

June 9, 2010 McCurdy E-mail to KEM, cc Chair, Vice-Chairs & Staff:

Kevin,

Attached is a comprehensive assignment table that lists all of the rules for which you are the lead drafter, along with the names of your codrafters. This message addresses your assignments for the June 25 & 26, 2010 meeting. To minimize email traffic and potential confusion, this message will be copied to your codrafters only after all of the lead drafter assignment messages have been sent.

ASSIGNMENT SUBMISSION DEADLINE: The assignment submission deadline for all assignments is **5:00 pm on Wednesday, June, 16, 2010.**

As mentioned at the June 4 meeting, the agenda for the Commission's June 25 & 26 meeting will involve final action on all of the rules recommended for adoption as well as those not recommended for adoption. This means that there are 85 items that require action. To alleviate some of the burden on Commission members, rules that either receive no comments at all or only comments in support will be prepared by staff and will be acted upon en masse by the Commission through the use of a consent agenda. At present, there are about 45 items that fall into this category.

This message provides the assignment background materials for the assignments listed below for which you are the lead drafter, and which are not being handled by staff as anticipated consent agenda items. The materials attached to this message are a staff prepared draft Public Commenter Chart synopsisizing all comments/testimony received to date & the current clean draft of a rule as posted for public comment. Consistent with the consent agenda plan, we are only providing assignment materials for those rules that have received a comment in opposition, or a comment stating an "Agree if Modified" position. Your assignment is to review these comments and to prepare a Public Commenter Chart with recommended Commission responses. If the drafters conclude that any revisions to a rule are warranted based on comments received, then a revised draft rule should be prepared. (Note: Where a drafting team decides not to recommend any revisions to a rule, that drafting team recommendation will be included in a second category of consent agenda items for action at the June 25 & 26 meeting.)

If revisions to a rule are recommended, then an updated Dashboard, Introduction, and Model Rule comparison chart also should be prepared to complete the rule package for Board submission. As soon as you or your drafting team determines that it will be recommending revisions to an assigned rule, please promptly inform staff and provide us with your revised Rule. We will create a new Model Rule redline version and middle column of the comparison chart, and provide you with the Word version of that document and any other necessary documents (Dashboard, etc . . .). Please contact us for this assistance once you or your team has determined that a revised rule will be recommended.

Because the comment period deadline of June 15th has not arrived, we may be updating your assignments. For example, a rule that presently has received no comments might receive an opposition comment prior to the June 15th comment deadline and, in that case, we would alert you with an email and provide you with the relevant background materials.

LIST OF ASSIGNED RULES (As explained above, these are rules that presently have received a comment in opposition or a comment stating an "Agree if Modified" position):

- 1.6 (Agenda Item III.I)
- 1.7 (Agenda Item III.J) Co-Lead w/Kehr
- 1.18 (Agenda Item III.FF)
- 7.1 (Agenda Item III.MMM)
- 7.2 (Agenda Item III.NNN)
- 7.3 (Agenda Item III.OOO)
- 7.4 (Agenda Item III.PPP)

Please note: The clean Word version of each rule is imbedded in the attached “Clean Version” PDF for each rule. You will see it and be able to open it when you open and view the PDF file.

Use the following link to the Proposed Rules page to find a copy of the Discussion Draft materials for all of the proposed rules as circulating for public comment:

www.calbar.org/proposedrules

Use the following link to review the full text of public comment letters or transcripts of the public hearings:

<http://sites.google.com/site/commentsrrc/>

Please don't hesitate to contact us with any questions you have.

