



# SAN DIEGO COUNTY BAR ASSOCIATION

May 6, 2010

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

Re:	TITLE
<b>RULE</b>	
Rule 1.0	Purpose and Scope of the Rules of Professional Conduct
Rule 1.0.1	Terminology *BATCH 6*
Rule 1.1	Competence
Rule 1.2	Scope of Representation and Allocation of Authority Between Client and Lawyer
Rule 1.4	Communication
Rule 1.4.1	Disclosure of Professional Liability Insurance *BATCH 6*
Rule 1.5	Fee for Legal Services
Rule 1.5.1	Financial Arrangements Among Lawyers
Rule 1.6	Confidential Information of a Client
Rule 1.7	Conflict of Interests: Current Clients
Rule 1.8.1	Business Transactions with a Client and Acquiring Interests Adverse to the Client
Rule 1.8.2	Use of a Current Client's Confidential Information
Rule 1.8.3	Gifts from Client
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Rule 1.8.9	Purchasing Property at a Foreclosure Sale or a Sale Subject to Judicial Review
Rule 1.8.10	Sexual Relations with Client
Rule 1.8.11	Imputation of Personal Conflicts (Rules 1.8.1 to 1.8.9)
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Rule 1.12	Former Judge, Arbitrator, Mediator or Other Third-Party Neutral
Rule 1.13	Organization as Client
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Rule 8.2	Judicial and Legal Officials; Lawyer as a Candidate or Applicant for Judicial Office *BATCH 6*
<b>Rule 8.3</b>	<b>Reporting Professional Misconduct</b>
Rule 8.4	Misconduct
Rule 8.4.1	Prohibited Discrimination in Law Practice Management and Operation
Rule 8.5	Disciplinary Authority; Choice of Law

Dear Ms. Hollins:

This letter constitutes the San Diego County Bar Association's response to The State Bar of California's Request for Public Comment on the foregoing proposed rules of Professional Conduct.

The SDCBA reconfirms previous responses to each of the foregoing proposed rules.

Very truly yours,



Patrick L. Hosey, President  
San Diego County Bar Association

October 10, 2006

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

Re: Response to Request for Comments  
Discussion Draft: Proposed Amendments to the Rules of  
Professional Conduct of the State Bar of California

Dear Ms. Hollins:

On behalf of the San Diego County Bar Association, I respectfully submit the enclosed with respect to the pending Twenty-Seven (27) Proposed New or Amended Rules of Professional Conduct of the State Bar of California, developed by the State Bar's Special Commission for the Revision of the Rules of Professional Conduct. We have also included separate comments (approvals) of the proposed Global Changes related thereto. This is in response to the State Bar of California's request for comments thereon distributed in June, 2006.

Please note that although the comments reflect the position of the San Diego County Bar Association, we have also included dissenting views offered by members of its Legal Ethics Committee. Given the tentative state of the proposed new and amended rules, we wished to provide as much input to the Special Commission as possible, with which to assist them in their efforts.

Thank you for providing our Association the opportunity to participate in this process.

Respectfully Submitted,



Andrew S. Albert, President  
San Diego County Bar Association

Enclosures

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Lilys D. McCoy

**MEMORANDUM**

Date: October 16, 2006

To: Special Commission for the Revision of the Rules of Professional Conduct  
The State Bar of California

From: San Diego County Bar Association ("SDCBA")

Re: "1<sup>st</sup> PC Batch," Proposed New or Amended Rules of Professional Conduct of the  
State Bar of California

**Subj: Proposed Rule 8.3: Reporting Professional Misconduct**

Founded in 1899 and comprised of over 8,000 members, the SDCBA is its region's oldest and largest law-related organization. Its response herein, as adopted by the SDCBA Board of Directors, followed extensive review and consideration by its selectively-constituted Legal Ethics Committee, the advisory body charged by the SDCBA bylaws with providing its members guidance in the areas of ethics and ethical considerations.

