

From: [Kevin Mohr](#)
To: [McCurdy, Lauren](#); [Difuntorum, Randall](#)
Cc: [Dominique Snyder](#); [Linda Foy](#); [Ignazio J. Ruvolo](#); [Harry Sondheim](#); [Kevin Mohr G](#)
Subject: RRC - 6.2 - III.J. - Agenda Materials
Date: Thursday, March 18, 2010 11:40:03 AM
Attachments: [RRC - \[6-2\] - Public Comment Chart - By Commenter - DFT2.1 \(03-16-10\).doc](#)
[RRC - \[6-2\] - E-mails, etc. - REV \(03-24-10\)-EXC.pdf](#)
[RRC - \[6-2\] - Rule - DFT3 \(03-16-10\) - Cf. to DFT2.doc](#)

Greetings Lauren:

I've attached the following. Please include them in the agenda materials in the order listed.

1. E-mail compilation excerpt that includes the 3/17/10 e-mail exchange among the drafters concerning the extent to this rule is intended to apply to public defenders and court panel lawyers. In PDF.
2. Public Comment Chart, Draft 2.1 (3/16/10). In Word.
3. Rule, Draft 3 (3/16/10), redline, compared to Draft 2 (11/28/10) [public comment version]. In Word.

Notes & comments:

1. The issue concerning the rule's intended applicability to public defenders and/or lawyers on a court panel for appointed representations is laid out in item #1.
2. As noted in the compilation, we might want to invite Michael Judge and/or Gary Windom to attend our meeting next week to discuss this issue.

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

Kevin

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March 17, 2010 Snyder E-mail to Drafters, cc Chair, Vice-Chairs & Staff:

I have reviewed the Commenters chart and talked to Kevin. We both think it best to apprise you (drafters and leadership) of our concern about this rule since it appears that the public commenters are confused about its scope. Perhaps a Comment might be in order to clarify our intention regarding the applicability of the rule (e.g. public defenders, panel attorneys). See below a suggested Comment to address this issue:

[4] This Rule is not intended to supersede the contractual obligations of a lawyer who provides legal services as a public defender or is a member of panel for receiving appointments as counsel for indigent clients.

Some or all of you who are more familiar with these processes will probably be able to come up with better language. Note that the work "intended" is used here even though we have largely discarded that usage in the proposed Rules because we're dealing with the authority of a court, and a court can pretty much do what it pleases with this Rule (i.e., apply or ignore it).

Note, too, that we need to revise the response to OCBA but I will await your comments on the scope of the rule before doing so.

I have attached the Annotated Model Rule for your information which Kevin kindly provided to me. He also found the following when he went through the Annotated MR to search for information regarding public defenders this morning:

Rule 6.2 does not require lawyers to accept court appointments. Rather, it subjects a lawyer to discipline if the lawyer tries to avoid an appointment for less than "good cause." See ABA Formal Ethics Op. 06-441, at n.16 (2006) (under Rule 6.2(a), public defender "should not claim an excessive workload in an attempt to avoid new cases or to withdraw from current cases unless good cause objectively exists").

So, it looks like the ABA Ethics Committee is at least of the opinion that the rule applies to public defenders. Note, however, that Op. 06-441 is the opinion that Michael Judge and the PD's of California have criticized heavily and the reason why they came to the RRC to complain about Rules 5.1 and 5.2. Kevin thinks that the opinion makes the same mistake that COPRAC originally made in its PD opinion, i.e., it focused on the individual line public defender rather than the head of the office who is responsible for making the decisions. It is just as likely that Michael Judge and the California PDs have it right and the ABA has it wrong. Please see the Annotated MR 6.2, with the above quoted material highlighted in turquoise.

Perhaps we should invite Michael Judge to appear at our next meeting and get his input. As you know and I noted in the public commenter chart, the PD's so far have not viewed this rule as a potential problem. Whether that is because it is not or because they are not aware of it is another matter.

Attached:

RRC – [6-2] - Model Rule 6 2 - ANNOT (2007)-MARKED.doc

March 17, 2010 Tuft E-mail to Snyder, cc Drafters, Chair, Vice-Chairs & Staff:

I agree with your proposed response to Orange County Bar Association.

March 17, 2010 Tuft E-mail to Snyder, cc Drafters, Chair, Vice-Chairs & Staff:

I am not sure I understand the concern that is being raise by Mr. Judge and the California PDs. The rule provides that a lawyer shall not seek to avoid appointment by a tribunal except for good cause. The rule does not depend on ABA Formal Opinion 06-441. As we determined earlier, states that adopt the Model Rules are not bound by ABA ethics opinions. There is a disclaimer that the opinion may or may not be applicable and lawyers need to look to the law of their particular jurisdiction.

I haven't looked at the Penal Code but will do so to see if there are any special provisions regarding the acceptance or rejection of appointments by PDs and panel counsel.

I regard to Dom's proposed comment, I am not sure "contractual obligations" is the right phrase for PDs although it may be for panel counsel. I served for 15 years on the Federal Public Defenders Panel and I believe our appointments were covered under the federal Criminal Justice Act. So, there may be federal and well as state statutes that may apply, but I am of the view that the provision of these statutes would probably constitute good cause under the rule.

Without agreeing that we need a comment on this issue, here is a suggested revision of Dom's draft comment

[4] This Rule does not abrogate the obligations of the Office of the Public Defender and lawyers in that office in accepting or rejecting appointment by a court in criminal or civil matters [nor does this Rule abrogate the responsibilities of the Federal Public Defender or lawyers who serve as panel counsel in criminal cases under federal and state law].

The more I think about it, the more concern I have about the comment. There are court appointments in civil cases, such juvenile cases, prisoner rights cases and immigration cases that will be impacted by this rule. I am not sure we need to add a comment in view of these complexities.

March 17, 2010 KEM E-mail to Tuft, cc Drafters, Chair, Vice-Chairs & Staff:

Please read Dom's e-mail again. Michael Judge did not express any concerns about the rule. The issue was raised by OCBA and then Dom and I researched the issue further.

We reviewed the Annotation for MR 6.2 and the concern of the Rule seems to be with lawyers whom a judge might pick out of the court room and order them to represent an unrepresented person for little or no money. I simply don't see this Rule applying where the lawyer has voluntarily placed himself or herself on a panel (usually, has been accepted on the panel after filing an application) or has taken a position with public defenders or federal defenders.

The concern (mine and Dom's) with the ABA opinion is that it held the rule applies to public defenders. However, that opinion got the facts wrong, at least as to the PD's in California who

**RRC – Rule 6.2 [MR 6.2]
E-mails, etc., -- Revised (1/5/2010)**

came to COPRAC to complain about our interim opinion on the same issue as the ABA opinion (as Bart Sheela told us, we got the law exactly right but the facts completely wrong). The ABA opinion is drafted from the point of view of the individual lawyer who happens to be a public defender. However, as explained by the California PD's and Alternate PD's, the attorney of record is the head of the office, so it is the head of the office who makes the decisions. That's why I don't think the rule applies to PD's, at least not in California. The rule is written from the point of an individual lawyer, not from the point of view of a supervisory lawyer who must make decisions based on the availability of resources office-wide. If a client or cause is repugnant to one PD, the case can be reassigned by the head PD to another deputy PD,

I also don't get the sense that the panel lawyers are a "target" of this Rule. From reviewing the cases cited in the MR 6.2 annotation, which Dom sent you earlier, you can see that nearly all the cited cases are concerned w/ lawyers who were not paid or were underpaid. That is not true of panel lawyers, who are paid adequately or are fine with not being paid or being underpaid, or they wouldn't have sought to be on the panel in the first place. Unless I'm mistaken and California courts shanghai lawyers for the panels.

But I am less concerned about panel lawyers. I am more concerned w/ PD's and the fact that if we conclude that this rule applies to them, the same problems that the California PD's saw in the ABA Opinion 441 (individual lawyers in the office making their own decisions as to what cases to withdraw from).

Even if we don't have as broad-ranging a comment, we should include one for the PD's, or at least solicit their views on the Rule. I would hate to have this become some kind of stealth rule that they never saw coming.

I've attached the ABA Opinion.

Attached:

RRC - [6-2] - ABA Ethics Op. 06-441 (PD Ethics).pdf

March 17, 2010 Snyder E-mail to KEM, cc Drafters, Chair, Vice-Chairs & Staff:

Thanks, Kevin. I just had an opportunity to read Mark's comment and I think he may have misread what I said. Mark, my apologies if I was not clear. I think Kevin's reply has very ably raised the issues that concern us about this. ***None of the PD organizations have raised any concerns about this*** - even though they have been very active in our process. It was the Orange Co. Bar that mentioned public defenders.