Attached:

- RRC - PubCom - 06-25 & 06-26-10 Meeting Assignments - MOHR - DFT1 (06-09-10).pdf
- RRC - [1-18] - Public Comment Chart - By Commenter - XDFT1 (04-22-10).doc
- RRC - 1-400 [7-2] - Public Comment Chart - By Commenter - XDFT2 (05-21-10)2.doc
- RRC - 3-310 [1-7] - Public Comment Chart - By Commenter - XDFT2.2 (05-24-10)RLK-KEM22.doc
- RRC - 3-100 [1-6] - Public Comment Chart - By Commenter - XDFT1 (04-22-10).doc
- RRC - 1-400 [7-1] - Public Comment Chart - By Commenter - XDFT1 (04-22-10).doc
- RRC - 1-400 [7-3] - Public Comment Chart - By Commenter - XDFT1 (04-22-10).doc
- RRC - 1-400 [7-4] - Public Comment Chart - By Commenter - XDFT1 (04-22-10).doc
- RRC - [1-18] - Rule - ALTB (No Screen) - PCD [2] (05-15-10) - CLEAN-LAND.pdf
- RRC - [1-18] - Rule - ALTB (No Screen) - PCD [2] (05-15-10) - CLEAN-LAND.doc
- RRC - 1-400 [7-4] - Rule - PCD [7] (05-31-09) - CLEAN-LAND.pdf
- RRC - 1-400 [7-4] - Rule - PCD [7] (05-31-09) - CLEAN-LAND.doc
- RRC - 3-100 [1-6] - Rule - ALT - PCD [12.1] (02-28-10).pdf
- RRC - 3-100 [1-6] - Rule - ALT - PCD [12.1] (02-28-10).doc
- RRC - 3-100 [1-6] - Rule - ALT - PCD [12.1] (02-28-10) - CLEAN-LAND.pdf
- RRC - 1-400 [7-1] - Rule - PCD [7] (05-30-09) - CLEAN-LAND.pdf
- RRC - 1-400 [7-1] - Rule - PCD [7] (05-30-09) - CLEAN-LAND.doc
- RRC - 1-400 [7-2] - Rule - PCD [8] (10-01-09) - CLEAN-LAND.pdf
- RRC - 1-400 [7-2] - Rule - PCD [8] (10-01-09) - CLEAN-LAND.pdf
- RRC - 1-400 [7-3] - Rule - PCD [8] (10-02-09) - CLEAN-LAND.pdf
- RRC - 1-400 [7-3] - Rule - PCD [8] (10-02-09) - CLEAN-LAND.doc

June 13, 2010 KEM E-mail to Drafters (Julien & Ruvolo), cc Difuntorum, McCurdy & Lee:

I've attached the following public comment charts, with responses to the comments received through last Friday. Revisions I've made are highlighted in yellow.

1. III.MMM. Rule 7.1, XDFT2 (6/11/10). Only change from the version staff circulated is add response that no response is required for the COPRAC comment. San Diego has simply resubmitted its comment from the initial public comment period. I see no reason to revise the RRC's response to the S.D. submission.
2. III.NNN. Rule 7.2, XDFT2 (5/21/10). This is the draft circulated for the 6/4/10 meeting. Myles Berman's comment was discussed. However, as the Commission defeated a motion to delete 7.2(c) address requirement, (see 6/4/10 KEM Meeting Notes, III.NNN., at paragraph 1A), there is no reason to change the response to Mr. Berman's submission.
3. III.OOO. Rule 7.3, XDFT2 (6/11/10). As with the other rules, San Diego has simply resubmitted its comment from the initial public comment period. I see no reason to revise the RRC's response to the S.D. submission. The only change from the chart version staff circulated on 6/9/10 is to add "The commenter" at the beginning of the last paragraph of the next to last column.
4. III.PPP. Rule 7.4, XDFT2 (6/11/10). As with the other rules, San Diego has simply resubmitted its comment from the initial public comment period. I see no reason to revise the RRC's response to the S.D. submission. The only change from the chart version staff circulated on 6/9/10 is to add "No response required" as the Commission response to the COPRAC submission and the clause, "for the reasons stated by the commenter" in the second paragraph of the RRC response.

