RE: Rule 1-400
2/20/04 Commission Meeting
Open Session Item III.A.

Difuntorum, Randall

From: Kevin Mohr [kemohr@comcast.net]
Sent: Thursday, February 05, 2004 9:17 AM
To: Edward P. George; JoElla L. Julien; Ignazio J. Ruvolo
Cc: Mohr, Kevin; Mohr, Kevin; Difuntorum, Randall
Subject: CalBar - RRC - 1-400 - Agenda Item III.A.

Greetings all:

Today is the deadline for submitting any further materials on 1-400.

1. I didn't do anything further on the discussion draft of 1-400 that was prepared for the 12/12/03 meeting. There was a good discussion, and the Commission voted that the rule should

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e. We don't need standards as standards; they can be merged into the new rules.

*George,
Julien,
Ruvolo

A. Consideration of Rule 1-400. Advertising and Solicitation
[anticipated 1-hour discussion]
(Materials enclosed.) ***[pages 1 - 18]***

1. Ed: Good discussion document. Tried to keep up with the meeting discussion and render three different parts of the rule.

   a. First question to the RRC is whether you have problems with a definition section at the beginning.

2. **Question #1: Should there be one rule or several rules?**

   a. Ed: How do you feel about a definition section at the beginning of the rule?

      (1) Harry: Some people want to put the definitions within the three different units. This is the first critical question.

      (2) Also, Karen (KEM: per her 12/10/03 e-mail) has a concern with whether this rule lends itself in dividing this

e. Mary: Solicitation is used with a number of different meanings.

3. **<u>Question #2</u>: Should definitions have a separate section?**

a. Nace: Better in separate rules rather than a standalone section.

b. Joella: Ditto

c. Jerry: Wants to see how rules play out; if definitions are succinct, then it doesn't matter.

(2) Have to have symmetry between our regulations and those from other states.

(3) Need to move toward brevity. Not sure we need definitions at all. Don't need them in the MR's, so do we really need them now?

(a) These definitions were put together when no one knew what was allowed, etc. (1978).

(b) We're way beyond that by now. Definitions are hard, and they are a moving target.

f. Almost want to say replace the whole thing with 1-400(D).

k. Joella: I usually go from the whole to the parts.

a. First, ask what is this rule about, then look at the details.

b. This rule is too long and too complicated. Not sure what it will look like when this is all finished.

c. Better to put it in one rule and the different aspects of it under subheadings.

d. Should be one rule and not three.

l. Nace: Pass.

m. Randy: [Out of room]

n. Harry: No problem with dividing it up into different rules, not because compelled by the ABA, but for the practitioners it will be easier if we have enough X-references.

(1) KEM Note to Self: See note above re ALR, i.e., one approach to doing the X-references.

o. VOTE: Divide into separate rules.

YES: 8 NO: 1 ABSTAIN:

3. **Question #2: Should definitions have a separate section?**

a. Nace: Better in separate rules rather than a standalone section.

b. Joella: Ditto

c. Jerry: Wants to see how rules play out; if definitions are succinct, then it doesn't matter.

d.. Linda: Likes a standalone definition rule.

e. Mark: Doesn't want to decide the definition issue.

a. Mark's 12/10/03 e-mail notes that there will be a number of issues re definitions

designation of the lawyer or the lawyer's law firm.

(b) Stationery, letterhead, business card, sign, brochure, or other written document.

(c) Webpage, website, email, or other electronic posting or transmission describing the lawyer or the lawyer's law firm.

(d) Any advertisement (regardless of the medium by which it is disseminated) for or on behalf of the lawyer or the lawyer's law firm.

n. KEM: Compromise. Put the definitions in each Rule at this stage of the rule process (tentative), with the idea being that eventually they will end up in a separate terminology section for the "communication" rules or in a separate terminology section for all the rules.

considering. What do you think?

I am not sending this to the entire commission because I would like your reactions first. If you think the suggestion has potential merit, we could tinker with wording before circulating it.

