



**ETHICS DEPARTMENT  
and  
COMMITTEE ON THE RULES OF PROFESSIONAL CONDUCT  
(ETHICS COMMITTEE)  
2007 ANNUAL REPORT**

**Introduction**

The Committee on the Rules of Professional Conduct (the Ethics Committee) and the position of ethics counsel were created by the State Bar of Arizona Board of Governors to help the State Bar and its members resolve questions of professional ethics. The Ethics Committee and the ethics counsel will render informal opinions in writing and by telephone. The Ethics Committee issues formal opinions in writing. Formal opinions address issues of widespread interest or unusual importance. If an opinion already exists, or if the rule and its comments are clear on the issue, then the ethics counsel will provide a telephone response to a written request.

All opinions rendered, whether written or telephonic, are advisory only based on the Ethics Committee's and ethics counsel's reading and interpretation of the Rules of Professional Conduct. Advice is not binding in any disciplinary or other legal proceeding. However, reliance on State Bar ethics advice may be considered mitigating in a disciplinary proceeding. Although not binding, these opinions constitute an important resource for Arizona attorneys to identify and apply the ethics rules.

The ethics counsel and the Ethics Committee will decline to render opinions on an attorney's past conduct, the conduct of another attorney or questions of law. In addition, department policies prohibit advice to be given via electronic mail or through a paralegal or other non-lawyer. Anonymous inquiries are prohibited.

**Ethics Department staff and Ethics Committee members**

During 2007, the Ethics Department was staffed by two attorneys (the ethics counsel and part-time assistant ethics counsel) and an administrative assistant shared with two other programs<sup>1</sup>. In mid 2006, the paralegal position was converted to a part-time assistant ethics counsel position. As a result, during the second half of 2006, the Ethics Department was staffed by the ethics counsel, a part-time assistant ethics counsel and the shared administrative assistant. The Ethics

---

<sup>1</sup> The Fee Arbitration Program and Client Protection Fund. Beginning in 2008, the State Bar added an additional administrative assistant position to be shared equally between the State Bar's conservatorship function and the three programs in the Special Services Department (Ethics, Fee Arbitration and Client Protection Fund).

Committee is comprised of 29 volunteer State Bar members appointed by the State Bar president.

**Written inquiries**

**A. Requests received and disposition**

During 2007, the Ethics Department received 53 written requests for opinions. Of those requests, the ethics counsels responded to 19 by providing telephonic guidance and 15 by preparing informal opinions. Six were declined for jurisdictional issues and 13 remain pending.

