

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

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 15<sup>th</sup> 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 15<sup>th</sup> 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):

**1.0.1** (Agenda Item III.B)

**1.7** (Agenda Item III. J) Co-Lead w/Mohr

**1.8.7** (Agenda Item III.S)  
**1.16** (Agenda Item III.DD)  
**8.3** (Agenda Item III.VVV)

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](http://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 - KEHR - DFT1 (06-09-10).pdf  
RRC - 1-100 [1-0-1] - Public Comment Chart - By Commenter - XDFT1 (04-22-10).doc  
RRC - 1-120 & 1-500B [8-3] - Public Comment Chart - By Commenter - XDFT1 (04-22-10).doc  
RRC - 3-310 [1-8-7] - Public Comment Chart - By Commenter - XDFT1 (04-22-10).doc  
RRC - 3-700 [1-16] - Public Comment Chart - By Commenter - XDFT1 (04-22-10).doc  
RRC - 3-310 [1-7] - Public Comment Chart - By Commenter - XDFT2.2 (05-24-10)RLK-KEM.doc  
RRC - 1-120 [8-3] - Rule - PCD [6] (12-14-09).pdf  
RRC - 1-120 [8-3] - Rule - PCD [6] (12-14-09).doc  
RRC - 3-310 [1-7] - Rule - PCD [2.2A] (02-28-10) - CLEAN-LAND.pdf  
RRC - 3-310 [1-7] - Rule - PCD [2.2A] (02-28-10) - CLEAN-LAND.doc  
RRC - 3-310 [1-8-7] - Rule - PCD [8] (12-14-09) - CLEAN-LAND.pdf  
RRC - 3-310 [1-8-7] - Rule - PCD [8] (12-14-09) - CLEAN-LAND.doc  
RRC - 3-700 [1-16] - Rule - PCD [8] (10-19-09) - CLEAN-LAND.pdf  
RRC - 3-700 [1-16] - Rule - PCD [8] (10-19-09) - CLEAN-LAND.doc  
RRC - 1-100 [1-0-1] - Rule - PCD [6.1] (04-24-10).pdf  
RRC - 1-100 [1-0-1] - Rule - PCD [6.1] (04-24-10).doc

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

Bob,

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 should be up-to-date shortly (<http://sites.google.com/site/commentsrrc/byrule> ).

**1.0.1** (Agenda Item III.B) – **2 Comments: Balin/Dilworth; and, LA Public Defender-Michael Judge (attached)**

**1.8.5** (Agenda Item III.Q) – OCTC (comment sent by Randy's 6/15/10 e-mail)

**RRC – Rule 4-210 (1.8.5)  
E-mails, etc. – Revised (6/21/2010)**

- 1.8.6 (Agenda Item III.R) – OCTC (comment sent by Randy's 6/15/10 e-mail)
- 1.9 (Agenda Item III.W) – OCTC (comment sent by Randy's 6/15/10 e-mail)
- 1.17 (Agenda Item III.EE) Co-Lead w/Sapiro – OCTC (comment sent by Randy's 6/15/10 e-mail)
- 5.7 (Agenda Item III.GGG) – Zitrin/Law Professors (comment sent by 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 - 1-100 [1-0-1] - BASF (Balin, Dilworth) re Tribunal (06-14-10).pdf
- RRC - 1-100 [1-0-1] - 06-14-10 LAPD (Judge) Comment.pdf

**June 16, 2010 Kehr E-mail to Julien, cc Chair, Vice-Chairs & Staff:**

The OCTC letter of yesterday seems to be the only comment received on this proposed Rule. At p. 12 of its letter, it says that Comment [3], the explanation of "costs" as used in paragraph (a)(3), should be in the Rule rather than in a Comment. I take that OCTC thinks that it cannot prosecute a lawyer if a definition is contained in a Comment b/c Comments are explanatory and do not provide a basis for discipline.

Lets leave aside for the moment that paragraph (a)(3) tells what a lawyer may do, so is it not the basis for discipline. Let's also leave aside that Comment [3] is descriptive rather than definitional. The essential point is that a lawyer is not disciplined for violating a definition but for violating a Rule. The explanation of the meaning of the Rule can be found to an extent in the Comment, and a definition in a Comment merely is part of the explanation of the Rule. Moreover, our current rules include several definitions in the Discussions rather than in the Rules themselves, with no problem of which I am aware, and the MRs do the same thing (for example, the key definition of "law firm" is found in MR 1.10, Comment [1]). I see no difference between having an explanatory definition in a Comment and having none, the point of which is that the meanings of the words in the Rule can be found in Webster's Third International. I would make no change on account of this comment.

Comments? Suggestions?