Happy holidays to both of you,

Jerry

Proposed new Rule 2 - A lawyer shall not initiate any communication with a potential client

McCurdy, Lauren

From: CommissionerJ2@aol.com

Sent: Thursday, February 05, 2004 1:43 PM

To: kemohr@comcast.net

Cc: McCurdy, Lauren; hbsondheim@earthlink.net; kabetzner@yahoo.com; lfoy@hrice.com; epgeorge@ix.netcom.com; slamport@ccnlaw.com; martinerz@ldbb.com; kmelchior@nossman.com; pecklaw@prodigy.net; justice.ruvolo@jud.ca.gov; jsapiro@sapirolaw.com; mtuft@cwclaw.com; pwvapnek@townsend.com; avoogd@technip.com; Difuntorum, Randall

Subject: Re: CalBar - RRC - 1-400 - Agenda Item III.A.

Happy New Year!

In an effort to beat the 2 p.m. deadline (smile) since I have not been able to talk to my co-drafters, I offer the following on 1-400.

I still believe that the rule is too long and convoluted; however, I am as concerned about format as I am about content. I think 1-400 should be one rule for the reasons Karen articulates (help attorneys to avoid searching for the one that applies), but I think that the topic is *COMMUNICATION*. A solicitation is a communication; advertising is communication so I do not see them as all on equal footing such that they should be subsets of each other.

[redacted]

kevin_e_mohr@compuserve.com
kevinm@wsulaw.edu

NOTE: *These materials include the December 12, 2003 meeting materials referred to in this message.*

McCurdy, Lauren

(d) Any advertisement (regardless of the medium by which it is disseminated) for or on behalf of the lawyer or the lawyer's law firm.

(e) Any unsolicited correspondence from the lawyer or the lawyer's law firm directed to any person or entity.

11/28/03 Question: Should the Discussion make specific reference to outsourcing?

ELLEN R. PECK, Lawyer

PRACTICE LIMITED TO LAWYERS' PROFESSIONAL
RESPONSIBILITIES AND ETHICS

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Model Rule Format
Draft 4
November 28, 2003

(1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;

(2) Direct communication with the client or third parties regarding matters such as

and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

DRAFTERS' NOTE: *Paragraph (d) below is California RPC 1.311*

(1) "Employ" means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;

(2) "Involuntarily inactive member" means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code sections 6007, 6203(c)(d)(1), or California Rule of Court 958(d); and

serve upon the State Bar written notice of the employment, including a full description of such person's current bar status. The written notice shall also list the activities prohibited in paragraph

referring to "internal policies," which implies *written* internal policies. Sentence could be deleted or rewritten as follows:

[2] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable

death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other

[3] **Concerning the meaning of "the practice of law" or "practice law"[9] see rule 5.5, Comment.**

~~***Discussion:***~~

~~For discussion of the activities that constitute the practice of law, see *Farnham v. State Bar* (1976) 17 Cal.3d 605 [131 Cal.Rptr. 611]; *Bluestein v. State Bar* (1974) 13 Cal.3d 162 [118 Cal.Rptr. 175]; *Baron v. City of Los Angeles* (1970) 2 Cal.3d 535 [86 Cal.Rptr. 673]; *Crawford v. State Bar*~~

pays the lawyer to render legal services for another, see rule [3-310(F)]."

Note that the comment [2] to this already contains a cross-reference to MR 1.8(f), the Model Rules' equivalent of 3-310(F).

COMMENT

[1] The provisions of this Rule express traditional limitations on sharing fees. These limitations

would constitute aiding and abetting the unlicensed person to practice law whether or not the unlicensed person in fact does advise client in California regarding foreign law and notwithstanding contention that unlicensed person would be doing nothing but assisting clients in obtaining counsel in a foreign country and that such [illegible]

[Proposed] Rule 5.5 UNAUTHORIZED PRACTICE OF LAW [Incorporating the substance of "CRPC 1-300. Unauthorized Practice of Law.]

