

McCurdy, Lauren

RE: Rule 1.4
6/25&26/10 Commission Meeting
Open Session Agenda Item III.E.

From: Ruvolo, Ignazio [Ignazio.Ruvolo@jud.ca.gov]
Sent: Thursday, June 17, 2010 12:31 PM
To: McCurdy, Lauren
Cc: Lee, Mimi; Difuntorum, Randall; hbsondheim@verizon.net; kemohr@charter.net; kevin_e_mohr@csi.com; kevinm@wsulaw.edu
Subject: RE: Public Comment Letters: HALT Letter

I think we should revisit whether to make mandatory the transmittal of all written offers to clients in civil cases. Also, I agree with the recommendation of COPRAC as to revision to comment [9].

-----Original Message-----

From: McCurdy, Lauren [mailto:Lauren.McCurdy@calbar.ca.gov]
Sent: Thursday, June 17, 2010 10:29 AM
To: Ruvolo, Ignazio
Cc: Lee, Mimi; Difuntorum, Randall; hbsondheim@verizon.net; kemohr@charter.net; kevin_e_mohr@csi.com; kevinm@wsulaw.edu
Subject: RE: Public Comment Letters: HALT Letter
Importance: High

Hi Nace, Thanks for reviewing the HALT comment. I've attached a complete comment compilation for Rule 1.4, please let us know, as soon as possible today, if you have any recommendations for revisions to Rule 1.4, as a result of the other comments received. Thanks. Lauren

-----Original Message-----

From: Ruvolo, Ignazio [mailto:Ignazio.Ruvolo@jud.ca.gov]
Sent: Wednesday, June 16, 2010 5:12 PM
To: Difuntorum, Randall; CommissionerJ2@gmail.com; hbsondheim@verizon.net; jsapiro@sapirolaw.com; kemohr@charter.net; kevin_e_mohr@csi.com; kevinm@wsulaw.edu; kmelchior@nossaman.com; Foy, Linda; martinez@lbbslaw.com; mtuft@cwclaw.com; pecklaw@prodigy.net; pwvapnek@townsend.com; rlkehr@kscllp.com; slamport@coxcastle.com; snyderlaw@charter.net
Cc: Lee, Mimi; McCurdy, Lauren
Subject: RE: Public Comment Letters: HALT Letter

As to rule 1.4, the comment addresses the old civil vs criminal offer dicotomy. We have decided that the dynamic of civil litigation, including hints of offers, sometimes on the courthouse steps, or worse, merited a difference in how the two situations are addressed by the rules. Yes, a civil oral settlement offer must be communicated, and the lawyer can be disciplined under other rules if the lawyer fails to do so, but not under 1.4. I do not think the commission wants to make a change in the rule at this late stage, as the issue had been debated to death.

From: Difuntorum, Randall [Randall.Difuntorum@calbar.ca.gov]
Sent: Tuesday, June 15, 2010 7:57 PM
To: CommissionerJ2@gmail.com; hbsondheim@verizon.net; Ruvolo, Ignazio; jsapiro@sapirolaw.com; kemohr@charter.net; kevin_e_mohr@csi.com; kevinm@wsulaw.edu; kmelchior@nossaman.com; Foy, Linda; martinez@lbbslaw.com; mtuft@cwclaw.com; pecklaw@prodigy.net; pwvapnek@townsend.com; rlkehr@kscllp.com; slamport@coxcastle.com; snyderlaw@charter.net
Cc: Lee, Mimi; McCurdy, Lauren
Subject: Public Comment Letters: HALT Letter

Commission Members:

More public comments keep arriving. Here's another one that you can begin addressing. It is from HALT (an actual non-lawyer public interest group). There are 5 rules addressed in the letter but HALT supports 3 rules (1.8.10, 1.4.1, and 1.2), so only the 2 rules listed below require attention. 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.

