



MEMORANDUM

DATE: April 29, 2010
TO: Members of the Board's Regulation & Admissions Oversight Committee
FROM: Randall Difuntorum, Director, Professional Competence Programs
SUBJECT: RAC Meeting on May 14, 2010 – Status of the Professional Competence Unit

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This memorandum provides an update on the activities of the Professional Competence Unit through March 31, 2010. 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

- As of March 31, 2010, 3,638 member inquiries were received with a completion rate of 89%. This completion rate includes distribution of 148 copies of published ethics opinions and other written materials requested by inquirers and 1,747 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, 411 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.

- As of March 31, 2010, 6 voluntary satisfaction surveys were received from members who utilized the Ethics Hotline service. Each survey asks for a rating on several specified categories of service, including: satisfaction with the system for handling the calls; helpfulness of receptionist; helpfulness of paralegal; 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 and included very complimentary remarks. An e-mail was also received from an attorney who wished to convey his great satisfaction with the service. (Copies of the surveys and complimentary e-mail received are attached.)

2. COPRAC

- Since the last Professional Competence status report submitted for the Board Committee's March 5, 2010 meeting, COPRAC met on March 12th in Los Angeles. At the March meeting, COPRAC considered new opinion topics for the coming year and approved three opinion requests for further development as formal ethics opinions on the subjects of social networking, communications with client's implied consent and virtual law offices.
- The following opinions are currently circulating for a 90-day public comment period:

Formal Opinion Interim No. 06-0004 (comment deadline: July 16, 2010)

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: July 16, 2010)

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 April 30, 2010 and will be held in San Francisco. At this meeting they will consider the Final Report of proposed new and amended rules currently published for public comment by 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); pre-public comment consideration of Formal Opinion Interim Number 08-0003 (serving subpoenas on existing clients of a law firm) and Formal Opinion Interim Number 09-0001 (attorney suing former firm for retaliatory discharge); the 2009/2010 annual appointment process; and, planning for the 2010 Annual Meeting CLE programs. The Committee will also be available to receive oral public comment during its Open Session on the two proposed opinions currently circulating for public comment (see, 06-0004 and 08-0001 above).

- COPRAC's 14th Annual Statewide Ethics Symposium is scheduled to be held on May 1, 2010 at the Practising Law Institute in San Francisco. The theme of the Symposium is "A New Decade – A New Set of Ethical Challenges" The panels that will be presented include the following: "Reeling from the Recession: Keeping Faith with Ethics of the Professional During Turbulent Times;" "Social Networking and Professional Responsibility: Can They Co-Exist?;" "Screening in California: The Evolving Debate;" and "Rules Revision Commission: New Rules for a New Decade?" This Symposium is being dedicated in the memory of the late Jeffrey Tidus, former Board Member and COPRAC member. The keynote speaker will be Michael Traynor, President Emeritus, American Law Institute and Co-Chair of the ABA Commission on Ethics 20/20.

3. RULES REVISION COMMISSION

- Since the last Professional Competence status report submitted for the Board Committee's March 5, 2010 meeting, the Commission met twice: on March 26 & 27, 2010 in San Francisco; and on April 23, 2010 by teleconference. At these meetings, the Commission considered the public comments received on its Batch 6 proposals. The Commission also considered Rule 1.10 (re imputation of conflicts of interests and screening), a Batch 5 rule that was not adopted by the Board. The Commission considered revising the proposed rule (to provide for imputation but not screening) with the goal of submitting the revised rule to the Board for reconsideration. The Commission's next meeting is scheduled for June 4 & 5, 2010 in San Francisco.
- In May, the Board Committee will consider whether to adopt, subject to further public comment, the Commission's Batch 6 proposals. The initial public comment period on the Batch 6 proposals ended on March 12, 2010. A public hearing to receive testimony on the Batch 6 proposals was held on March 11, 2010 at the State Bar's Office in Los Angeles.
- The Commission will present a panel at the 14th Annual Statewide Ethics Symposium on May 1, 2010 in San Francisco. The panel will examine key issues in the proposed new and amended rules, including: confidentiality; fees; conflicts of interest; and law firm associations. The Commission panelists will be: Harry Sondheim (Commission Chair); Mark Tuft (Commission Co-Vice Chair); Paul Vapnek (Commission Co-Vice Chair); and Linda Foy (Commission Member). Also participating on the panel are Professor Kevin Mohr (Commission Consultant) and Shawn Harpen (COPRAC Vice Chair) as panel moderator.

