



**THE STATE BAR
OF CALIFORNIA**

180 HOWARD STREET, SAN FRANCISCO, CA 94105-1639

**COMMITTEE ON PROFESSIONAL
RESPONSIBILITY AND CONDUCT**

TELEPHONE: (415) 538-2161

May 6, 2010

Harry B. Sondheim, Chair
Commission for the Revision of the
Rules of Professional Conduct
State Bar of California
180 Howard Street
San Francisco, CA 94105

RE: Proposed Rule 7.5

Dear Mr. Sondheim:

The State Bar of California's Committee on Professional Responsibility and Conduct (COPRAC) appreciates the opportunity to comment on the proposed amendments to the Rules of Professional Conduct of the State Bar of California, pursuant to the request of the Board Committee on Regulation, Admissions & Discipline Oversight (RAD) for public comment.

COPRAC has reviewed the provisions of proposed Rule 7.5 - Firm Names and Letterheads. COPRAC supports the adoption of proposed Rule 7.5 and the Comments to the Rule.

Thank you for your consideration of our comments.

Very truly yours,

A handwritten signature in cursive script that reads "Carole J. Buckner".

Carole Buckner, Chair
Committee on Professional
Responsibility and Conduct

cc: Members, COPRAC

May 6, 2010

Ms. Audrey Hollins
Office of Professional Competence, Planning and Development
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re:	TITLE
RULE	
Rule 1.0	Purpose and Scope of the Rules of Professional Conduct
Rule 1.0.1	Terminology *BATCH 6*
Rule 1.1	Competence
Rule 1.2	Scope of Representation and Allocation of Authority Between Client and Lawyer
Rule 1.4	Communication
Rule 1.4.1	Disclosure of Professional Liability Insurance *BATCH 6*
Rule 1.5	Fee for Legal Services
Rule 1.5.1	Financial Arrangements Among Lawyers
Rule 1.6	Confidential Information of a Client
Rule 1.7	Conflict of Interests: Current Clients
Rule 1.8.1	Business Transactions with a Client and Acquiring Interests Adverse to the Client
Rule 1.8.2	Use of a Current Client's Confidential Information
Rule 1.8.3	Gifts from Client
Rule 1.8.5	Payment of Personal or Business Expenses Incurred by or for a Client
Rule 1.8.6	Payments Not From Client
Rule 1.8.7	Aggregate Settlements
Rule 1.8.8	Limiting Liability to Client
Rule 1.8.9	Purchasing Property at a Foreclosure Sale or a Sale Subject to Judicial Review
Rule 1.8.10	Sexual Relations with Client
Rule 1.8.11	Imputation of Personal Conflicts (Rules 1.8.1 to 1.8.9)
Rule 1.9	Duties to Former Clients
Rule 1.11	Special Conflicts for Former and Current Government Officers and Employees *BATCH 6*
Rule 1.12	Former Judge, Arbitrator, Mediator or Other Third-Party Neutral
Rule 1.13	Organization as Client
Rule 1.14	Client with Diminished Capacity
Rule 1.15	Handling Funds and Property of Clients and Other Persons
Rule 1.16	Declining or Terminating Representation
Rule 1.17	Purchase and Sale of a Law Practice *BATCH 6*
Rule 1.18	Duties to Prospective Clients *BATCH 6*
Rule 2.1	Advisor
Rule 2.4	Lawyer as a Third-Party Neutral
Rule 2.4.1	Lawyer as a Temporary Judge
Rule 3.1	Meritorious Claims
Rule 3.3	Candor Toward the Tribunal
Rule 3.4	Fairness to Opposing Party and Counsel
Rule 3.5	Impartiality and Decorum of the Tribunal
Rule 3.6	Trial Publicity
Rule 3.7	Lawyer As A Witness

