

McCurdy, Lauren

From: Ruvolo, Ignazio [Ignazio.Ruvolo@jud.ca.gov]
Sent: Thursday, March 18, 2010 10:52 AM
To: McCurdy, Lauren
Subject: RE: Additional Batch 6 Public Comments Received - CYLA Comment "Unofficial"

Here is the text for the response to the OCTC comment (the only one added since the original batch.):

"RCC respectfully disagrees with OCTC that comments [1] and [2] are 'unnecessary.' The comments discuss the purposes served by the rule, and the important public interests advanced. Also, comment [2] reminds lawyers that their political activities may become restricted once they apply for appointment or election to judicial office.

"RCC believes that Comment [3] is consistent with Bus and Prof code 6068(b) which requires lawyers to 'maintain the respect due to the courts . . .'"

As to 3.9, I was out yesterday, and didn't get to the new comments. I suggest in my absence that Stan or Linda follow up. I can't do them today anyway.

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

From: McCurdy, Lauren [mailto:Lauren.McCurdy@calbar.ca.gov]
Sent: Wednesday, March 17, 2010 12:00 PM
To: Ruvolo, Ignazio
Cc: Difuntorum, Randall
Subject: RE: Additional Batch 6 Public Comments Received - CYLA Comment "Unofficial"

Hi Nace, Here's the text of Rule 8.2. As for Rule 3.9 you need to get in touch with your co-drafters to seek help in your absence. Lauren

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

From: Ruvolo, Ignazio [mailto:Ignazio.Ruvolo@jud.ca.gov]
Sent: Wednesday, March 17, 2010 10:11 AM
To: McCurdy, Lauren
Subject: RE: Additional Batch 6 Public Comments Received - CYLA Comment "Unofficial"

Please send me asap the text of rule 8.2(a) so I can draft a response to OCTC comment. I may not have time to do 3.9. I will not be attending the March or April meetings as I will be out of the country.

From: McCurdy, Lauren [Lauren.McCurdy@calbar.ca.gov]
Sent: Tuesday, March 16, 2010 2:25 PM
To: McCurdy, Lauren; CommissionerJ2@gmail.com; Difuntorum, Randall; hbsondheim@verizon.net; Ruvolo, Ignazio; jsapiro@sapirolaw.com; kemohr@charter.net; kevin_e_mohr@csi.com; kevinm@wsulaw.edu; kmelchior@nossaman.com; Lee, Mimi; Foy, Linda; Marlaud, Angela; martinez@lbbslaw.com; mtuft@cwclaw.com; pecklaw@prodigy.net; pwvapnek@townsend.com; rlkehr@kscllp.com; slamport@coxcastle.com; snyderlaw@charter.net
Subject: RE: Additional Batch 6 Public Comments Received - CYLA Comment "Unofficial"

Commission Members:

Please note that we have been informed that the CYLA comment circulated to you yesterday with the message below is considered an "unofficial"

comment submission. We anticipate submission of an official comment soon. Regard this comment as "unofficial" unless and until an official comment is submitted. The "unofficial " version should not be shared with anyone outside of the Commission.

Thanks.

Lauren

From: McCurdy, Lauren

Sent: Monday, March 15, 2010 4:46 PM

To: CommissionerJ2@gmail.com; Difuntorum, Randall; hbsondheim@verizon.net; ignazio.ruvolo@jud.ca.gov; jsapiro@sapirolaw.com; kemohr@charter.net; kevin_e_mohr@csi.com; kevinm@wsulaw.edu; kmelchior@nossaman.com; Lee, Mimi; linda.foy@jud.ca.gov; Marlaud, Angela; martinez@lbbslaw.com; McCurdy, Lauren; mtuft@cwclaw.com; pecklaw@prodigy.net; pwapnek@townsend.com; rlkehr@kscllp.com; slamport@coxcastle.com; snyderlaw@charter.net
Subject: Additional Batch 6 Public Comments Received

Commission Members:

I've attached a zip file with copies of the additional public comments received since the earlier assignment messages were sent out last week.
The file name for each comment letter include the rule number.