1.5 = VAPNEK (Ruvolo)

1.4 = RUVOLO (Julien)

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

Nace,

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):

1.4 (Agenda Item III.E)
1.8.3 (Agenda Item III.M)
1.8.10 (Agenda Item III.U)
1.12 (Agenda Item III.Z)

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 - RUVOLO - DFT1 (06-09-10).pdf
RRC - 3-500 [1-4] - Public Comment Chart - By Commenter - XDFT1 (04-22-10).doc
RRC - [1-12] - Public Comment Chart - By Commenter - XDFT1 (04-22-10).doc
RRC - 3-120 [1-8-10] - Public Comment Chart - By Commenter - XDFT1 (04-22-10).doc
RRC - 4-400 [1-8-3] - Public Comment Chart - By Commenter - XDFT1 (04-22-10).doc
RRC - 3-310 [1-12] - Rule - PCD [6] (02-17-10) - CLEAN-LAND.pdf
RRC - 3-310 [1-12] - Rule - PCD [6] (02-17-10) - CLEAN-LAND.doc
RRC - 3-500 [1-4] - Rule - PCD [8] (09-14-10) - CLEAN-LAND.pdf
RRC - 3-500 [1-4] - Rule - PCD [8] (09-14-10) - CLEAN-LAND.doc
RRC - 4-400 [1-8-3] - Rule - PCD [5.1] (10-18-09) - CLEAN-LAND.pdf
RRC - 4-400 [1-8-3] - Rule - PCD [5.1] (10-18-09) - CLEAN-LAND.doc
RRC - 3-120 [1-8-10] - Rule - PCD [8] (12-14-09) - CLEAN-LAND.pdf
RRC - 3-120 [1-8-10] - Rule - PCD [8] (12-14-09) - CLEAN-LAND.doc

June 10, 2010 Sondheim E-mail to RRC re June 25-26, 2010 Agenda:

Since I am going out of town this Saturday until June 24 with 2 of my grandchildren and will not have time to send e-mails regarding the proposed RRC responses to comments on our rules (including oral comments we heard today) as I will be busy taking care of these grandchildren, I want to send a few thoughts on some of the comments or rules based upon a quick review of what we have received and heard so far.

Rule 1.4

While this is not based upon a comment, in reviewing this rule it seemed to me that there may be an inconsistency between (c)(2) and comment 6.

Rule 1.8.1

The COPRAC comment appears to me to be a clarification of out intent.

Rule 3.4

While I realize that most, if not all, of the SDCBA comments are reiterations of what was submitted before, I think further consideration should be given to Comment 1 regarding (e) (3).

Rule 6.3

We should give further consideration to what we mean by "legal service organization." Do we mean just those organizations covered by B&P section 6213? If so, then we should make a reference to 6213. I have asked Toby Rothschild to give this matter some thought and he may be sending an email regarding his views.

Based upon the oral testimony we heard today, I have the following observations:

Rule 1.5

It is my understanding that Barry Tarlow believes that "non-refundable" and "earned on receipt" language is useful in avoiding forfeiture, seizure, etc. of the attorney's fee and that if this language is permitted, he would not be adverse to requiring the fee agreement to state that the client "may or may not be entitled to a refund." I would suggest that consideration be given to this type of language, rather than our proposed disclosure regarding seeking a return of the fee. As to the disclosure that the client can terminate the representation, it was my understanding that he believes this language would create a greater risk that the fee may be forfeited, seized, etc. He pointed out that this language is not required by our proposed rules in other types of fee agreements. We can discuss this further at the meeting.

Rule 6.1

Toby pointed out that we deleted the last sentence of ABA comment 4 and suggested that the sentence be retained as it makes it clear that the attorney's fees can be donated when the matter has been referred to someone willing to do pro bono work. At least one other speaker supported this view. We may want to reconsider this deletion.

June 16, 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 HALT (an actual non-lawyer public interest group). There are 5 rules addressed in the letter but HALT supports 3 rules (1.8.10, 1.4.1, and 1.2), so only the 2 rules listed below require attention. 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.

1.5 = VAPNEK (Ruvolo)

1.4 = RUVOLO (Julien)

Attached:

RRC - 3-410 [1-4-1] - 06-14-10 HALT Comment.pdf

RRC - 3-500 [1-4] - 06-14-10 HALT Comment.pdf

RRC - 3-210 [1-2] - 06-14-10 HALT Comment.pdf
RRC - 3-120 [1-8-10] - 06-14-10 HALT Comment.pdf
RRC - 4=200 [1-5] - 06-14-10 HALT Comment.pdf

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

Nace,

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>).