Finally, given our responses to the submitted public comment, I do not recommend any further changes to the Rules themselves.

Please let me know if you have any questions. Thanks,

Kevin

Attached:

RRC - 1-400 [7-1] - Public Comment Chart - By Commenter - XDFT2 (06-11-10).doc
RRC - 1-400 [7-2] - Public Comment Chart - By Commenter - XDFT2 (05-21-10).doc
RRC - 1-400 [7-3] - Public Comment Chart - By Commenter - XDFT2 (06-11-10).doc
RRC - 1-400 [7-4] - Public Comment Chart - By Commenter - XDFT2 (06-11-10).doc

June 14, 2010 Ruvolo E-mail to KEM, cc Julien & Staff:

This looks good to me.

June 14, 2010 McCurdy E-mail to KEM, cc Chair, Vice-Chairs & Staff:

Kevin,

A new comment in opposition or recommending modifications has been received for the following rule and an updated commenter table is attached. The comment compilation for this rule is attached, and has also been uploaded to the Google site (<http://sites.google.com/site/commentsrrc/byrule>). Please review the assignment instructions described in my earlier message below.

7.5 (Agenda Item III.QQQ)

The assignment deadline for these rules is the same as the earlier assignments -- **5:00 pm on Wednesday, June, 16, 2010.**

Attached:

RRC - 1-400 [7-5] - Public Comment Chart - By Commenter - XDFT1 (06-14-10).doc
RRC - 1-400 [7-5] - Public Comment Complete - REV (06-14-10).pdf

June 14, 2010 KEM E-mail to Drafters, cc Difuntorum, McCurdy & Lee re 7.5:

I've attached XDFT2 (6/14/10) of the Public Comment Chart for Rule 7.5, for which we have just received public comment requesting some changes. Please review my suggested responses to the OCBA submissions.

We need to submit by 5:00 p.m. on Wed, June 16, 2010. If you can give me your thoughts before then it will help as I have jury duty this week. Thanks,

Attached:

RRC - 1-400 [7-5] - Public Comment Chart - By Commenter - XDFT2 (06-14-10).doc

June 14, 2010 Ruvolo E-mail to KEM, cc Julien, Difuntorum, McCurdy & Lee re 7.5:

I agree with your proposed responses.

June 15, 2010 McCurdy E-mail to KEM, cc Chair, Vice-Chairs & Staff re 7.1 & 7.3:

Kevin,

Additional comments in opposition or recommending modifications have been received for the following rules previously assigned and updated commenter tables are attached. The comment compilations for these rules are attached, and have also been uploaded to the Google site (<http://sites.google.com/site/commentsrrc/byrule>). Please review the assignment instructions described in my earlier message below.

1.7 (Agenda Item III.J) Co-Lead w/Kehr (NOTE: We haven't added the synopsis for the Bradley Paulsen comment to the commenter chart yet, but will do so soon.)

7.1 (Agenda Item III.MMM)

7.3 (Agenda Item III.OOO)

If the drafters prepared and shared with staff an updated public commenter chart with proposed RRC responses, we have tried to use that version for this updated assignment.

Please note that the assignment deadline for these rules remains the same as previously stated -- 5:00 pm on Wednesday, June, 16, 2010.

Attached:

RRC - 1-400 [7-1] - Public Comment Chart - By Commenter - XDFT2.1 (06-15-10).doc
RRC - 1-400 [7-3] - Public Comment Chart - By Commenter - XDFT2.1 (06-15-10).doc
RRC - 3-310 [1-7] - Public Comment Complete - REV (06-15-10).pdf
RRC - 1-400 [7-1] - Public Comment Complete - REV (06-15-10).pdf
RRC - 1-400 [7-3] - Public Comment Complete - REV (06-15-10).pdf

June 15, 2010 KEM E-mail to Drafters, cc Staff re 7.1:

I've attached XDFT2.2 (6/15/10) of the Public Comment Chart for Rule 7.1, for which we have just received public comment requesting some changes. Please review my suggested responses to the OCBA submissions.