March 17, 2010 Foy E-mail to Drafters, cc Chair, Vice-Chairs & Staff:

This is looking murky. We know the relevant background and what we intended, but it's very likely others may not share our understanding. Is there a way to solicit Michael Judge's review and comment informally by email?

March 17, 2010 KEM E-mail to Foy, cc Drafters, Chair, Vice-Chairs & Staff:

I think that can be done but it should be done this week.

Also, I'd like to include the proposed comment, if not in the Rule itself, as part of an e-mail compilation excerpt to be sent out w/ the agenda materials. If the need for discussion arises during the meeting, the members will have it in front of them for review. I can have that ready by the deadline tomorrow if that's the wish of the drafters.

March 17, 2010 Foy E-mail to KEM, cc Drafters, Chair, Vice-Chairs & Staff:

That sounds fine to me.

**Rule 6.2 Accepting Appointments
[Sorted by Commenter]**

TOTAL = 6 Agree =
 Disagree =
 Modify =
 NI =

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
1	Anonymous	A			Although commenter did not specifically reference this rule, she expressed her support for all the rules contained in Batch 6.	No response required.
6	Committee on Professional Responsibility and Conduct ("COPRAC")	A		Comment [1]	COPRAC support adoption of this rule. COPRAC also recommends that the last two sentences in Comment [1] of the proposed Rule 6.2 be deleted. A lawyer's acceptance of "unpopular matters" or "indigent or unpopular clients", as stated in the Comment [1], does not equate with compliance with proposed Rule 6.1. Such references imply that a lawyer can meet her pro bono obligations in these ways, which may be misleading.	The Commission agrees that the last two sentences in the Comment might be potentially misleading, and has revised them to remove the suggestion that accepting a compensated appointment will comply with Rule 6.1. ²
5	Office of the Chief Trial Counsel	D			OCTC appreciates the intent of this Rule, but is concerned that this Rule as written is not enforceable. OCTC would also strike the Comments as unnecessary.	The Commission disagrees. Nearly every jurisdiction has adopted some version of Rule 6.2. Among the issues addressed, the Rule offers protection to the criminal defendant to ensure that he or she has competent counsel unhindered by overriding personal prejudice. It further reinforces the goal of Access to Justice. This Rule is an appropriate addition to the Rules of Professional Conduct. Moreover, the comments provide important clarification as to the application of the

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

² See Rule 6.2, Draft 3 (3/16/10), compared to Draft 2 (11/28/10) [Public Comment Version].

**Rule 6.2 Accepting Appointments
[Sorted by Commenter]**

TOTAL = 6 Agree =
 Disagree =
 Modify =
 NI =

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
						Rule.
4	Orange County Bar Association	M			<p>It is not clear whether the proposed Rule applies to any attorney who is asked by a judicial officer to take on a particular representation, or only to those lawyers who voluntarily place themselves on panels for such appointments. In the former case, we believe the ability of a lawyer to decline the "appointment" should be even broader than stated in this proposed Rule.</p> <p>In addition, it is not clear whether the proposed Rule also would apply to public defenders and, if so, how the Rule would intersect with a criminal defendant's constitutional right to counsel.</p>	<p>The Commission does not believe it necessary to distinguish between an attorney who voluntarily places himself or herself on a panel for appointment and one who does not do so. If the assignment presents this problem for a panel attorney, the overriding concern should be the attorney's impairment under the circumstances and his or her ability to competently represent the criminal defendant.</p> <p>Rules apply to all lawyers unless there is a specific exclusion. Therefore, public defenders are included in this Rule. If an <i>individual</i> public defender finds a client or cause so repugnant as to be likely to impair the lawyer-client relationship or the lawyer's ability to represent the client, the case could be assigned to another attorney in the office or law firm who does not feel the same repugnance. Public defender stakeholder groups that have been active in the Commission's process have not indicated a concern that the rule affects a criminal defendant's right to counsel.³</p>
2	San Diego County Bar Association Legal Ethics	A			We approve the new rule in its entirety.	No response required.

³ **Drafters' Note:** This response may have to be substantially re-written depending upon the resolution of issues raises in the 3/17/10 e-mail exchange among the drafters that accompanies this proposed Chart.

**Rule 6.2 Accepting Appointments
[Sorted by Commenter]**

TOTAL = 6 Agree =
 Disagree =
 Modify =
 NI =

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
	Committee					
3	Santa Clara County Bar Association	A			No comment.	No response required.

Rule 6.2: Accepting Appointments
(Commission's Proposed Rule – Draft 3 (3/16/10) – COMPARED TO DFT2 (11/28/09))

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

- (a) representing the client is likely to result in violation of these Rules, the State Bar Act, or other law;
- (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- (c) the client or the cause is so repugnant to the lawyer as to be likely to impair the lawyer-client relationship or the lawyer's ability to represent the client.

COMMENT

[1] A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. See Business & Professions Code section 6068(h). All lawyers have a responsibility to assist in providing pro bono publico service. See Rule 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients for little or no compensation. A lawyer may also be subject to appointment by a tribunal to serve unpopular clients or persons unable to afford legal services.

Appointed Counsel

[2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause includes situations where the lawyer would not be able to handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the lawyer-client relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty, confidentiality, and competence, and is subject to the same limitations on the lawyer-client relationship, such as the obligation to refrain from assisting the client in violation of these Rules or the State Bar Act. See Rule 1.2(d).



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February 12, 2010

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

**Re: Comments to Proposed Amendments to the Rules of Professional Conduct of
The State Bar of California (Batch 6)**

Dear Ms. Hollins:

On behalf of the San Diego County Bar Association (SDCBA), I respectfully submit the attached comments to Batch 6 of the Proposed Amendments to the Rules of Professional Conduct. The comments were proposed by the SDCBA's Legal Ethics Committee, and have been approved by our Board of Directors.

Sincerely,

Patrick L. Hosey, President
San Diego County Bar Association

Enclosures

cc: David F. McGowan, Co-Chair, SDCBA Legal Ethics Committee
Erin Gibson, Co-Chair, SDCBA Legal Ethics Committee

SDCBA Legal Ethics Committee
Comments to Revisions to California Rules of Professional Conduct (CRPC) Batch 6
LEC Subcommittee Deadline January 22, 2010; LEC Deadline January 26, 2010
SDCBA Deadline March 12, 2010

Coversheet

<u>Rule</u>	<u>Title [and current rule number]</u>	<u>Rec.</u>	<u>Author</u>
Rule 1.0.1	Terminology [1-100]	App	McGowan
Rule 1.4.1	Insurance Disclosure [3-410]	App.	Simmons
Rule 1.11	Special Conflicts for Gov't Employees [N/A]	Mod.App.	Hendlin
Rule 1.17	Sale of a Law Practice [2-300]	App.	Fulton
Rule 1.18	Duties to Prospective Client [N/A]	Mod. App.	Tobin
Rule 3.9	Non-adjudicative Proceedings [N/A]	App.	Leer
Rule 4.1	Truthfulness in Statements to Others [N/A]	App.	Hendlin
Rule 4.4	Respect for Rights of 3rd Persons [N/A]	No Rec.	Carr
Rule 6.1	Voluntary Pro Bono Service [N/A]	App.	Gerber
Rule 6.2	Accepting Appointments [N/A]	App.	Gibson
Rule 6.5	Limited Legal Services Programs [1-650]	App.	Simmons
Rule 8.2	Judicial and Legal Officials [1-700]	App.	McGowan

Format for Analyses:

(1) Is the **policy** behind the new rule correct? If "yes," please proceed to the next question. If "no," please elaborate, and proceed to Question #4.

Yes [] No []

(2) Is the new rule **practical** for attorneys to follow? If "yes," please proceed to the next question. If "no," please elaborate, and then proceed to the Conclusions section.

Yes [] No []

(3) Is the new rule **worded correctly and clearly**? If "yes," please proceed to the Conclusions section. If "no," please elaborate, and then proceed to the Conclusions section.

Yes [] No []

(4) Is the policy behind the existing rule correct? If "yes," please proceed to the Conclusions section. If "no," please elaborate, and then proceed to the Conclusions section.

Yes [] No []

(5) Do you have any other comments about the proposed rule? If so, please elaborate here:

Format for Recommendations:

[] We approve the new rule in its entirety.