PRE-AUGUST 2002 MODEL RULE:

A member ~~lawyer~~ shall not:

(a) ~~*A member shall not aid any person or entity in the unauthorized practice of law.*~~ practice law in a jurisdiction where doing so [where to do so] violates the regulation of the legal profession in that jurisidiction; or

(b) ~~*A member shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.*~~ assist a person who is not a member, **~~of the bar~~ or assist an entity** in the performance of activity that constitutes the unauthorized practice of law [aid any person or entity in the unauthorized practice of law][15]

POST-AUGUST 2002 MODEL RULE (Adopted per ABA's MJP Report):[16]

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer [illegible]

[Westlaw] Where city ordinance requiring registration of local lobbyists defined "municipal legislation" so broadly that ordinance applied to virtually all activities of attorneys representing clients before any local administrative agencies, including activities unrelated to lobbying as traditionally defined, ordinance was invalid insofar as conflicting with provisions of State Bar Act regulating "practice of law," i. e., performing services in representative capacity in manner which would constitute unauthorized practice of law if performed by layman [illegible]

authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

[2] In California, the phrase "practice of law" is defined by legislation and published decisions. California published appellate decisions and other authorities have

Bus & Prof §§ 6126(a); *Bluestein v. State Bar* (1975) 13 Cal.3d 162, 175, 118 Cal.Rptr. 175, 183, fn. 13] [OUT-OF-STATE LAWYER]

determined that the following conduct or activities may constitute the "practice of law"

Bluestein v. State Bar – out-of-state lawyer

[Westlaw] Actions which include

sufficient activities in state, or created continuing relationship with California client that included legal duties and obligations.

<u>People v. Merchants' Protective Corp.</u> – Corporation practicing law/offering legal services

[Westlaw] Where a corporation charged a yearly membership fee for dispensing legal advice and services of the sort usually furnished by attorneys to their clients, and part of this membership fee was paid to attorneys for rendering services as agents and representatives of the corporation, the corporation was engaged in the practice of law, in view of Const. art. 6, § 22, and Code Civ.Proc. § 171, § 281 (repealed. See Business and Professions Code, § 6127), and § 1209, subd. 13.

[Citing *Eley v. Miller*, 7 Ind. App. 529, 34 N. E. 836] "'As the term is generally understood, the practice of the law is the doing or performing services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity to the adopted rules of procedure. But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured although such matter may or may not be depending in a court.'"

<u>Baron v. City of Los Angeles</u> – In-state non-lawyers "practicing law"/lobbying

[Westlaw] Where city ordinance requiring registration of local lobbyists defined "municipal legislation" so broadly that ordinance applied to virtually all activities of attorneys representing clients before any local administrative agencies, including activities unrelated to lobbying as traditionally defined, ordinance was invalid insofar as conflicting with provisions of State Bar Act regulating "practice of law," i. e., performing services in representative capacity in manner which would constitute unauthorized practice of law if performed by layman.

State Bar Act preempts field of regulation of attorneys only insofar as they are "practicing law" under the Act, i. e., performing services in representative capacity in manner which would constitute unauthorized practice of law if performed by layman.

(c) <u>Giving legal advice and counsel to another which involves the application of law or legal principles to the specific facts and circumstances, rights, obligations,</u>

liabilities or remedies of that person or entity or of another, whether or not a matter is pending in any court. [See *People v. Merchants' Protective Corp.* (1922) 189 Cal. 531, 535, 209 P 363, 365]

People v. Merchants' Protective Corp. – Corporation practicing law/offering legal services

Note that case involved a corporation, other than a law corporation, providing legal services to third parties. [Citing *Eley v. Miller*, 7 Ind. App. 529, 34 N. E. 836.]

[3] With respect to assisting a person who is not a member, or an entity, in the unauthorized practice of law as proscribed in paragraph (b), California published appellate decisions and other authorities have determined that the following kinds of conduct or activities by non-lawyers or **[out-of-state]** lawyers not licensed to practice law in California constitute the unauthorized practice of law. The following cases and other authorities are provided for information and guidance only. They are not all-inclusive. The nature and kinds of activities subject to prohibition under this rule are subject to change by judicial or legislative action. Whether or not an activity constitutes the unauthorized practice of law may vary depending upon the context in which the activity occurs, or who performs the activity, e.g. whether a lawyer or non-lawyer is the actor; whether the lawyer is disbarred, suspended, resigned with disciplinary charges pending, or involuntarily inactive; or whether the lawyer is voluntarily inactive; or whether the lawyer is an out-of-state lawyer.

