



MEMORANDUM

DATE: October 26, 2010

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

FROM: Randall Difuntorum, Director, Professional Competence Programs

SUBJECT: RAD Meeting on November 10, 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 September 30, 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 September 30, 2010, 11,330 member inquiries were received with a completion rate of 91%. This completion rate includes distribution of 470 copies of published ethics opinions and other written materials requested by inquirers and 5,047 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, 1,663 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.
- Between June 1 and September 30, 2010, 7 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. Five of the surveys received gave the Hotline the highest possible marks in each survey category and included very complimentary remarks. One survey expressed dissatisfaction with the demeanor of the staff person who assisted them, and another survey indicated dissatisfaction with the return call process. (Copies of the surveys are attached.)

2. COPRAC

- Since the last Professional Competence status report submitted for the Board Committee's July 23, 2010 meeting, COPRAC met on August 6th & 7th in San Francisco and September 23rd in Monterey. At the August and September meetings, COPRAC continued post-public comment consideration of Formal Opinion Number 06-0004 (Confidentiality and Unsolicited E-mail Correspondence), 08-0001 (Gifts from Clients), and (08-0002 (Confidentiality and Technology). The Committee began initial consideration of issuing an Ethics Alert on the subject of Internet scams that specifically target attorneys. The Committee also considered the 7 Proposed New and Amended Rules of Professional Conduct circulated for an additional 30-day public comment period and approved and submitted 6 comment letters to the RRC on 6 of the 7 rules.
- The following opinion was tentatively approved by COPRAC for final 30-day circulation to RAD for approval prior to publication at the Bar's website. COPRAC considered this opinion following an additional 30-day public comment period and we anticipate that it will be circulating before RAD at the time of RAD's November meeting:

Formal Opinion Interim No. 08-0002 (comment deadline: September 20, 2010):

ISSUES: Does an attorney violate the duties of confidentiality and competence he or she owes to a client by: 1) using a computer to which the organization employing the attorney and its supervisors have access; 2) using computer software to which the software developer has access; or 3) using a public or home wireless connection?

DIGEST: To comply with his or her duties of confidentiality and competence, an attorney must take appropriate steps to evaluate: 1) the level of security attendant to the use of a particular technology in the course of representing a client; 2) the legal ramifications to a third party who intercepts, accesses or exceeds authorized use of the electronic information; 3) the degree of sensitivity of the information; 4) the possible impact on the client of an inadvertent disclosure of privileged or confidential information or work product; and 5) whether reasonable precautions may be taken when using the technology to increase the level of security. With regard to use of a computer to which the organization employing the attorney and its supervisors have access, the attorney must consider the purpose of, and limitations on, the access and whether the organization itself or an individual with access may have an interest in the information that is in conflict with the client's interest. The attorney may need to take precautions to ensure that any interested persons will not be able to access the information or, absent informed client consent, the attorney may need to consider whether he or she can competently represent the client without using the computer in connection with the representation. With regard to access to confidential information by a software developer, the attorney may use the software as long as the attorney does not have a reason to believe the information will be used improperly. However, he or she may need to discuss the issue with the client to determine appropriate methods of proceeding if the information at issue is highly sensitive or the software developer has an adverse interest in the matter. With regard to use of a public or home wireless connection, the attorney risks violating his or her duties of confidentiality and competence unless appropriate precautions are taken, such as using an adequate encryption device and a personal firewall. Depending on the situation, including if the information at issue is of a highly sensitive

nature, the attorney may need to avoid using the wireless connection entirely, or notify the client of possible risks associated with use of the wireless connection and seek the client's informed consent to do so. Generally, the attorney should not use an unsecured public wireless connection that does not require a password for access.