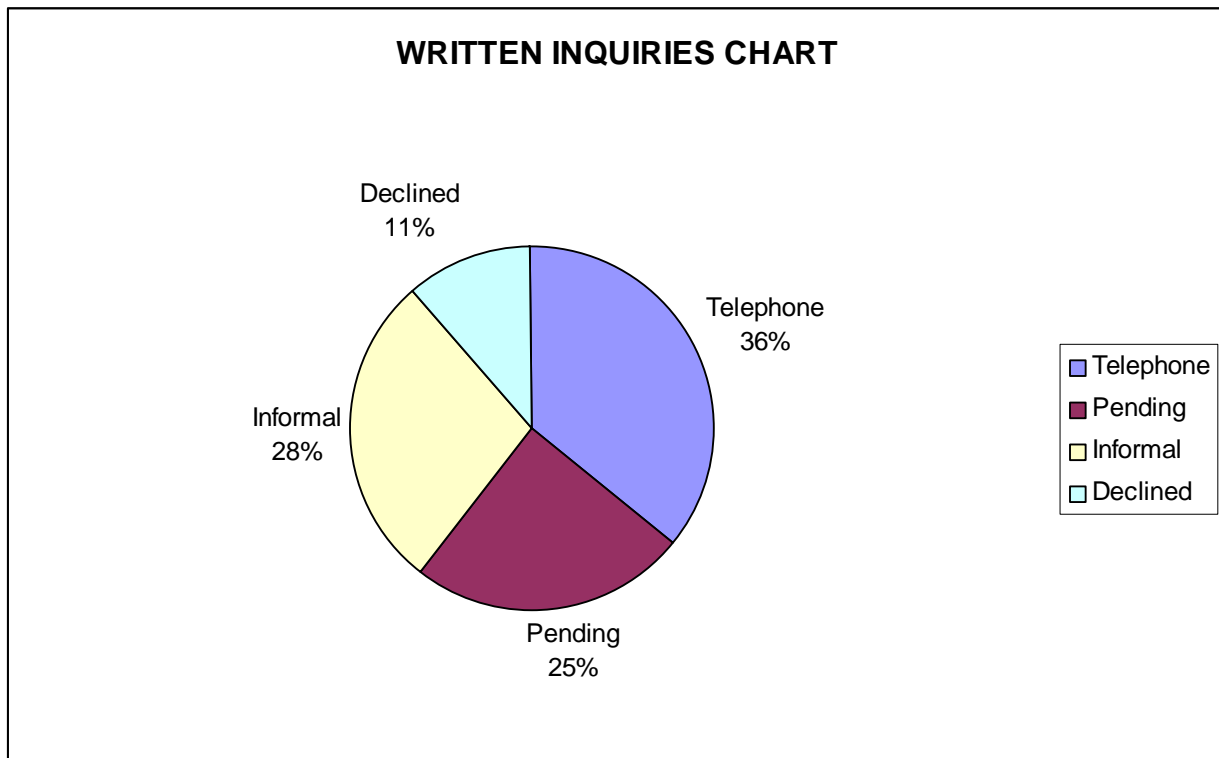
**B. Opinions issued**

Four formal opinions and 21 informal opinions were issued in 2007.

**C. Inquiries still pending**

Five requests for written opinions received during 2006 and 2007 are pending before the Ethics Committee.

The chart below represents the disposition of the 53 written inquiries received in 2007.



## Hotline telephone calls

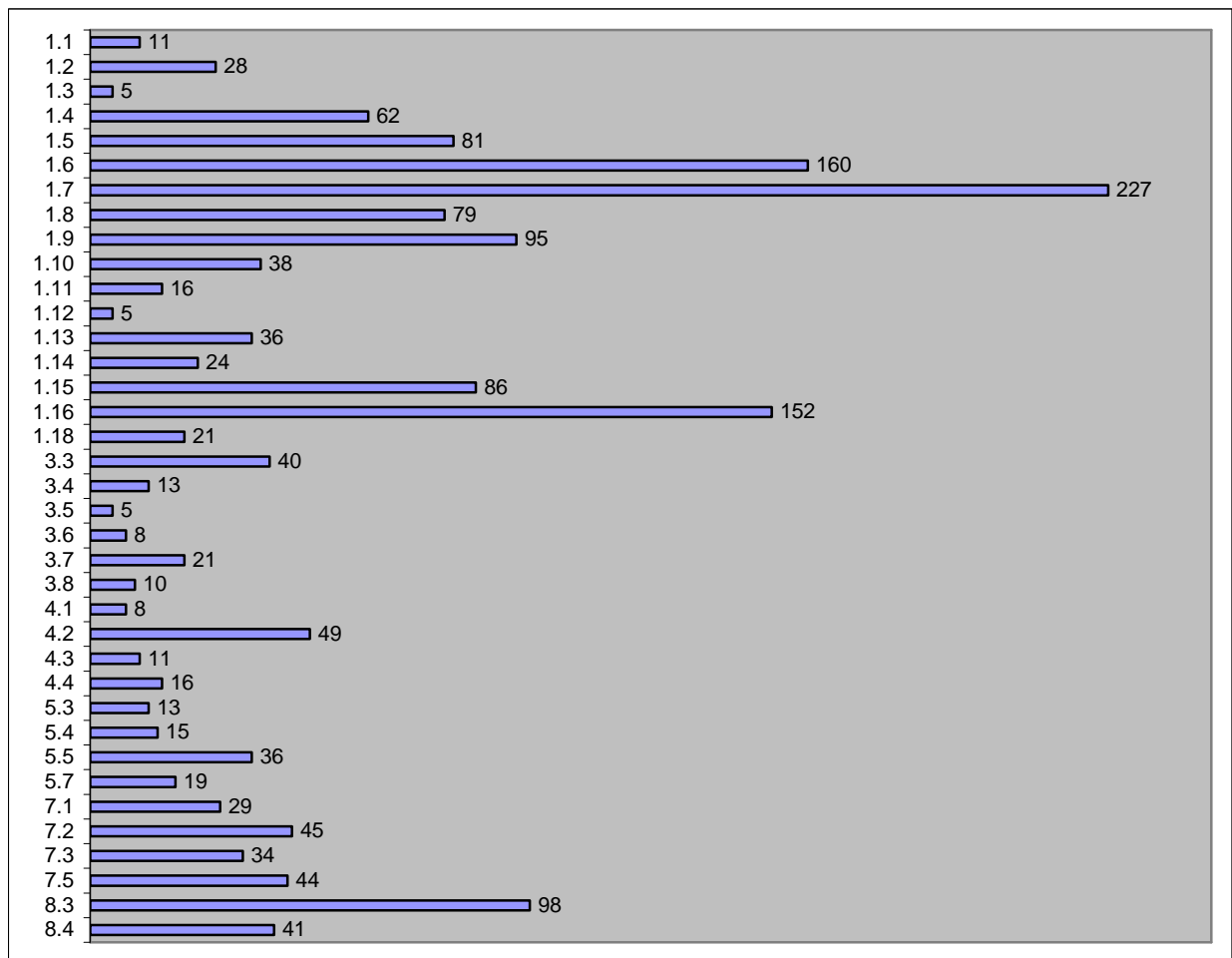
The Ethics Department began tracking ethics calls in October 2003. Most calls arrive on the State Bar's ethics hotline, 602-340-7284. In 2006, the hotline received 2,140 calls. In 2007, the hotline received 2,023 calls. In addition, in 2007, the Ethics Department received 57 calls about the unauthorized practice of law. Those calls were referred to the UPL Department.