(a) Out-of-state lawyer not licensed to practice in California providing legal advice to California residents in California without a member's supervision. [See Ca Bus & Prof §§ 6126(a); *Bluestein v. State Bar* (1975) 13 Cal.3d 162, 175, 118 Cal.Rptr. 175, 183, fn. 13] **[OUT-OF-STATE LAWYER]**

Bluestein v. State Bar – out-of-state lawyer

[Westlaw] Actions which include introducing unlicensed person to clients at law office, informing clients that the unlicensed person is an attorney in another state and has practiced law in Europe, and subsequently allowing the unlicensed person to consult with clients without any supervision by a licensed attorney would constitute aiding and abetting the unlicensed person to practice law whether or not the unlicensed person in fact does advise client in California regarding foreign law and notwithstanding contention that unlicensed person would be doing nothing but assisting clients in obtaining counsel in a foreign country and that such referral of clients to foreign counsel is constitutionally protected speech.

(h) Out-of-state lawyer not licensed to practice law in California appearing [illegible]

Gordon & Frank, P.C. v. Sup. Ct. (ESO Business Services, Inc.) [illegible]

[Citing *Eley v. Miller*, 7 Ind. App. 529, 34 N. E. 836] "'As the term is generally understood, the practice of the law is the doing or performing services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity to the adopted rules of procedure. But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured although such matter may or may not be depending in a court.'"

(d) Corporation appearing in a court of law, except in small claims courts, where the person appearing on behalf of the corporation is not licensed to practice law in California. [*Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284, 111 Cal.Rptr.2d 439, 444, fn. 5; *Merco Const. Engineers, Inc. v. Mun.Ct.* (1978) 21 Cal.3d 724, 733, 147 Cal.Rptr. 631, 636; see also *In re Las Colinas Develop. Corp.* (1st Cir. 1978) 585 F.2d 7, 13]
[CORPORATION]

Gamet v. Blanchard – California corporation representing itself

sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured although such matter may or may not be depending in a court.'"

(d) Corporation appearing in a court of law, except in small claims courts, where the person appearing on behalf of the corporation is not licensed to practice law in California. [*Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284, 111 Cal.Rptr.2d 439, 444, fn. 5; *Merco Const. Engineers, Inc. v. Mun.Ct.* (1978) 21 Cal.3d 724, 733, 147 Cal.Rptr. 631, 636; see also *In re Las Colinas Develop. Corp.* (1st Cir. 1978) 585 F.2d 7, 13]

"Practice of law" is doing and performing services in court of justice, in any matter depending therein through its various stages.

[**Westlaw: Separation of Powers Issue!**] Code of Civil Procedure section permitting corporations to appear as parties in proceedings in justice courts through directors, officers, or employees, whether or not such natural persons are attorneys constitutes legislative attempt to permit persons judiciary has deemed not qualified for practice of law to appear in limited [illegible]

[Westlaw] Nothing in Uniform Statutory Power of Attorney Act changes rule that attorney in fact may not act as attorney at law; authority of attorneys in fact under Act is subject to conditions of fact and law that exist outside of Act, and one such law is State Bar Act's prohibition against practice of law by nonlawyers. West's Ann.Cal.Civ.Code § 2494; West's Ann.Cal.Bus. & Prof.Code §§ 6125, 6126.

[Westlaw] Clerical functions such as delivering and filing pleadings with clerk

that attorney in fact may not act as attorney at law; authority of attorneys in fact

appearing at said hearing, and the fact that he was acting without compensation does not furnish any justification for his actions. He had no consent from the court to appear at said hearing, and he was clearly violating the ethics of his profession as well as the laws of his adopted state by acting as an attorney in

court to appear at said hearing, and he was clearly violating the ethics of his profession as well as the laws of his adopted state by acting as an attorney in said matter without a license. However, we do not consider this conduct on his part as in any way involving his moral character, or that it is sufficient in itself to deprive him of his right to a license to practice law in this state."

