



MEMORANDUM

DATE: June 29, 2011

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

FROM: Randall Difuntorum, Director, Professional Competence Programs

SUBJECT: RAD Meeting on July 22, 2011 – Status of the Professional Competence Unit

This memorandum provides a report on the activities of the Professional Competence Unit through May 31, 2011.¹ In addition to this memorandum, provided are the following: (1) Ethics Hotline Activity Statistics, (2) Professional Competence Budget Summary – Authorized vs. Actuals, and (3) Ethics Hotline satisfaction survey excerpts. Board members with questions may contact Randall Difuntorum at (415) 538-2161 or Lauren McCurdy at (415) 538-2107.

1. ETHICS HOTLINE

As of May 31, 2011, 6,433 member inquiries were received with a completion rate of 92%. This completion rate includes distribution of 192 copies of published ethics opinions and other written materials requested by inquirers and 2,747 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.) In addition, the staff made 761 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.

Six Ethics Hotline paralegals handle the majority of calls received. As of May 31, 2011: (1) the monthly average number of total calls handled by one paralegal was 330; the monthly average number of completed calls by one paralegal was 204; and (3) the monthly average number of left messages by one paralegal was 126. In April and May, since the last status report for RAD's May meeting, 12 voluntary satisfaction surveys were received from members after using 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. All of the surveys received gave the Hotline top marks in most survey categories (Copies of the surveys are available upon request). Comments from members were provided on ten of these surveys and were uniformly favorable. (An excerpt from these 10 surveys with the full text of the member comments is attached.)

¹ There are 13.5 authorized positions in the Professional Competence Unit and all of these positions are currently filled. These authorized positions include a Program/Court Systems Analyst position that is shared with the Office of General Counsel. In addition, we currently have a law clerk on staff.

2. COPRAC

Since the last Professional Competence status report submitted for the Board Committee's May 12, 2011 meeting, COPRAC met on June 3rd in San Francisco.

At the June meeting, COPRAC continued post-public comment consideration of Formal Opinion Interim No. 06-0004 (confidentiality and unsolicited e-mail correspondence) which had been circulating for a 60-day second public comment period ending April 4, 2011. The Committee also continued pre-public comment consideration of 09-0001A (State Bar complaint threats); 09-0001B (duty of confidentiality and seeking legal advice), 10-0001 (social networking), and 10-0003 (virtual law practice). COPRAC also began discussion of a new opinion topic regarding third party payors (11-0001), and selected and assigned drafting teams for an additional three opinion topics for discussion at their September meeting (11-0002 re duties to opposing side, 11-0003 re dissolving firm and moving to new firm, and 11-0004 re ESI and discovery requests). In addition, the Committee approved their recommended slate of officers and new members for the 2010/2011 annual appointment process, selected speakers for the COPRAC sponsored CLE programs at the State Bar Annual Meeting, and considered feedback on the 2011 Annual Statewide Ethics Symposium. COPRAC also discussed new committee initiatives including creating free CLE programs on the subject of recently published ethics alert articles and ethics opinions and developing new outreach programs directed to local, county and specialty bar associations.

The following opinion was completed and published at the Bar's website:

Formal Opinion No. 2011-180 (formerly Interim Opinion No. 08-0001):

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 issues such as the value of the gift from the perspective of both the client and the attorney both financially and otherwise, as well as general standards of fairness.

Post public consideration of the following opinion will occur at the Committee's July meeting. The 90-day public comment period ends on June 28, 2011.

Formal Opinion Interim No. 10-0002:

ISSUES: May consent under the "no contact" rule of California Rule of Professional Conduct 2-100 be implied, or must it be provided expressly? If consent may be implied, how is implied consent determined?

DIGEST: Consent under the "no contact" rule of California Rule of Professional Conduct 2-100 may be implied. Such consent may be implied by the facts and circumstances surrounding the communication with the represented party. Such facts and circumstances may include the following: whether the communication is within the presence of the other attorney; prior course of conduct; the nature of the matter; how the communication is initiated and by whom; the formality of the communication; the extent to which the communication might interfere with the attorney-client relationship; whether there exists a common interest or joint defense privilege between the parties; whether the other attorney will have a reasonable opportunity to counsel the represented party with regard to the communication contemporaneously or immediately following such communication; and the instructions of the represented party's attorney.