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Rule 3.8	Special Responsibilities of a Prosecutor
Rule 3.9	Advocate in Non-adjudicative Proceedings *BATCH 6*
Rule 3.10	Threatening Criminal, Administrative, or Disciplinary Charges
Rule 4.1	Truthfulness in Statements to Others *BATCH 6*
Rule 4.2	Communication with a Person Represented by Counsel
Rule 4.3	Dealing with Unrepresented Person
Rule 4.4	Respect for Rights of Third Persons *BATCH 6*
Rule 5.1	Responsibilities of Partners, Managers, and Supervisory Lawyers
Rule 5.2	Responsibilities of a Subordinate Lawyer
Rule 5.3	Responsibilities Regarding Nonlawyer Assistants
Rule 5.3.1	Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Member
Rule 5.4	Duty to Avoid Interference with a Lawyer's Professional Independence
Rule 5.5	Unauthorized Practice of Law; Multijurisdictional Practice
Rule 5.6	Restrictions on Right to Practice
Rule 6.1	Voluntary Pro Bono Publico Service *BATCH 6*
Rule 6.2	Accepting Appointments *BATCH 6*
Rule 6.3	Legal Services Organizations
Rule 6.4	Law Reform Activities
Rule 6.5	Limited Legal Services Programs *BATCH 6*
Rule 7.1	Communications Concerning the Availability of Legal Services
Rule 7.2	Advertising
Rule 7.3	Direct Contact with Prospective Clients
Rule 7.4	Communication of Fields of Practice and Specialization
Rule 7.5	Firm Names and Letterheads
Rule 8.1	False Statement Regarding Application for Admission to Practice
Rule 8.1.1	Compliance with Conditions of Discipline and Agreements in Lieu of Discipline
Rule 8.2	Judicial and Legal Officials; Lawyer as a Candidate or Applicant for Judicial Office *BATCH 6*
Rule 8.3	Reporting Professional Misconduct
Rule 8.4	Misconduct
Rule 8.4.1	Prohibited Discrimination in Law Practice Management and Operation
Rule 8.5	Disciplinary Authority; Choice of Law

Dear Ms. Hollins:

This letter constitutes the San Diego County Bar Association's response to The State Bar of California's Request for Public Comment on the foregoing proposed rules of Professional Conduct.

The SDCBA reconfirms previous responses to each of the foregoing proposed rules.

Very truly yours,



Patrick L. Hosey, President
San Diego County Bar Association

October 10, 2006

Audry Hollins
Office of Professional Competence,
Planning and Development
State Bar of California
180 Howard Street
San Francisco, CA 94105-1639

Re: Response to Request for Comments
Discussion Draft: Proposed Amendments to the Rules of
Professional Conduct of the State Bar of California

Dear Ms. Hollins:

On behalf of the San Diego County Bar Association, I respectfully submit the enclosed with respect to the pending Twenty-Seven (27) Proposed New or Amended Rules of Professional Conduct of the State Bar of California, developed by the State Bar's Special Commission for the Revision of the Rules of Professional Conduct. We have also included separate comments (approvals) of the proposed Global Changes related thereto. This is in response to the State Bar of California's request for comments thereon distributed in June, 2006.

Please note that although the comments reflect the position of the San Diego County Bar Association, we have also included dissenting views offered by members of its Legal Ethics Committee. Given the tentative state of the proposed new and amended rules, we wished to provide as much input to the Special Commission as possible, with which to assist them in their efforts.

Thank you for providing our Association the opportunity to participate in this process.

Respectfully Submitted,



Andrew S. Albert, President
San Diego County Bar Association

Enclosures

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MEMORANDUM

Date: October 16, 2006

To: Special Commission for the Revision of the Rules of Professional Conduct
The State Bar of California

From: San Diego County Bar Association ("SDCBA")

Re: "1st PC Batch," Proposed New or Amended Rules of Professional Conduct of the
State Bar of California

Subj: Proposed Rule 7.5: Firm Names and Letterheads

Founded in 1899 and comprised of over 8,000 members, the SDCBA is its region's oldest and largest law-related organization. Its response herein, as adopted by the SDCBA Board of Directors, followed extensive review and consideration by its selectively-constituted Legal Ethics Committee, the advisory body charged by the SDCBA bylaws with providing its members guidance in the areas of ethics and ethical considerations.

The SDCBA respectfully submits the following concerning the subject proposed Rule 7.5:

* * * * *

We approve the proposed new rule in its entirety.



