 | 3 | 1 | 0 | 0 | 4.8 | 14 | 4 | 1 | 0 | 0 | 4.7 | 15 | 2 | 2 | 0 | 0 | 4.7 |

#135 - Forming and Reforming the Attorney-Client Relationship (13 responses)

(40 attendees)

Attachment E
COPRAC 2007
Annual Meeting Programs

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? | 7 | 4 | 0 | 1 | 0 | 4.4 |
| To what extent did the environment contribute to the learning experience? | 5 | 3 | 4 | 1 | 0 | 3.9 |
| To what extent did the materials contribute to the learning experience? | 6 | 5 | 2 | 0 | 0 | 4.3 |
| To what extent were the objectives stated in the promotional literature or those stated at the beginning of the activity satisfied? | 8 | 3 | 0 | 0 | 0 | 4.7 |
| To what extent did the program contain significant current intellectual or practical content? | 10 | 2 | 0 | 0 | 0 | 4.8 |

| <u>Instructor</u> | Overall Teaching 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. |
| Carole Buckner | 5 | 3 | 3 | 0 | 0 | 4.2 | 5 | 2 | 4 | 0 | 0 | 4.1 | 7 | 1 | 3 | 0 | 0 | 4.4 |
| James Fischer | 4 | 1 | 1 | 0 | 0 | 4.5 | 4 | 1 | 1 | 0 | 0 | 4.5 | 4 | 1 | 1 | 0 | 0 | 4.5 |
| Steven Lewis | 10 | 1 | 0 | 0 | 0 | 4.9 | 10 | 1 | 0 | 0 | 0 | 4.9 | 9 | 2 | 0 | 0 | 0 | 4.8 |
| Dennis Maio | 4 | 2 | 1 | 0 | 0 | 4.4 | 5 | 1 | 1 | 0 | 0 | 4.6 | 5 | 1 | 1 | 0 | 0 | 4.6 |

#160 - Recognizing and Avoiding Conflicts of Interest (14 responses)

(67 attendees)

Attachment E
COPRAC 2007
Annual Meeting Programs

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? | 10 | 2 | 1 | 0 | 0 | 4.7 |
| To what extent did the environment contribute to the learning experience? | 9 | 2 | 2 | 0 | 0 | 4.5 |
| To what extent did the materials contribute to the learning experience? | 7 | 4 | 2 | 0 | 0 | 4.4 |
| To what extent were the objectives stated in the promotional literature or those stated at the beginning of the activity satisfied? | 11 | 2 | 0 | 0 | 0 | 4.8 |
| To what extent did the program contain significant current intellectual or practical content? | 10 | 3 | 0 | 0 | 0 | 4.8 |

| <u>Instructor</u> | Overall Teaching 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. |
| John Amberg | 6 | 3 | 2 | 0 | 0 | 4.4 | 6 | 3 | 2 | 0 | 0 | 4.4 | 9 | 2 | 0 | 0 | 0 | 4.8 |
| Brian Forbes | 6 | 3 | 2 | 1 | 0 | 4.2 | 6 | 2 | 3 | 1 | 0 | 4.1 | 8 | 2 | 1 | 1 | 0 | 4.4 |
| Shawn Harpen | 6 | 2 | 3 | 0 | 0 | 4.3 | 6 | 3 | 2 | 0 | 0 | 4.4 | 8 | 2 | 1 | 0 | 0 | 4.6 |
| John Steele | 9 | 2 | 1 | 0 | 0 | 4.7 | 9 | 2 | 1 | 0 | 0 | 4.7 | 10 | 2 | 0 | 0 | 0 | 4.8 |

Attachment F

COPRAC - 2007 Accomplishments Report Member Outreach Programs

| | Date | Name | Sponsor | Location |
|-----|-------------|-----------------------------|--|-----------------|
| 1. | 01-19-07 | Ann Ravel | Santa Clara Co. Bar Assoc. | San Jose |
| 2. | 01-22-07 | Dennis P. Maio | Alameda Co. Family Lawyers Assoc. | Oakland |
| 3. | 01-25-07 | Brian Forbes | San Diego Co. Bar Assoc. | San Diego |
| 4. | 03- -07 | Steven Lewis | CA Dept. of Health Services | Sacramento |
| 5. | 03-30-07 | John Amberg | Pepperdine Univ. School of Law | Malibu |
| 6. | 05-05-07 | Dennis P. Maio | Law Offices of Phillip M. Anderson | American Canyon |
| 7. | 07-18-07 | Suzanne Mellard | Women Lawyers of Alameda County | Oakland |
| 8. | 09- -07 | John Steele | Santa Clara Co. Bar Assoc. | San Jose |
| 9. | 09-09-07 | Dennis P. Maio | CA Political Attorneys Assoc. | San Francisco |
| 10. | 12-01-07 | Wendy Mazzearella | Alexander's Legal Seminars | Mission Valley |
| 11. | 12-10-07 | Wendy Mazzearella | National College of District Attorneys | Mesa, AZ |
| 12. | 12-15-07 | John Amberg Jon Rewinski | LA County Bar Association | Los Angeles |

Attachment G



THE STATE BAR OF CALIFORNIA

COMMITTEE ON PROFESSIONAL
RESPONSIBILITY AND CONDUCT

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1639

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").