[] We approve the new rule with modifications.*

[] We disapprove the new rule and support keeping the old rule.

[] We disapprove the new rule and recommend a rule entirely different from either the old or new rule.*

[] We abstain from voting on the new rule but submit comments for your consideration.*

Summaries Follow:

Proposed New Rule No./ Title: Rule 6.2 – Accepting Appointments

(5) Proposed Rule 6.2 is substantively identical to the ABA Model Rule.

The Commission notes that some of its members do not recommend this Rule, because it would allow a lawyer to reject an appointment to represent a client the lawyer considers “repugnant.” This minority argues that lawyers are traditionally obliged to represent people they may consider “repugnant,” such as some criminal or unpopular clients.

However, the policy behind proposed Rule 6.2 correctly recognizes that, in some cases, a client may be so repugnant to a lawyer as to impair the lawyer’s ability to represent the client. In these cases, it would be a conflict of interest for the lawyer to represent the client. Thus, Rule 6.2, while it permits lawyers to decline appointments by a tribunal in limited circumstances, does so for a proper purpose—and a purpose that may be in the “repugnant” client’s best interests. After all, another appointed attorney may not find the client so repugnant that the attorney-client relationship would be impaired.

Furthermore, the comments to the proposed rule contain a substantive exception that helps to address the minority’s concerns. Specifically, Comment 1 to proposed Rule 6.2 contains a cross-reference to Cal. Bus. & Prof. Code § 6068(h), which states that it is the duty of a lawyer “[n]ever to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.” Thus, the comments acknowledge that an attorney cannot decline an appointment simply because a client is unpopular.

CONCLUSION: We approve the new rule in its entirety.

LEC Rule Volunteer Name(s): Ross G. Simmons

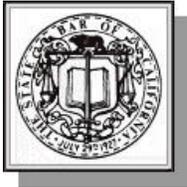
Old Rule No./Title: CRPC 1-650 Limited Legal Services Programs

Proposed New Rule No./ Title: CRPC 6.5 Limited Legal Services Programs

(5) Proposed CRPC 6.5 largely embodies recently adopted CRPC 1-650. This is not surprising. The Rules Revision Commission was involved in the rule’s inception in the spring of 2009, approval and adoption of which was pursued on an expedited basis under the auspices of meeting a demand for *pro bono* legal services in view of the recent economic downturn. Existing CRPC 1-650 was adopted by the California Supreme Court by order dated June 29, 2009, modified by the Court for clarification.

Its objective is to relax the general application of conflict of interest rules, and their imputing effects in connection with provision of “short-term limited legal services to a client without [reasonable] expectation by either the lawyer or the client that the lawyer will provide continuing representation in the manner.” For its own sake, MR 6.5, upon which the proposed California rule is based, has evoked little controversy, and has been adopted little variation in nearly all Model Rule jurisdictions.

As was true with CRPC 1-650, the coverage of proposed CRPC 6.5 is slightly broader than its



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.

DEADLINE TO SUBMIT COMMENT IS: MARCH 12, 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 links below:

[Rule 1.0.1 \[1-100\]](#)

[Rule 1.11 \[n/a\]](#)

[Rule 4.1 \[n/a\]](#)

[Rule 6.5 \[1-650\]](#)

[Rule 1.4.1 \[3-410\]](#)

[Rule 1.17 \[2-300\]](#)

[Rule 4.4 \[n/a\]](#)

[Rule 7.6](#)

[Rule 1.8.4 \[n/a\]](#)

[Rule 1.18 \[n/a\]](#)

[Rule 6.1 \[n/a\]](#)

[Rule 8.2 \[1-700\]](#)

[Rule 1.8.9 \[n/a\]](#)

[Rule 3.9 \[n/a\]](#)

[Rule 6.2 \[n/a\]](#)

[Discussion Draft \[all rules\]](#)

* Select the Proposed Rule that you would like to comment on from the drop down list.

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.

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F-2010-3821 SCCBA [6.2]

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March 9, 2010

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

Re: Twelve Proposed New or Amended Rules of Professional Conduct

Dear Ms. Hollins:

The Orange County Bar Association hereby submits written comments on the following:

- Rule 1.0.1 Terminology [1-100]
- Rule 1.4.1 Insurance Disclosure [3-410]
- Rule 1.11 Special Conflicts for Government Employees [N/A]
- Rule 1.17 Sale of a Law Practice [2-300]
- Rule 1.18 Duties to Prospective Client [N/A]
- Rule 3.9 Non-adjudicative Proceedings [N/A]
- Rule 4.1 Truthfulness in Statements to Others [N/A]
- Rule 4.4 Respect for Rights of 3rd Persons [N/A]
- Rule 6.1 Voluntary Pro Bono Service [N/A]
- Rule 6.2 Accepting Appointments [N/A]
- Rule 6.5 Limited Legal Services Programs [1-650]
- Rule 8.2 Judicial and Legal Officials [1-700]

These comments have been drafted by the OCBA Professionalism and Ethics Committee and approved by the OCBA Board of Directors. Please let me know if you have any questions or require additional information.

Sincerely,

ORANGE COUNTY BAR ASSOCIATION

Trudy Levindofske
Executive Director

MEMORANDUM

Date: February 24, 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 6.2 – Accepting Appointments**

Founded over 100 years ago, the Orange County Bar Association has over 7,000 members, making it one of the 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 and Ethics Committee.

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

The OCBA generally supports the Commission's effort to expand the ability of lawyers to decline appointments where the representation of a particular client would be "so repugnant to the lawyer as to... likely... impair the lawyer's ability to represent the client." The OCBA has several concerns, however, regarding the scope of this proposed Rule and, in particular, to whom it applies.

For example, it is not clear whether the proposed Rule applies to any attorney who is asked by a judicial officer to take on a particular representation, or only to those lawyers who voluntarily place themselves on panels for such appointments. In the former case, we believe the ability of a lawyer to decline the "appointment" should be even broader than stated in this proposed Rule.

In addition, it is not clear whether the proposed Rule also would apply to public defenders and, if so, how the Rule would intersect with a criminal defendant's constitutional right to counsel.

We urge the Commission to consider and address these questions before adopting this or any similar Rule.



THE STATE BAR OF
CALIFORNIA

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1639

OFFICE OF THE CHIEF TRIAL COUNSEL
ENFORCEMENT

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March 12, 2010

Randall Difuntorum, Director
Office of Professional Competence & Planning
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 Mr. Difuntorum:

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-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 in January 2010. 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 most 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 applied in a uniform fashion by the prosecutor. We hope you find our thoughts helpful.

~~**Rule 1.0.1 Terminology/Definitions.**~~

- ~~1. Many definitions appear later in the rules rather than being consolidated here. It is unclear why certain definitions are included here while others are not. Further, many of the definitions are repeated elsewhere, which is unnecessary.~~
- ~~2. Rule 1.0.1(b) states that "confidential information relating to representation" is defined in rule 1.6, Comments [3] [6]. This is not a precise definition. Moreover, the Comments are not intended to be binding and, therefore, it is inappropriate to reference them as part of the actual (binding) definition.~~
- ~~3. Rule 1.0.1(m) significantly deviates from the ABA rule defining "tribunal" by excluding legislative bodies acting in adjudicative capacities. OCTC agrees with the ABA drafters that legislative bodies acting in adjudicative capacities should be included within the definition of tribunal. Attorneys representing clients before legislative bodies acting in adjudicative capacities should be held to the same standards as those appearing before any other adjudicative body.~~

Rule 4.1 Truthfulness in Statements to Others.

- ~~1. OCTC's concern is one it has stated before: that this proposed rule requires knowing conduct and is thus inconsistent with well-established law that gross negligence can support a finding of moral turpitude and culpability under section 6068(d). (See, for example, *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 173-174 [respondent's unqualified and unequivocal statements under circumstances that should have caused him at least some uncertainty were at minimum deceptive, in violation of section 6068(d) and 6106]; *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar 266, 2381-282 [violation of section 6068(d) and 6106 through gross negligence].~~
- ~~2. The Comments to this rule are too general and should be eliminated.~~

Rule 4.4 Respect for the Rights of Third Persons.