**ORANGE COUNTY
BAR ASSOCIATION**

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OC WOMEN LAWYERS ASSOC.

June 11, 2010

Ms. Audrey Hollins
Office of Professional Competence, Planning and Development
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed New or Amended Rules of Professional Conduct

Dear Ms. Hollins:

The Orange County Bar Association is submitting comments on the following proposed new or amended rules of professional conduct:

- 1.2 Scope of Representation
- 1.5 Fees for Legal Services
- 1.13 Organization as a Client
- 1.18 Duties to Prospective Client
- 5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Member
- 6.2 Accepting Appointments
- 7.1 Communications Concerning the Availability of Legal Services
- 7.3 Direct Contact with Prospective Clients
- 7.5 Firm Names and Letterheads
- 8.3 Reporting Professional Misconduct

The enclosed comments were drafted by the OCBA Professionalism and Ethics Committee and approved by the Board of Directors. Please let us know if you have any questions or require additional information.

Sincerely,

ORANGE COUNTY BAR ASSOCIATION

Lei Lei Wang Ekvall
2010 President

Enc.

MEMORANDUM

Date: May 26, 2010

To: Commission for the Revision of the Rules of Professional Conduct of the State Bar of California

From: Orange County Bar Association ("OCBA")

Re: **Proposed Rule 7.5 – Firm Names and Letterheads**

Founded over 100 years ago, the Orange County Bar Association has over 7,000 members, making it one of largest voluntary bar associations in California. The OCBA Board of Directors, made up of practitioners from large and small firms, with varied civil and criminal practices, and of differing ethnic backgrounds and political leanings, has approved this comment prepared by the Professionalism & Ethics Committee.

The OCBA respectfully submits the following comments concerning the subject proposed Rule:

Proposed Rule 7.5 governs the use of firm names and letterheads by lawyers. The proposed Rule is derived from current Rule 1-400 and the ABA Model Rules.

The OCBA supports the adoption of proposed Rule 7.5, but suggests the following changes and additions to the Comments:

- The words "all or some" in the second line of Comment [1] should be changed to "one or more."

Reason: Some firms use the name of only one lawyer as the firm name.

- An additional sentence should be added at the end of Comment [2] stating:

"It is permissible to use the name of a lawyer who has a proper 'of counsel' relationship with a law firm in the name of the firm."

Reason: Adding such a sentence eliminates any confusion on this question and would reconcile two ethics opinions that are currently inconsistent in this regard. Los Angeles County Bar Association Formal Opinion No. 421 (1983), addressing then applicable Rule 2-101 (Rule 1-400's predecessor), determined that using an "of counsel" lawyer's name in a firm name was improper. California State Bar Formal Opinion 1986-90, also addressing Rule 2-101, implies that the use of a lawyer's name who is "of counsel" to the firm in a firm name is permissible if the lawyer's actual relationship and true role is properly communicated.

- A new Comment [3] should be added stating:

“Also with regard to paragraph (d), a lawyer may not denominate a firm name as, for example, “Smith & Associates” or “Smith, Jones & Associates,” if Smith or Smith and Jones do not in fact practice with associates.”

Reason: The OCBA believes that this is a sufficiently common practice among some sole practitioners or small firms such that it should be specifically addressed. The OCBA also believes that the practice is misleading.



THE STATE BAR OF CALIFORNIA

PROPOSED RULES OF PROFESSIONAL CONDUCT

PUBLIC COMMENT FORM

INSTRUCTIONS: This form allows you to submit your comments by entering them into the text box below and/or by uploading files as attachments. We ask that you comment on **one** Rule per form submission and that you choose the proposed Rule from the drop-down box below.

All information submitted is regarded as public record.

Updated on May 17, 2010 to implement the Batch 6 Rules and one Batch 5 Rule (Rule 1.10) conditionally adopted by the Board of Governors at its meeting on May 15, 2010.

DEADLINE TO SUBMIT COMMENT IS: JUNE 15, 2010

Your Information

Professional Affiliation

Commenting on behalf of an organization

Yes

No

* Name

* City

* State

* Email address
(You will receive a copy of your comment submission.)