We are in the process of updating the public comment compilations and public commenter charts to add these comments and I will be sending those documents out to each drafting team as we update them. But, in the meantime, if you are working on your assignment between now and then, please refer to the attached letters, and go ahead and add the entries into the chart provided in my earlier message.

Lauren

**Rule 8.2 Judicial and Legal Officials
[Sorted by Commenter]**

TOTAL = __ Agree = __
Disagree = __
Modify = __
NI = __

No.	Commentator	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
1	Sandra K. McIntyre	A			Agree, with no comment.	No response required.
2	Esther	A			Although commenter did not specifically reference this rule, she expressed her support for all the rules contained in Batch 6.	No response required.
3	San Diego County Bar Association Legal Ethics Committee	A			We approve the new rule in its entirety.	No response required.
4	Santa Clara County Bar Association	A			Agree, with no comment.	No response required.
5	Orange County Bar Association	A			We support the adoption of proposed Rule 8.2 and agree with the recommendations of the Commission.	No response required.
6	Office of the Chief Trial Counsel	M			OCTC agrees with requiring the 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. Comment [3] is confusing. It is misleading because nothing in B&P Code section	RCC respectfully disagrees with OCTC that comments [1] and [2] are 'unnecessary.' The comments discuss the purposes served by the rule, and the important public interests advanced. Also, comment [2] reminds lawyers that their political activities may become restricted once they apply for appointment or election to judicial office. "RCC believes that Comment [3] is consistent with Bus and Prof code 6068(b) which requires lawyers

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

**Rule 8.2 Judicial and Legal Officials
[Sorted by Commenter]**

TOTAL = __ Agree = __
Disagree = __
Modify = __
NI = __

No.	Commentator	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
					<p>6068(b) requires lawyers to defend judges, just not disrespect them. If the intent of this Comment is to remind lawyers of the duty not to unjustly criticize judges, OCTC supports that but the Comment should just state that. If the intent of the Comment is to encourage lawyers to defend judges and the court, then the reference to B&P Code section 6068(b) should be stricken.</p> <p>Comment [4] states that nothing in this Rule shall be deemed to limit the applicability of any other rule or law. It should not be a Comment, but part of the Rule.</p>	to 'maintain the respect due to the courts . . .'"



**SAN DIEGO COUNTY
BAR ASSOCIATION**

February 12, 2010

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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:

~~Model Rules counterpart, not limited to non-profit programs, but defined to include programs “sponsored by a court, government agency, bar association, law school or non-profit organization.”~~

~~The author proposes approval of the new rule in its entirety, in that (1) this rule has only recently been adopted and, its proposal in this context follows conclusions based on that deliberate process, (2) it has since been approved (following pointed, deliberate modification) by the California Supreme Court (3) it is consistent with a national standard that developed without California’s participation, but which promotes worthy public and professional interests worthy of California’s joinder.~~

~~**CONCLUSION:** We approve the new rule in its entirety.~~

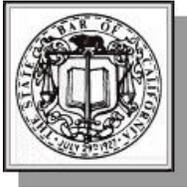
LEC Rule Volunteer Name(s): David McGowan

Old Rule No./Title: 1-700 (Member as candidate for judicial office)

Proposed New Rule No./ Title: 8.2 “Judicial and Legal Officials”

(5) The proposed rule requires candidates for judicial office to comply with the canons of judicial ethics and requires that lawyers not lie about judges. The proposed rule tracks the ABA rule except that it adds provisions for appointed rather than elected judges.

CONCLUSION: We approve the new rule in its entirety.



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.

OFFICE USE ONLY.

* Date

02/19/2010 

Period

PC

File :

F-2010-381e Sandra McIntyre [8.2]

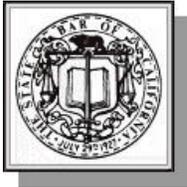
Commented On:

Specify:

Submitted via:

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* Required



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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* Date

03/01/2010 

Period

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File :

F-2010-382o SCCBA [8.2]

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OC TRIAL LAWYERS ASSOC.
OC WOMEN LAWYERS ASSOC.

