



MEMORANDUM

DATE: February 19, 2010
TO: Members of the Board's Regulation & Admissions Oversight Committee
FROM: Randall Difuntorum, Director, Professional Competence Programs
SUBJECT: RAC Meeting on March 4, 2010 – Status of the Professional Competence Unit

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This memorandum provides a 2009 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 2009, 15,652 member inquiries were received with a completion rate of 86%. This completion rate includes distribution of 598 copies of published ethics opinions and other written materials requested by inquirers and 6,682 referrals to information posted at the Bar's website. (Due to the availability of State Bar Formal Opinions at the Ethics Information area of the website, there is a decreasing need for distribution of this information by mail.) Of the total calls, 1,053 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 received instructions on how to call-in and receive priority handling when they choose to return the Hotline's call at their convenience. However, when no return call is received, the Hotline initiates a courtesy follow-up call.

- In 2009, 46 voluntary satisfaction surveys were received from members who utilized the Ethics Hotline service. Each survey asks for a rating on several specified categories of service, including: satisfaction with the system for handling the calls; helpfulness of receptionist; helpfulness of paralegal; usefulness of materials sent; whether the inquirer would recommend the Hotline to others; and whether they received the assistance they needed. Nearly all of the surveys received gave the Hotline the highest possible marks in each survey category. (Copies of the surveys received between November and December of 2009, since the last report to RAC, are attached.)

2. COPRAC

- COPRAC's 2009 Accomplishments Report is found as a separate item on RAC's March meeting agenda.
- Since the last Professional Competence status report submitted for the Board Committee's January 7, 2010 meeting, COPRAC met on January 15th in San Francisco. At the January meeting COPRAC considered new opinion topics for the coming year and approved two opinions for public comment circulation.
- The following opinions were approved for public comment and are anticipated to be circulating for a 90-day public comment period by the time of RAC's March meeting:

Formal Opinion Interim No. 06-0004 (comment deadline: TBD)

ISSUE: If an attorney receives from a non-party a confidential communication between opposing counsel and opposing counsel's client, what should the attorney do if the attorney reasonably believes that the communication may not be privileged because of the crime-fraud exception to the attorney-client privilege?

DIGEST: If an attorney receives a confidential written communication between opposing counsel and opposing counsel's client under circumstances reasonably suggesting that the crime-fraud exception precludes application of the attorney-client privilege, the attorney may ethically read the communication. If the document may be privileged but for the crime-fraud exception, the attorney must notify opposing counsel as soon as possible that the attorney has possession of the communication. The two attorneys should try to resolve the privilege issue or, if that fails, obtain the assistance of a court. Until the issue is resolved, the attorney may not disseminate or otherwise use the communication or its contents.

Formal Opinion Interim No. 08-0001 (comment deadline: TBD)

ISSUE: When does an attorney violate rule 4-400 of the California Rules of Professional Conduct by accepting a gift from a client?

DIGEST: An attorney who demonstrates by words or conduct an intent to cause a client to give the attorney a substantial gift violates rule 4-400. Whether a gift is substantial must be determined by examining the value of the gift from the perspective of both the client and the attorney. If the gift is substantial from either perspective, and the attorney said or did something with the intent to cause the gift to be given, the attorney violates rule 4-400.

- COPRAC's next meeting is scheduled for March 12, 2010 and will be held in Los Angeles. At this meeting they will consider and finalize letters of comment on the Batch 6 proposed new and amended rules for submission to the Rules Revision Commission. They will also continue work on the following matters: post public comment consideration of Formal Opinion Interim No. 08-0002 (confidentiality and technology); the 2009/2010 annual appointment process; and, planning for the 2010 Ethics Symposium scheduled for Saturday, May 1st at the Practising Law Institute (PLI) in San Francisco.

3. RULES REVISION COMMISSION

- The Rules Revision Commission's 2009 Accomplishments Report is found as a separate item on RAC's March meeting agenda.
- Since the last Professional Competence status report submitted for the Board Committee's January 7, 2010 meeting, the Commission met once on January 22 & 23 in San Francisco. At this meeting, the Commission considered the public comments received on its Batch 5 proposals. The Commission also continues to consider one rule, proposed Rule 1.7 (re current client conflicts of interest) presented to the Board Committee in November which was not adopted by the Board. The Commission's next meeting is scheduled for February 26 & 27, 2010 in Los Angeles.
- In March, the Board Committee will consider: (1) whether to adopt the Batch 5 proposals following public comment; and (2) whether to authorize a 90-day public comment distribution of all of the Commission's proposed rules that have been adopted by Board as a comprehensive Final Report and Recommendation.
- The public comment period for the Commission's Batch 6 proposed rules ends on March 12, 2010 and the Commission will consider revisions to those rules in response to the public comments at its March 26 & 27, 2010 meeting.
- A public hearing to receive testimony on the Batch 6 proposals is scheduled for March 11, 2010 at the State Bar's Office in Los Angeles.