The SDCBA respectfully submits the following concerning the subject proposed Rule:

\* \* \* \* \*

Comment 1:

Comment #2 to the Rule should be re-written to be cleaner and more comprehensible.

Rationale For Comment 1:

Suggested language for Comment #2

This Rule is not intended to allow a lawyer to report a violation of these Rules or the State Bar Act if doing so would:

- (a) violate the lawyer's duty of protecting confidential information of a lawyer's client as provided in Business and Professions Code section 6068, subdivision (e);
- (b) prejudice the interests of the lawyer's client;
- (c) involve the unauthorized disclosure of information received by the lawyer in the course of participating in an approved lawyer's assistance program.

Comment 2:

Proposed Rule 8.3 seems to eliminate all references to reporting judicial misconduct. Comment #1 of the original rule stated, "Lawyers have a similar obligation with respect to judicial misconduct." Barring any significant purpose for omitting the reference, we think it would only be advantageous to include it in the proposed rule as well



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BAR ASSOCIATION**

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June 11, 2010

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

Re: Proposed New or Amended Rules of Professional Conduct

Dear Ms. Hollins:

The Orange County Bar Association is submitting comments on the following proposed new or amended rules of professional conduct:

- 1.2 Scope of Representation
- 1.5 Fees for Legal Services
- 1.13 Organization as a Client
- 1.18 Duties to Prospective Client
- 5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Member
- 6.2 Accepting Appointments
- 7.1 Communications Concerning the Availability of Legal Services
- 7.3 Direct Contact with Prospective Clients
- 7.5 Firm Names and Letterheads
- 8.3 Reporting Professional Misconduct

The enclosed comments were drafted by the OCBA Professionalism and Ethics Committee and approved by the Board of Directors. Please let us know if you have any questions or require additional information.

Sincerely,

ORANGE COUNTY BAR ASSOCIATION

Lei Lei Wang Ekvall  
2010 President

Enc.

## MEMORANDUM

Date: May 26, 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 8.3 – Reporting Professional Misconduct**

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 & Ethics Committee.

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

The OCBA agrees with paragraph (c), which states that a lawyer who knows that a judge or other adjudicative officer has committed a violation of applicable rules of judicial conduct that raises a substantial question as to that person's fitness for office may, but is not required to, report the violation to the appropriate authority. The OCBA recommends, however, that the words "or to hear a matter" be added after the phrase "fitness for office," as "fitness for office" appears to be too restrictive a term and would not include situations where the judge or judicial officer has acted or threatens to act improperly on only one occasion and only on a specific matter, but may still be otherwise fit for office.



# 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.*

Updated on May 17, 2010 to implement the Batch 6 Rules and one Batch 5 Rule (Rule 1.10) conditionally adopted by the Board of Governors at its meeting on May 15, 2010.

**DEADLINE TO SUBMIT COMMENT IS: JUNE 15, 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 following link: [Proposed Rules of Professional Conduct](#).

\* Select the Proposed Rule that you would like to comment on from the drop down list. Rules not listed in the drop-down box below are rules that are not being recommended for adoption. To submit comments on the rules not recommended please submit your comment by using the form at this link: [Rules Not Recommended Public Comment Form](#).

Rule 8.3 Reporting Professional Misconduct [1-500(B)]

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.**

Please see attached 6 page .pdf.



# LAW PRACTICE MANAGEMENT AND TECHNOLOGY SECTION

THE STATE BAR OF CALIFORNIA

## PROPOSED RULE 8.3 [1-120 & 1-500(B)] “REPORTING PROFESSIONAL MISCONDUCT” (DRAFT #6, 12/14/09)

### **INTRODUCTION**

***Law Practice Management & Technology Section’s (LPMT’s)  
comment on Proposed Rule 8.3 concerns paragraph (a):***

“(a) A lawyer who knows that another lawyer has committed a felonious criminal act that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer shall inform the appropriate disciplinary authority.”