- ~~1. OCTC is concerned that this proposed rule deviates substantially from the ABA rule by eliminating the ABA's paragraph (a). The Commission states that they are concerned about vagueness and over breadth of the ABA's language. OCTC finds this concern unwarranted; and when balanced against the needs to prevent litigation abuse, believes the ABA is correct. The State Bar Act already prohibits counseling or maintaining unjust proceedings (section 6068(e); advancing facts prejudicial to the honor or reputation of a party or witness (section 6068(f)); and encouraging the commencement or the continuance of actions for any corrupt motive (section 6068(g)). The current Rules of Professional Conduct similarly prohibits an attorney from bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal without probable cause and for the purpose of harassing or maliciously injuring any person (rule 3-200(A).) The Ninth Circuit has held that a rule prohibiting attorneys from conduct unbecoming a member of the bar is not unconstitutionally vague. (*United States v. Hearst* (9th Cir. 1981) 638 F2d 1190, 1197.) OCTC believes the ABA's paragraph (a) should be adopted.~~
- ~~2. OCTC believes both the Commission's language in paragraph (b) and the ABA's language are equally adequate and consistent with the California Supreme Court's decision in *Rico v. Mitsubishi Motors Corp* (2007) 42 Cal.4th 807, 818. We find either acceptable.~~
- ~~3. Comments 1 and 3 seem unnecessary as the rule is clear and unambiguous.~~

Rule 6.1 Voluntary Pro bono Publico Service.

~~This is a noble goal, but it does not belong in a rule of professional conduct since it is merely advisory and not enforceable. It dilutes the rest of the rules. The Comments have the same problem.~~

Rule 6.2 Accepting Appointments.

OCTC appreciates the intent of this rule, but is concerned that this rule as written is not enforceable. OCTC would also strike the Comments as unnecessary.

~~Rule 8.2 Judicial and Legal Officials. (Current rule 1 700.)~~

- ~~1. OCTC agrees with requiring a lawyer who seeks a judicial appointment shall comply with Canon 5B of the California Code of Judicial Ethics. OCTC, however, would eliminate Comments 1 and 2 as unnecessary.~~



**THE STATE BAR
OF CALIFORNIA**

180 HOWARD STREET, SAN FRANCISCO, CA 94105-1639

**COMMITTEE ON PROFESSIONAL
RESPONSIBILITY AND CONDUCT**

TELEPHONE: (415) 538-2161

March 12, 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 6.2

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.

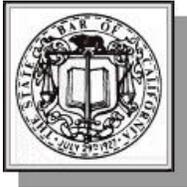
COPRAC has reviewed the provisions of proposed Rule 6.2, Accepting Appointments, and we support adoption of such proposed rule. However, we would recommend that the last two sentences in Comment [1] of the proposed Rule 6.2 be deleted. A lawyer's acceptance of "unpopular matters" or "indigent or unpopular clients", as stated in the Comment [1], does not equate with compliance of proposed Rule 6.1. Such references imply that a lawyer can meet her pro bono obligations in these ways, which may be misleading.

Thank you for your consideration of our comments.

Very truly yours,

Carole J. Buckner, Chair
Committee on Professional
Responsibility and Conduct

cc: Members, COPRAC



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.

DEADLINE TO SUBMIT COMMENT IS: MARCH 12, 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 links below:

[Rule 1.0.1 \[1-100\]](#)

[Rule 1.11 \[n/a\]](#)

[Rule 4.1 \[n/a\]](#)

[Rule 6.5 \[1-650\]](#)

[Rule 1.4.1 \[3-410\]](#)

[Rule 1.17 \[2-300\]](#)

[Rule 4.4 \[n/a\]](#)

[Rule 7.6](#)

[Rule 1.8.4 \[n/a\]](#)

[Rule 1.18 \[n/a\]](#)

[Rule 6.1 \[n/a\]](#)

[Rule 8.2 \[1-700\]](#)

[Rule 1.8.9 \[n/a\]](#)

[Rule 3.9 \[n/a\]](#)

[Rule 6.2 \[n/a\]](#)

[Discussion Draft \[all rules\]](#)

* Select the Proposed Rule that you would like to comment on from the drop down list.

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.

I agree with all of them, since I have dealt with lawyers who many of them have violated more than one if not all of these rules.

OFFICE USE ONLY.

* Date

01/26/2010 

Period

PC

File :

F-2010-378 Esther [multiple].pdf

Commented On:

Specify:

Submitted via:

Online

* Required

Proposed Rule 6.2 [n/a] “Accepting Appointments”

(Draft #2, 11/28/09)

Summary: Proposed Rule 6.2 is based on Model Rule 6.2, which sets forth a lawyer’s duties when a tribunal seeks to appoint the lawyer to represent a person. The Rule is identical to the Model Rule, except for some changes to conform language to California rule style and statutes. See Introduction and Explanation of Changes.

Comparison with ABA Counterpart

Rule	Comment
<input checked="" type="checkbox"/> ABA Model Rule substantially adopted	<input checked="" type="checkbox"/> ABA Model Rule substantially adopted
<input type="checkbox"/> ABA Model Rule substantially rejected	<input type="checkbox"/> ABA Model Rule substantially rejected
<input type="checkbox"/> Some material additions to ABA Model Rule	<input type="checkbox"/> Some material additions to ABA Model Rule
<input type="checkbox"/> Some material deletions from ABA Model Rule	<input type="checkbox"/> Some material deletions from ABA Model Rule
<input type="checkbox"/> No ABA Model Rule counterpart	<input type="checkbox"/> No ABA Model Rule counterpart

Primary Factors Considered

- Existing California Law

Rule

Statute

Bus. & Prof. Code § 6068(h).

Case law

- State Rule(s) Variations (In addition, see provided excerpt of selected state variations.)

- Other Primary Factor(s)

State Bar of California Board of Governors Pro Bono Resolution (2002).

Rule Revision Commission Action/Vote to Recommend Rule Adoption

(13 Members Total – votes recorded may be less than 13 due to member absences)

Approved on 10-day Ballot, Less than Six Members Opposing Adoption

Vote (see tally below)

Favor Rule as Recommended for Adoption _____

Opposed Rule as Recommended for Adoption _____

Abstain _____

Approved on Consent Calendar

Approved by Consensus

Commission Minority Position, Known Stakeholders and Level of Controversy

Minority Position Included. (See Introduction): Yes No

No Known Stakeholders

The Following Stakeholders Are Known:

Very Controversial – Explanation:

Moderately Controversial – Explanation:

Not Controversial – Explanation:

COMMISSION FOR THE REVISION OF THE RULES OF PROFESSIONAL CONDUCT

Proposed Rule 6.2* Accepting Appointments

December 2009

(Draft rule to be considered for public comment.)

INTRODUCTION:

Proposed Rule 6.2 is based on Model Rule 6.2, which sets forth a lawyer's duties when a tribunal seeks to appoint the lawyer to represent a person. The Rule is identical to the Model Rule, except for some changes to conform language to California rule style and statutes. In addition, a cross-reference to Business & Professions Code § 6068(h), which provides it is the duty of a lawyer, "Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed," has been added.

Minority. A minority of the Commission declines to recommend the Rule because it would allow a lawyer to reject an appointment to represent a client the lawyer considers "repugnant" or who is unpopular. The minority notes that lawyers are traditionally obliged to represent people they consider "repugnant." A client accused of a crime, a philandering spouse, and a protester arrested in a mass demonstration are all entitled to representation, even if the lawyer considers them "repugnant" or unpopular because of their acts or for other reasons. The unpopularity of a client should not permit a lawyer to refuse appointment by a tribunal. An appointed lawyer does not espouse the client or the client's cause.

Variations in other jurisdictions. Nearly every jurisdiction has adopted some version of Model Rule 6.2, with little variation. New York and Oregon have declined to adopt the Rule, and Georgia has reduced the rule to a single sentence.

* Proposed Rule 6.2, Draft #2 (11/28/09).

<p align="center"><u>ABA Model Rule</u> Rule 6.2 Accepting Appointments</p>	<p align="center"><u>Commission's Proposed Rule*</u> Rule 6.2 Accepting Appointments</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:</p>	<p>A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:</p>	<p>The introductory clause is identical to its Model Rule counterpart.</p>
<p>(a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;</p>	<p>(a) representing the client is likely to result in violation of these <u>the State Bar Act</u>, or other law;</p>	<p>Paragraph (a) is identical to Model Rule 6.2(a), except that “these Rules” has been substituted for “the Rules of Professional Conduct” to conform with the Rules style, and “the State Bar Act” has been added consistent with other Rules.</p>
<p>(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or</p>	<p>(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or</p>	<p>Paragraph (b) is identical to Model Rule 6.2(b).</p>
<p>(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.</p>	<p>(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer <u>client-lawyer</u> relationship or the lawyer's ability to represent the client.</p>	<p>Paragraph (c) is identical to Model Rule 6.2(c), except that “lawyer-client” has been substituted for “client-lawyer,” consistent with California rules and statute style.</p>

* Proposed Rule 6.2, Draft 2 (11/28/09). Redline/strikeout showing changes to the ABA Model Rule.