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 8.2 – Judicial and Legal Officials**

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:

Proposed Rule 8.2, which imposes duties on lawyers with respect to judicial and legal officials, and when a lawyer is a candidate for judicial office, closely tracks Model Rule 8.2, but also carries forward provisions in current Rule 1-700. Paragraph (a) incorporates the concept of respect for the judiciary more generally stated in Business and Professions Code section 6068(b), but also adds an obligation not to make false statements concerning candidates for judicial office. Paragraphs (b) through (d) provide means by which the State Bar can discipline lawyers who violate ethical duties imposed by Canons 5 and 5B of the California Code of Judicial Ethics when seeking appointment or election to judicial office. The comments to the proposed Rule are virtually identical to those of Model Rule 8.2.

The OCBA supports the adoption of proposed Rule 8.2 and agrees with the recommendations of the Commission.



THE STATE BAR OF
CALIFORNIA

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1639

OFFICE OF THE CHIEF TRIAL COUNSEL
ENFORCEMENT

Russell G. Weiner, Interim Chief Trial Counsel

TELEPHONE: (415) 538-2000

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<http://www.calbar.ca.gov>

DIRECT DIAL: (415) 538-2063

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.~~

2. Comment 3 is confusing. Comment 3 states: To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized. See Business and Professions Code section 6068(b).” This is misleading because nothing in Business and Professions Code section 6068(b) requires lawyers to defend judges, just not disrespect them. If the intent of this Comment is to remind lawyers of the duty not to unjustly criticize judges, OCTC supports that but the comment should just state that. If the intent of the Comment is to encourage lawyers to defend the judges and the court, then the reference to Business and Professions Code section 6068(b) should be stricken.
3. Comment 4 states that nothing in this rule shall be deemed to limit the applicability of any other rule or law. It should not be a comment, but part of the rule.

Again, we thank you for the opportunity to present our views. If you have any questions, please feel free to contact us.

Very truly yours,



Russell G. Weiner
Interim Chief Trial Counsel



**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 8.2

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 8.2. COPRAC generally supports the adoption of proposed Rule 8.2 subject to the following comment.

Canon 5B employs a definition of "candidate" that only applies to persons seeking judicial office by election and not to persons seeking judicial office by appointment. Therefore, the reference in 8.2(c) to Canon 5B is ambiguous. We propose replacing the first sentence of 8.2(c) with the actual language from Canon 5B so that it reads as follows: "A lawyer who seeks appointment to judicial office shall not make statements to the appointing authority that commit the lawyer with respect to cases, controversies, or issues that could come before the courts, or knowingly, or with reckless disregard for the truth, misrepresent the identity, qualifications, present position, or any other fact concerning the lawyer."

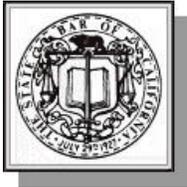
Thank you for your consideration of our comments.

Very truly yours,

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

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 8.2 [1-700] “Judicial and Legal Officials”

(Draft #2, 12/15/09)

Summary: Proposed Rule which imposes duties on lawyers with respect to judicial and legal officials, and when a lawyer is a candidate for judicial office, closely tracks Model Rule 8.2, but also carries forward provisions in current California Rule 1-700 (“Member as Candidate for Judicial Office”). See Introduction.

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 checked="" 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

RPC 1-700.

Statute

Bus. & Prof. Code § 6068(b).

Case law

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

- Other Primary Factor(s)

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 8.2* Judicial and Legal Officials

December 2009

(Draft rule to be considered for public comment.)