I've recommended that we remove the word "intentionally" from Comment [5] of the proposed Rule, which provides:

[5] The list of communications under paragraphs (a)(1) through (a)(4) of this Rule is not exclusive. For example, a lawyer's intentionally misleading use of metatags to divert a prospective client to the web site of the lawyer or the lawyer's law firm would also be prohibited under this Rule.

I thought that OCBA's point has merit and would make their suggested change.

We need to submit by 5:00 p.m. on Wed, June 16, 2010. If you can give me your thoughts before then it will help as I have jury duty this week.

Attached:

RRC - 1-400 [7-1] - Public Comment Chart - By Commenter - XDFT2.2 (06-15-10).doc

June 15, 2010 KEM E-mail to Drafters, cc Staff re 7.3:

I've attached XDFT2.2 (6/15/10) of the Public Comment Chart for Rule 7.3, for which we have just received public comment requesting some changes. Please review my suggested response to the OCBA submission.

We need to submit by 5:00 p.m. on Wed, June 16, 2010. If you can give me your thoughts before then it will help as I have jury duty this week.

Attached:

RRC - 1-400 [7-3] - Public Comment Chart - By Commenter - XDFT2.2 (06-15-10).doc

June 15, 2010 Difuntorum E-mail to RRC:

Commission Members:

More public comments keep arriving. Here's another one that you can begin addressing. It is from the State Bar Law Practice Management and Technology Section. The 9 rules addressed in the letter and the responsible lead drafters and codrafters are listed below. As previously emphasized, the question we need you to answer by the assignment deadline is whether the codrafters will be recommending rule revisions in response to the public comments received. Rules for which there are no recommended revisions will be placed on consent. –Randy D.

1.1 = VAPNEK (Peck, Ruvolo)
1.5 = VAPNEK (Ruvolo)
1.16 = KEHR (Foy, Melchior)
5.1 = TUFT (Martinez, Peck)
4.4 = MARTINEZ/TUFT
7.3 = MOHR (Julien, Ruvolo)
8.3 = KEHR (Peck, Tuft, Vapnek)
8.4.1 = PECK (Martinez)
8.5 = MELCHIOR (Lampert, Peck)

Attached:

RRC - 1-400 [7-3] - 06-15-10 LPMT [Hoffman] Comment.pdf
RRC - [4-4] - 06-15-10 LPMT [Hoffman] Comment.pdf
RRC - 1-310X [5-1] - 06-15-10 LPMT [Hoffman] Comment.pdf
RRC - 3-700 [1-16] - 06-15-10 LPMT [Hoffman] Comment.pdf
RRC - 3-110 [1-1] - 06-15-10 LPMT [Hoffman] Comment.pdf
RRC - 4-200 [1-5] - 06-15-10 LPMT [Hoffman] Comment.pdf
RRC - 1-100 [8-5] - 06-15-10 LPMT [Hoffman] Comment.pdf
RRC - 2-400 [8-4-1] - 06-15-10 LPMT [Hoffman] Comment.pdf
RRC - 1-120 [8-3] - 06-15-10 LPMT [Hoffman] Comment.pdf

June 16, 2010 Ruvolo E-mail to KEM, cc Drafters & Staff re 7.1:

I agree with your draft comments.

June 16, 2010 Ruvolo E-mail to KEM, cc Drafters & Staff re 7.3:

I agree with your additional comment to the Orange County committee.

June 16, 2010 McCurdy E-mail to KEM, cc Chair, Vice-Chairs & Staff:

Kevin,

It's finally your turn . . . you have exactly 40 minutes to complete this work J . . . I'm sure you're way ahead of me, but just in case . . .