The following proposed rules can be viewed by clicking on the following link: [Proposed Rules of Professional Conduct](#).

* Select the Proposed Rule that you would like to comment on from the drop down list. Rules not listed in the drop-down box below are rules that are not being recommended for adoption. To submit comments on the rules not recommended please submit your comment by using the form at this link: [Rules Not Recommended Public Comment Form](#).

Rule 7.5 Firm Names and Letterheads

From the choices below, we ask that you indicate your position on the Proposed rule. This is not required and you may type a comment below or provide an attachment regardless of whether you indicate your position from the choices.

AGREE with this proposed Rule

DISAGREE with this proposed Rule

AGREE ONLY IF MODIFIED

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.



LACBA

LOS ANGELES COUNTY
BAR ASSOCIATION

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June 14, 2010

Audrey Hollins
Office of Professional Competence, Planning and Development
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Dear Ms. Hollins:

The Access to Justice Committee (AJC) of the Los Angeles County Bar (LACBA) has the following comments on Proposed Rule 7.5:

Rule 7.5 (a)

The AJC greatly appreciates the recommendation of the Rule Revision Commission to include this section in the proposed rules. The use of the name "legal aid" or other similar designation which implies that the user is a non-profit legal services provider is a common problem in California. While the existing rule covers this situation, moving the prohibition from the Board of Governors-adopted standards to the rule itself gives it increased credibility and strength.

The "phony legal aid" problem is obtaining increased attention in recent months. On January 1, 2010 a new law went into effect prohibiting the use of the name "legal aid" or "confusingly similar" names by anyone except a legitimate legal aid program. Several providers, including both lawyers and non-lawyer operations, have agreed to cease and desist from using the improper names. Having this language in a rule adopted by the Supreme Court, with comment [1] giving it added strength, may assist courts in interpreting the language of the new statute.

Thank you for the opportunity to comment on this rule.

Sincerely,

Toby Rothschild
Chair, Access to Justice Committee



**THE STATE BAR OF
CALIFORNIA**

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1639

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June 15, 2010

Audrey Hollins, Director
Office of Professional Competence, Planning &
Development
State Bar of California
180 Howard Street
San Francisco, California 94105

re: Comments of the Office of the Chief Trial Counsel to Proposed
Amendments to the Rules of Professional Conduct

Dear Ms. Hollins:

Preliminarily, the Office of the Chief Trial Counsel (OCTC) would like to thank Harry B. Sondheim, Chair, Mark L. Tuft and Paul W. Vapnek, Co-Vice-Chairs, and the members of the Commission for the Revision of the Rules of Professional Conduct, for the opportunity to submit comments to the proposed amendments to the Rules of Professional Conduct, as released for public comment by the Board of Governors. We appreciate the Commission's considerable efforts in crafting rules of conduct for California attorneys relevant to our contemporary legal environment. While we concur with many of the Commission's recommendations, we raise some points of disagreement. Our disagreement is offered in the spirit of aiding in the adoption of rules which can be practically and fairly understood by the attorneys in this state and applied in a uniform fashion by both this Office and the State Bar Court. While OCTC has submitted comments in the past to some of these rules as they were initially submitted,¹ we welcome this opportunity to comment on the entire set of rules and in context. Further, there have been changes to the proposed rules since our original comments.² We hope you find our thoughts helpful.

SUMMARY

We summarize our main concerns as follows:

- Some of the rules are becoming too complicated and long, making them difficult to understand and enforce;
- There are way too many Comments to the Rules, making the rules unwieldy, confusing, and

¹ OCTC refers the Commission to its previous comments and recommendations.

