

CALIFORNIA LAWYERS ASSOCIATION

ANTITRUST POLICY STATEMENT

I. Introduction

The California Lawyers Association (“CLA” or the “Association”) is a member-driven, not-for-profit organization; its mission is “promoting excellence, diversity and inclusion in the legal profession and fairness in the administration of justice and the rule of law.” The CLA is not organized to—and may not—become a forum for conduct or practices that have an unlawful anticompetitive effect on the marketplace or that otherwise violate federal or state antitrust laws.

The CLA provides a forum for exchange of ideas in a variety of settings including its annual and regular Board meetings, special Board meetings, educational programs, webinars, and CLA Section and committee meetings. In addition, the CLA may take positions or comment on legislation, regulations, jury instructions, or rules as permitted by the CLA’s Association Governmental Affairs Policy, local rules, or applicable law, which are “necessarily or reasonably related to the legal profession or improvement of the quality of legal services available to the people of the state.” The CLA recognizes that antitrust violations in various industries have been prosecuted based on anticompetitive conduct occurring at trade associations. Therefore, this Antitrust Policy Statement (“Antitrust Policy”) clearly and unequivocally supports the policy of competition served by the antitrust and unfair competition laws and expresses the CLA’s uncompromising policy to comply strictly in all respects with those laws.

II. Antitrust Laws

Antitrust laws are found in a collection of federal and state statutes designed to ensure vigorous and fair competition in the marketplace. The antitrust laws are set forth in the Sherman Act, the Cartwright Act, the Unfair Competition Law, the Unfair Practices Act, the Federal Trade Commission Act, the Clayton Act, and the Robinson-Patman Act, among other statutes. These laws prohibit anticompetitive activities, including price-fixing, bid rigging, market allocation, certain boycotts and information sharing, anticompetitive mergers and joint ventures, attempts to monopolize or divide markets or restrain competition, unduly restrictive distribution practices, and other unreasonable restraints on trade. Although the law is a profession, actions by lawyers may be subject to antitrust scrutiny and liability. For example, in *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975), an agreement among bar association members to fix minimum prices for real estate closing

services was found to be unlawful price-fixing. In *FTC v. Superior Court Trials Lawyers Association*, 493 U.S. 411 (1980), a boycott of lawyers and private defense firms of the District of Columbia's program to provide reduced-fee legal services for indigent clients was found to be unlawful price-fixing. The law may allow unlawful agreements or boycotts to be inferred from communications among individual competitors as it did in *U.S. v. Foley*, 598 F. 2d 1323 (9th Cir. 1979), where real estate brokers' complaints about brokerage commission amounts at a trade association was followed by a rise in brokerage amounts and were prosecuted as price-fixing.

The antitrust laws also extend to agreements and restraints on the purchase and recruitment of goods, labor, or services. An antitrust claim against several technology companies for agreeing not to "poach" competitors' engineers was settled for over \$400 million, and the U.S. Department of Justice has issued extensive guidance on agreements among employers on poaching and wage-fixing agreements (available at <https://www.justice.gov/atr/file/903511/download>).

III. Penalties for Violating the Antitrust Laws

Both federal and state antitrust laws have criminal and civil enforcement provisions. The consequences of violating antitrust laws can be severe, and can result in criminal penalties that may include imprisonment for up to 10 years, as well as criminal fines up to \$1 million for individuals and up to \$100 million for companies and business associations. Civil enforcement can include treble damages, injunctive relief and recovery of attorneys' fees and costs.

IV. Antitrust Compliance Policy

The CLA has a policy of strict compliance with federal and state antitrust laws. This Antitrust Policy is intended to assist all members, representatives, employees and the Sections that comprise the CLA, in the identification and avoidance of potential antitrust issues. Actions such as collusion among member attorneys to fix prices, set billing rates, allocate legal markets, limit market entry, or otherwise limit competition for legal services, whether or not done under the auspices of the CLA or any of its Sections or officers, may violate the antitrust laws. Meetings of the CLA often involve attorneys who may be considered competitors in the marketplace under the antitrust laws, and discussions in such meetings of prices or labor costs (such as prevailing or future hourly billing rates and associate, attorney or staff salaries or benefits, as well as recruitment or retention of talent) may implicate antitrust concerns.

V. Principles

To ensure that the CLA strictly complies with the antitrust laws, the following principles must be followed:

- The CLA—and its Sections, committees, and activities—shall not be used for the purpose of creating, monitoring, fixing or enforcing any understanding or agreement, written or oral, formal or informal, expressed or implied, among two or more members or other competitors concerning fees, prices or terms and conditions of contracts for services or products.
- Neither the CLA, nor any of its Sections or members of the CLA acting on behalf of the CLA or in connection with official CLA business may take any action that could impact, lessen, or restrict competition and create an unreasonable restraint on trade. Unreasonable restraints on trade generally include actions that raise or fix prices; set prices and billing rates; set employee salary or benefits, or restrict the solicitation or hiring of talent, diminish quality, limit choice; or unlawfully create, maintain or enhance market power. Anticompetitive practices may arise when a group of active market participants agree or decide who can participate in its market or on what terms. Similarly, potential anticompetitive conduct includes competitors sharing competitively sensitive information, such as billing rates or employee compensation levels, which can result in reducing or eliminating competition for legal services among CLA members.
- Agreements among competitors to deal with a particular supplier or customer or to boycott a particular supplier or customer, restrain trade and injure competition, may be anticompetitive and should not be discussed at any CLA gathering.