**RRC – Rule 1-400 [7.1 – 7.6]
E-mails, etc. – Revised (6/21/2010)**

Additional comments in opposition or recommending modifications have been received for the following rules, and those **comments not previously sent to you** are attached here for your review. The Google site is also up-to-date (<http://sites.google.com/site/commentsrrc/byrule> .

- 1.6 (Agenda Item III.I) OCTC (sent with Randy's 6/15/10 e-mail)
- 1.7 (Agenda Item III.J) Co-Lead w/Kehr - OCTC; and Zitrin/Law Professors (sent with Randy's 6/15/10 e-mail)
- 1.8.2 (Agenda Item III.L) - OCTC (sent with Randy's 6/15/10 e-mail)
- 1.18 (Agenda Item III.FF) - 2 Comments: **COPRAC (attached)**; and OCTC (sent with Randy's 6/15/10 e-mail)
- 5.4 (Agenda Item III.DDD) OCTC (sent with Randy's 6/15/10 e-mail)
- 7.1 (Agenda Item III.MMM) OCTC (sent with Randy's 6/15/10 e-mail)
- 7.2 (Agenda Item III.NNN) OCTC (sent with Randy's 6/15/10 e-mail)
- 7.3 (Agenda Item III.OOO) OCTC; and Law Practice Management & Technology Section (sent with Randy's 6/15/10 e-mail)
- 7.5 (Agenda Item III.QQQ) OCTC (sent with Randy's 6/15/10 e-mail)

NOTE: As previously mentioned, the most important information needed for the assignment deadline and for preparing the agenda is the codrafters' decision as to whether revisions to a rule are being recommended. We need to know this in order to determine which rules will be consent items and which rules will not be consent items.

In reviewing public comments, although drafting RRC responses are important and need to be completed prior to the meeting, the primary information that must be submitted for the agenda are any and all proposed language changes to the rules. Please keep this mind when reviewing the public comments and when preparing your assignment submissions.

This message may include assignments for rules for which staff has not yet provided a draft commenter chart. We hope to provide any such charts as soon as possible, by a separate message.

Please note that the assignment deadline for these rules remains the same as previously stated -- **5:00 pm on Wednesday, June, 16, 2010.**

Attached:

RRC - [1-18] - 06-14-10 COPRAC Comment.pdf

June 17, 2010 Difuntorum E-mail to Drafters, cc Staff:

Rule 7.3 also has comments from OCTC (pasted below) and LPMT (in the attached compilation). Let us know if any revisions to rule are recommended in response to these comments.

Rule 7.3. Direct Contact with Prospective Clients.

1. OCTC supports this rule, but finds most of the Comments more appropriate for treatises, law review articles, and ethics opinions. We support the last two sentences of Comment 8.

June 17, 2010 KEM E-mail to McCurdy, Difuntorum & Lee, cc Drafters & Chair:

I've attached revised XDFT2.4 (6/17/10) of the Public Comment Chart, which includes the comments of LPMT and a suggested response. Neither JoElla nor Nace has had an opportunity to address the latter response, but I have previously circulated versions of the public comment chart for their review.

I do not recommend any changes to the Rule.

Please let me know if you have any questions.

Attached:

RRC - 1-400 [7-3] - Public Comment Chart - By Commenter - XDFT2.4 (06-17-10).doc

June 17, 2010 Ruvolo E-mail to Drafters, Chair & Staff:

I agree with Kevin's comment.

June 17, 2010 KEM E-mail to McCurdy, Difuntorum & Lee, cc Drafters & Chair:

Earlier I sent you the materials on 7.3. Now I'm sending you the materials for the remaining rules in the "7 series" [1-400]:

1. III.MMM. 7.1

- a. Public Comment Chart, XDFT2.3 (6/16/10).
- b. Rule, Post-PCD [#8] (6/16/10), redline, compared to PCD [#7] (5/30/09). Deleted Comment [4], definition of writing, because it is already a defined term in 1.0.1(n), and renumbered the remaining comments to conform to the Model Rule numbering order.
- c. Rule, Post-PCD [#8] (6/16/10), clean landscape version.