4. COMPETENCE PUBLICATIONS

- Handbook on Client Trust Accounting for CA Attorneys:
As of March 31, 2010, the online version of the handbook was downloaded 24,800 times. A revised 2010 online version of the handbook is anticipated in the coming months.
- California Compendium on Professional Responsibility:
As of March 31, 2010, 78 copies of the 2009 Compendium updates were sold. 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 in June.
- CA Rules of Professional Conduct & State Bar (a.k.a Publication No. 250):
As of March 31, 2010, 288 copies of the 2009 Publication 250 were sold, marking the final sales of the 2009 edition. The 2010 hard copy edition was completed in March and orders are being processed. The 2010 online PDF version of the Rules of Professional Conduct posted at the Bar's website was downloaded 70,800 times.

5. COMPETENCE RESOURCES AT CALBAR.CA.GOV

- The meeting materials for the Rules Revision Commission's March 26 & 27 and April 23 meetings were posted at the Commission's Meeting Materials page of the website.
- A new webpage was developed to present the resource documents for the Rules Revision Commission's comprehensive public comment circulation of the entire set of rules (www.calbar.org/proposedrules) and the official public comment posting was also posted at the Public Comment page of the website.
- A new webpage entitled "Archive of Board Consideration" was developed and posted on the Rules Revision Commission's page that provides copies of the rules tentatively approved by the Board Committee/Board and each of its meetings since November, 2009. This page also links to the public comment Discussion Drafts for each of the groups of rules circulated for initial public comment (Batches 1 – 6).
- Formal Opinion Interim Nos. 06-0004 and 08-0001 tentatively approved for public comment by COPRAC were posted at the Public Comment page of the website.
- The updated 2010 html versions of the State Bar Act provisions were posted at the Bar's website.
- COPRAC's ethics alert entitled: "Legal Services to Distressed Homeowners and Foreclosure Consultants on Loan Modifications" posted at the Bar's website was downloaded 13,300 times.

cc: Robert A. Hawley

Professional Competence Staff List

Professional Competence Staff Positions as of March 31, 2010	
Number of Positions Authorized	14.5
Number of Positions Filled	13.5

Professional Competence Employees as of March 31, 2010	
	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 - 2010

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	19	1317	1107	210	84%	16%	46	504
February	19	1310	1230	80	94%	6%	49	594
March	22	1438	1301	137	90%	10%	53	649
Cumulative Totals	60	4,065	3,638	427	89%	11%	148	1,747

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 March 31, 2010)

Daily: Incoming Calls: 68
Completed Calls: 61

Monthly: Incoming Calls: 1,355
Completed Calls: 1,213

Aggregate Outgoing Calls

Current Month: 2,313

Cumulative to Date: 6,170

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
2010 Monthly and Cumulative
Individual Paralegal Call Statistics**

JAN					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	270	101	169	90	3
2	290	136	154	40	18
3	277	91	186	101	5
4	410	172	238	101	0
5	519	215	304	119	0
6	120	63	57	1	95
JAN TOTALS	1,886	778	1,108	452	121

FEB					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	344	128	216	113	21
2	375	178	197	51	21
3	324	108	216	117	6
4	420	168	252	107	9
5	490	208	282	110	10
6	11	5	6	0	0
7	7	3	4	1	0
FEB TOTALS	1,971	798	1,173	499	67