INTRODUCTION:

Proposed Rule 8.2, which imposes duties on lawyers with respect to judicial and legal officials, and when a lawyer is a candidate for judicial office, closely tracks Model Rule 8.2, but also carries forward provisions in current California Rule 1-700 (“Member as Candidate for Judicial Office”). Paragraph (a) incorporates the concept of respect for the judiciary more generally stated in Bus. & Prof. Code § 6068(b), but also adds an obligation not to make false statements concerning candidates for judicial office. Paragraphs (b) through (d) provide a means by which the State Bar can discipline lawyers who violate ethical duties imposed by Canons 5 and 5B of the California Code of Judicial Ethics when seeking appointment or election to judicial office.

The Comment to the Rule largely tracks the comment to Model Rule 8.2.

Previously, the Board of Governors approved circulation of proposed Rule 2.4.2, which is based on current rule 1-700, for public comment. Paragraph (b) and (d) are carried forward from that Rule, which in turn carried forward the provisions of current rule 1-700. The concept of paragraph (c), which concerns lawyers seeking appointment to judicial office, is also carried forward from proposed Rule 2.4.2, but has been separated out as a separate paragraph for clarity.

* Proposed Rule 8.2, Draft 2 (12/15/2009).

<p align="center"><u>ABA Model Rule</u> Rule 8.2 Judicial and Legal Officials</p>	<p align="center"><u>Commission's Proposed Rule*</u> Rule 8.2 Judicial and Legal Officials</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.</p>	<p>(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.</p>	<p>Paragraph (a) is identical to Model Rule 8.2(a).</p>
<p>(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.</p>	<p>(b) A lawyer who is a candidate for judicial office <u>in California</u> shall comply with the applicable provisions <u>Canon 5</u> of the <u>California</u> Code of Judicial Conduct <u>Ethics</u>.</p>	<p>Paragraph (b) substantially follows Model Rule 8.2(b). It has been modified only to reference the applicable California Code of Judicial Ethics when a lawyer seeks office in California.</p>
	<p>(c) <u>A lawyer who seeks appointment to judicial office shall comply with Canon 5B of the California Code of Judicial Ethics. A lawyer commences to become an applicant seeking judicial office by appointment at the time of first submission of an application or personal data questionnaire to the appointing authority. A lawyer's duty to comply with this Rule shall end when the lawyer advises the appointing authority of the withdrawal of the lawyer's application.</u></p>	<p>There is no counterpart in the Model Rules to paragraph (c). It is included to provide a disciplinary path for lawyers who violate their duty as applicants for appointment to judicial office by requiring that those lawyers comply with Canon 5B, as currently provided in the California Code of Judicial Ethics. This paragraph also sets forth when a lawyer is deemed to have commenced or terminated his or her status as an applicant for appointment.</p>

* Proposed Rule 8.2, Draft 2 (12/15/09). Redline/strikeout showing changes to the ABA Model Rule

<p align="center"><u>ABA Model Rule</u> Rule 8.2 Judicial and Legal Officials</p>	<p align="center"><u>Commission's Proposed Rule*</u> Rule 8.2 Judicial and Legal Officials</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
	<p>(d) <u>For purposes of this Rule, "candidate for judicial office" means a lawyer seeking judicial office by election. The determination of when a lawyer is a candidate for judicial office by election is defined in the terminology section of the California Code of Judicial Ethics. A lawyer's duty to comply with this Rule shall end when the lawyer announces withdrawal of the lawyer's candidacy or when the results of the election are final, whichever occurs first.</u></p>	<p>There is no counterpart in the Model Rules to paragraph (d). It references the terminology used in the Code of Judicial Ethics, and expands on the Code section's explanation as to when a candidacy for election or retention to judicial office ends.</p>