(h) Lawyer not licensed to practice law in California appearing on behalf of another or performing services in administrative hearings in which a party

obligations of the person, entity or another. [*People v. Sipper* (1943) 61 Cal.App.2d Supp. 844, 846-847, 142 P.2d 960, 962 (overruled on other grounds in *Murguia v. Mun.Ct.* (1975) 15 Cal.3d 286, 301, 124 Cal. Rptr.

Cal.App.2d Supp. 844, 846-847, 142 P.2d 960, 962 (overruled on other grounds in *Murguia v. Mun.Ct.* (1975) 15 Cal.3d 286, 301, 124 Cal. Rptr.
204, 214, fn. 11) (non-lawyer providing advice on the kind of legal document to execute to secure loan on real estate.); *People v. Landlords Professional*

(l) Non-lawyer preparing legal instruments and contracts on behalf of another by which legal rights may be secured, including the drawing of agreements, the organization of corporations and preparing papers connected therewith, and

which legal rights may be secured, including the drawing of agreements, the organization of corporations and preparing papers connected therewith, and wills and trusts, whether or not a matter is pending in court. [*People v. Merchants' Protective Corp.* (1922) 189 Cal. 531, 535, 209 P 363, 365] [*Smallberg v. State Bar* (1931) 212 Cal. 113, 119-120, 297 P 916, 919; see also *Geibel v. State Bar* (1938) 11 Cal.2d 412, 422-423, 79 P.2d 1073.

wills and trusts, whether or not a matter is pending in court. [*People v. Merchants' Protective Corp.* (1922) 189 Cal. 531, 535, 209 P 363, 365] [*Smallberg v. State Bar* (1931) 212 Cal. 113, 119-120, 297 P 916, 919; see also *Geibel v. State Bar* (1938) 11 Cal.2d 412, 422-423, 79 P.2d 1073.
[NON-LAWYER]

People v. Merchants' Protective Corp. (1922) 189 Cal. 531, 535, 209 P 363, 365 – non-lawyer

Smallberg v. State Bar (1931) 212 Cal. 113, 119-120, 297 P 916, 919

[NON-LAWYER]

People v. Merchants' Protective Corp. (1922) 189 Cal. 531, 535, 209 P 363, 365 – non-lawyer

Smallberg v. State Bar (1931) 212 Cal. 113, 119-120, 297 P 916, 919 (assisting in the UPL; ambulance chaser; the runner drafted the pleadings without oversight by the lawyer) – non-lawyer

Geibel v. State Bar (1938) 11 Cal.2d 412, 422-423, 79 P.2d 1073 (assisting in UPL. Apparently, non-lawyers drafted the documents/pleadings at issue) – non-lawyer

(m) Suspended lawyer negotiating a stipulation on behalf a party in a divorce

advice on another state's law, he or she is not UPL, so long as the advice is rendered within the state in which the lawyer is licensed.

[4] With respect to assisting a person who is not a member, or an entity, in the unauthorized practice of law as proscribed in paragraph (b), the following kinds of conduct or activities by non-lawyers or out-of-state lawyers not licensed to practice law in California but otherwise in good standing do not constitute the unauthorized practice of law. The following cases and other authorities are provided for information

conduct or activities by non-lawyers or out-of-state lawyers not licensed to practice law in California but otherwise in good standing do not constitute the unauthorized practice of law. The following cases and other authorities are provided for information
and guidance, but they are not all-inclusive. The kinds of activity allowed pursuant to the authorities below are subject to change by judicial or legislative action. Whether

"If a husband and wife are sued together, each may defend for his or her own right, but if one spouse neglects to defend, the other spouse may defend for that spouse's right also."

(c) Appearing in a California or federal administrative proceeding where [illegible]

right, but if one spouse neglects to defend, the other spouse may defend for that spouse's right also."