² We are not commenting on the rules that were not recommended or tentatively adopted by the Board of Governors (BOG).

difficult to read, understand, and enforce. Many of the Comments are more appropriate for treatises, law review articles, and ethics opinions. The Comments clutter and overwhelm the rules. We recommend that most of the Comments be stricken or that the Rules be adopted without the Comments;

- Many of the Comments are too large and thus bury the information sought to be presented;
- Several of the Comments are in our opinion legally incorrect (i.e. Comment 9 of Rule 1.8.1 and Comment 5 of rule 1.9);
- One of the Comments invades OCTC's prosecutory discretion (i.e. Comment 6 of Rule 8.4);
- Some of the rules are confusing and inconsistent with the State Bar Act (i.e. that an attorney's misrepresentation to a court cannot be based on gross negligence);
- Some of the rules attempt to define and limit provisions adopted by the Legislature in the State Bar Act (i.e. Rule 1.6's defining the scope of confidentiality in Business & Professions Code section 6068(e)); and
- Some of the proposed rules deviate unnecessarily from the ABA Model Rules (i.e. proposed rules 3.9, 4.4 and 8.4).³

GENERAL COMMENTS

OCTC finds many of the proposed rules too lengthy and complicated, often making them difficult to understand and enforce. There are way too many Comments to the Rules, making the rules unwieldy, confusing, and difficult to read, understand, and enforce. We would strongly suggest that the rules be simplified and the Comments either be significantly reduced or entirely eliminated. Otherwise, it is hard to imagine the attorneys of this state reading and understanding the entirety of the rules and official Comments. Further, we believe that some of the Comments are legally incorrect.

The Rules and Comments are not meant to be annotated rules, a treatise on the rules, a series of ethics opinions, a law review article, or musings and discussions about the rules and best practices. There are other more appropriate vehicles for such discussions and expositions.

Every attorney is required to know and understand the Rules of Professional Conduct. This is why ignorance of a rule is no defense in a State Bar proceeding. (See *Zitny v. State Bar* (1966) 64 Cal.2d 787, 793.) Yet, the proposed rules (including Comments) are 99 pages; contain 68 rules; and almost 500 Comments. One rule alone has 38 Comments.⁴

In contrast, the current rules are 30 pages; contain 46 rules; and 94 comments.⁵ The 1974 rules were 13 pages; contained 25 rules; and 6 comments.⁶ The original 1928 rules were 4 pages long; contained 17 rules; and had no comments.

³ Unless stated otherwise, all future references to section are to a section of the Business & Professions Code; all references to rule are to the current Rules of Professional Conduct; all references to proposed rule is to the Commission's proposed Rule of Professional Conduct; and all references to the Model Rules are to the ABA's current Model Rules of Professional Conduct.

⁴ See proposed rule 1.7. Another rule has 26 comments. (See proposed rule 1.6.)

⁵ The current rules list them as Discussion paragraphs; most are unnumbered, but OCTC estimates there are 94 paragraphs of discussion and will refer to them as comments so that there is a standard reference.

⁶ The 1974 rules had 6 footnotes (*), four simply reference another rule and two contain a short substantive discussion.

Letter from OCTC
To Randall Difuntorum
June 15, 2010

Many of the proposed Comments appear to be nothing more than a rephrasing of the rule or an annotated version of the rule. If the rule is ambiguous or not clear enough, the solution should not be a Comment rephrasing the rule, but a redrafting of the rule so it is clear and understandable. Likewise, discussing the purpose of the rule, best practices, or the limits of the rule are not proper Comments to the rules. There are other better vehicles for such discussions. Lawyers can read and conduct legal research when needed.

In addition, the rules and Comments make too much use of references to other rules and Comments, making it hard to understand the rules. Some of the Comments are too long and, thus, bury information in a very long Comment. Other Comments appear to be legally incorrect. We would recommend that most of the Comments be stricken or that the Rules be adopted without the Comments. It is our understanding that about seven states have not adopted the ABA's Comments, although two of those still provide the ABA's comments as guidance.

We are also concerned that there are too many separate conflicts rules (see rules 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13(g), and 1.18) and they often incorporate each other, making it difficult to comprehend, understand, and enforce them.⁷

⁷ There is actually no Rule 1.8, but several separate rules, going from 1.8.1 through 1.8.11.

Letter from OCTC
To Randall Difuntorum
June 15, 2010

Rule 7.5. Firm Names and Letterheads.

1. OCTC supports this rule. Comments 1 and 2 should be broken down into several comments so that the ideas do not get buried. Also, a Comment should refer attorneys to section 6132 of the Business and Profession Code regarding their duty to remove the names of disbarred and resigned attorneys from their law firms.