<p align="center"><u>ABA Model Rule</u> Rule 8.2 Judicial and Legal Officials Comment</p>	<p align="center"><u>Commission's Proposed Rule</u> Rule 8.2 Judicial and Legal Officials Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.</p>	<p>[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.</p>	<p>Comment [1] is identical to Model Rule 8.2, cmt. [1].</p>
<p>[2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.</p>	<p>[2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.</p>	<p>Comment [2] is identical to Model Rule 8.2, cmt. [2].</p>
<p>[3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.</p>	<p>[3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized. See Business and Professions Code section 6068(b).</p>	<p>Comment [3] is identical to Model Rule 8.2, cmt. [3], except for the inclusion of a cross-reference to Bus. & Prof. Code § 6068(b), which provides it is the duty of a lawyer: "To maintain the respect due to the courts of justice and judicial officers".</p>
	<p>[4] Nothing in this Rule shall be deemed to limit the applicability of any other rule or law.</p>	<p>Comment [4] has no counterpart in the Model Rule. It carries forward Discussion paragraph 1 of current rule 1-700.</p>

Rule 8.2: Judicial and Legal Officials
(Commission's Proposed Rule - Clean Version)

- (a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.
- (b) A lawyer who is a candidate for judicial office in California shall comply with Canon 5 of the California Code of Judicial Ethics.
- (c) A lawyer who seeks appointment to judicial office shall comply with Canon 5B of the California Code of Judicial Ethics. A lawyer commences to become an applicant seeking judicial office by appointment at the time of first submission of an application or personal data questionnaire to the appointing authority. A lawyer's duty to comply with this Rule shall end when the lawyer advises the appointing authority of the withdrawal of the lawyer's application.
- (d) For purposes of this Rule, "candidate for judicial office" means a lawyer seeking judicial office by election. The determination of when a lawyer is a candidate for judicial office by election is defined in the terminology section of the California Code of Judicial Ethics. A lawyer's duty to comply with this Rule shall end when the lawyer announces withdrawal of the lawyer's candidacy or when the results of the election are final, whichever occurs first.

appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

- [2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.
- [3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized. See Business and Professions Code section 6068(b).
- [4] Nothing in this Rule shall be deemed to limit the applicability of any other rule or law.

COMMENT

- [1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or

Rule 8.2: Judicial and Legal Officials

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: The California Rules of Professional Conduct have no comparable provision, but California Business & Professions Code §6068(b) provides that it is the duty of an attorney to “maintain the respect due to the courts of justice and judicial officers.”

District of Columbia omits ABA Model Rule 8.2.

Florida: Rule 8.2(a) also applies to statements about a mediator, arbitrator, juror or member of the venire.

Georgia omits ABA Model Rule 8.2(a) but adopts Rule 8.2(b) verbatim.

Maryland: Rule 8.2(b)(2) provides that a lawyer who is a candidate for judicial office “with respect to a case, controversy or issue that is likely to come before the court, shall not make a commitment, pledge, or promise that is inconsistent with the impartial performance of the adjudicative duties of the office.”

New Jersey: Rule 8.2(b) provides that a lawyer who “has been confirmed for judicial office” shall comply with the applicable provisions of the Code of Judicial Conduct. The rule does not apply to lawyers who are only candidates for judicial office.

New York: DR 8-102 provides as follows:

A. A lawyer shall not knowingly make false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office.

B. A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer.

DR 8-103(A) provides that a lawyer who is a candidate for judicial office shall comply with §100.5 of the Chief Administrator’s Rules Governing Judicial Conduct and Canon 5 of the New York Code of Judicial Conduct.

Ohio: Rule 8.2(a) omits the ABA reference to an “adjudicatory officer or public legal officer.”

Pennsylvania: Rule 8.2 replaces all of ABA Model Rule 8.2(a) with language taken verbatim from DR 8-102(A) and (B) and 8-103(A) of the ABA Model Code of Professional Responsibility (see New York entry above).

Virginia: Rule 8.2 provides, in its entirety as follows: “A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or other judicial officer.”