**RRC – Rule 4-210 (1.8.5)  
E-mails, etc. – Revised (6/21/2010)**

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

Bob,

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 22<sup>nd</sup>.**

***Attached:***

RRC - 1-120 & 1-500B [8-3] - Public Comment Chart - By Commenter - XDFT2 (06-21-10)ML.doc  
RRC - 1-100 [1-0-1] - Public Comment Chart - By Commenter - XDFT1.1 (06-21-10).doc  
RRC - [5-7] - Public Comment Chart - By Commenter - XDFT2 (06-21-10)ML.doc  
RRC - 3-700 [1-16] - Public Comment Chart - By Commenter - XDFT2 (06-21-10)ML.doc  
RRC - 3-310 [1-9] - Public Comment Chart - By Commenter - XDFT2 (06-21-10)ML.doc  
RRC - 3-310 [1-8-7] - Public Comment Chart - By Commenter - XDFT2.2 (06-21-10)-RD.doc  
RRC - 3-310 [1-8-6] - Public Comment Chart - By Commenter - XDFT2 0(6-21-10)ML.doc  
RRC - 3-310 [1-7] - Public Comment Chart - By Commenter - XDFT3.3 (06-21-10)RLK-KEM-AT.doc  
RRC - 2-300 [1-17] - Public Comment Chart - By Commenter - XDFT2 (06-21-10)ML.doc  
RRC - 4-210 [1-8-5] - Public Comment Chart - By Commenter - XDFT2 (06-21-10)ML.doc

**June 22, 2010 Kehr E-mail to Difuntorum & McCurdy, cc Drafters, Chair, Vice-Chairs & Staff:**

Commenter chart attached.

***Attached:***

RRC - 4-210 [1-8-5] - Public Comment Chart - By Commenter - XDFT2.1 (06-22-10)ML-RLK.doc

**Rule 1.8.5 Payment of Personal or Business Expenses Incurred by or for a Client.  
[Sorted by Commenter]**

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

No.	Commenter	Position <sup>1</sup>	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
1	San Diego County Bar Association	A	Yes		Support as drafted.	No response required.
2	Office of Chief Trial Counsel	A	Yes	Comment [3]	Comment [3] should be in the Proposed Rule and not a Comment.	

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



**Rule 1.8.5 Payment of Personal or Business Expenses Incurred by or for a Client**  
(Commission's Proposed Rule – Clean Version)

- (a) A lawyer shall not directly or indirectly pay or agree to pay, guarantee, or represent that the lawyer or lawyer's law firm will pay the personal or business expenses of a prospective or existing client, except that a lawyer may:
- (1) pay or agree to pay such expenses to third persons, from funds collected or to be collected for the client as a result of the representation, with the consent of the client;
  - (2) after the lawyer is retained by the client, agree to lend money to the client based on the client's written promise to repay the loan, provided the lawyer complies with Rule 1.8.1 before making the loan or agreeing to do so;
  - (3) advance the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the client's interests, the repayment of which may be contingent on the outcome of the matter. "Costs" within the meaning of this paragraph (a)(3) are limited to all reasonable expenses of litigation, including court costs, and reasonable expenses in preparing for litigation or in providing other legal services to the client; and
  - (4) pay court costs and reasonable expenses of litigation on behalf of an indigent or pro bono client in a matter in which the lawyer represents the client.
- (b) A lawyer does not violate this rule by offering or giving a gift to a current client, provided that anything given was not offered in consideration of any promise, agreement, or understanding that the lawyer would make a gift to the client.

**Comment**

- [1] This Rule is intended to balance two competing concerns. One is that a lawyer's subsidization of a client's legal proceedings would give the lawyer a financial stake in the proceedings that might injuriously affect the performance of the duties owed to the client, including the obligation to exercise independent professional judgment on the client's behalf without being influenced by the lawyer's personal interests. The second concern is that a prohibition on the lawyer providing financial assistance to the client might adversely affect the client's access to justice. The Rule is also intended to protect against the hidden transfer of funds to a client under the guise of a loan and to protect the lawyer against client demands for loans or gifts.
- [2] Paragraph (a)(2) does not permit a lawyer to lend money, or to offer, promise or agree to lend money, to a prospective client. It does permit a lawyer to lend money to a client after the lawyer is retained, but the lawyer then must comply with Rule 1.8.1 and make a disclosure under Rule 1.7(d)(4) concerning the effect the proposed agreement might have on the lawyer's representation of the client. Nothing in this Rule shall be deemed to limit the application of Rule 1.8.12.
- [3] "Costs," as defined in paragraph (a)(3), are not limited to those that are taxable or recoverable under any applicable statute or rule of court.