(c) Appearing in a California or federal administrative proceeding where permitted by statute or other law. **[NON-LAWYER & OUT-OF-STATE LAWYER]**

Drafters' Note: ***The issue was raised at the July 2003 meeting whether***

(3) Prepare any will or trust instrument affecting the disposition on death of any property located in the United States and owned by a resident or any instrument relating to the administration of a decedent's estate in the United States;

(4) Prepare any instrument in respect of the marital relations, rights or duties of

instrument relating to the administration of a decedent's estate in the United States;

(4) Prepare any instrument in respect of the marital relations, rights or duties of a resident of the United States, or the custody or care of the children of a resident; or

(5) Otherwise render professional legal advice on the law of the State of California, any other state of the United States, the District of Columbia, the United States, or of any jurisdiction other than the jurisdiction(s) named in satisfying the requirements of subdivision (c) of this rule, whether rendered

a resident of the United States, or the custody or care of the children of a resident; or

(5) Otherwise render professional legal advice on the law of the State of California, any other state of the United States, the District of Columbia, the United States, or of any jurisdiction other than the jurisdiction(s) named in satisfying the requirements of subdivision (c) of this rule, whether rendered incident to preparation of legal instruments or otherwise.

(e) Non-lawyer patent agent [or lawyer not licensed to practice in California but

"[S]uch services do not amount to the practice of law as long as the service offered by LPS was merely clerical, i.e., the service did not engage in the practice of law if it made forms available for the client's use, filled the forms in

Court at 1609, 264 Cal.Rptr. at 554:

"LPS argues that what it describes as the "larger sense" definition of the practice of law, i.e., the giving of legal

at the specific direction of the client and filed and served those forms as directed by the client. Likewise, merely giving a client a manual, even a detailed

1893, 7 Ind.App. 529, 535, 34 N.E. 836, 837; State ex rel. Wright v. Barlow, 1936, 131 Neb. 294, 268 N.W. 95; In re Matthews, 1938, 58 Idaho 772, 79 P.2d 535, 537; Gustafson v. V. C. Taylor & Sons, 1941, 138 Ohio St. 392, 35 N.E.2d 435. But the record supports the conclusion that he went further, that he determined for the parties the kind of fee [illegible]

(j) An insurance company employing its own in-house staff attorneys or creating a captive law firm to defend the company's insureds [illegible]

(t) [Non-lawyer/lawyer not licensed to practice law in California but otherwise in good standing?] appearing on behalf of another in an arbitration in Calif

recommending, or paying for legal services, which allows any third person or organization to interfere with the member's independence of professional judgment, or with the client-lawyer relationship

[Proposed] Rule 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated[2] with a lawyer:

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[1] Per the vote at the 9/5/2003 Commission meeting, only alternative #1, the rules in the Model Rule format

(a) a partner and a lawyer[3] who individually or together with other lawyers possess

and knows of the conduct at a time when its consequences can be avoided or mitigated

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

COMMENT

[1] The provisions of this Rule express traditional limitations

substance of "CRPC 1-300. Unauthorized Practice of Law.]

[Proposed] Rule 5.5 UNAUTHORIZED PRACTICE OF LAW [Incorporating the

(2) are in or reasonably related to a pending or potential proceeding before a

of legal services by unqualified persons or entities.] Paragraph (b), except as

tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting

[2] ~~With respect to~~In California, the phrase "practice of law" ~~in California, the term has the same definition as the term has been defined by [illegible]~~

client that included legal duties and obligations.

People v. Merchants' Protective Corp. – Corporation practicing law/offering legal services

contact with California client to render

(c) Giving legal advice and

304, 308; *People v. Merchants' Protective Corp.* (1922) 189 Cal. 531,

535, 209 P. 262, 365; *Barrett v. City of Los Angeles* (1970) 2 Cal. 3d 505

counsel implied the corporation could

one such law is State Bar Act's prohibition against practice of law by

claim or cause of action for principals, to bring action to determine adverse claims, intervene in litigation and act as amicus curiae, and to appear for principals in connection with prosecution, settlement or defense of claim or

deprive him of his right to a license to practice law in this state."