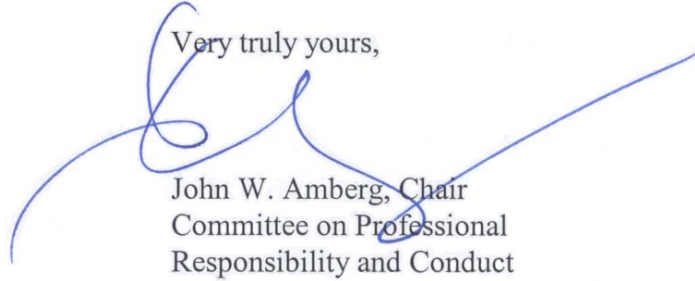
Given the further modifications that have been made, COPRAC supports proposed new paragraph 13 of the Guidelines with one caveat. We would recommend that the word "person" be substituted for the word "party" and that the phrase "arbitration with a non-client" be substituted for "third-party arbitration." 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
Page 2

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,

A handwritten signature in blue ink, appearing to read "John W. Amberg", is written over the typed name and title. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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

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



October 18, 2007

Kate O'Connor
Office of Legal Services, Access & Fairness Programs
The State Bar of California
180 Howard Street, 10th Floor
San Francisco, CA 94105

Dear Ms. O'Connor:

The Committee on Professional Responsibility and Conduct ("COPRAC") submits the following comments on the draft report to the Supreme Court in response to *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal. 4th 23, regarding nonprofit public benefit corporations providing legal services to the public ("nonprofits").

Although not unanimous, it was COPRAC's consensus that some further regulation of nonprofits is appropriate. The consensus supports the following recommendations for revisions to applicable provisions of the Rules of Professional Conduct ("Rules") and the Corporations Code, in large part because they do not appear to be particularly onerous, so as to reflect the reality of providing legal services by nonprofits and reconfirm the applicability of professional standards to attorneys practicing in nonprofits:

- To allow nonprofits to engage in the practice of law where non-attorney management or governance may exist
- To allow legal services to be mixed with other services
- To allow legal fees to be charged and contingency fee agreements to be used
- To require a "head of legal practice" in a nonprofit to register with the State Bar of California and to certify that the legal practice in California is overseen by a qualified member of the Bar, that attorneys within the nonprofit are subject to professional standards, and that policies and procedures are in place to assure compliance with such standards

With respect to requiring policies and procedures, COPRAC believes it would be helpful to set out specific goals, including preventing non-attorneys from interfering with an attorney's duty of loyalty to his or her client and protecting attorneys from ideological and funding pressures in their representation of their clients.

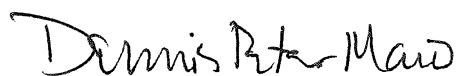
COPRAC also supports amendment of the Rules to except nonprofit legal practices from fee-sharing prohibitions. There is, however, no consensus among members on the scope of that exception. Some support the proposed limitation on the use of attorney fees to the reasonable operating expenses of the legal practice and to “programmatic public service activities of the legal practice”—provided the latter phrase is given some proper determinacy. But others question whether the use of attorney fees should be limited to legal services activities. They would instead endorse the approach of the American Bar Association, which imposes no such limitation, and suggest that a limitation of this sort might be unnecessary in light of the regulations applicable to nonprofits that have been promulgated by agencies including the Internal Revenue Service.

COPRAC questions the report’s recommendation that nonprofits be required to maintain security for error and omission claims in the same amount as is required for for-profit law corporations. COPRAC is concerned that, as the report acknowledges, this requirement might cause some nonprofits to cease to operate and thereby reduce the supply of legal services. COPRAC recommends further study regarding whether such consequences would in fact result. Such further study could take the form of requiring nonprofits to provide information, as part of the registration process, during the first year any new requirement is in effect regarding any claim made. As an alternative to maintaining security for error and omission claims in the same amount as is required for for-profit law corporations, nonprofits could be required to disclose to their clients any absence of malpractice insurance and the potential consequences of the absence of such insurance.

Finally, COPRAC recommends a fuller statement of reasons for removing the statutory requirement that 70% of a nonprofit’s clientele be of low income or otherwise without access to legal services. COPRAC assumes that the purpose may be to ensure that the statutory requirements do not violate the First Amendment, but has not found an explanation in the report.

COPRAC thanks you for the opportunity to comment and stands ready to comment further should you so desire.

Very Truly Yours,



Dennis Peter Maio

Chair

Attachment I



THE STATE BAR OF CALIFORNIA

COMMITTEE ON PROFESSIONAL
RESPONSIBILITY AND CONDUCT

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1639

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 uncivily. 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.

Teri Greenman

June 14, 2007

Page 4

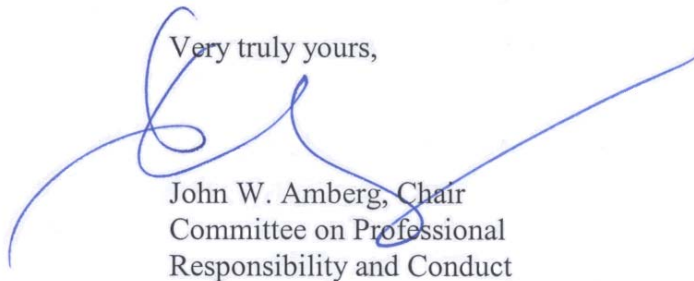
9. Re Section 12 / Ex Parte Communication With The Court: Since ex parte contacts with the court are already prohibited by Rule 5-300(B) of the Rules of Professional Conduct, Canon 3(B)(7) of the Cal. Code of Judicial Ethics, and by the court rules of every court in the state, Section 12 is unnecessary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



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

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