4. COMPETENCE PUBLICATIONS

- Handbook on Client Trust Accounting for CA Attorneys:
In 2009, the online version of the handbook was downloaded 126,500 times. A revised 2010 online version of the handbook is anticipated in the coming months.
- California Compendium on Professional Responsibility:
In 2009, 640 copies of the Compendium updates were sold, and the online PDF version of the Compendium index was downloaded more than 86,000 times. Work on the 2010 update to the Compendium, including index entries for all of the 2009 ethics cases, is nearly complete and is anticipated to be available by the second quarter of the year.
- CA Rules of Professional Conduct & State Bar (a.k.a Publication No. 250):
In 2009, 1,500 copies of the 2009 Publication 250 were sold and the online PDF version of the Rules of Professional Conduct posted at the Bar's website was downloaded 138,700 times. Annual updates to the Publication 250 have been completed and the 2010 book is anticipated to be available by the end of the first quarter of the year.

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 2009 activity in terms of downloads and visits (a.k.a. "hits").

2009 Professional Competence Web Resources – Activity Detail	
Webpage	Approx. Number of Downloads/Visits
2009 California Rules of Professional Conduct pdf	138,700 downloads
Trust Accounting Handbook pdf	126,500 downloads
Loan Modification Ethics Alert pdf	109,200 downloads
Rules of Professional Conduct html pages	120,600 visits
The State Bar Act html pages	119,400 visits
Ethics Opinions html pages	57,400 visits
Ethics Information html pages	33,300 visits
COPRAC html pages	26,100 visits
Ethics Hotline html pages	23,700 visits

- The meeting materials for the Rules Revision Commission's January 22 & 23 and February 26 & 27 meetings were posted at the Commission's Meeting Materials page of the website.
- The Rules Revision Commission's Draft Rules page was updated to include a link to the full text of the Batch 4 rule proposals tentatively adopted by the Board of Governors at its January 9, 2010 meeting.
- The Discussion Draft for the proposed new and amended Batch 6 rules circulating for public comment was posted at the Public Comment page of the website.
- Notice of the March 11, 2010 public hearing on the Batch 6 rules was posted at the Bar's website and a press-release on the public hearing was also circulated and is posted at the Bar's website.
- The updated 2010 PDF versions of the Rules of Professional Conduct, the State Bar Act and the Related Statutes was posted at the Bar's website.

cc: Robert A. Hawley

Professional Competence Staff List

Professional Competence Staff Positions as of December 31, 2009	
Number of Positions Authorized	14.5
Number of Positions Filled	13.5

Professional Competence Employees as of December 31, 2009	
	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
	8 – Paralegal
	6 – Administrative Secretary
	4 – Data Analyst II
<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 - 2009

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	20	1386	1155	231	83%	17%	53	588
February	18	1314	1134	180	86%	14%	51	578
March	21	1471	1247	224	85%	15%	45	647
April	22	1406	1175	231	84%	16%	54	661
May	20	1273	1085	188	85%	15%	39	580
June	22	1342	1137	205	85%	15%	56	579
July	22	1309	1116	193	85%	15%	58	511
August	21	1233	1096	137	89%	11%	47	488
September	22	1383	1203	180	87%	13%	48	599
October	22	1420	1197	223	84%	16%	65	561
November	19	1062	963	99	91%	9%	37	449
December	22	1053	898	155	85%	15%	45	441
Cumulative Totals	251	15,652	13,406	2,246	86%	14%	598	6,682

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, 2009)

Daily: Incoming Calls: 62
Completed Calls: 53

Monthly: Incoming Calls: 1,304
Completed Calls: 1,117

Aggregate Outgoing Calls

Current Month: 1,695

Cumulative to Date: 23,165

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
2009 Monthly and Cumulative
Individual Paralegal Call Statistics**

JAN					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	276	80	196	111	1
2	375	183	192	63	0
3	416	157	259	117	0
4	488	225	263	103	0
5	319	118	201	100	0
6	217	136	81	3	190
JAN TOTALS	2,091	899	1,192	497	191