MAR					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	334	124	210	128	12
2	347	175	172	53	90
3	371	133	238	150	0
4	567	241	326	128	1
5	566	230	336	115	0
6	128	55	73	7	120
MAR TOTALS	2,313	958	1,355	581	223

Y-T-D					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	948	353	595	331	36
2	1,012	489	523	144	129
3	972	332	640	368	11
4	1,397	581	816	336	10
5	1,575	653	922	344	10
6	259	123	136	8	215
7	7	3	4	1	0
Y-T-D TOTALS	6,170	2,534	3,636	1,532	411

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 March 31, 2010	
Budget (Actual)	\$548,628
Budget (Authorized)	\$553,848
Savings	\$5,220

Monthly as of March 31, 2010						
	<u>January</u>	<u>February</u>	<u>March</u>	<u>April</u>	<u>May</u>	<u>June</u>
Budget (Actual)	\$155,433	\$182,603	\$210,592			
Budget (Authorized)	\$184,616	\$184,616	\$184,616			
Savings	\$29,183	\$2,013	-\$25,976	\$0	\$0	\$0
	<u>July</u>	<u>August</u>	<u>September</u>	<u>October</u>	<u>November</u>	<u>December</u>
Budget (Actual)						
Budget (Authorized)						
Savings	\$0	\$0	\$0	\$0	\$0	\$0

Ethics Hotline Customer Satisfaction Survey

RECEIVED

By leem at 10:44 am, Jan 08, 2010



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:

The paralegal directed me to exactly the right materials and showed me new materials on the State Bar website. Most professional.

Paralegal you spoke with (optional)

Ricardo Patino

Call Date

01/08/2010



Your Name

Street Address

E-mail Address

City

State

California



Zip Code

Ethics Hotline Customer Satisfaction Survey

RECEIVED

By leem at 12:34 pm, Jan 20, 2010



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:

In 40 yrs, I have called maybe ten times and EACH TIME IT WAS OUTSTANDING!!! help.All the Paralegals I have spoken to were extremely courteous, knowledgable and very, very helpful. Thank you very, very much.

Paralegal you spoke with (optional)

Elbert Lee

Call Date

01/20/2010

Your Name

Street Address

E-mail Address

City

State

California

Zip Code

Ethics Hotline Customer Satisfaction Survey

RECEIVED

By leem at 12:37 pm, Jan 22, 2010



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)

Lynn Cobb

Call Date

01/22/2010

Your Name

Street Address

E-mail Address

City

State

California

Zip Code

Ethics Hotline Customer Satisfaction Survey

RECEIVED

By leem at 2:55 pm, Feb 03, 2010



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)

Call Date

Your Name

Street Address

E-mail Address

City

State

California

Zip Code

Ethics Hotline Customer Satisfaction Survey

RECEIVED

By leem at 4:25 pm, Feb 16, 2010



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:

Lynn Cobb helped me on the phone today and was not only extremely efficient and helpful with all of the relevant materials at her fingertips, she was incredibly sweet and charming. I doubt she is earning enough of a salary from our annual Bar fees and I would like to recommend that she be given a raise lest her excellent client bed-side manner be taken to a private firm!

Thank you.

Daniel

Paralegal you spoke with (optional)

Lynn Cobb

Call Date

02/16/2010



Your Name

Street Address

E-mail Address

City

State

Other

Zip Code

Ethics Hotline Customer Satisfaction Survey

RECEIVED

By leem at 10:30 am, Feb 23, 2010



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

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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 was fortunate enough to speak with a supervising attorney "Mark." He was more than helpful in providing me the information I need to review to deal with a sticky issue related to a professional leaving a law firm. While I've never had to use the ethics hotline before it gives me great comfort in knowing that the Ethics Hotline is staffed with competent personnel.

Paralegal you spoke with (optional)

Call Date

02/23/2010

Your Name

Street Address

E-mail Address

City

State

California

Zip Code