(h) Lawyer not licensed to practice law in California appearing on behalf of another or performing services in administrative hearings in which a party may not be represented by other than a lawyer. [*Z.A. v. San Bruno Park School Dist.* (9th Cir. 1999) 165 F.3d 1273, 1274-1276] **[OUT-OF-STATE LAWYER]**

Z.A. v. San Bruno Park School Dist. – Out-of-state lawyer

[Westlaw] Under California law, clients of attorney admitted to local federal bar but not California bar could not recover attorney fees under IDEA for prevailing in state administrative proceeding concerning client's special education placement. Individuals with Disabilities Education Act

Ex parte McCue – out-of-state lawyer (also licensed in California federal courts).

Court at 68, 293 P. at 52: "His appearance before the officer before whom a deposition was being taken at the request of [illegible]

(k) Nonlawyer accountant rendering legal advice on purely legal issue. *Agran v. Shapiro* (1954) 127 Cal.App.2d Supp. 807, 818-819, 273 P.2d 619, 626. **[NON-LAWYER]**

Agran v. Shapiro (1954) 127 Cal.App.2d Supp. 807, 818-819, 273 P.2d 619, 626 (Accountant in tax matter) – Non-lawyer

From the case (at 813-814): "A different and more serious question arises, however, with respect to the services rendered by the plaintiff in preparing the applications for a carry back adjustment and refund of taxes paid for the previous two years, and the preparation of the 1949 return wherein a deduction was claimed for a portion of the Pritchard loss, as well as his subsequent

a party in this state's courts. Bus. & Prof. Code, § 6125; *Birbrower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal.4th 119

At this stage no question of accounting was involved. Neither the fact that th

person shall practice law (for another) in this State unless he is an active member of the state bar." (Bus. & Prof.Code, s 6125.) A violation of this statute is a criminal act. (Id., s 6126.) Nor is Abar who is (as is Elizabeth) a plaintiff of the instant action aided by Code of Civil Procedure section 371, which provides: "If a husband and wife are sued together, each may defend for

loss had been sustained nor the manner in which it arose was questioned. The

his or her own right, but if one spouse neglects to defend, the other spouse may

only question was whether, under the admitted facts, the loss was one which

[Westlaw] Engaging in negotiations with opposing counsel concerning settlement of divorce action, and agreeing that case should be continued until later date, constitutes "practice of law," for purposes of determining whether attorney has engaged in practice of law while under suspension, even though

brought in any court or before any judicial officer;

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[18] **Question**: It has been suggested [JS - 10/23/03] that all non-lawyers be allowed to appear at an administrative agency hearing unless otherwise prohibited by the rules of the administrative agency. Does that mean

(3) Prepare any will or trust instrument affecting the disposition on death of any property located in the United States and owned by a resident or any

unauthorized practice of law as proscribed in paragraph (b), other authorities have

(b) Non-lawyer spouse appearing on behalf of an absent spouse where both

"LPS argues that what it describes as the "larger sense" definition of the practice of law, i.e., the giving of legal advice, is not a viable definition since it potentially applies, for example, to friends who give opinions or advice about each other's legal problems. While it is true the inherent and necessarily general nature of any definition of legal practice may allow the formulation of

(2) Prepare any deed, mortgage, assignment, discharge, lease, or any other instrument affecting title to real estate located in the United States;

(3) Prepare any will or trust instrument affecting the disposition on death of any property located in the United States and owned by a resident or any instrument relating to the administration of a decedent's estate in the United States;

(4) Prepare any instrument in respect of the marital relations, rights or duties of a resident of the United States, or the custody or care of the children of a resident; or

(5) Otherwise render professional legal advice on the law of the State of California, any other state of the United States, the District of Columbia, the United States, or of any jurisdiction other than the jurisdiction(s) named in satisfying the requirements of subdivision (c) of this rule, whether rendered incident to preparation of legal instruments or otherwise.