We recommend that the mandatory reporting requirement be removed. We set forth below our reasons for our recommendation. We also offer proposed alternative language to paragraph (a) and to paragraph (b) to conform it to the proposed changes to paragraph (a).

### **ANALYSIS**

#### **I. Vagueness and Riskiness of the “Know” Standard**

The State Bar should not predicate a rule on the assumption that a lawyer should be able to “know” when “a felonious criminal act” has been committed.<sup>1</sup>

In our system of jurisprudence, only a jury can “know” whether someone has committed a felonious criminal act. The Commission has recognized the importance of this principle by noting that: Before recognizing that unlawful conduct has occurred, a tribunal of competent jurisdiction shall have first adjudicated the allegation of unlawful conduct and found that such unlawful conduct occurred.

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<sup>1</sup> We assume that Proposed Rule 8.3(a) is not directed to those circumstances in which the accused lawyer has been convicted of a felony, yet no one has notified the State Bar of that conviction.

Compare the standard in Proposed Rule 8.3(a) with the below-quoted language from Proposed Rule 8.4.1 [2-400] “Prohibited Discrimination in Law Practice Management and Operation” at Rule 8.4.1(c) and Comment [3]:

“(c) No disciplinary investigation or proceeding may be initiated by the State Bar against a lawyer under this Rule unless and until a tribunal of competent jurisdiction, other than a disciplinary tribunal, shall have first adjudicated a complaint of alleged discrimination and found that unlawful conduct occurred. Upon such adjudication, the tribunal finding or verdict shall then be admissible evidence of the occurrence or nonoccurrence of the alleged discrimination in any disciplinary proceeding initiated under this Rule. In order for discipline to be imposed under this Rule, however, the finding of unlawfulness must be upheld and final after appeal, the time for filing an appeal must have expired, or the appeal must have been dismissed.”

Comment [3]

“In order for discriminatory conduct to be sanctionable under this Rule, it first must be found to be unlawful by an appropriate civil administrative or judicial tribunal under applicable state or federal law. Until there is a finding of civil unlawfulness, there is no basis for disciplinary action under this Rule.”

Note also that Proposed Rule 8.4.1 concerns adjudication of allegations generally emanating from a *civil* complaint. A verdict in a civil matter requires a much lower standard of proof than the standard implicated by the context to which Proposed Rule 8.3 would apply, namely guilt beyond a reasonable doubt on a *criminal* felony charge.

Even if a lawyer might be said to “know” that another lawyer has committed a certain act, for a number of reasons, the lawyer may not know whether the act was a felony, or even a crime. The typical lawyer may be expected to know other types of rules or principles, for example the proper methods for preserving the identity of funds and property of a client (CRPC Rule 4-100). Knowledge of criminal law, however, should not be imputed to all lawyers.

A lack of certainty could result, for example, because California may treat certain acts as felonies but federal law does not, or vice versa. Consider the law regarding marijuana. A conviction for a drug offense “raises a substantial question as to that lawyer's . . . fitness.” Yet, whether a lawyer’s possession of a certain quantity of marijuana is a felony – or even a crime – in California depends on who arrests him. If it is the FBI, possession of any amount of marijuana is punishable by 1-20 years in

prison pursuant to 21 USC § 801 *et seq.* and, hence, is a felony. The People of California, however, have decreed that if one has the required prescription, one is not a felon but an invalid. California Health & Safety Code § 11362.5.<sup>2</sup>

A lawyer – who has not committed any offense – should not risk being charged with a violation of the Rules of Professional Conduct because the State Bar alleges that he or she knew or should have known (beyond a reasonable doubt) that

1. Another lawyer committed a specific act.
2. The criminal law of California and/or of the United States has deemed commission of that act a felony.
3. There are no surrounding circumstances or defenses that would lessen the seriousness of the offense.
4. A jury would reach the same conclusion.