- COPRAC's next meeting is scheduled for November 5 & 6, 2010 and will be held in Los Angeles. An orientation meeting to orient the incoming COPRAC members will also be held at this meeting, along with a computer training session for all members on the use of the Collaboration software used to assist in the management of the committee work. They will continue work on the following matters: post public comment consideration of Formal Opinion Interim Nos. 06-0004 (Confidentiality and Unsolicited E-mail Correspondence) and 08-0001 (Gifts from Clients); pre-public comment consideration of Formal Opinion Interim Nos. 08-0003 (serving subpoenas on existing clients of a law firm), 09-0001 (attorney suing former firm for retaliatory discharge), 10-0001 (social networking), 10-0002 (communications with client's implied consent), and 10-0003 (virtual law practice); an Ethics Alert Article concerning Internet scams targeting lawyers; the 2010/2011 annual appointment process; and, planning for the 2011 Annual Statewide Ethics Symposium and State Bar Annual Meeting CLE programs.
- COPRAC conducted four educational programs at the State Bar Annual Meeting held in Monterey. The COPRAC sponsored programs were entitled "Conflicts for Lawyers: How to Get Yourself Disqualified, Sued and Disciplined," "Ethics Update 2010: Significant Developments in the Law of Lawyering," "Keeping Your Client Trust Account and Collecting Your Fee," and "Electronic Ethics." The foregoing programs were all selected by Annual Meeting staff for videotaping to be offered as online CLE following the Annual Meeting. The Office of Professional Competence also sponsored two additional programs. The first program, entitled "Ethical Paradigms for 2010," was moderated by former RAD co-chair Judy Gilbert; and presented by COPRAC chair Carole Buckner and COPRAC member David Parker. The second program, entitled "Intellectual Property Ethics Jeopardy," was co-sponsored by the San Francisco Bay Area Intellectual Property Chapter of the American Inns of Court and was presented by Neil Smith, former COPRAC member John Steele, Daralyn Durie and Ragesh Tangri. A summary of the program evaluation forms for these programs will be provided with the next RAD status report.

3. RULES REVISION COMMISSION

- Since the last Professional Competence status report submitted for the Board Committee's July 23, 2010 meeting, the Commission met on August 27, 2010 in San Francisco. At that meeting the Commission considered the public comments received on an additional 30-day public comment circulation for Rules 1.0.1, 2.1, 3.3, 3.8, 4.2, 5.4 & 8.4 that ended on August 25, 2010. The Commission completed its review of the public comments received and the Commission's report was considered at the Board's September meeting in Monterey, which completed the Board's review of all of the Commission's proposed new and amended rules. A detailed report on the action taken by the Board at the Monterey meeting has been published in the ABA/BNA (*Lawyers' Manual on Professional Conduct*, Vol. 26, No. 21, October 13, 2010). An article also appeared in the California Bar e-Journal (October 2010, posted at: <http://www.calbarjournal.com/October2010/TopHeadlines/TH6.aspx>)
- The Commission presented a panel at the State Bar Annual Meeting entitled "Proposed New and Amended Rules of Professional Conduct." The panel examined key issues in the proposed new and amended rules, including: confidentiality; fees; conflicts of interest; and law firm associations. The panel

was moderated by Judge Michael Marcus (Ret.), the Immediate Former RAC Chair, and the co-panelists were: Harry Sondheim (Commission Chair); Prof. Kevin Mohr (Commission Consultant), and Randall Difuntorum (Commission Staff Counsel) A summary of the program evaluation forms for this program will be provided with the next RAD status report.

- At its July 23rd meeting, the Board of Governors approved a new California professional responsibility award to recognize outstanding contributions to the field of attorney professional responsibility and Harry Sondheim (Commission Chair) was selected as the inaugural recipient of the award in his name “The Harry B. Sondheim Professional Responsibility Award.” The award was presented at the State Bar Award Reception in Monterey.

4. COMPETENCE PUBLICATIONS

- Handbook on Client Trust Accounting for CA Attorneys:
A revised 2010 online version of the handbook is anticipated in the coming months.
- California Compendium on Professional Responsibility:
As of September 30, 2010, 103 copies of the 2009 Compendium updates were sold. Sales of the 2010 update to the Compendium, including index entries for all of the 2009 ethics cases, are currently being processed.
- CA Rules of Professional Conduct & State Bar (a.k.a Publication No. 250):
As of September 30, 2010, 1,027 copies of the 2010 Publication 250 have been sold.