1.4 (Agenda Item III.E) - 2 Comments: **COPRAC (attached)**; and OCTC (sent with Randy's 6/15/10 e-mail)
1.8.3 (Agenda Item III.M) – OCTC (sent with Randy's 6/15/10 e-mail)
1.8.10 (Agenda Item III.U) - OCTC (sent with Randy's 6/15/10 e-mail)
1.12 (Agenda Item III.Z) - OCTC (sent with Randy's 6/15/10 e-mail)
2.4 (Agenda Item III.II) - OCTC (sent with Randy's 6/15/10 e-mail)
3.9 (Agenda Item III.SS) – 2 Comments: OCTC; and Zitrin/Law Professors (sent with Randy's 6/15/10 e-mail)
8.2 (Agenda Item III.UUU) - 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 - 3-500 [1-4] - 06-11-10 COPRAC Comment.pdf

June 16, 2010 Ruvolo E-mail to RRC:

As to rule 1.4, the comment addresses the old civil vs. criminal offer dichotomy. We have decided that the dynamic of civil litigation, including hints of offers, sometimes on the courthouse steps, or worse, merited a difference in how the two situations are addressed by the rules. Yes, a civil oral settlement offer must be communicated, and the lawyer can be disciplined

under other rules if the lawyer fails to do so, but not under 1.4. I do not think the commission wants to make a change in the rule at this late stage, as the issue had been debated to death.

June 17, 2010 Peck E-mail to RRC:

I agree with Nace.

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

Thanks for reviewing the HALT comment. I've attached a complete comment compilation for Rule 1.4, please let us know, as soon as possible today, if you have any recommendations for revisions to Rule 1.4, as a result of the other comments received.

Attached:

RRC - 3-500 [1-4] - Public Comment Complete - REV (06-17-10).pdf

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

I think we should revisit whether to make mandatory the transmittal of all written offers to clients in civil cases. Also, I agree with the recommendation of COPRAC as to revision to comment [9].

June 19, 2010 Kehr E-mail to RRC:

Here are my comments on this Rule:

The email traffic on this overlooked the first two of COPRAC's comments.

COPCRAC point out that, in representing organizational clients, a lawyer might not communicate with the decision maker, and it therefore suggests modifying Comment [4] to clarify that a lawyer may communicate with someone designated by the client for that purpose. I think that is right, but only to an extent. I don't think we can say that a lawyer fulfills the duty to communicate in a criminal matter by communicating with someone other than the client. I see two ways of dealing with this. We could insert COPCRAC's suggested language about communicating with a designee but exclude criminal matters or we could limit the designee situation to the organizational clients that it had in mind. I favor the latter b/c I am not comfortable with the idea that, when representing an individual in a civil matter, the lawyer satisfies the Rule 1.4 obligation by communicating settlement offers to someone other than the client (the lawyer might communicate with others in addition to the client, such as the client's accountant, but not instead of the client). Put in legislative form, what I have in mind is this:

As used in paragraph (c), "client" includes: (i) a person who possesses the authority to accept an offer of settlement or plea; (ii) representatives of an organizational client authorized by the client to communicate with the lawyer regarding settlement offers or, (iii) in a class action, all the named representatives of the class.

As to Comment [6], I continue to support the civil – criminal dichotomy for the reasons given by Nace in his 6/16/10 email. COPRAC also says, as did L.A., that the Comment [6] exception

should be in the Rule. I'd be glad to put it in the Rule if I could find some brief way of doing so. I cannot, and I don't think we should struggle to do so. While a basis for discipline must be in the Rule, I don't feel so strongly about an exception. Also, and as is suggested by the reference to Rule 1.2(a), the lawyer would not be subject to discipline because the lawyer would comply with the client's directions by simply rejecting the settlement offer in the Comment [6] situation.

I will hold until the meeting my thoughts on the COPRAC and OCTC comments on Comment [9].

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

Nace,

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.

p.s. We realize you are not able to be present at the meeting, but we're hoping you can give us your final additions and/or edits to these charts for consideration at this meeting.