<p align="center"><u>ABA Model Rule</u> Rule 6.2 Accepting Appointments Comment</p>	<p align="center"><u>Commission’s Proposed Rule*</u> Rule 6.2 Accepting Appointments Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>[1] A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer’s freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono publico service. See Rule 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.</p>	<p>[1] A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer’s freedom to select clients is, however, qualified. <u>See Business & Professions Code section 6068(h).</u> All lawyers have a responsibility to assist in providing pro bono publico service. See Rule 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court<u>tribunal</u> to serve unpopular clients or persons unable to afford legal services.</p>	<p>Comment [1] is based on Model Rule 6.2, cmt. [1], except: (i) a reference to Business & Professions Code § 6068(h), which provides it is the duty of a lawyer, “Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed,” has been added; and (ii) “tribunal” has been substituted for “court” to conform to the black letter of the introductory clause.</p>
<p>Appointed Counsel</p> <p>[2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer’s ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example,</p>	<p>Appointed Counsel</p> <p>[2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if<u>includes situations where</u> the lawyer could<u>would not be able to</u> handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer-client relationship or the lawyer’s ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would</p>	<p>Comment [2] is based on Model Rule 6.2, cmt. [2], except that “includes situations where” has been substituted for “exists if” to emphasize that the situations described are examples only; (ii) “would” has been substituted for “could” to create an appropriate parallel construction with the following clause; and (iii) “lawyer-client” has been substituted for “client-lawyer” as explained above.</p>

* Proposed Rule 6.2, Draft 2 (11/28/09). Redline/strikeout showing changes to the ABA Model Rule

<p align="center"><u>ABA Model Rule</u> Rule 6.2 Accepting Appointments Comment</p>	<p align="center"><u>Commission's Proposed Rule*</u> Rule 6.2 Accepting Appointments Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>when it would impose a financial sacrifice so great as to be unjust.</p>	<p>be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.</p>	
<p>[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules.</p>	<p>[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, <u>and competence</u>, and is subject to the same limitations on the client-lawyer-client relationship, such as the obligation to refrain from assisting the client in violation of the<u>these</u> Rules <u>or the State Bar Act. See Rule 1.2(d).</u></p>	<p>Comment [3] is based on Model Rule 6.2, cmt. [3], except that “competence” has been added to emphasize that an appointed lawyer owes the same duty of competence as is owed when retained. In addition, a reference to Rule 1.2(d), which prohibits a lawyer from assisting a client to engage in criminal or fraudulent conduct, has been added to provide further guidance on the limits of a representation.</p>

Rule 6.2: Accepting Appointments (Commission's Proposed Rule - Clean Version)

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

- (a) representing the client is likely to result in violation of these Rules, the State Bar Act, or other law;
- (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- (c) the client or the cause is so repugnant to the lawyer as to be likely to impair the lawyer-client relationship or the lawyer's ability to represent the client.

COMMENT

[1] A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. See Business & Professions Code section 6068(h). All lawyers have a responsibility to assist in providing pro bono publico service. See Rule 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a tribunal to serve unpopular clients or persons unable to afford legal services.

Appointed Counsel

[2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose

cause is unpopular. Good cause includes situations where the lawyer would not be able to handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the lawyer-client relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty, confidentiality, and competence, and is subject to the same limitations on the lawyer-client relationship, such as the obligation to refrain from assisting the client in violation of these Rules or the State Bar Act. See Rule 1.2(d).

Rule 6.2: Accepting Appointments

STATE VARIATIONS

(The following is an excerpt from Regulation of Lawyers: Statutes and Standards (2009 Ed.)
by Steven Gillers, Roy D. Simon and Andrew M. Perlman.)

California has no comparable provision in its Rules of Professional Conduct.

Georgia shortens ABA Model Rule 6.2 to a single sentence: “For good cause a lawyer may seek to avoid appointment by a tribunal to represent a person.”

New York has no comparable provision in its Disciplinary Rules, but ECs 2-38 and 2-39 (formerly ECs 2-29 and 2-30) address the issues addressed in ABA Model Rule 6.2.

North Carolina omits Rule 6.2.

Ohio substitutes the word “court” for “tribunal” in the first line of the rule to reflect the Ohio Supreme Court’s view that “the inherent authority to make appointments is limited to courts and does not extend to other bodies” included within the definition of “tribunal.” Ohio also omits ABA Model Rule 6.2(c) because “the substance... is addressed in Rule 1.1, which mandates that a lawyer shall provide competent representation to a client.”

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March 10, 2010 McCurdy E-mail to Drafters (Snyder, Foy, Ruvolo), cc Chair, Vice-Chairs & Staff:

Rule 6.2 Drafting Team (SNYDER, Foy, Ruvolo):

This message provides the assignment background materials for Rule 6.2 on the March agenda. **The assignment deadline is Thursday, March 18, 2010.**

This message includes the following draft documents:

1. public comment compilation (full text of comment letters received to date – public comment period ends March 12th)
2. public commenter chart (a staff prepared chart with the synopsis of comments in draft form and open third column for the codrafters recommended response to the comments)
3. dashboard (public comment version)
4. introduction (public comment version – this should be updated if there are any recommended amendments to the rule)
5. Model Rule comparison chart (public comment version)
6. clean rule text (public comment version – use this clean version to make any changes to the rule, do not edit the rule in the Model Rule comparison chart)
7. state variations excerpt (this does not require any work)

The codrafters are assigned to review any written comments received and to prepare a revised draft rule and comment, if any changes are recommended. The “RRC Response” column on the public commenter chart should be filled in with the drafting team’s recommended action in response to the public comment. In addition, we need the drafting team to prepare a completed dashboard, and to update, as needed, the Introduction, and the Explanations in the third column of the Model Rule comparison chart based on the revised rule. Please do not edit the redline-middle column of the Model Rule comparison chart. Staff is available to generate a new redline of the post public comment rule to the Model Rule and will assist in completing the middle column of the Model Rule comparison chart.

We are looking for submissions that are as close to final form as possible. As noted above, please feel free to send us your revised clean version of the proposed rule and we will generate a redline comparison to the Model Rule for the comparison chart. Of course, you will still need to complete the Explanation column of the Model Rule Comparison Chart. Lastly, if among the drafters there is a minority view, please consider including the minority view in your draft Introduction.

Attached:

- RRC - [6-2] - Dashboard - ADOPT - DFT3 (03-10-10).doc
- RRC - [6-2] - Compare - Introduction - DFT2 (12-15-09)KEM-LM.doc
- RRC - [6-2] - Compare - Rule & Comment Explanation - DFT2.1 (12-15-09)KEM-LM.doc
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March 11, 2010 KEM E-mail to Drafters, cc Chair, Vice-Chairs & Staff:

To assist you in preparing the materials for the 3/26-27/10 meeting, I've attached the following for this Rule:

1. My cumulative meeting notes, revised 11/27/09.
2. Full E-mail compilation, revised 1/5/10.

Please let me know if you have any questions.

March 15, 2010 Snyder E-mail to Drafters, cc Chair, Vice-Chairs & Staff:

It appears that our assignment will require us to provide a substantive response to only one comment which was made by the Orange County Bar Association as follows:

"It is not clear whether the proposed Rule applies to any attorney who is asked by a judicial officer to take on a particular representation, or only to those lawyers who voluntarily place themselves on panels for such appointments. In the former case, we believe the ability of a lawyer to decline the "appointment" should be even broader than stated in this proposed Rule. In addition, it is not clear whether the proposed Rule also would apply to public defenders and, if so, how the Rule would intersect with a criminal defendant's constitutional right to counsel."

I disagree with the comment.

1. I don't understand why it would be necessary to make some distinction between an attorney who voluntarily places himself or herself on a panel and one who does not. If the assignment presents this problem, what does it matter if you volunteered for the panel? The overriding concern should be the attorney's impairment under the circumstances.
2. The rules apply to all lawyers unless the RRC has made some specific exclusion. So, assuming that it applies to public defenders, I can't really understand how this would affect a criminal defendant's right to counsel. The defendant is represented by the Office of the Public Defender who, for example, is Michael Judge in Los Angeles County. My assumption is that if an *individual* public defender found a criminal defendant or cause repugnant (e.g. "the client or the cause is so repugnant to the lawyer as to be likely to impair the lawyer-client relationship or the lawyer's ability to represent the client") the case could fairly easily be assigned to another attorney in the office who does not have that particular repugnance. I note, too, that the Public Defenders have not commented on this although they have been most active in our process. Therefore, they have not indicated any problems with this proposed rule.