### **A. Calls broken down by Ethical Rule and subject matter**

The top five subjects inquired about in 2007 were:

Conflicts of Interest (ERs 1.7, 1.8, 1.9, 1.10)	373 calls
Confidentiality (ER 1.6)	160 calls
Declining or terminating representation (ER 1.16)	152 calls
Duty to Report (ER 8.3)	98 calls
Safekeeping Property (ER 1.15)	86 calls

The chart below reflects the number of calls received, sorted by specific Ethical Rule.\*



\* Ethical Rules that attracted fewer than five calls are not included.

**B. Calls broken down by area of practice**

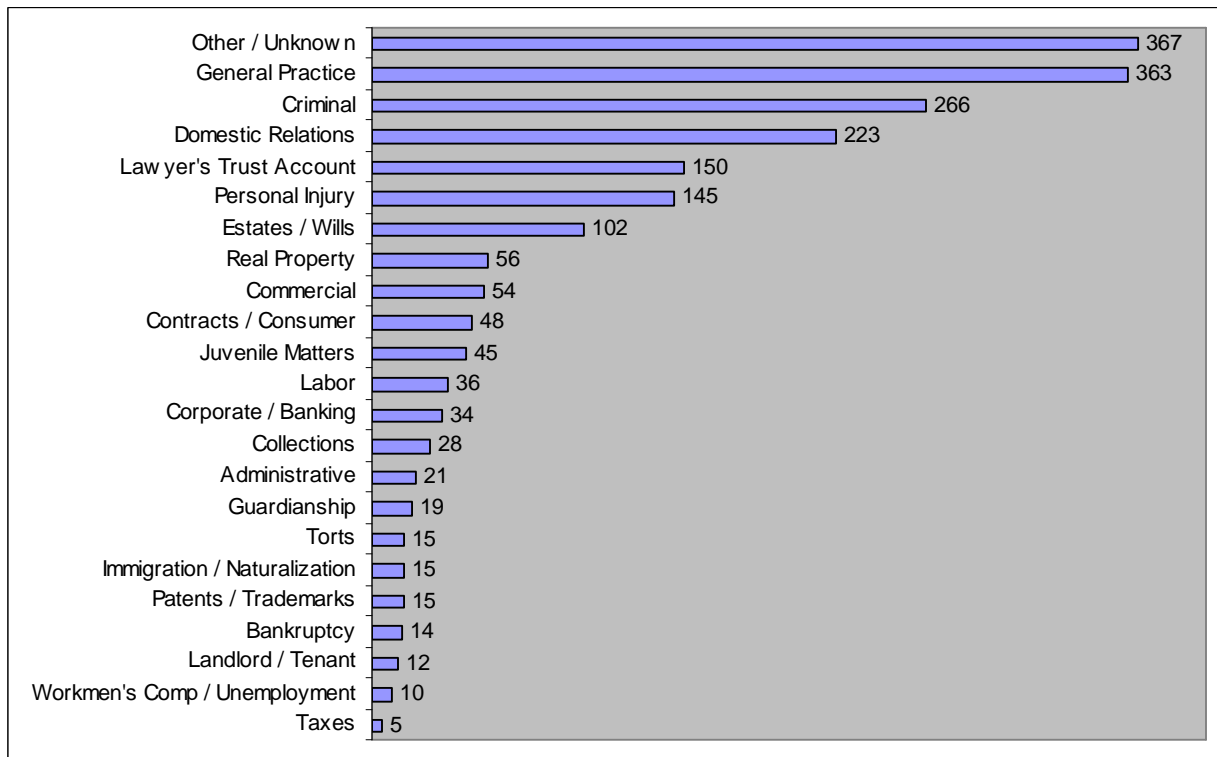
The top five practice areas related specifically to the nature of the question in 2007 were:

General Practice	363 calls
Criminal Law	266 calls
Domestic Relations	223 calls
Trust Account	150 calls
Personal Injury	145 calls

The Ethics Department logged 367 calls under the “Other/Unknown” area of practice. The most common reason for categorizing a call as “Other/Unknown” was because the inquiring attorney’s question involved an ethics rule, but related to no particular practice area.