Attached:

RRC - 1-710 [2-4-1] - Public Comment Chart - By Commenter - XDFT2 (06-21-10)ML.doc
RRC - 1-700 [8-2] - Public Comment Chart - By Commenter - XDFT2 (06-21-10)ML.doc
RRC - [3-9] - Public Comment Chart - By Commenter - XDFT2 (06-21-10)ML.doc
RRC - [1-12] - Public Comment Chart - By Commenter - XDFT2 (06-21-10)ML.doc
RRC - 4-400 [1-8-3] - Public Comment Chart - By Commenter - XDFT2 (06-21-10)ML.doc
RRC - 3-500 [1-4] - Public Comment Chart - By Commenter - XDFT1 (06-21-10)ML.doc
RRC - 3-120 [1-8-10] - Public Comment Chart - By Commenter - XDFT2 (06-21-10).doc
RRC - 1-720 [2-4] - Public Comment Chart - By Commenter - XDFT2 (06-21-10)ML.doc

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

1. I agree with Bob's recommendation regarding Comment [4].
2. I, too, would continue the distinction between transmission of offers made in criminal and those in civil matters.

June 22, 2010 Julien E-mail to Drafters, cc Chair & Staff:

I will do my best to field the discussion this rule without prejudice. I must confess, as I have said many, many times, that I agree with OCTC with respect to the length of these rules and, more importantly, the comments. Specifically, rule 1.4--if the rule does not say that the lawyer must communicate with the "decision maker" but with the "client" and I would not think that a person delegated by the client is not a non-delegable duty and so the designee would be understood if properly transmitted to the client.

Further, why would we have to separate civil from criminal in this context. What criminal defendant would have a designee when their own liberty interest is at stake?? Perhaps this is an indication of my own ignorance of the practice of law.

I agree with COPRAC's suggested addition to comment 9 (the first sentence only) re possible imprudence in communicating some offers to some clients although I always worry when we give lawyers too much power in making decisions for clients based on a non-legal reason.

At any rate, I shall do my best with this rule.

**Rule 1.4 Communication.
[Sorted by Commenter]**

TOTAL = 6 Agree = 1
Disagree = 1
Modify = 4
NI =

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
1	Michael Tracy	M	No		<p>Comment [4] should read: "As used in paragraph (c), 'client' includes all persons whose authority is required to accept an offer of settlement or plea, or, in a class action, all the named representatives of the class."</p> <p>Comment [6] should read: "Paragraph (c)(2) requires a lawyer to advise a client promptly of all written settlement offers, regardless of whether the offers are considered by the lawyer to be significant. Notwithstanding paragraph (c)(2), a lawyer need not inform the client of the substance of an offer of a settlement conveyed solely by electronic mail in a civil matter if the client has previously instructed that such an offer will be acceptable or unacceptable, or has previously authorized the lawyer to accept or to reject the offer, and there has been no change in circumstances that requires the lawyer to consult with the client. See Rule [1.2(a)]."</p>	
2	San Diego County Bar Association	A	Yes		Support as drafted.	No response required.
3	COPRAC	M	Yes	Comment [4]	Under the definition of "client" for purposes of communication of settlement offers in a class action may not be practical for lawyers	

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

**Rule 1.4 Communication.
[Sorted by Commenter]**

TOTAL = 6 Agree = 1
Disagree = 1
Modify = 4
NI =

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
				Comment [6]	<p>representing entity clients. We propose to revise the Comment to provide that a client “includes a person who possesses the authority to accept an offer of settlement or plea, or in a class action, all the named representatives of the class or a representative authorized by the client to communicate with the lawyer regarding settlement offers.</p> <p>COPRAC is concerned that Comment [6] includes language that is not sufficiently protective of clients. Because the lawyer may not be aware of changed circumstances that would cause the client to reconsider the authority to settle previously provided, COPRAC believes that a client should always be told of a settlement offer, regardless of whether authority to accept or reject the authority may have been previously provided.</p> <p>A bright-line rule requiring all written offers of settlement in a civil matter to be communicated to clients is beneficial to both clients and lawyers and suggests that the proposed language of the Comment be deleted.</p> <p>If the RRC keeps this language, COPRAC joins the LACBA’s concern regarding the</p>	