I don't see either of these issues as presenting real problems to enforcement of the proposed rule. I have seen Linda's and Randy's emails and am fine with including "Esther." When staff decides how her comment should be noted, I will include it accordingly.

Let me know what you think.

March 15, 2010 McCurdy E-mail to Drafters, cc Chair, Vice-Chairs & Staff:

Drafting Team:

This message provides an updated public comment compilation adding comments received since the materials I transmitted with the message below. In addition, I've attached an updated commenter chart. Please note that not all of the comments received over the past several days have been synopsisized and added to this chart. Please go ahead and add any missing comment synopses and responses yourself in the extra rows at the bottom of the table. If you run out of rows, simply press the TAB key in the last cell of the last row and a new row will appear.

Since the last transmission, comments from the following commenters were received:

OCTC
COPRAC

Any additional comments received will be sent to you as soon as they are received.

Attached:

RRC - [6-2] - Public Comment Complete - REV (03-15-10).pdf

RRC - [6-2] - Public Comment Chart - By Commenter - DFT1.1 (03-15-10)AT.doc

March 16, 2010 Snyder E-mail to KEM:

Attached is my revised Commenter Chart for 6.2. What do you think of COPRAC's comment (see below) and my proposed response to the others?

"COPRAC also recommends that the last two sentences in Comment [1] of the proposed Rule 6.2 be deleted. A lawyer's acceptance of "unpopular matters" or "indigent or unpopular clients", as stated in the Comment [1], does not equate with compliance of proposed Rule 6.1. Such references imply that a lawyer can meet her pro bono obligations in these ways, which may be misleading."

March 16, 2010 KEM E-mail to Snyder:

I've attached a revised Chart and Rule, with redline changes in both. In Word:

1. Public Comment Chart, Draft 2.1 (3/16/10), redline, compared to Draft 2 (the draft you sent me);
2. Rule, Draft 3 (3/16/10), redline, compared to Draft 2 (11/28/09) [the public comment version].

Notes & Comments:

- 1.. As I was reviewing the chart, it dawned on me how COPRAC and OCBA are interpreting this Rule. I don't think it is intended to apply to panel lawyers who seek placement on the panel and are appointed to represent criminal defendants. I believe that is contractual between the lawyers and the court that oversees the panel and lawyers don't have an option to turn down a representation. Moreover, they are adequately compensated. Nor do I think this Rule is intended to apply to Public Defenders. They are obligated to accept representations unless there is a conflict or to accept it would so overload the system as to result in incompetent representation. Again, they are also adequately compensated.
2. Rather, this rule applies to situations when a judge simply picks a lawyer in a courtroom and assigns the lawyer to represent an unrepresented party in the court for no compensation or for very little compensation. See the last sentence of Comment [2]. It might not happen very often in L.A. or even happen elsewhere in California, but I think it occurs often in other jurisdictions (or at least it did, which is the rationale for the rule). I've also attached the Annotated Model Rules, Rule 6.2, in which I've marked in yellow case summaries that support my view of the Rule.
3. If you agree, then the response to OCBA has to be revised.
4. With this understanding of the Rule, should we run it by the Commission again to make sure that is their understanding as well? Is this a real concern in California? We may have to clarify to whom the Rule applies.

Please let me know if you have any questions.

March 17, 2010 Snyder E-mail to KEM:

I have reviewed the materials you sent and have to agree with you. This rule appears to have very limited application in California (probably none in large cities - perhaps it occurs in small towns), and I agree that public defenders are not contemplated nor are those who contract with cities or counties to be on a panel and accept appointments. If the Commenters are confused, it may warrant a Comment to explain its limited application in California - assuming that the primary focus is inadequate compensation as discussed in the annotations. What do you think is the best way to approach this? Should we ask Harry for guidance?

March 17, 2010 KEM E-mail to Snyder:

I think it best to apprise the drafters and leadership of the limited scope of the rule (note that Harry, Paul and Mark are all recipients if you just "reply all" to Lauren's most recent e-mail on this Rule) and that public commenters appear to be confused about its scope. I agree that a comment might be in order. Ask the e-mail recipients for their input on the following additional comment (rough language; you might want to revise):

[4] This Rule is not intended to supersede the contractual obligations of a lawyer who provides legal services as a public defender or is a member of panel for receiving appointments as counsel for indigent clients.

Folks more familiar with these processes will probably be able to come up with better language. Note that I used "intended" here even though we have largely discarded that usage in the proposed Rules because we're dealing with the authority of a court, and a court can pretty much do what it pleases with this Rule (i.e., apply or ignore it),

I would also send them the Annotated Model Rule I sent you last night.

Note that we need to revise the response to OCBA but tell the drafters and leadership you are awaiting their comments on the scope of the rule before doing so.

CAVEAT: I just went through the Annotated MR to search for public defender and found the following:

Rule 6.2 does not require lawyers to accept court appointments. Rather, it subjects a lawyer to discipline if the lawyer tries to avoid an appointment for less than "good cause." See ABA Formal Ethics Op. 06-441, at n.16 (2006) (under Rule 6.2(a), public defender "should not claim an excessive workload in an attempt to avoid new cases or to withdraw from current cases unless good cause objectively exists").

So, the ABA Ethics Committee is at least of the opinion that the rule applies to public defenders. Note, however, that Op. 06-441 is the opinion that Michael Judge and the PD's of California have criticized heavily and the reason why they came to the RRC to complain about Rules 5.1 and 5.2. That opinion makes the same mistake that COPRAC originally made in its PD opinion, i.e., it focused on the individual line public defender rather than the head of the office who is responsible for making the decisions. I still think that Michael Judge and the California PDs have it right and the ABA has it wrong. I've attached the Annotate MR 6.2 again, this time with the above quoted material highlighted in turquoise.

Perhaps we should invite Michael Judge to appear at our next meeting and get his input. As you noted in the public commenter chart, the PD's so far have not viewed this rule as a potential problem. Whether that is because it is not or because they are not aware of it is another matter.

March 17, 2010 Snyder E-mail to Drafters, cc Chair, Vice-Chairs & Staff:

I have reviewed the Commenters chart and talked to Kevin. We both think it best to apprise you (drafters and leadership) of our concern about this rule since it appears that the public commenters are confused about its scope. Perhaps a Comment might be in order to clarify our intention regarding the applicability of the rule (e.g. public defenders, panel attorneys). See below a suggested Comment to address this issue:

[4] This Rule is not intended to supersede the contractual obligations of a lawyer who provides legal services as a public defender or is a member of panel for receiving appointments as counsel for indigent clients.

Some or all of you who are more familiar with these processes will probably be able to come up with better language. Note that the work "intended" is used here even though we have largely discarded that usage in the proposed Rules because we're dealing with the authority of a court, and a court can pretty much do what it pleases with this Rule (i.e., apply or ignore it).

Note, too, that we need to revise the response to OCBA but I will await your comments on the scope of the rule before doing so.

I have attached the Annotated Model Rule for your information which Kevin kindly provided to me. He also found the following when he went through the Annotated MR to search for information regarding public defenders this morning:

Rule 6.2 does not require lawyers to accept court appointments. Rather, it subjects a lawyer to discipline if the lawyer tries to avoid an appointment for less than "good cause." See ABA Formal Ethics Op. 06-441, at n.16 (2006) (under Rule 6.2(a), public defender "should not claim an excessive workload in an attempt to avoid new cases or to withdraw from current cases unless good cause objectively exists").

So, it looks like the ABA Ethics Committee is at least of the opinion that the rule applies to public defenders. Note, however, that Op. 06-441 is the opinion that Michael Judge and the PD's of California have criticized heavily and the reason why they came to the RRC to complain about Rules 5.1 and 5.2. Kevin thinks that the opinion makes the same mistake that COPRAC originally made in its PD opinion, i.e., it focused on the individual line public defender rather than the head of the office who is responsible for making the decisions. It is just as likely that Michael Judge and the California PDs have it right and the ABA has it wrong. Please see the Annotated MR 6.2, with the above quoted material highlighted in turquoise.