**RRC – Rules 2.4 [1-720]; 2.4.1 [1-710]; 8.2 & 2.4.2 [1-700]
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**RRC – Rules 2.4 [1-720]; 2.4.1 [1-710]; 8.2 & 2.4.2 [1-700]
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**RRC – Rules 2.4 [1-720]; 2.4.1 [1-710]; 8.2 & 2.4.2 [1-700]
E-mails, etc. – Revised (3/24/2010)**

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

Rule 8.2(a) Drafting Team (**RUVOLO**, Sapiro, Vapnek):

This message provides the assignment background materials for Rule 8.2(a) 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 - 1-700 [8-2] - Dashboard - ADOPT - DFT3 (03-10-10).doc
RRC - 1-700 [8-2] - Compare - Introduction - DFT4 (12-15-09)KEM-ML.doc
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RRC - 1-700 [8-2] - Public Comment Complete - REV (03-10-10).pdf
RRC - 1-700 [8-2] - Public Comment Chart - By Commenter - DFT1 (03-10-10)AT.doc
RRC - 1-700 [8-2] State Variation.pdf

**RRC – Rules 2.4 [1-720]; 2.4.1 [1-710]; 8.2 & 2.4.2 [1-700]
E-mails, etc. – Revised (3/24/2010)**

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. E-mail compilation excerpt, revised 1/5/10.

Please let me know if you have any questions.

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

I have reviewed this rule materials and conclude that nothing further need be done. All comments were positive.

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

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 - 1-700 [8-2] - Public Comment Complete - REV (03-15-10).pdf

RRC - 1-700 [8-2] - Public Comment Chart - By Commenter - DFT1.1 (03-15-10)AT.doc

March 18, 2010 KEM E-mail to McCurdy, Difuntorum & Lee:

I never saw anything on this so as I was cleaning out my inbox and updating my files, I went ahead and responded to COPRAC and OCTC. If it has already been done, then simply discard the attached. At any rate, I attach the following, both in Word:

1. Public Comment Chart, Draft 2 (3/18/10).
2. Rule, Draft 3 (3/18/10), redline, compared to Draft 2 (12/15/09) [Public comment version].

Please let me know if you have any questions.

March 20, 2010 Kehr E-mail to RRC:

Here are my comments on these materials:

1. I agree with the proposed response to the OCTC criticism of Comment [1], but I think Comment [2] should be reconsidered. It is inaccurate (“should” suggests the Rule is aspirational) and vague (does “applicable limitation” refer to something other than Canons 5 and 5B?). If Comment [2] is intended only to say that a lawyer who is a candidate for or who seeks appointment to judicial office shall comply with those two Canons, then the Comment adds nothing to the Rule.
2. I ask that we discuss the OCTC criticism of Comment [3]. That Comment doesn't explain the Rule b/c there is nothing in the Rule about defending judges and courts. I suggest that it be replaced with the following: “Lawyers also are obligated to maintain the respect due to the courts of justice and judicial officers. See Business and Professions Code section 6068(b).”

March 22, 2010 McCurdy E-mail to RRC:

This message provides the following materials for Rule 8.2 (III.L.):

1. Public Comment Chart, Draft 2 (3/18/10). This replaces the draft found at pages 571 & 572 of your materials, and adds a synopsis and response to COPRAC's comment.
2. Rule, Draft 3 (3/18/10), redline, compared to Draft 2 (12/15/09) [Public comment version]. This revised rule draft is new and reflects an amendment in response to the comment received from COPRAC.

Attached:

RRC - 1-700 [8-2] - Public Comment Chart - By Commenter - DFT2 (03-18-10).doc
RRC - 1-700 [8-2][2-4-2] - Rule - DFT3 (03-18-10) - Cf. to DFT2.doc

March 22, 2010 McCurdy E-mail to RRC:

This message provides a PDF copy of the earlier attachments scaled to letter size paper.

Attached:

RRC - 1-700 [8-2] - Public Comment Chart - By Commenter - DFT2 (03-18-10).pdf
RRC - 1-700 [8-2][2-4-2] - Rule - DFT3 (03-18-10) - Cf. to DFT2.pdf

March 23, 2010 Sondheim E-mail to RRC:

We will discuss Bob's 2 comments and then vote on the rule.

March 23, 2010 Sapiro E-mail to RRC:

I agree with Bob Kehr's recommendations.