FEB					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	245	87	158	85	0
2	324	142	182	63	0
3	429	173	256	95	7
4	550	255	295	101	0
5	291	95	196	110	0
6	119	48	71	4	76
FEB TOTALS	1,958	800	1,158	458	83

MAR					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	308	107	201	90	0
2	362	181	181	60	0
3	441	153	288	134	0
4	567	248	319	105	0
5	350	133	217	118	0
6	101	56	45	4	67
MAR TOTALS	2,129	878	1,251	511	67

APR					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	316	114	202	96	5
2	407	192	215	63	5
3	196	75	121	65	5
4	570	233	337	117	5
5	318	113	205	128	0
6	202	95	107	14	35
APR TOTALS	2,009	822	1,187	483	55

MAY					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	300	99	201	97	20
2	419	212	207	50	6
3	294	102	192	90	13
4	458	194	264	91	11
5	266	86	180	95	10
6	102	43	59	20	17
MAY TOTALS	1,839	736	1,103	443	77

JUNE					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	226	79	147	68	1
2	350	147	203	64	0
3	339	109	230	153	5
4	607	276	331	114	5
5	408	155	253	112	0
6	58	25	33	0	53
JUNE TOTALS	1,988	791	1,197	511	64

**Ethics Hotline
2009 Monthly and Cumulative
Individual Paralegal Call Statistics**

JULY					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	278	101	177	98	20
2	502	254	248	79	68
3	377	131	246	132	9
4	497	214	283	103	1
5	285	108	177	84	0
6	83	32	51	7	55
7			0		
JULY TOTALS	2,022	840	1,182	503	153

AUG					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	315	115	200	109	28
2	241	107	134	29	36
3	386	129	257	109	18
4	386	166	220	73	22
5	263	86	177	94	20
6	242	124	118	27	25
7					
AUG TOTALS	1,833	727	1,106	441	149

SEPT					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	270	101	169	82	10
2	281	133	148	45	0
3	365	137	228	125	0
4	451	186	265	97	0
5	410	172	238	141	0
6	184	79	105	42	0
7	31	19	12	0	31
SEPT TOTALS	1,992	827	1,165	532	41

OCT					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	240	89	151	88	1
2	436	196	240	67	0
3	367	143	224	116	0
4	501	201	300	106	0
5	432	152	280	143	0
6	17	11	6	0	17
7			0		
OCT TOTALS	1,993	792	1,201	520	18

NOV					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	243	93	150	87	0
2	292	138	154	70	19
3	290	116	174	97	0
4	406	165	241	77	7
5	384	160	224	91	0
6	1	0	1	0	0
7			0		
NOV TOTALS	1,616	672	944	422	26

DEC					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	191	81	110	73	15
2	301	153	148	37	67
3	351	117	234	132	0
4	419	183	236	80	19
5	351	148	203	96	0
6	80	34	46	26	28
7	2	0	2	0	0
DEC TOTALS	1,695	716	979	444	129

Y-T-D					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	3,208	1,146	2,062	1,084	101
2	4,290	2,038	2,252	690	201
3	4,251	1,542	2,709	1,365	57
4	5,900	2,546	3,354	1,167	70
5	4,077	1,526	2,551	1,312	30
6	1,406	683	723	147	563
7	33	19	14	0	31
Y-T-D TOTALS	23,165	9,500	13,665	5,765	1,053

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, 2009	
Budget (Actual)	\$2,117,971 *
Budget (Authorized)	\$2,275,667
Savings	\$157,696 *

Monthly as of December 31, 2009						
	<u>January</u>	<u>February</u>	<u>March</u>	<u>April</u>	<u>May</u>	<u>June</u>
Budget (Actual)	\$136,879	\$129,283	\$156,573	\$153,296	\$217,803	\$166,749
Budget (Authorized)	\$175,480	\$176,494	\$176,988	\$177,054	\$251,612	\$177,381
Savings	\$38,601	\$47,211	\$20,415	\$23,758	\$33,809	\$10,632
	<u>July</u>	<u>August</u>	<u>September</u>	<u>October</u>	<u>November</u>	<u>December</u>
Budget (Actual)	\$164,562	\$163,898	\$198,578	\$213,606	\$163,220	\$253,524 *
Budget (Authorized)	\$177,761	\$177,753	\$177,967	\$251,908	\$177,301	\$177,968 *
Savings	\$13,199	\$13,855	-\$20,611	\$38,302	\$14,081	-\$75,556 *

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.

*Estimate pending official closing of 12/09 financial statements.