Perhaps we should invite Michael Judge to appear at our next meeting and get his input. As you know and I noted in the public commenter chart, the PD's so far have not viewed this rule as a potential problem. Whether that is because it is not or because they are not aware of it is another matter.

Attached:

RRC – [6-2] - Model Rule 6 2 - ANNOT (2007)-MARKED.doc

March 17, 2010 Tuft E-mail to Snyder, cc Drafters, Chair, Vice-Chairs & Staff:

I agree with your proposed response to Orange County Bar Association.

March 17, 2010 Tuft E-mail to Snyder, cc Drafters, Chair, Vice-Chairs & Staff:

I am not sure I understand the concern that is being raise by Mr. Judge and the California PDs. The rule provides that a lawyer shall not seek to avoid appointment by a tribunal except for good cause. The rule does not depend on ABA Formal Opinion 06-441. As we determined earlier, states that adopt the Model Rules are not bound by ABA ethics opinions. There is a disclaimer that the opinion may or may not be applicable and lawyers need to look to the law of their particular jurisdiction.

I haven't looked at the Penal Code but will do so to see if there are any special provisions regarding the acceptance or rejection of appointments by PDs and panel counsel.

I regard to Dom's proposed comment, I am not sure "contractual obligations" is the right phrase for PDs although it may be for panel counsel. I served for 15 years on the Federal Public Defenders Panel and I believe our appointments were covered under the federal Criminal Justice Act. So, there may be federal and well as state statutes that may apply, but I am of the view that the provision of these statutes would probably constitute good cause under the rule.

Without agreeing that we need a comment on this issue, here is a suggested revision of Dom's draft comment

[4] This Rule does not abrogate the obligations of the Office of the Public Defender and lawyers in that office in accepting or rejecting appointment by a court in criminal or civil matters [nor does this Rule abrogate the responsibilities of the Federal Public Defender or lawyers who serve as panel counsel in criminal cases under federal and state law].

The more I think about it, the more concern I have about the comment. There are court appointments in civil cases, such juvenile cases, prisoner rights cases and immigration cases that will be impacted by this rule. I am not sure we need to add a comment in view of these complexities.

March 17, 2010 KEM E-mail to Tuft, cc Drafters, Chair, Vice-Chairs & Staff:

Please read Dom's e-mail again. Michael Judge did not express any concerns about the rule. The issue was raised by OCBA and then Dom and I researched the issue further.

We reviewed the Annotation for MR 6.2 and the concern of the Rule seems to be with lawyers whom a judge might pick out of the court room and order them to represent an unrepresented person for little or no money. I simply don't see this Rule applying where the lawyer has voluntarily placed himself or herself on a panel (usually, has been accepted on the panel after filing an application) or has taken a position with public defenders or federal defenders.

The concern (mine and Dom's) with the ABA opinion is that it held the rule applies to public defenders. However, that opinion got the facts wrong, at least as to the PD's in California who

**RRC – Rule 6.2 [MR 6.2]
E-mails, etc., -- Revised (3/24/2010)**

came to COPRAC to complain about our interim opinion on the same issue as the ABA opinion (as Bart Sheela told us, we got the law exactly right but the facts completely wrong). The ABA opinion is drafted from the point of view of the individual lawyer who happens to be a public defender. However, as explained by the California PD's and Alternate PD's, the attorney of record is the head of the office, so it is the head of the office who makes the decisions. That's why I don't think the rule applies to PD's, at least not in California. The rule is written from the point of an individual lawyer, not from the point of view of a supervisory lawyer who must make decisions based on the availability of resources office-wide. If a client or cause is repugnant to one PD, the case can be reassigned by the head PD to another deputy PD,

I also don't get the sense that the panel lawyers are a "target" of this Rule. From reviewing the cases cited in the MR 6.2 annotation, which Dom sent you earlier, you can see that nearly all the cited cases are concerned w/ lawyers who were not paid or were underpaid. That is not true of panel lawyers, who are paid adequately or are fine with not being paid or being underpaid, or they wouldn't have sought to be on the panel in the first place. Unless I'm mistaken and California courts shanghai lawyers for the panels.

But I am less concerned about panel lawyers. I am more concerned w/ PD's and the fact that if we conclude that this rule applies to them, the same problems that the California PD's saw in the ABA Opinion 441 (individual lawyers in the office making their own decisions as to what cases to withdraw from).

Even if we don't have as broad-ranging a comment, we should include one for the PD's, or at least solicit their views on the Rule. I would hate to have this become some kind of stealth rule that they never saw coming.

I've attached the ABA Opinion.

Attached:

RRC - [6-2] - ABA Ethics Op. 06-441 (PD Ethics).pdf

March 17, 2010 Snyder E-mail to KEM, cc Drafters, Chair, Vice-Chairs & Staff:

Thanks, Kevin. I just had an opportunity to read Mark's comment and I think he may have misread what I said. Mark, my apologies if I was not clear. I think Kevin's reply has very ably raised the issues that concern us about this. ***None of the PD organizations have raised any concerns about this*** - even though they have been very active in our process. It was the Orange Co. Bar that mentioned public defenders.

March 17, 2010 Foy E-mail to Drafters, cc Chair, Vice-Chairs & Staff:

This is looking murky. We know the relevant background and what we intended, but it's very likely others may not share our understanding. Is there a way to solicit Michael Judge's review and comment informally by email?

March 17, 2010 KEM E-mail to Foy, cc Drafters, Chair, Vice-Chairs & Staff:

I think that can be done but it should be done this week.

Also, I'd like to include the proposed comment, if not in the Rule itself, as part of an e-mail compilation excerpt to be sent out w/ the agenda materials. If the need for discussion arises during the meeting, the members will have it in front of them for review. I can have that ready by the deadline tomorrow if that's the wish of the drafters.

March 17, 2010 Foy E-mail to KEM, cc Drafters, Chair, Vice-Chairs & Staff:

That sounds fine to me.

March 18, 2010 KEM E-mail to McCurdy & Difuntorum, cc Drafters, Chair & Staff:

I've attached the following. Please include them in the agenda materials in the order listed.

1. E-mail compilation excerpt that includes the 3/17/10 e-mail exchange among the drafters concerning the extent to which this rule is intended to apply to public defenders and court panel lawyers. In PDF.
2. Public Comment Chart, Draft 2.1 (3/16/10). In Word.
3. Rule, Draft 3 (3/16/10), redline, compared to Draft 2 (11/28/10) [public comment version]. In Word.

Notes & comments:

1. The issue concerning the rule's intended applicability to public defenders and/or lawyers on a court panel for appointed representations is laid out in item #1.
2. As noted in the compilation, we might want to invite Michael Judge and/or Gary Windom to attend our meeting next week to discuss this issue.

Please let me know if you have any questions.

March 18, 2010 Tuft E-mail to Drafters, cc Drafters, Chair & Staff:

Having read Kevin's explanation for a comment that excludes PDs from the rule and having re-read 06-441 and statutes regarding the appointment and duties of the public defender, I am even more convinced there is no need to create an express exception for PDs in this rule. The requirement that a lawyer not seek to avoid appointment except for good cause applies to all lawyers and is not inconsistent with the duties of the public defender or members of that office in California. Opinion 06-441 notes the distinction between lawyers receiving appointments directly from the court and lawyers receiving appointments as a member of the public defender's office. The opinion correctly states in footnote 16 that when a lawyer receives an appointment as a member of a public defender's office (which is considered to be the equivalent of a law firm (footnote 17)), an attempt by that public defender to avoid appointment or withdraw from a case

must be based on valid legal grounds, citing Rule 6.2(a). "Therefore, a public defender should not claim an excessive workload in an attempt to avoid new cases or to withdraw from current cases unless good cause objectively exists."

In California, as in other jurisdictions, courts typically assign the public defender as defense counsel in cases where an indigent defendant is entitled to appointed counsel. (e.g., Penal Code section 987.05 (assignment of counsel in felony cases). The public defender is counsel of record in these cases as are members of the office to whom the public defender assigns the case. Courts appoint counsel from an assigned private counsel system or pursuant to other court appointment or government contract when there is no public defender available, the public defender has a conflict of interest or is otherwise unable to represent the accused. Penal Code 987.2. The statutory provisions for assigning defense counsel recognize that good cause may exist for declining an assignment by a public defender (e.g., Penal Code section 987.2(a)(3) - appointed counsel will be compensated out of the general fund in a case in which the court finds that, because of a conflict of interest or other reasons, the public defender has properly refused). The Penal code provisions and the duties of the public defender under Government Code section 27706 are not incompatible with Rule. 6.2 and there is no need or justification for a special exception for PDs in California.