5. COMPETENCE RESOURCES AT CALBAR.CA.GOV

- A new page in the “Ethics Information” area was added for the Bar’s recently adopted model agreement for the designation of an attorney to administer a lawyer’s law practice in the event that the lawyer becomes disabled or incapacitated. To feature this important addition, a new navigation tab was added for “Attorney Surrogacy” and also a link was added to the ongoing Ethics Information page “Announcements” box.
- The “Proposed Rules” page was revised to include a PDF download of the entire set of rules (www.calbar.org/proposedrules) as adopted by the Board. The page also was updated to clarify that although adopted by the Board, the new rules only become operative if approved by the California Supreme Court.
- Professional Competence’s free online MCLE self-study article, describing the proposed new and amended Rules of Professional Conduct, has been posted for only 2 months and already over 140 members have used it to obtain 1 hour of free ethics credit.

cc: Robert A. Hawley

Professional Competence Staff List

Professional Competence Staff Positions as of September 30, 2010	
Number of Positions Authorized	13.5
Number of Positions Filled	13.5

Professional Competence Employees as of September 30, 2010	
	Grade & Classification
	56EA – Director
	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
April	22	1316	1186	130	90%	10%	62	585
May	20	1184	1078	106	91%	9%	40	522
June	22	1320	1222	98	93%	7%	59	589
July	21	1075	993	82	92%	8%	68	527
August	22	1178	1118	60	95%	5%	41	541
September	21	1192	1115	77	94%	6%	52	536
October								
November								
December								
	188	11,330	10,350	980	91%	9%	470	5,047
Totals								

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 September 30, 2010)

Daily: Incoming Calls: 60
Completed Calls: 55

Monthly: Incoming Calls: 1,416
Completed Calls: 1,294

Aggregate Outgoing Calls

Current Month: 1,824

Cumulative to Date: 17,953

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

APR					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	313	124	189	97	24
2	275	150	125	31	45
3	305	84	221	133	19
4	443	185	258	91	13
5	525	219	306	124	6
6	298	113	185	39	136
APR TOTALS	2,159	875	1,284	515	243

MAY					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	229	82	147	73	7
2	310	145	165	46	27
3	245	76	169	97	0
4	456	181	275	87	1
5	319	111	208	80	0
6	377	149	228	45	209
MAY TOTALS	1,936	744	1,192	428	244

JUNE					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	312	141	171	79	19
2	362	183	179	47	125
3	354	113	241	127	0
4	499	206	293	89	0
5	476	188	288	108	0
6	144	58	86	9	101
JUNE TOTALS	2,147	889	1,258	459	245

JULY					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	293	131	162	61	51
2	308	181	127	27	137
3	308	71	237	136	17
4	299	98	201	55	0
5	480	175	305	113	0
6	258	85	173	68	52
JULY TOTALS	1,946	741	1,205	460	257

AUG					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	382	141	241	61	31
2	286	147	139	27	99
3	245	78	167	86	0
4	324	96	228	67	0
5	329	99	230	97	0
6	205	61	144	73	0
AUG TOTALS	1,771	622	1,149	411	130

**Ethics Hotline
2010 Monthly and Cumulative
Individual Paralegal Call Statistics**

SEP					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	303	128	175	48	44
2	347	160	187	45	79
3	225	66	159	68	10
4	285	78	207	57	0
5	318	91	227	90	0
6	346	86	260	87	0
SEP TOTALS	1,824	609	1,215	395	133

Y-T-D					
Paralegal	Total Calls	Left Msg.	Completed Calls	Return Calls	Call Backs
1	2,780	1,100	1,680	750	212
2	2,900	1,455	1,445	367	641
3	2,654	820	1,834	1,015	57
4	3,703	1,425	2,278	782	24
5	4,022	1,536	2,486	956	16
6	1,887	675	1,212	329	713
7	7	3	4	1	0
Y-T-D TOTALS	17,953	7,014	10,939	4,200	1,663