2. III.NNN. 7.2

- a. Public Comment Chart, XDFT2.1 (6/16/10).

3. III.PPP. 7.4

- a. Public Comment Chart, XDFT2.1 (6/16/10).

4. III.QQQ. 7.5

- a. Public Comment Chart, XDFT2.1 (6/16/10).

**RRC – Rule 1-400 [7.1 – 7.6]
E-mails, etc. – Revised (6/21/2010)**

- b. Rule, Post-PCD [#8] (6/16/10), redline, compared to PCD [#7] (5/31/09). Sentence added to end of Comment [1] per request of OCTC.
- c. Rule, Post-PCD [#8] (6/16/10), clean landscape version.

Please let me know if you have any questions.

Attached:

RRC - 1-400 [7-1] - Public Comment Chart - By Commenter - XDFT2.3 (06-16-10).doc
RRC - 1-400 [7-1] - Rule - Post-PCD [8] (06-16-10) - Cf. to PCD [7] (05-30-09) - LAND.doc
RRC - 1-400 [7-1] - Rule - Post-PCD [8] (06-16-10) - CLEAN-LAND.doc
RRC - 1-400 [7-2] - Public Comment Chart - By Commenter - XDFT2.1 (06-16-10).doc
RRC - 1-400 [7-4] - Public Comment Chart - By Commenter - XDFT2.1 (06-16-10).doc
RRC - 1-400 [7-5] - Public Comment Chart - By Commenter - XDFT2.1 (06-16-10).doc
RRC - 1-400 [7-5] - Rule - Post-PCD [8] (06-16-10) - Cf. to PCD [7] (05-31-09) - LAND.doc
RRC - 1-400 [7-5] - Rule - Post-PCD [8] (06-16-10) - CLEAN-LAND.doc

June 21, 2010 McCurdy E-mail to KEM, cc Chair, Vice-Chairs & Staff:

Kevin,

This message provides a public commenter chart for every rule you are assigned as a lead or co-lead drafter. We have reconciled all of the comments received against each commenter chart and there should now be a synopsis for every comment received. However, there are a number of comments for which an RRC Response is needed. Please take a look at each table and fill in any missing RRC Responses.

Our goal is to send out a supplemental mailing providing a copy of all of the final or near-final commenter charts on Tuesday or Wednesday, for receipt prior to the meeting this week.

If possible, please provide us with any revised charts no later than 5:00 pm, Tuesday, June 22nd.

Attached:

RRC - 3-100 [1-8-2] - Public Comment Chart - By Commenter - XDFT2 (06-21-10).doc (#)
RRC - 3-310 [1-7] - Public Comment Chart - By Commenter - XDFT3.3 (06-21-10)RLK-KEM-AT.doc (A)
RRC - [1-18] - Public Comment Chart - By Commenter - XDFT2.1 (06-21-10).doc
RRC - 1-310X [5-4] - Public Comment Chart - By Commenter - XDFT2 (06-21-10).doc (A,#)
RRC - 1-400 [7-1] - Public Comment Chart - By Commenter - XDFT2.3 (06-21-10).doc
RRC - 1-400 [7-2] - Public Comment Chart - By Commenter - XDFT2.1 (06-21-10).doc
RRC - 1-400 [7-3] - Public Comment Chart - By Commenter - XDFT2.4 (06-21-10).doc
RRC - 1-400 [7-4] - Public Comment Chart - By Commenter - XDFT2.1 (06-21-10).doc
RRC - 1-400 [7-5] - Public Comment Chart - By Commenter - XDFT2.1 (06-21-10).doc (A, R)
RRC - 3-100 [1-6] - Public Comment Chart - By Commenter - XDFT3.2 (06-21-10)KEM.doc

June 22, 2010 KEM E-mail to McCurdy re 1.7, 1.8.2, 5.4 & 7.5:

I've reviewed the charts you sent and updated them where necessary. Please substitute the following files for the files you sent me:

**RRC – Rule 1-400 [7.1 – 7.6]
E-mails, etc. – Revised (6/21/2010)**

RRC - 3-100 [1-8-2] - Public Comment Chart - By Commenter - XDFT2 (06-21-10).doc [Draft # should have been #2].