## II. Where's The Fire the Bar is So Eager to Put Out?

Although we laud the Commission's goal, it may be proposing a solution where the problem – if it exists at all – is *de minimis*. The Commission proffers no evidence – and we are aware of none – to suggest that there is an underreporting by lawyers of other lawyers' felonious criminal acts. Indeed, "the Commission is not aware of any evidence of an underreporting of lawyer misconduct in California." Introduction at 4, ¶ b. Furthermore, if the goal of imposing such a duty on a lawyer is preventing "substantial harm to the public" (*id.* at 4, ¶ a), should not the lawyer call the police instead? Disciplining the "lawyer who knows" offers scant "additional public protection" (*id.*). Proposed Rule 8.4(a) is unlikely to deter a lawyer bent on committing a felonious criminal act. We also do not want to mislead the people of California into thinking that the State Bar has now provided them substantial protection against felons posing as lawyers – namely protection beyond the reach of the California Penal Code.<sup>3</sup>

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<sup>2</sup> Proposition 215 was the basis for the Compassionate Use Act of 1996, or CUA. Under the CUA, there is no specific maximum/minimum amount of marijuana prohibited from possession because the amount depends on the patient's illness and what the physician prescribes.

<sup>3</sup> We appreciate the goal, a lawyer's "fitness", however, is too vague for any disciplinary rule. Any felonious criminal act committed by a lawyer may – let alone *does* – raise a substantial question as to that lawyer's fitness as a lawyer. Nor are we helped much by the qualifiers "honesty" and "trustworthiness" (assuming the two concepts differ materially). Any lawyer who has committed a felonious criminal act is already dishonest in his or her obligations to the State Bar. In addition, unless the felonious criminal act

### III. Mandatory Nature of Reporting Requirement Could Prejudice the Client

Even if we did not have the above concerns, we would still urge the removal of any mandatory reporting requirement because of its potential to prejudice the client and to damage the attorney-client relationship. The California Supreme Court recently reaffirmed the central importance of protecting the attorney-client relationship. *Costco Wholesale Corp. v. Superior Court* (November 30, 2009) 47 Cal. 4th 725 [decided just before the final draft of this rule was approved]. “[T]he fundamental purpose of the attorney-client privilege is the preservation of the confidential relationship between attorney and client . . . .” *Id.*, 2009 Cal. LEXIS 12375 at 8.

We agree with the Commission’s reluctance to impose on a California lawyer that which befell James H. Himmel, Esq. See *In re Himmel*, 533 N.E.2d 790 (Ill. 1988) [lawyer suspended who abided by client's directive not to report her former counsel's misconduct]. In particular, the Commission has acknowledged that:

“As exemplified by *Himmel*, mandatory lawyer reporting compels the client to be a participant in the disciplinary process without the client's consent and even over the client's objections. The Commission considers the client loyalty issue paramount. Broadly mandating reporting of another lawyer’s misconduct could prejudice the reporting lawyer’s client, e.g., by: (i) disclosing the client’s confidential information; (ii) interfering with the pursuit of the client’s legitimate objectives; (iii) implicating the client in wrongdoing; and (iv) as mentioned below (see ¶. 9 of this Introduction), embroiling the client as a witness in the disciplinary proceedings.”

Introduction at 4, ¶ a.

(c’t’d)

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requires proof of dishonesty – and all the other requirements of 8.4(a) are met – it would be unfair to expect each lawyer in the state to conclude fairly that another attorney has been dishonest.

## **CONCLUSION – AND SUGGESTED EDITS TO THE PROPOSED RULE**

For the foregoing reasons, we recommend that Proposed Rule 8.3(a) & (b) and Comments [1] – [3] be amended as follows:

(a) A lawyer ~~who knows that another lawyer has committed a felonious criminal act that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer shall~~ may, but is not required to, inform the appropriate disciplinary authority ~~that another lawyer has committed a felonious criminal act.~~

(b) ~~Except as required by paragraph (a), a~~ A lawyer may, but is not required to, report to the State Bar a violation of these Rules or the State Bar Act.