Professional Competence Budget Summary Authorized vs. Actual

Year-to-Date as of September 30, 2010	
Budget (Actual)	\$1,481,155
Budget (Authorized)	\$1,726,472
Savings	\$245,317

Monthly as of September 30, 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	\$264,943	\$156,510	\$769
Budget (Authorized)	\$184,616	\$184,616	\$184,616	\$252,649	\$184,616	\$181,616
Savings	\$29,183	\$2,013	-\$25,976	-\$12,294	\$28,106	\$180,847
	<u>July</u>	<u>August</u>	<u>September</u>	<u>October</u>	<u>November</u>	<u>December</u>
Budget (Actual)	\$177,404	\$169,271	\$163,630			
Budget (Authorized)	\$184,603	\$184,597	\$184,543			
Savings	\$7,199	\$15,326	\$20,913	\$0	\$0	\$0

Ethics Hotline Customer Satisfaction Survey

RECEIVED

By leem at 11:55 am, Jun 18, 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 was outstanding in terms of understanding the issues I presented and directing me to pertinent authorities. She is an asset to the State Bar. (The receptionist, on the other hand, can be replaced by either voicemail or an online submission form, both of which would provide greater accessibility, accuracy, and convenience.)

Paralegal you spoke with (optional)

Lynn Cobb

Call Date

06/18/2010

Your Name

Street Address

E-mail Address

City

State

California

Zip Code

Ethics Hotline Customer Satisfaction Survey

RECEIVED

By leem at 11:58 am, Jun 25, 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)

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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 that called me back was very rude and yelled at me, without providing any basis for her answers, and without doing any research on my topic.

Paralegal you spoke with (optional)

Call Date

06/25/2010

Your Name

Street Address

E-mail Address

City

Los Angeles

State

California

Zip Code

Ethics Hotline Customer Satisfaction Survey

RECEIVED

By leem at 11:59 am, Jul 28, 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)

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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:

Getting a call back 1-2 days later is difficult because of busy schedules. I would rather have a time with a 15 minute block during which I will receive a call. That way I can reserve it on my schedule.

Also, if the hotline is going to refer members to cal state bar ethics rptr decisions then that should be a resource the state bar offers it members directly online.

Paralegal you spoke with (optional)

Lynn Cobb

Call Date

07/28/2010

Your Name

Street Address

E-mail Address

City

State

California

Zip Code

Ethics Hotline Customer Satisfaction Survey

RECEIVED

By leem at 12:01 pm, Jul 30, 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)

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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:

David Jasper was very pleasant and competent, as always.

The research specialist Lynn was very pleasant and helpful.

Thank you for a great service.

Your service has ALWAYS been excellent. I have always been totally satisfied.

Paralegal you spoke with (optional)

Lynn Cobb

Call Date

07/30/2010

Your Name

Street Address

E-mail Address

City

State

California

Zip Code

Ethics Hotline Customer Satisfaction Survey

RECEIVED

By leem at 1:49 pm, Aug 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)

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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:

Lynn was awesome

Paralegal you spoke with (optional)

Lynn Cobb

Call Date

08/16/2010

Your Name

Street Address

E-mail Address

City

State

California

Zip Code

RECEIVED

By leem at 1:51 pm, Sep 02, 2010

Ethics Hotline Customer Satisfaction Survey



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)

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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 do not know the name of the paralegal I spoke with, but she was very helpful and patient. I was impressed with her ability to provide citations to case law while speaking with me. Keep up the great work. Thank you.

Paralegal you spoke with (optional)

Call Date

09/02/2010

Your Name

Street Address

E-mail Address

City

San Francisco

State

California

Zip Code

Ethics Hotline Customer Satisfaction Survey

RECEIVED

By leem at 1:55 pm, Sep 11, 2010



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Please choose the best answer for each question.

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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:

Amazingly efficient, knowledgeable and informative. Great crew - do not know what I would do without them.

Paralegal you spoke with (optional)

Call Date

09/14/2010

Your Name

Street Address

E-mail Address

City

State

Zip Code

California