**Rule 1.4 Communication.
[Sorted by Commenter]**

TOTAL = 6 Agree = 1
Disagree = 1
Modify = 4
NI =

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
				Comment [9]	<p>inclusion of this language. The language appears to be an exception to the proposed Rule and should be clearly stated in the rule text. We disagree with the RRC's conclusion that this language is an interpretation of the Rule and not an exception.</p> <p>COPRAC is concerned that the language in Comment [9] permitting a lawyer to "withhold" information from a client is overly broad. It appears that the impetus for the Comment is to permit a lawyer to withhold information where delivery of the information could result in harm to the client. However, this is not clearly stated.</p> <p>COPRAC proposes replacing the first sentence of the proposed Comment with the following: "A lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. In some circumstances, a lawyer may be justified in withholding transmission of information when the lawyer reasonably believes delivery of the information could result in harm to the client or others. See <i>also</i> proposed rule 1.14"</p>	
4	HALT, Inc. – an Organization of Americans for Legal Reform	M	Yes	(c)(2)	HALT strongly supports the RRC's acceptance of ABA MR 1.4 as a substantial improvement over current CRPC 3-500.	

**Rule 1.4 Communication.
[Sorted by Commenter]**

TOTAL = 6 Agree = 1
Disagree = 1
Modify = 4
NI =

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
				Comment [7]	<p>Without full and regular communication, the attorney-client relationship cannot function properly, and a client is not in a position to make the critic decision during the course of the representation.</p> <p>The proposed rule only requires a lawyer to communicate the “amounts, terms, and conditions of any <i>written</i> offer of settlement made to the client” in civil matters. Whether a settlement offer is oral or written is immaterial; the client has the right to decide whether to accept it under Proposed rule 1.2, and should be informed of all such offers.</p> <p>Comment [7] states “[a]ny oral offers of settlement made to the client in a civil matter must also be communicated if they are significant.” But a Comment is not a Rule.</p> <p>As currently drafted, the Proposed rule and the RRC’s commentary create unnecessary ambiguity. HALT urges the RRC to strike the word “written” form Proposed Rule 1.4(c)(2), so it is clear that a lawyer has an obligation to communicate all settlement offers to a client.</p>	
5	Bradley Paulson	D			<p>Commenter, in general, is concerned with attorney conduct in regard to soliciting clients in the area of Homeowner’s Notice of Claim of Violation of Functionality Standards, per Civil</p>	

**Rule 1.4 Communication.
[Sorted by Commenter]**

TOTAL = 6 Agree = 1
Disagree = 1
Modify = 4
NI =

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
				1.4(a)(2)	Code section 910 and Senate Bill 800. Many homeowners do not even realize they are involved in a Claim/Lawsuit, nor do they know why. The soliciting attorney supplied propaganda literature that certain problems are prevalent in the community without even investigating or observing the home first for the sole purpose of making a monetary settlement for the attorney group. The Soliciting Attorney Groups leave homeowners wondering if they really do have a problem, then they tell the homeowners not to talk with their builder, because the builder will take care of warranty items for their customers. This is not accomplishing the clients' objectives, because they don't know what the objectives are, in many cases, the client only assumes that they may receive a settlement check.	
				1.4(b)	The Soliciting Attorney Groups only follow the course of a witch hunt to find a construction defect to build their settlement demand and do not inform the homeowners that the builder will take care of any warranty deficiencies. The builder will perform the work, in most cases, immediately; while the Soliciting Attorney Group takes months and sometimes years to settle, leaving little or no	

**Rule 1.4 Communication.
[Sorted by Commenter]**

TOTAL = 6 Agree = 1
Disagree = 1
Modify = 4
NI =

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
					work being performed to the home. The homeowner may receive a small settlement check years after the fact, which by this time, if something was in need of repair most certainly would have deteriorated or escalated to further repair necessary.	
6	Office of Chief Trial Counsel	M	Yes	Comment [9]	<p>OCTC suggests that the rule also include the language currently in Rule 3-500 that attorneys inform the client about significant developments relating to the employment. While OCTC believes that employment is included in representation, it also believes that using employment as well as representation ins clearer and will prevent arguments about whether employment issues are included in this rule. Further, since it is in the current rule, some may argue that the new rules removed any requirement that was included by the language in the old rule.</p> <p>We support Comments [8] and [10].</p> <p>OCTC is concerned that the first two sentences in Comment [9] are confusing and could be misconstrued by attorneys to think that they can make the decision to withhold information from a client.</p> <p>The other Comments seem more appropriate for treatises, law review articles, or ethics</p>	

**Rule 1.4 Communication.
[Sorted by Commenter]**

TOTAL = 6 Agree = 1
Disagree = 1
Modify = 4
NI =

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
					opinions.	