(e) Non-lawyer patent agent [or lawyer not licensed to practice in California but

"If defendant had only been called upon to perform and had only undertaken to perform the clerical service of filling in the blanks on a particular form in accordance with information furnished him by the parties, or had merely acted as a scrivener to record the stated agreement of the parties to the transaction, he would not have been guilty of practicing law without a license. Eley v. Miller, 1893, 7 Ind. App. 529, 535, 34 N.E. 836, 837; State ex rel. Wright v. Real-

California involving international commercial disputes in compliance with Code of Civil Procedure §§ 1297.351 et seq. or in an arbitrations under collective

(m) Non-lawyer publishing and sellign "do-it-yourself" manuals, designed to allow purchasers to represent themselves, provided that the instructions are addressed to the public in general rather than to the specific legal problems of a specific person. [*People v. Landlords Professional Services* (1989) 215 Cal.App.3d 1599, 1606, 264 Cal.Rptr. 548, 551] **[NON-LAWYER]**

bargaining agreements in California in compliance with Code of Civil Procedure

1936, 131 Neb. 294, 268 N.W. 95; In re Matthews, 1938, 58 Idaho 772, 79 P.2d 535, 537; Gustafson v. V. C. Taylor & Sons, 1941, 138 Ohio St. 392, 35 N.E.2d 435. But the record supports the conclusion that he went further--that he determined for the parties the kind of a legal document they should execute in order to effectuate their purpose. This constituted the practice of law."

(i) A liability insurance carrier which negotiates and settles a claim against an

(B) The Board of Governors of the State Bar shall formulate and adopt Minimum Standards for Lawyer Referral Services, which, as from time to time amended, shall be binding on members

(n) Non-lawyer selling legal forms, including blank wills, deeds, trust instruments, or court forms. [*People v. Landlords Professional Services*, supra, 215

Discussion:

[1] The participation of a member in a lawyer referral service established, sponsored, supervised

Cal.App.3d at 1605-1606, 264 Cal.Rptr. at 551] [NON-LAWYER]

appointed temporary judge, arbitrator, or referee is an "ancillary business." (See You Know Whose purple books, section 1:311). We need to discuss this assumption in light

Proposed new Rule 1-700. Member as Candidate for Judicial Office

(A) A member who is a candidate for judicial office in California shall comply with Canon 5 of the Code of Judicial Ethics.

(B) For purposes of this rule, "candidate for judicial office" means a member seeking judicial office by election or appointment. The determination of when a member is a candidate for judicial office by election is defined in the terminology section of the California Code of Judicial Ethics. A member commences to become a candidate for judicial office by appointment at the time of first submission of an application or personal data questionnaire to the appointing

of case law. Acting in these capacities may give rise to fiduciary duties to the parties

Proposed New Rule 1-710. Member as Temporary Judge, Referee, or Court-Appointed Arbitrator

neutrals. The ADR community has been [illegible]

(1) A member who is serving as a temporary judge, referee, or court-appointed arbitrator

announces withdrawal of the member's candidacy or when the results of the election are final

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(December 1, 2003)

Rule 4.700 (Membership Qualifications for Judicial Office [illegible]

sentence of the definition of "candidate" as found in the "Terminology" section of the Code of Judicial Ethics and in similar support that [illegible]

RULE AMENDMENT HISTORY(2020)

RULE AMENDMENT HISTORY (2003)

Summary of New Rule as Proposed in January, 1997

Paragraph (A) would require a member who is a candidate for judicial office in California to comply with Canon 5 of the Code of Judicial Ethics [illegible]

~~a court.~~

~~Paragraph (B) is intended to apply while the member is actually serving as a temporary judge, referee, or court-appointed arbitrator.~~

Nothing in rule 1-710 shall be deemed to limit the applicability of any other rule or law [illegible]

RULE AMENDMENT HISTORY (2003)

Summary of New Rule as Proposed in January 1997

and replace with:

A member shall not:

(a) violate or attempt to violate the Rules of Professional Conduct or the State Bar Act

Section (b) would codify two principles established by the Supreme Court case law, but which

DATE: December 1, 2003

TO: MEMBERS OF THE COMMISSION

FROM: ETHICS HOTLINE STAFF

SUBJECT: RULE 1-710

RULE 1-710 Member as Temporary Judge, Referee or Court