VI. Prohibited Discussions, Agreements, and Exchanges of Information

CLA members, when acting on behalf of CLA or in connection with CLA business, are strictly *prohibited* from having discussions among themselves about the following:

- Setting or fixing current or future billing rates, fees, margins, or other terms on which they provide legal or other products or services.

- Capping, limiting or setting compensation levels or ranges for employees, including salaries, wages, bonuses, retirement programs, health care, disability, or other employee benefits.
- Coordinating decisions about soliciting or hiring talent, including agreements not to “poach” each other’s employees.
- Encouraging or forming group boycotts of or exclusive dealing with any supplier or purchaser or group of suppliers or purchasers of products or services where such boycotts are not protected by the First Amendment.
- Allocating or dividing geographic or service markets or customers or agreeing not to recruit or retain attorneys or staff in given areas or territories.
- Restricting, limiting, prohibiting, or sanctioning advertising or solicitation that is not false, misleading, or deceptive.
- Discouraging entry into or competition in any segment of the marketplace.
- Exchanging data or information among themselves during, or in preparation of, CLA-related activities regarding future or current prices or billing rates, staff compensation levels, costs, or other competitively sensitive information unless that information is already available to the public, such as through mandatory publication.

These prohibitions do not apply to and do not forbid:

(1) Discussions or exchanges that are limited to and reasonably essential to conduct the regular business activities and decisions of the CLA, such as contracting for CLA travel, CLA conferences, CLA event planning, or CLA staff selection and setting of compensation;

(2) Actions or conduct in accordance with the California State Bar Antitrust Policy as reflected in Administrative Order 2017-09-20 of the California Supreme Court and that are subject to active state supervision undertaken pursuant to a clearly articulated state policy;

(3) Conduct or actions consistent with the CLA’s mission that represent good-faith, non-sham efforts to influence action by the legislative, executive, or judicial branches of the government;

(4) Efforts to educate lawyers about the legal profession and the law, including antitrust law, provided they do not violate the antitrust laws; and

(5) Discussions and conduct falling within the labor exemptions under California Business & Professions Code Section 16703, 15 U.S.C Section 17 or federal antitrust laws or that are protected by any other applicable exemption under state or federal antitrust laws.

VII. Guidelines for Meetings and Discussions

Separate and apart from this Policy, CLA has established protocols governing meetings among its members. For formal Board of Representative and Executive Committee meetings, those protocols include but are not limited to the following:

- Meeting agendas are circulated in advance and minutes of these meetings properly reflect the formal actions taken at the meetings.
- Meetings generally adhere to written agendas posted in advance, subject to exceptions established in the CLA Bylaws and the Sections’ Administrative Bylaws.
- Minutes are prepared after each meeting to provide a summary of matters discussed and formal actions taken.

VIII. Discussions with Antitrust Implications

It is the CLA’s policy that in a formal CLA meeting where a discussion involves any of the topics prohibited by this Antitrust Policy, any attendee should request that the prohibited discussion cease immediately. If minutes are kept for that meeting, they shall reflect that the above request was made. If attendees continue the prohibited discussion, any meeting attendee may excuse him/herself from the meeting and request that minutes of the meeting reflect that he/she/they left the meeting at that point and the reasons expressed for the departure(s). The person chairing any meeting where the above occurs shall report such occurrence within a reasonable time to the CLA President or the CLA Executive Director. The

email addresses for the persons in these positions can be accessed on the CLA website.

IX. Mandatory Reporting of Possible Violations, and Compliance

Any CLA member who has reason to believe that this Antitrust Policy has been violated, including but not limited to violations allegedly caused by actions of the CLA or any of its Sections, shall report the same within a reasonable time to the CLA President or the CLA Executive Director. Any CLA member or member of the public may report a potential antitrust violation anonymously, but any report must be made in writing. Any concerns or questions as to this Antitrust Policy should be addressed to the CLA President or the CLA Executive Director.

It is the responsibility of CLA officers, members of the Board of Representatives, and Section chairs to be familiar with and comply with this Antitrust Policy. The CLA has also adopted the following rules to prevent unintentional violations of the antitrust laws:

- The full text of this Antitrust Policy shall be included in the written policies of the CLA and shall be posted on the CLA website.
- The Bylaws of each of the Sections shall refer to and incorporate by reference this Antitrust Policy.
- The CLA's annual orientation for Section Chairs (and Board members) shall include a summary of the terms and importance of this Antitrust Policy.