

# B-Law B-Law B-Law: Ethics for Business Lawyers

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Welcome to the inaugural edition of *B-Law B-Law B-Law: Ethics for Business Lawyers*, a new feature of the Business Law News, focusing on ethical issues of particular interest to business lawyers in the State of California.

This column is supported by the members of the Ethics Committee of the California Lawyers Association (CLA). By way of introduction, this first edition will briefly describe the work of the Ethics Committee and highlight the resources currently available for CLA members. Should you have suggestions for future topics of interest to business lawyers, please feel free to submit them to the Ethics Committee (keeping in mind that no legal advice can be provided, and that any responsive article will be delayed by at least three months).

## The Ethics Committee of the California Lawyers Association

During the summer of 2019, the Board of Representatives of the California Lawyers Association approved the formation of a new Ethics Committee to help ensure that CLA members stay up-to-date with their ethical obligations. The initial meeting of the newly-appointed members of the Ethics Committee was held a few months later, in October 2019, at the Annual Meeting of the California Lawyers Association in Monterey, California. Since then, the Ethics Committee has been very active.

The Ethics Committee was charged with the responsibility to create educational content, comment on proposed rule changes, write advisory opinions on emerging ethical issues, and issue ethics alerts and reminders to CLA members. The activities of the

Ethics Committee since its initial meeting include all of the following:

### MCLE Presentations:

The work of the Ethics Committee includes both in-person presentations and webinars by Ethics Committee members providing ethics MCLE credits. Such presentations include the following (many of which can be found under the Education tab on the CLA's website):

- *Breaking Away: Ethical Concerns when Leaving a Firm to Start Your Own Practice*, CLA Solo and Small Firm Summit, Virtual (October 7, 2020)
- *Show Me the Money—Ethical Issues in Charging and Collecting Attorney Fees*, CLA Annual Meeting, Virtual (September 26, 2020)
- *Hindsight in 2020: A Legal Ethics Year in Review*, CLA Annual Meeting, Virtual (September 25, 2020)
- *Everyone Needs an Expert—Effective and Ethical Use of Expert Witnesses in Litigation*, CLA Annual Meeting, Virtual (September 24, 2020)
- *Conflicts of Interest and the New Rules: A Primer*, CLA Ethics Committee Webinar (September 9, 2020)
- *Selling Your Services: How to Attract Clients but Avoid Discipline*, CLA Ethics Committee Webinar (July 31, 2020)
- *Ethical Pitfalls and Pratfalls for Attorneys When Using Social Media*, CLA Ethics Committee Webinar (July 6, 2020)
- *10 Ethical Gaffes for New Lawyers*, CLA Ethics Committee Webinar (May 30, 2020)

- *Ethical Issues in IP Practice*, CLA Ethics Committee Webinar (May 19, 2020)
- *What You Weren't Taught in Law School: How to Be Civil and Mind Your Ethical Obligations in What Seems Like an Uncivil World*, CLA Business Law Section and CYLA Webinar (February 26, 2020)
- *What You Weren't Taught in Law School: Getting and Retaining Clients: Making it Rain Your Own Way in an Ethical Manner*, CLA Business Law Section and CYLA Webinar (February 12, 2020)
- *Ethics Update: What You Need to Know About the New Rules*, CLA Litigation Section One and Done—MCLE Extravaganza, San Diego, CA (January 24, 2020)
- *Ethical Decision Making in Mediation*, CLA Litigation Section One and Done—MCLE Extravaganza, San Diego, CA (January 24, 2020)
- *Ethical Considerations in Pro Bono Work*, Webinar (December 10, 2019)
- *E-Ethics: Successfully Navigating Social Media and Technology in Marketing Your Practice and Representing Clients*, Webinar (November 20, 2019)
- *When Are Conflict Waivers Effective—and When Are They Not!*, CLA Annual Meeting, Monterey, CA (October 11, 2019)
- *The New Rules of Professional Conduct—A Year in Review*, CLA Annual Meeting, Monterey, CA (October 11, 2019)
- *Far from the Shallow: Management Tips for Solos and Small Firms*, CLA Annual Meeting, Monterey, CA (October 11, 2019)
- *Professional Responsibility in California: Past, Present and Future*, CLA Annual Meeting (opening session), Monterey, CA (October 10, 2019)
- *Write It Down: The Benefits of an Engagement Letter*, in California Lawyers Association eNews (September 2020)
- *Conflicting Roles: Lawyer as Corporate Director*, in Business Law News (anticipated in an upcoming issue)
- *Spotlight on Ethics: Where to Deposit Advance Payments*, in California Lawyers Association eNews (August 2020)
- *Spotlight on Ethics: California Bar Issues Opinion on Advising Cannabis Industry Clients*, in California Lawyers Association eNews (July 2020)
- *Whatever Happened to the Task Force on Access and Innovation?*, in California Lawyers Association eNews (June 2020)
- *Spotlight on Ethics: Unwaivable Conflicts of Interest*, in California Lawyers Association eNews (May 2020)
- *Legal Ethics and the Coronavirus*, in California Lawyers Association eNews (April 2020)
- *Consensual Sexual Relations with Clients? No. Not Ever. Not Even on Valentine's Day!*, in California Lawyers Association eNews (February 2020)
- *How to Recognize When You Have 'Too Many' Clients*, in California Lawyers Association eNews (January 2020)
- *Advance Fee Deposits and Your Client Trust Account*, in California Lawyers Association eNews (December 2019)
- *The Importance of Knowing Who Is, and Who Is Not, Your Client*, in Business Law News (2019, Issue 3); and in California Real Property Journal (2019, volume 37, No. 4)
- *The Importance of Knowing Who Is, and Who Is Not, My Client*, in California Lawyers Association eNews (September 2019)
- *Ethics of Cryptocurrency: New Rules, New Money, New Issues*, in California Lawyers Association eNews (November 2019)
- *Cannabis Clients—High Times, or Buzz Kill?*, in California Lawyers Association eNews (October 2019)