Ethics Hotline Customer Satisfaction Survey

RECEIVED

By leem at 5:20 pm, Nov 09, 2009



We thank you for calling the Ethics Hotline and welcome any comments or suggestions that you may have. Submit completed surveys by clicking **SUBMIT** at the end of the form.

Please choose the best answer for each question.

(1) (2) (3) (4) (5)

Rate overall satisfaction with the hotline experience Very Dissatisfied Dissatisfied Neutral Satisfied Very Satisfied

How satisfied are you with the information our staff provided? Very Dissatisfied Dissatisfied Neutral Satisfied Very Satisfied

How helpful was the ethics research paralegal? Very Dissatisfied Dissatisfied Neutral Satisfied Very Satisfied

How helpful was the receptionist? Very Dissatisfied Dissatisfied Neutral Satisfied Very Satisfied

How satisfied are you with our system for receiving calls? Very Dissatisfied Dissatisfied Neutral Satisfied Very Satisfied

Rate your overall satisfaction with the State Bar website. Very Dissatisfied Dissatisfied Neutral Satisfied Very Satisfied

I would recommend this service to others. Strongly Disagree Disagree Neutral Agree Strongly Agree

COMMENTS/SUGGESTIONS:

Paralegal you spoke with (optional)
Ricardo Patino

Call Date
11/04/2009

Your Name

Street Address

E-mail Address

City
Los Angeles

State
California

Zip Code

Ethics Hotline Customer Satisfaction Survey

RECEIVED

By leem at 5:22 pm, Nov 12, 2009



We thank you for calling the Ethics Hotline and welcome any comments or suggestions that you may have. Submit completed surveys by clicking **SUBMIT** at the end of the form.

Please choose the best answer for each question.

(1) (2) (3) (4) (5)

Rate overall satisfaction with the hotline experience Very Dissatisfied Dissatisfied Neutral Satisfied Very Satisfied

How satisfied are you with the information our staff provided? Very Dissatisfied Dissatisfied Neutral Satisfied Very Satisfied

How helpful was the ethics research paralegal? Very Dissatisfied Dissatisfied Neutral Satisfied Very Satisfied

How helpful was the receptionist? Very Dissatisfied Dissatisfied Neutral Satisfied Very Satisfied

How satisfied are you with our system for receiving calls? Very Dissatisfied Dissatisfied Neutral Satisfied Very Satisfied

Rate your overall satisfaction with the State Bar website. Very Dissatisfied Dissatisfied Neutral Satisfied Very Satisfied

I would recommend this service to others. Strongly Disagree Disagree Neutral Agree Strongly Agree

COMMENTS/SUGGESTIONS:

Mr. Lee quickly provided succinct and on-target case references that will help our office to resolve our question.

Having this service available was a great help.

Mr. Lee helped me to gather the right framework within which to discuss a particular professional responsibility issue with one of our attorneys who brought their question to me.

Thank you!

Paralegal you spoke with (optional)

Elbert Lee

Call Date

11/12/2009

Your Name

Street Address

E-mail Address

City

State

Zip Code

Ethics Hotline Customer Satisfaction Survey

RECEIVED

By leem at 10:05 am, Nov 20, 2009



We thank you for calling the Ethics Hotline and welcome any comments or suggestions that you may have. Submit completed surveys by clicking **SUBMIT** at the end of the form.

Please choose the best answer for each question.

(1) (2) (3) (4) (5)

Rate overall satisfaction with the hotline experience Very Dissatisfied Dissatisfied Neutral Satisfied Very Satisfied

How satisfied are you with the information our staff provided? Very Dissatisfied Dissatisfied Neutral Satisfied Very Satisfied

How helpful was the ethics research paralegal? Very Dissatisfied Dissatisfied Neutral Satisfied Very Satisfied

How helpful was the receptionist? Very Dissatisfied Dissatisfied Neutral Satisfied Very Satisfied

How satisfied are you with our system for receiving calls? Very Dissatisfied Dissatisfied Neutral Satisfied Very Satisfied

Rate your overall satisfaction with the State Bar website. Very Dissatisfied Dissatisfied Neutral Satisfied Very Satisfied

I would recommend this service to others. Strongly Disagree Disagree Neutral Agree Strongly Agree

COMMENTS/SUGGESTIONS:

I am very grateful to receptionist David to and paralegal Ricardo for their assistance and for their patiently taking time to listen to and discuss the issues. Ricardo was very knowledgeable and offered relevant case and statutory authority as well as good suggestions. Thank you.

Paralegal you spoke with (optional)

Ricardo Patino

Call Date

11/20/2009



Your Name

Street Address

E-mail Address

City

State

California



Zip Code