Post public consideration of the following opinion will occur at the Committee's September meeting. The 90-day public comment period ends on August 10, 2011.

Formal Opinion Interim No. 08-0003:

ISSUES: When at the outset of representation it appears an attorney would need to serve a discovery subpoena for production of documents on another current client of the attorney or the attorney's law firm, may the attorney accept the representation of the new client and serve the discovery subpoena on the current client? If doing so raises a conflict of interest, may the attorney seek informed written consent in order to accept the representation including possible service of the subpoena? What obligations arise if an attorney seeks informed written consent?

DIGEST: When an attorney discovers at the outset of representation that the attorney must serve a discovery subpoena for production of documents on another current client of the attorney or the attorney's law firm, serving the discovery subpoena is an adverse action such that a concurrent client conflict of interest arises. To represent a client who seeks to serve such a subpoena, the attorney must seek informed written consent from each client, disclosing the relevant circumstances and the actual and reasonably foreseeable adverse consequences to the client providing consent.

On May 27, 2011 in San Francisco, COPRAC's appointments subcommittee conducted interviews of applicants for appointment to COPRAC for the 2011-2012 committee year. The recommendations of COPRAC's appointments subcommittee were considered at COPRAC's June 3, 2011 meeting for submission to VIC for action at VIC's and the Board's July meeting.

COPRAC's next meeting is scheduled for July 15 & 16, 2011 and will be held in Los Angeles. At this meeting, the Committee will continue work on the following matters: post-public comment consideration of Formal Opinion Interim No. 06-0004 (confidential information and unsolicited e-mail correspondence), and 10-0002 (communications with opposing counsel's implied consent under the "no contact" rule); pre-public comment consideration of Formal Opinion Interim Nos. 09-0001A (State Bar complaint threats), 09-0001B (client confidentiality and seeking legal advice), 10-0001 (social networking), 10-0003 (virtual law practice), 11-0001 (third party payors); 11-0002 (duties to opposing side), 11-0003 (dissolving firm and moving to new firm), and 11-0004 (ESI and discovery requests); continued planning for the 2011 State Bar Annual Meeting CLE programs; and continued discussion of the new Committee CLE initiatives and outreach programs.

3. RULES REVISION COMMISSION

A follow-up meeting with Jon Streeter to finalize the Supreme Court filing of the Proposed Rules of Professional Conduct is anticipated prior to the July RAD meeting. An oral report will be provided at the RAD meeting.

4. COMPETENCE PUBLICATIONS

Handbook on Client Trust Accounting for CA Attorneys: A revised 2011 online version of the handbook is now available at the Bar's website. The updated book provides revised information concerning FDIC coverage for IOLTA client trust accounts.

California Compendium on Professional Responsibility: The 2011 Compendium update was completed in May. We anticipate sales to begin in July.

CA Rules of Professional Conduct & State Bar (a.k.a Publication No. 250): Sales of the 2011 Publication 250 began in April, and 486 orders have been received and processed through May 31, 2011.

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 2011 activity in terms of visits (a.k.a. “hits”).

Webpage	Approx. Number of Visits
Trust Accounting Handbook html webpage	2,500
Rules of Professional Conduct html webpages	198,463
The State Bar Act html webpages	8,967
Ethics Opinions html webpages	15,925
Ethics Information html webpages	99,890

*NOTE: Since the transition to the new website in June, 2010 web download statistics are no longer available for Adobe PDF documents.

Two free online MCLE self-study articles produced by the Office of Professional Competence have been used by thousands of lawyers to obtain free MCLE credit in ethics. So far in 2011, an article entitled “A ‘Charging Lien’ as an Adverse Interest Under Rule 3-300 of the Rules of Professional Conduct” has been used by 1,698 members and another article addressing the topic of the Proposed New and Amended Rules of Professional Conduct has been used by 2,356. The total usage for both programs since posting in 2010 is 8,695.

New this year, the following four panels offered at the Statewide Ethics Symposium held at UC Irvine on April 9, 2011, were webcast and are now available for online participatory MCLE credit. The panel entitled “Ethics in Limbo: Practical Issues for Lawyers as Changes in the Law Regulating Lawyers Continue” has been offered for free since the date of the live event.