### COMMENT

[1] In deciding whether to report another lawyer's violation of these Rules or the State Bar Act ~~that is not required by paragraph (a),~~ a lawyer should consider, ~~[insert comma]~~ among other things, ~~[insert comma]~~ whether the violation raises a substantial question as to ~~another~~ lawyer's honesty, trustworthiness, ~~[insert comma]~~ or fitness as a lawyer.

[2] This Rule does not abrogate a lawyer's obligations to report the lawyer's own conduct as required under the State Bar Act. *See, e.g.,* Business and Professions Code section 6068(o). ~~In addition, a lawyer is not obligated to report a felonious criminal act under paragraph (a) committed by another lawyer if doing so would infringe on the reporting lawyer's privilege against self-incrimination.~~ In addition, under paragraph (a), a lawyer should not report a felonious criminal act committed by another lawyer if doing so would infringe on the reporting lawyer's privilege against self-incrimination.

[3] Even if a lawyer is permitted ~~or required~~ to report under this Rule, the lawyer must not threaten to file criminal, administrative, ~~[insert comma]~~ or disciplinary charges to obtain an advantage in a civil dispute in violation of Rule 3.10.

*(c't'd)*

Clean version of amended Proposed Rule 8.3(a) & (b) and Comments [1] – [3]:

(a) A lawyer may, but is not required to, inform the appropriate disciplinary authority that another lawyer has committed a felonious criminal act.

(b) A lawyer may, but is not required to, report to the State Bar a violation of these Rules or the State Bar Act.

#### COMMENT

[1] In deciding whether to report another lawyer's violation of these Rules or the State Bar Act, a lawyer should consider, among other things, whether the violation raises a substantial question as to another lawyer's honesty, trustworthiness, or fitness as a lawyer.

[2] This Rule does not abrogate a lawyer's obligations to report the lawyer's own conduct as required under the State Bar Act. *See, e.g.,* Business and Professions Code section 6068(o). **In addition, under paragraph (a), a lawyer should not report a felonious criminal act committed by another lawyer if doing so would infringe on the reporting lawyer's privilege against self-incrimination.**

[3] Even if a lawyer is permitted to report under this Rule, the lawyer must not threaten to file criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute in violation of Rule 3.10.



**THE STATE BAR OF  
CALIFORNIA**

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June 15, 2010

Audrey Hollins, Director  
Office of Professional Competence, Planning &  
Development  
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 Ms. Hollins:

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-Vice-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. 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 many 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 understood by the attorneys in this state and applied in a uniform fashion by both this Office and the State Bar Court. While OCTC has submitted comments in the past to some of these rules as they were initially submitted,<sup>1</sup> we welcome this opportunity to comment on the entire set of rules and in context. Further, there have been changes to the proposed rules since our original comments.<sup>2</sup> We hope you find our thoughts helpful.

**SUMMARY**

We summarize our main concerns as follows:

- Some of the rules are becoming too complicated and long, making them difficult to understand and enforce;
- There are way too many Comments to the Rules, making the rules unwieldy, confusing, and

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<sup>1</sup> OCTC refers the Commission to its previous comments and recommendations.

<sup>2</sup> We are not commenting on the rules that were not recommended or tentatively adopted by the Board of Governors (BOG).

difficult to read, understand, and enforce. Many of the Comments are more appropriate for treatises, law review articles, and ethics opinions. The Comments clutter and overwhelm the rules. We recommend that most of the Comments be stricken or that the Rules be adopted without the Comments;