RRC - 3-310 [1-7] - Public Comment Chart - By Commenter - XDFT3.3 (06-21-10)RLK-KEM-AT2.doc [document you sent me was not alphabetized, which I've done; also note that I will review Bob's revisions to the chart and send in my responses later].

RRC - 1-310X [5-4] - Public Comment Chart - By Commenter - XDFT2 (06-21-10).doc [Draft # should have been #2 and it's been alphabetized].

RRC - 1-400 [7-5] - Public Comment Chart - By Commenter - XDFT2.3 (06-22-10).doc [Draft # should have been 2.3, also alphabetized and response to LACBA Access to Justice Committee].

June 21, 2010 Sapiro E-mail to RRC List:

I suggest that we reconsider the response to Orange County at page 67 of the agenda materials. They do not recommend deleting the standards. To the contrary, they recommend moving them into the rule itself. That would neither delete the standards nor dilute the effect of the standards.

June 22, 2010 Julien E-mail to KEM re 7.1:

I agree with your suggested response.

TOTAL = 4 Agree = 1
Disagree = 1
Modify = 2
NI = 0

**Rule 7.2. Advertising
[Sorted by Commenter]**

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
3	Berman, Myles L.	M	No	7.2(c)	<p>I am opposed to the language that requires an office address. While it is extremely important for the responsible advertising attorney to be identified in any advertisement, this goal can be accomplished by requiring the naming of one lawyer or law firm with a telephone number instead of an address who is responsible for the ads content.</p> <p>Mass advertising in print media such as newspapers is read by millions of California consumers in hundreds of different cities and numerous counties. The same is true for radio and TV ads. Print advertising space and radio/TV ads are often times limited in space and time. In addition, many law practices have more than one location. Once a potential contacts an attorney, the client will then automatically know the exact office location of the attorney called. Clients often times are looking for good quality attorneys who advertise. Requiring an office address to be included in legal ads serves no legitimate consumer protection.</p> <p>I have not heard of any case where a client was harmed because the client did not know the address of the attorney or attorneys hired.</p>	<p>The suggested change was not made. The requirement that the "office address" of the responsible lawyer or law firm be included in the advertisement is a verbatim adoption of the Model Rule language. It was added because lawyers frequently use trade names and advertise in areas in which they do not maintain offices (e.g., providing an 800 number in local telephone directories throughout a state.) The Commission determined that this information was necessary not only to enable the State Bar disciplinary authorities to track down those responsible for an advertisement, but also to provide prospective clients with information about where the lawyer or law firm is located, which may be an important factor in the prospective client's decision to retain counsel. As noted in other jurisdictions, "[t]he absence of a street address in a widely disseminated advertisement could be misleading by suggesting a physical proximity to the recipient that does not in fact exist and by suggesting the ability to serve in jurisdictions in which the advertising firm or lawyer is not qualified to practice." See, e.g., N.Y. State Ethics Op. 756 (3/13/02), available at: http://www.nysba.org/AM/Template.cfm?Section=Ethics_Opinions&CONTENTID=18770&TEMPLATE=/</p>

¹ A = AGREE with proposed Rule D = DISAGREE with proposed Rule M = AGREE ONLY IF MODIFIED NI = NOT INDICATED