Title	No. of Views
Ethics in Limbo: Practical Issues for Lawyers as Changes in the Law Regulating Lawyers Continue	78
Ethics on the Inside	5
Ethics on the Outside: Electronic Communication and Professional Responsibility - Can They Coexist?	16
Ethics, Innocence and Prosecutorial Misconduct	5

Newly approved Formal Opinion No. 2011-180 was posted at the Opinions page of the Bar’s website.

The public comment posting for the circulation for COPRAC’s Proposed Formal Opinion No. 08-0003 was posted at the Public Comment page of the Bar’s website.

An updated copy of the *Handbook on Client Trust Accounting for California Attorneys* was posted at the Client Trust Accounting page of the Bar’s website. The revised copy updates information concerning FDIC coverage for IOLTA client trust accounts.

cc: Robert A. Hawley

ETHICS HOTLINE ACTIVITY STATISTICS - 2011

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	1,325	1,283	42	97%	3%	54	531
February	19	1,155	1,044	111	90%	10%	23	507
March	22	1,421	1,273	148	90%	10%	30	610
April	21	1,263	1,152	111	91%	9%	38	556
May	21	1,269	1,148	121	90%	10%	47	543
Cumulative Totals	103	6,433	5,900	533	92%	8%	192	2,747

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

Daily:	Incoming Calls:	62
	Completed Calls:	57
Monthly:	Incoming Calls:	1,287
	Completed Calls:	1,180

Aggregate Outgoing Calls

Current Month:	1,883
Cumulative to Date:	9,893

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.

Professional Competence Budget Summary

Authorized vs. Actual

Year-to-Date as of May 31, 2011

Budget (Actual)	\$760,846
Budget (Authorized)	\$992,567
Savings	\$231,721

Monthly (January-June)

	January	February	March	April	May	June
Budget (Actual)	\$160,273	\$159,732	\$46,638	\$222,232	\$171,971	-
Budget (Authorized)	\$185,116	\$185,116	\$184,795	\$252,745	\$184,795	-
Variance	\$24,843	\$25,384	\$138,751	\$30,513	\$12,824	-

Excerpt from Ethics Hotline Customer Satisfaction Surveys
Additional Comments

(Surveys Received April - May, 2011)

1. Received April 8, 2011

COMMENTS / SUGGESTIONS:

I call the Ethics hot line 1-2x every year and have found that it is very useful. The "take a name and we'll call you back" procedure is off-putting at first because we all want answers NOW, but it works and I usually get calls back w/in 4 work hours.

2. Received April 14, 2011

COMMENTS / SUGGESTIONS:

I spoke with Lynn Cobb who was extremely helpful and knowledgeable.

3. Received April 14, 2011

COMMENTS / SUGGESTIONS:

Perhaps consider putting some links to information by topic... for instance if someone is looking for a notice to client on arbitration maybe suggest a link to the ethics byte journal on topic...

4. Received April 26, 2011

COMMENTS/SUGGESTIONS:

Excellent service. This was very helpful and useful information that helps to resolve a very difficult situation. Thank you!

5. Received April 28, 2011

COMMENTS/SUGGESTIONS:

Lynn was great. This is an excellent service for those of us dedicated to practicing law ethically. Keep it up.

6. Received May 6, 2011

COMMENTS/SUGGESTIONS:

Ricardo Patino was extremely knowledgeable and helpful on my question concerning an attorney acknowledging a medical lien and then not paying once the PI case was settled. Also, very timely call back. Thank you,

7. Received May 9, 2011

COMMENTS/SUGGESTIONS:

This is the most important resource I've used from the state bar since my admission in 1982.
DO NOT CUT FUNDING FOR THIS!!!!

8. Received May 13, 2011

COMMENTS/SUGGESTIONS:

Both the receptionist as well as the research paralegal were courteous and helpful. My call was returned in a timely manner and I received the information I needed. Thank you.

9. Received May 18, 2011

COMMENTS/SUGGESTIONS:

I spoke to Susan. She was great! She was understanding, efficient, and really knew her stuff!

10. Received May 20, 2011

COMMENTS/SUGGESTIONS:

I was very impressed with Lynn's knowledge and attitude. I would like to thank her for her help.