

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 synopsising 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 = 5 Agree = 4
Disagree = 0
Modify = 1
NI = 0

Rule 7.5. Firm Names and Letterheads.
[Sorted by Commenter]

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
5	Access to Justice Committee of L.A. County Bar Association [Toby Rothschild]	A	Yes		Commenter appreciates the proposed Rule and Comment [1]'s guidance re the prohibition on the use of trade names that include words such as "legal aid" that might mislead consumers to believe that a private law firm is associated with a government program intended to provide legal services to the poor.	No response necessary.
1	COPRAC	A	Yes		COPRAC supports the adoption of Proposed Rule 7.5 and the Comments to the Rule.	No response required.
4	Office of Chief Trial Counsel ("OCTC")	A	Yes		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.	No response required. The Commission did not make the suggested change. It disagrees that the ideas are buried in the comments. The Commission has made the suggested change.
3	Orange County Bar Association ("OCBA")	M	Yes	Comment [1]	The words "all or some" in the second line of Comment [1] should be changed to "one or more." Some firms use the name of only one lawyer as the firm name.	The Commission declines to change the language of the Model Rule comment, which has been nearly universally adopted across the country. The Commission does not understand how the use of only one lawyer's name for the firm name would violate the Rule.

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

**Rule 7.5. Firm Names and Letterheads.
[Sorted by Commenter]**

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
				Comment [2]	<p>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." Adding such a sentence eliminates any confusion on this question and would reconcile two ethics opinions that are currently inconsistent in this regard. LACBA Formal Op. 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 Form. Op. 1986-90, also addressing 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.</p> <p>Add a new Comment [3] 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." 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</p>	<p>The Commission disagrees that the suggested sentence should be added. The proposed sentence would be merely permissive and potentially misleading, and thus should not be included in a comment to the rule. Whether an "of counsel" relationship with a firm is "proper" would depend upon the particular facts and circumstances, see last sentence of Comment [2] to Rule 7.5, and a blanket statement that it is appropriate to use the name of a person who is "of counsel" in the firm's name would itself be misleading.</p> <p>The Commission has determined that if, as the commenter asserts, it is a "common practice" for sole practitioners to use the term "associates" in their firm names, then those lawyers are already in violation of Rule 7.5. Rule 7.5 prohibits the use of firm names "in violation of Rule 7.1," which in turn prohibits lawyers from making a "false or misleading communication." No further elaboration is required.</p>

**Rule 7.5. Firm Names and Letterheads.
[Sorted by Commenter]**

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
					believes that the practice is misleading.	
2	San Diego County Bar Association	A	Yes		Approves proposed Rule in its entirety.	No response required.

Rule 7.5 Firm Names and Letterheads
(Commission’s Proposed Rule – Clean Version)

- (a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.
- (b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.
- (c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.
- (d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

COMMENT

- [1] A firm may be designated by the names of all or some of its lawyers, by the names of deceased or retired lawyers where there has been a continuing succession in the firm’s identity, by a distinctive website address, or by a trade name such as the “ABC Legal Clinic.” Use of such names in law practice is acceptable so long as it is not misleading in violation of Rule 7.1. If a private firm uses a trade name that includes a geographical name such as “Springfield Legal Clinic,” the firm may have to expressly disclaim that it is a public legal aid agency to avoid a misleading implication. It is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer.
- [2] With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, “Smith and Jones,” for that title suggests that they are practicing law together in a firm. A lawyer may state or imply that the lawyer or lawyer’s law firm is “of counsel” to another lawyer or a law firm only if the former has a relationship with the latter (other than as a partner or associate, or officer or shareholder pursuant to Business and Professions Code sections 6160-6172) which is close, personal, continuous, and regular.