TOTAL = 4 Agree = 1
 Disagree = 1
 Modify = 2
 NI = 0

**Rule 7.2. Advertising
 [Sorted by Commenter]**

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
						CM/ContentDisplay.cfm [last visited 5/22/10]
1	COPRAC	A	Yes		COPRAC supports the adoption of Proposed Rule 7.2 and the Comments to the Rule.	No response necessary.
4	Office of Chief Trial Counsel ("OCTC")	M	Yes		OCTC supports this rule, but many of the Comments are more appropriate for treatises, law review articles, and ethics opinions. It supports Comments [6], [9], and the first two sentences of Comment [7] and the last sentence of Comment [7].	As the Commission has noted with respect to other Rules, the comments are an important part of the Rules modeled on the ABA Model Rules, providing clarification of the black letter and guidance to lawyers on how to be in compliance with their professional obligations.
2	San Diego Co. Bar Ass'n	M	Yes	Cmt. [6]	Requests that the ABA Model Rule definitions in Comment [6] for "legal services plan" and "lawyer referral service" be retained. The proposed retention would result in keeping the second, third and fourth sentences of Comment [6] to the ABA Model Rule 7.2.	The Commission did not make the change. Comment [6] was revised to reflect the specific regulatory framework governing lawyer referral services in California. The definitions are not accurate within the California framework. See Bus. & Prof. Code § 6155.

Rule 7.2 Advertising
(Commission's Proposed Rule – Clean Version)

- (a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through any written, recorded or electronic media, including public media.
- (b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may
 - (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
 - (2) pay the usual charges of a legal services plan or a qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's minimum standards for a lawyer referral service in California;
 - (3) pay for a law practice in accordance with Rule 1.17; and
 - (4) refer clients to another lawyer or non-lawyer pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if
 - (i) the reciprocal referral agreement is not exclusive, and
 - (ii) the client is informed of the existence and nature of the agreement.
- (5) offer or give a gift or gratuity to any person or entity having made a recommendation resulting in the employment of the lawyer or the lawyer's law firm, provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.
- (c) Any communication made pursuant to this Rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

COMMENT

- [1] To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through advertising. The public's need to know about legal services is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. Lawyers must be aware, however, that advertising by them entails the risk of practices that are misleading or overreaching.
- [2] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly

represented; and other information that might invite the attention of those seeking legal assistance.

[3] This Rule permits advertising by electronic media, including but not limited to television, radio and the Internet. But see Rule 7.3(a) concerning real-time electronic communications with prospective clients.

[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as court-approved class action notices.

Paying Others to Recommend a Lawyer

[5] Lawyers are not permitted to pay others for channeling professional work. Paragraph (b)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, banner ads, and group advertising. A lawyer may also compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. See Rule 5.3 for the duties of lawyers and law firms with respect to the conduct of nonlawyers who prepare marketing materials for them.

[6] Paragraph (b)(2) permits a lawyer to pay the usual charges of a group or pre-paid legal service plan exempt from registration under Business and Professions Code section 6155(c). Paragraph (b)(2) permits a lawyer to pay the usual charges of a qualified lawyer referral service established, sponsored and operated in accordance with the State Bar

of California's minimum standards for a lawyer referral service in California. See Business and Professions Code, section 6155, and rules and regulations pursuant thereto. See also Rule 5.4(a)(4).

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rules 5.3 and 5.4. Legal service plans and lawyer referral services may communicate with prospective clients, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead prospective clients to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.

[8] Paragraph (b)(4) permits a lawyer to make referrals to another, in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rule 5.4 (c). A lawyer does not violate paragraph (b)(4) of this Rule by agreeing to refer clients or customers to another, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by arrangements made pursuant to paragraph (b)(4) are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within a law firm comprised of multiple

entities. A division of fees between or among lawyers not in the same law firm is governed by Rule 1.5.1.

Required information in advertisements

- [9] Paragraph (c) also applies to a group of lawyers that engages in cooperative advertising. Any such communication made pursuant to this Rule shall include the name and office address of at least one member of the group responsible for its content. See also Business and Professions Code section 6155(h). See also Business and Professions Code section 6159.1, concerning the requirement to retain any advertisement for one year.