Rule 1.4 Communication
(Commission's Proposed Rule – Clean Version)

- (a) A lawyer shall:
- (1) promptly inform the client of any decision or circumstance with respect to which written disclosure or the client's informed consent, as defined in Rule 1.0(e), is required by these Rules or the State Bar Act;
 - (2) reasonably consult with the client about the means by which to accomplish the client's objectives in the representation;
 - (3) keep the client reasonably informed about significant developments relating to the representation;
 - (4) promptly comply with reasonable requests for information;
 - (5) promptly comply with reasonable client requests for access to significant documents necessary to keep the client reasonably informed about significant developments relating to the representation, which the lawyer may satisfy by permitting the client to inspect the documents or by furnishing copies of the documents to the client; and
 - (6) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by these Rules or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

- (c) A lawyer shall promptly communicate to the lawyer's client:
- (1) all terms and conditions of any offer made to the client in a criminal matter; and
 - (2) all amounts, terms, and conditions of any written offer of settlement made to the client in all other matters.

COMMENT

- [1] Whether a particular development is significant will generally depend upon the surrounding facts and circumstances. For example, a change in lawyer personnel might be a significant development depending on whether responsibility for overseeing the client's work is being changed, whether the new attorney will be performing a significant portion or aspect of the work, and whether staffing is being changed from what was promised to the client. Other examples of significant developments may include the receipt of a demand for further discovery or a threat of sanctions, a change in a criminal abstract of judgment or re-calculation of custody credits, and the loss or theft of information concerning the client's identity or information concerning the matter for which representation is being provided. Depending upon the circumstances, a lawyer may also be obligated pursuant to paragraphs (a)(2) or (a)(3) to communicate with the client concerning the opportunity to engage in, and the advantages and disadvantages of, alternative dispute resolution processes. Conversely, examples of developments or circumstances that generally are not significant include the payment of a motion fee and

the application for or granting of an extension of time for a time period that does not materially prejudice the client's interest.

- [2] A lawyer may comply with paragraph (a)(5) by providing to the client copies of significant documents by electronic or other means. A lawyer may agree with the client that the client assumes responsibility for the cost of copying significant documents the lawyer provides pursuant to paragraph (a)(5). A lawyer must comply with paragraph (a)(5) without regard to whether the client has complied with an obligation to pay the lawyer's fees and costs. This Rule is not intended to prohibit a claim for the recovery of the lawyer's expense in any subsequent legal proceeding.
- [3] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so.
- [4] As used in paragraph (c), "client" includes a person who possesses the authority to accept an offer of settlement or plea, or, in a class action, all the named representatives of the class.
- [5] Because of the liberty interests involved in a criminal matter, paragraph (c)(1) requires that counsel in a criminal matter convey to the client all offers, whether written or oral. As used in this Rule, "criminal matters" includes all legal proceedings where violations of criminal laws are alleged, and liberty interests are involved, including juvenile proceedings.
- [6] Paragraph (c)(2) requires a lawyer to advise a client promptly of all written settlement offers, regardless of whether the offers are

considered by the lawyer to be significant. Notwithstanding paragraph (c)(2), a lawyer need not inform the client of the substance of a written offer of a settlement in a civil matter if the client has previously instructed that such an offer will be acceptable or unacceptable, or has previously authorized the lawyer to accept or to reject the offer, and there has been no change in circumstances that requires the lawyer to consult with the client. See Rule [1.2(a)].

- [7] Any oral offers of settlement made to the client in a civil matter must also be communicated if they are significant.
- [8] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.
- [9] In some circumstances, a lawyer may be justified in delaying or withholding transmission of information when the client would be likely to react imprudently to an immediate communication. For example, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. This Rule does not require a lawyer to disclose to a client any information or document that a court order or non-disclosure

agreement prohibits the lawyer from disclosing to that client. This Rule is not intended to override applicable statutory or decisional law requiring that certain information not be provided to defendants in criminal cases who are clients of the lawyer. Compare Rule [1.16(e)(1) and Comment [9]].

- [10] This Rule is not intended to create, augment, diminish, or eliminate any application of the work product doctrine. The obligation of the lawyer to provide work product to the client shall be governed by relevant statutory and decisional law.