“General Practice” calls include inquiries that involve firm regulations, advertising, profit sharing, subpoenas for former clients, suing former clients, sharing office space, keeping client files, starting a new practice, self-reporting misconduct, and lawyers switching firms.

The chart below represents the areas of practice relative to the hotline guidance provided.\*



\* Areas of practice that attracted fewer than five calls are not included.

**C. Calls broken down by geographical location**

Finally, the following is the number of calls broken down by geographical location:

<b>Area Code</b>	<b>Major Cities Therein</b>	<b>Number of Calls</b>
602	Phoenix	728
480	Scottsdale, Mesa, Tempe, Chandler, Fountain Hills	478
520	Tucson, Casa Grande, Wilcox, Douglas, Florence, Bisbee	359
928	Prescott, Yuma, Kingman, Flagstaff, Wickenburg, Show Low, Bullhead City, Sedona, Camp Verde, Pinetop	274
Other	Miscellaneous locations	132
623	Glendale, Sun City, Litchfield Park, Surprise, Goodyear, Peoria, Avondale, Anthem, Tolleson	52

**Brief summaries of the formal opinions issued in 2007**

During 2007, the Ethics Committee issued four formal ethics opinions, summarized below.

**A. Ethics Op. 07-01**

*What duty, if any, does counsel owe to the client’s family or friends to communicate information to them relating to the client’s trial?*

Summary: A lawyer has no per se duty to provide information about a client’s case or upcoming trial to the client’s family or friends. The lawyer may provide this information if the client gives informed consent or consent is impliedly authorized in order to carry out the representation. Depending on the circumstances, however, the lawyer’s ethical duty to provide competent representation to his/her client may require such contact. It is a balancing test. This opinion assumes that the client is a competent adult.

**B. Ethics Op. 07-02**

*May a lawyer keep current client files only as electronic images, and then destroy the converted paper documents, in an attempt to maintain a paperless law practice? May a lawyer digitize client files that are closed – but not yet eligible for total destruction – and then destroy the paper documents?*

Summary: In appropriate cases, a lawyer may keep current and closed client files as electronic images in an attempt to maintain a paperless law practice or to more economically store files. After digitizing paper documents, a lawyer may not, without client consent, destroy original paper documents that belong to or were obtained from the client. After digitizing paper documents, a lawyer may destroy copies of paper documents that were obtained from the client unless the lawyer has reason to know that the client wants the lawyer to retain them. A lawyer has the discretion to decide whether to maintain the balance of the file solely as electronic images and destroy the paper documents.

### **C. Ethics Op. 07-03**

*If a lawyer sends an electronic communication, what ethical duty does the lawyer have to prevent the disclosure, through metadata embedded therein, of confidential or privileged information? May a lawyer who receives an electronic communication examine it for the purpose of discovering the contents of the metadata that may be embedded within it?*

Summary: While modern electronic communications are often greatly beneficial to the client, lawyers who use them to send or receive documents or other communications on behalf of clients must be aware that they carry certain risks. Lawyers must take reasonable precautions to prevent inadvertent disclosure of confidential information. Except in the specific circumstances described in this opinion, a lawyer who receives an electronic communication may not examine it for the purpose of discovering the metadata embedded in it.

### **D. Ethics Op. 07-04**

*Where a lawyer seeks to represent multiple clients in a single litigation matter, what information must the lawyer adequately communicate to the clients to satisfy ER 1.7's requirement of an "informed consent, confirmed in writing"*

Summary: The representation of multiple clients in a single litigation matter is generally permissible so long as the lawyer reasonably believes that he or she will be able to provide competent and diligent representation to each client, the representation does not involve the assertion of a claim by one client against another client, and each client gives informed consent, confirmed in writing. The requirement of informed consent arises only if, as an initial matter, the lawyer determines that the lawyer can, in fact, competently and diligently represent each client in the particular matter. Once that determination is made, the lawyer bears the burden of showing that there was adequate disclosure to each client and that each client gave an informed consent. The disclosures required to obtain the client's "informed consent" will depend on the facts and circumstances of the particular matter. The lawyer must explain the possible effects of the common representation on the lawyer's obligations of loyalty, confidentiality and the attorney-client privilege. In addition to the confirming writing required by ER 1.7(b), informed consent usually will require that the lawyer explain the advantages and disadvantages of the common representation in sufficient detail so that each client can understand why separate counsel may be desirable. Finally, during the course of the matter, the lawyer must continue to evaluate whether conflicts have arisen that may require additional disclosures and consent or withdrawal from the representation.