- Many of the Comments are too large and thus bury the information sought to be presented;
- Several of the Comments are in our opinion legally incorrect (i.e. Comment 9 of Rule 1.8.1 and Comment 5 of rule 1.9);
- One of the Comments invades OCTC's prosecutory discretion (i.e. Comment 6 of Rule 8.4);
- Some of the rules are confusing and inconsistent with the State Bar Act (i.e. that an attorney's misrepresentation to a court cannot be based on gross negligence);
- Some of the rules attempt to define and limit provisions adopted by the Legislature in the State Bar Act (i.e. Rule 1.6's defining the scope of confidentiality in Business & Professions Code section 6068(e)); and
- Some of the proposed rules deviate unnecessarily from the ABA Model Rules (i.e. proposed rules 3.9, 4.4 and 8.4).<sup>3</sup>

## GENERAL COMMENTS

OCTC finds many of the proposed rules too lengthy and complicated, often making them difficult to understand and enforce. There are way too many Comments to the Rules, making the rules unwieldy, confusing, and difficult to read, understand, and enforce. We would strongly suggest that the rules be simplified and the Comments either be significantly reduced or entirely eliminated. Otherwise, it is hard to imagine the attorneys of this state reading and understanding the entirety of the rules and official Comments. Further, we believe that some of the Comments are legally incorrect.

The Rules and Comments are not meant to be annotated rules, a treatise on the rules, a series of ethics opinions, a law review article, or musings and discussions about the rules and best practices. There are other more appropriate vehicles for such discussions and expositions.

Every attorney is required to know and understand the Rules of Professional Conduct. This is why ignorance of a rule is no defense in a State Bar proceeding. (See *Zitny v. State Bar* (1966) 64 Cal.2d 787, 793.) Yet, the proposed rules (including Comments) are 99 pages; contain 68 rules; and almost 500 Comments. One rule alone has 38 Comments.<sup>4</sup>

In contrast, the current rules are 30 pages; contain 46 rules; and 94 comments.<sup>5</sup> The 1974 rules were 13 pages; contained 25 rules; and 6 comments.<sup>6</sup> The original 1928 rules were 4 pages long; contained 17 rules; and had no comments.

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<sup>3</sup> Unless stated otherwise, all future references to section are to a section of the Business & Professions Code; all references to rule are to the current Rules of Professional Conduct; all references to proposed rule is to the Commission's proposed Rule of Professional Conduct; and all references to the Model Rules are to the ABA's current Model Rules of Professional Conduct.

<sup>4</sup> See proposed rule 1.7. Another rule has 26 comments. (See proposed rule 1.6.)

<sup>5</sup> The current rules list them as Discussion paragraphs; most are unnumbered, but OCTC estimates there are 94 paragraphs of discussion and will refer to them as comments so that there is a standard reference.

<sup>6</sup> The 1974 rules had 6 footnotes (\*), four simply reference another rule and two contain a short substantive discussion.

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To Randall Difuntorum  
June 15, 2010

Many of the proposed Comments appear to be nothing more than a rephrasing of the rule or an annotated version of the rule. If the rule is ambiguous or not clear enough, the solution should not be a Comment rephrasing the rule, but a redrafting of the rule so it is clear and understandable. Likewise, discussing the purpose of the rule, best practices, or the limits of the rule are not proper Comments to the rules. There are other better vehicles for such discussions. Lawyers can read and conduct legal research when needed.

In addition, the rules and Comments make too much use of references to other rules and Comments, making it hard to understand the rules. Some of the Comments are too long and, thus, bury information in a very long Comment. Other Comments appear to be legally incorrect. We would recommend that most of the Comments be stricken or that the Rules be adopted without the Comments. It is our understanding that about seven states have not adopted the ABA's Comments, although two of those still provide the ABA's comments as guidance.

We are also concerned that there are too many separate conflicts rules (see rules 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13(g), and 1.18) and they often incorporate each other, making it difficult to comprehend, understand, and enforce them.<sup>7</sup>

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<sup>7</sup> There is actually no Rule 1.8, but several separate rules, going from 1.8.1 through 1.8.11.

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**Rule 8.3. Reporting Professional Misconduct.**

1. OCTC believes that Comments 1, 3, and 4 are more appropriate for treatises, law review articles, and ethics opinions.