#### Publications:

Members of the Ethics Committee have published the following articles in eNews Bulletins, section periodicals, and other publications of the CLA:

- *Sometimes You Just Need an Expert Witness*, in California Lawyers Association eNews (October 2020)

- *New Committee to Offer Ethics Guidance*, in California Lawyers Association eNews (August 2019)
- *Warning: New Rules of Professional Conduct Are Here & They Apply to You!*, in California Young Lawyers Association eNews (Spring 2019).

#### Advisory Opinions:

The Ethics Committee has commenced work on twelve different advisory opinions. While some of these draft opinions may never see the light of day after the Committee’s deliberative process, the Ethics Committee is hopeful that it will be providing advisory opinions on such matters as: the identity of the client or clients when attorneys are engaged to create a new business; the nature of “disclosures” required by the Rules of Professional Conduct, even though such term is not defined in the Rules; and conflicts of interest pertaining to contract attorneys.

Members of the CLA can submit topics for advisory opinions to be considered by the Ethics Committee.

#### Feedback & Comment on Proposed Opinions, Rules & Legislation:

The Ethics Committee has been very involved in providing feedback and comments on opinions proposed by the State Bar’s Standing Committee on Professional Responsibility and Conduct and on other rules and legislation proposed by the State Bar. Such actions include comment letters on the following State Bar proposals:

- Proposed Amended California Rule of Professional Conduct 5.4 (Financial and Similar Arrangements with Nonlawyers)
- Proposed Amended California Rule of Professional Conduct 1.1 (Competence)
- Proposed Formal Opinion Interim No. 16-0002 (Data Breaches)
- Proposed Formal Opinion Interim No. 14-0002 (Alternative Litigation Funding)
- Proposed Formal Opinion Interim No. 17-0001 (Advising a Cannabis Business)
- Proposed Amended California Rules of Professional Conduct Regarding File Release and Retention Duties

- Tentative Recommendations of the State Bar Task Force on Access Through Innovation of Legal Services (ATILS)
- Proposed New and Amended Rules of Procedure of the State Bar Regarding Vexatious Complainants—Rule 2605

#### Other Activities:

The Ethics Committee considered two amicus briefs, including one in connection with a Petition for Hearing submitted to the California Supreme Court.

The Ethics Committee has been working in collaboration with some of the sections of the California Lawyers Association (including the Business Law Section, the Litigation Section, and the Solo and Small Firm Section) in creating content that involves attorney ethics. The Ethics Committee is also working with the Trusts and Estates Section in connection with an upcoming edition of *The Ethics Guide for Trusts and Estates Practitioners* (expected Fall 2020).

#### Ethics Committee Membership:

This success of the Ethics Committee is largely due to the efforts of the twelve highly-qualified and diverse members of the Committee, whose qualifications include the following:

- Five of the twelve Ethics Committee members are certified specialists in legal malpractice law by the State Bar of California
- Nine are former members of the State Bar of California Standing Committee on Professional Responsibility and Conduct (COPRAC), including five former chairs of COPRAC
- Two are former advisors or members of the most recent Rules Revision Commission
- All twelve are current or former members of local bar association ethics committees, with at least five being current or former officers
- One member is a liaison to the ABA Standing Committee on Ethics and Professional Responsibility
- Six are current or former law school professors
- Two are current CLA section officers, including one former section chair
- One is a former State Bar trustee

In addition, the members of the Ethics Committee reflect the diversity of the members of the California Lawyers Association, in terms of race, age, gender, sexual orientation, geography, firm size, and practice areas.

Membership on the Ethics Committee is offered based on a number of criteria, including ethics experience and a focus on diversity, as outlined in the CLA's appointments policy. The Ethics Committee is committed to including at least one California Young

Lawyers Association member as a member of the Ethics Committee.

**Conclusion:**

More information can be found on the webpage for the Ethics Committee: <https://calawyers.org/cla/committees/ethics/>.

Watch this column for guidance on ethical issues of particular interest to business lawyers in the State of California.

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## Business Law News Welcomes Article Submissions



Contact our Production Coordinator for more information:

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