March 20, 2010 Kehr E-mail to RRC:

Here are my comments on these materials:

1. On rereading this proposed Rule, I have a fundamental problem with it b/c if its inconsistency with Rule 1.16 (titled: "Declining or Terminating Representation"). I see no reason why Rule 6.2 should set a standard for declining a representation that differs from the Rule 1.16 standard. A lawyer's obligation in the Rule 6.2 situation should not be greater or less than in any other situation. While Rule 1.16 seems to me to be a complete statement, making Rule 6.2 redundant, I would support a Rule 6.2 so that its absence does not lead to confusion, but only if it simply said: "A lawyer shall not seek to avoid appointment by a tribunal to represent a person except as permitted by Rule 1.16." I suspect this change would avoid the minority's objection to the reference to repugnance (which is in MR 1.16(b)(4) but not in our Rule 1.16). If this change were made, it would be possible to eliminate the Comment, perhaps except Comment [3].
2. I request that we discuss the OCTC recommendation that the Comment be removed. I see nothing in the Comment that clarifies the Rule. However, there is one statement that is wrong. The second sentence of Comment [2] a lawyer has a conflict of interest if the lawyer finds the client or the cause repugnant. This is not within Rule 1.7 or its Comment's explanation of conflicts.
3. The revision to Comment [1] (at agenda p. 509) - adding "for little or not compensation" - does not track Rule 6.1. It says: "... for no expectation of compensation other than reimbursement of expenses"

March 22, 2010 Sondheim E-mail to Difuntorum, cc Drafters & Staff:

think we should alert both Michael Judge and Gary Windom to the PD issue and suggest that they might want to attend the meeting.

If they would like, I would do a special setting to accommodate them although at the present time I am not certain when Dom will be able to participate in the meeting.

March 22, 2010 KEM E-mail to Sondheim, cc Drafters & Staff:

Have you had an opportunity to read Mark's response to my last e-mail that appears in the compilation? It came too late to make it into the agenda materials. He doesn't think there is an issue. Here is what he wrote on 3/18:

Having read Kevin's explanation for a comment that excludes PDs from the rule and having re read 06-441 and statutes regarding the appointment and duties of the public defender, I am even more convinced there is no need to create an express exception for PDs in this rule. The requirement that a lawyer not seek to avoid appointment except for good cause applies to all lawyers and is not inconsistent with the duties of the public defender or members of that office in California. Opinion 06-441 notes the distinction between lawyers receiving appointments directly from the court and lawyers receiving appointments as a member of the public defender's office. The opinion correctly states in footnote 16 that when a lawyer receives an appointment as a member of a public defender's office (which is considered to be the equivalent of a law firm (footnote 17)), an attempt by that public defender to avoid appointment or withdraw from a case must be based on valid legal grounds, citing Rule 6.2(a). "Therefore, a public defender should not claim an excessive workload in an attempt to avoid new cases or to withdraw from current cases unless good cause objectively exists."

In California, as in other jurisdictions, courts typically assign the public defender as defense counsel in cases where an indigent defendant is entitled to appointed counsel. (e.g., Penal Code section 987.05 (assignment of counsel in felony cases). The public defender is counsel of record in these cases as are members of the office to whom the public defender assigns the case. Courts appoint counsel from an assigned private counsel system or pursuant to other court appointment or government contract when there is no public defender available, the public defender has a conflict of interest or is otherwise unable to represent the accused. Penal Code 987.2. The statutory provisions for assigning defense counsel recognize that good cause may exist for declining an assignment by a public defender (e.g., Penal Code section 987.2(a)(3) - appointed counsel will be compensated out of the general fund in a case in which the court finds that, because of a conflict of interest or other reasons, the public defender has properly refused). The Penal code provisions and the duties of the public defender under Government Code section 27706 are not incompatible with Rule. 6.2 and there is no need or justification for a special exception for PDs in California.

I still think we should at least ask them if they are interested in speaking to the rule. They may have seen it and don't have a problem with it but we could at least ask them, given the concerns they raised about the ABA opinion.

March 22, 2010 Sondheim E-mail to KEM, cc Drafters & Staff:

As indicated by the e-mail I sent a few minutes ago, I think they should be alerted in spite of Mark's views. It is not up to us to decide for them whether they believe there is an issue.

March 22, 2010 Sapiro E-mail to RRC List:

1. I agree with the change recommended by the drafting committee in Comment [1].
2. However, I still disagree with the wording of paragraph (c). If a court appoints a lawyer to represent a person who is, or whose cause is, repugnant, then at least one judge has concluded that the person deserves representation. To me, performing that service is part of the lawyer's responsibility under Business & Professions Code section 6068(h). Many lawyers represent clients they find repugnant. Did the Unibomber deserve representation? Does the target of an involuntary commitment deserve representation, regardless of the obscenities he or she may utter? If the client the lawyer has been appointed to represent has not had a bath for six months, he or she still deserves representation. "I think he is repugnant" should not be an excuse.
3. For the same reason, I still disagree with the "good cause" sentence in proposed Comment [2].

March 23, 2010 Difuntorum E-mail to Michael Judge, Gary Windom, Hal Friedman, K Wong, cc Chair & Staff:

Public Defender Stakeholders Who Have Attended Rules Revision Commission Meetings:

Proposed Rule 6.2, which sets forth a lawyer's duties when a tribunal seeks to appoint the lawyer to represent a client, will be considered by the Rules Revision Commission at its next meeting. The Rules Revision Commission's next meeting will be held at the State Bar Office in San Francisco as follows:

Friday, March 26, 2010
9:15 am - 5:00 pm

AND

Saturday, March 27, 2010
9:00 am – 5:00 pm

San Francisco – State Bar Office
180 Howard Street
San Francisco, CA 94105

If you who wish to attend this meeting, please call Audrey Hollins at 415-538-2167.

A copy of the meeting notice and agenda for the March meeting is attached (both documents combined in one file). The complete agenda materials for the Commission's March meeting are available from the Bar's website: www.calbar.ca.gov/ethics (Commission for the Revision of the Rules of Professional Conduct/Meeting Materials); however, please note that the website is experiencing some technical difficulties, so you may need to check the page from time to time.

For convenient reference, the agenda materials for proposed Rule 6.2 are attached. These materials include an e-mail compilation discussing the question of the intended applicability of Rule 6.2 to public defenders and court panel lawyers. Your views on this issue, as well as any other rule on the Commission's meeting agenda, are welcomed and appreciated. You may provide input directly to the members of the Commission and other interested person subscribers by sending an e-mail message to the Commission's listserv: rrc2@calbar.org

Also, if you are not already a subscriber, please consider joining the Commission's listserv by sending an email request to lauren.mccurdy@calbar.ca.gov

Thank you for your interest in the work of the State Bar's Rules Revision Commission.

Attached:

RRC - 03-26 & 03-27-10 Meeting Agenda.pdf

RRC - [6-2] - 03-26 & 03-27-10 Agenda Materials - IIIJ.pdf

March 23, 2010 Difuntorum E-mail to Diane Bellas:

My message below to Harold Friedman was returned as undeliverable. In contacting the office, I learned that he has retired. Office staff indicated that you might be interested in my message. Accordingly, I am providing it to you but there is, of course, no obligation to respond or reply. However, if you elect to not respond, please consider forwarding this message to another Public Defender who may be interested. Thank you.

March 23, 2010 Difuntorum E-mail to Gary Windom, cc Michael Judge, K Wong, Chair & Staff:

Audrey Hollins referred your voice mail message to me for a response.

I raised with the Commission officers the issue of postponing consideration of Rule 6.2 and the Chair has asked me to inform you that he cannot postpone consideration due to the rigorous work-plan set by the State Bar for completion of the Commission's rule revision project. This work-plan requires the Commission to report to the Board of Governors at the next Board meeting with all of the Commission's revisions to the twelve rules that were distributed for public comment with a deadline of March 12, 2002. Given the pressure of this schedule, the Chair asks that you and the other stakeholders do your best to submit whatever input you can for the Commission's meetings on Friday and Saturday. But, please note that this will not be the last opportunity to provide input because it is expected that the Commission's proposal for Rule 6.2 will be incorporated into a 30-day public comment period beginning in mid-May. Thanks again for your interest in the work of the Rules Revision Commission.

March 23, 2010 Sondheim E-mail to RRC:

In comment 2, is a repugnant cause a "conflict of interest"?