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To: [McCurdy, Lauren](#); [Difuntorum, Randall](#)
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Subject: RRC - 6.1 - III.I. - Agenda Materials
Date: Thursday, March 18, 2010 11:21:04 AM
Attachments: [RRC - \[6-1\] - Dashboard - ADOPT - DFT3 \(03-18-10\).doc](#)
[RRC - \[6-1\] - Public Comment Chart - By Commenter - DFT2.4 \(03-18-10\)DS-KEM.doc](#)
[RRC - \[6-1\] - Compare - Introduction - DFT2 \(03-18-10\).doc](#)
[RRC - \[6-1\] - Compare - Rule & Comment Explanation - DFT2 \(11-28-09\) 03-10.doc](#)
[RRC - \[6-1\] - Rule - DFT2 \(11-28-09\)-CLEAN-LAND2.doc](#)

Greetings:

I've attached the following, all in Word:

1. Dashboard, Draft 3 (3/18/10). Minor changes highlighted in yellow.
2. Introduction, Draft 2 (3/18/10). I've added a section called "public comment".
3. Rule & Comment Comparison Chart, Draft 2 (11/28/09). No change.
4. Rule, Draft 2 (11/28/09). This is the public comment draft. No changes are recommended.
5. Public Comment Chart, Draft 2.4 (3/18/10). Because the official CYLA comment has not yet been submitted, I've deleted the CYLA row from the Chart (but have save it in Draft 2.3 (3/17/10).)

Notes and Comments:

1. Only one comment. Given the negative public comment received from CYLA, OCTC, OCBA and SCCBA, we should consider identifying this Rule as "very controversial". At present it is listed as moderately controversial.

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

Kevin

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Proposed Rule 6.1 [n/a]

“Voluntary Pro Bono Publico Service”

(Draft #2, 11/28/09)

Summary: Proposed Rule 6.1, which encourages lawyers to provide *pro bono publico* services to persons of limited means, largely tracks Model Rule 6.1, except that it incorporates some language from the Board of Governors Pro Bono Resolution (2002) and includes specific references to California statutory law. See Introduction and Explanation of Changes.

Comparison with ABA Counterpart

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

Primary Factors Considered

- Existing California Law

Rule

Statute

Bus. & Prof. Code § 6068(h).

Case law

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

- Other Primary Factor(s)

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

Rule Revision Commission Action/Vote to Recommend Rule Adoption

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

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

Vote (see tally below)

Favor Rule as Recommended for Adoption _____

Opposed Rule as Recommended for Adoption _____

Abstain _____

Approved on Consent Calendar

Approved by Consensus

Commission Minority Position, Known Stakeholders and Level of Controversy

Minority Position Included. (See Introduction): Yes No

No Known Stakeholders

The Following Stakeholders Are Known:

Commission on Access to Justice.

Very Controversial – Explanation:

Moderately Controversial – Explanation:

A number of Commission members have expressed their belief that the delivery of pro bono services is not an appropriate subject for a disciplinary rule. See Introduction.

Not Controversial – Explanation:

COMMISSION FOR THE REVISION OF THE RULES OF PROFESSIONAL CONDUCT

Proposed Rule 6.1* Voluntary Pro Bono Publico Service

March 2010

(Draft rule to be considered for public comment.)

INTRODUCTION:

Proposed Rule 6.1, which encourages lawyers to provide or enable the direct delivery of pro bono publico services to persons of limited means, tracks Model Rule 6.1, except that it incorporates some language from the Board of Governors Pro Bono Resolution (2002) (“Board Resolution”) and includes specific references to California statutory law. Paragraph (a) primarily concerns the direct or indirect delivery of uncompensated legal services. Paragraph (b) addresses a lawyers delivery of legal services at a reduced fee to social service, medical research, etc., organizations, or to persons of limited means, or a lawyer’s participation in activities to improve the law or access to justice. The Comment largely tracks the Model Rule.

Minority. A minority of the Commission agrees that lawyers should be encouraged to provide pro bono legal services, and as the legislature stated in Business & Professions Code section 6073, this is “the tradition” of the Bar. The minority, however, takes the position that the Rule’s statement of this aspiration is not intended to be the basis for discipline (this is said in Comment [12]), and thus placing the aspiration in the disciplinary rules therefore has no legal purpose. The minority further states that this Rule adds nothing meaningful to what the legislature has fully and carefully stated in section 6073, but placing the statement in the Rules muddles the disciplinary purpose of the Rules. Finally, the minority argues that while all lawyers should aspire to meet the pro bono goal, not all lawyers can do so. The current economic crisis highlights only the most obvious of the reasons for this as thousands of lawyers are unemployed and countless others struggle to pay their rent and keep the lights on. No lawyer should be subject to arm twisting or ridicule for an inability to meet the goal.

* Proposed Rule 6.1, Draft #2 (11/28/09).

Public Comment. Many public commenters support the Commission's recommendation to adopt proposed Rule 6.1. See public comments from California Commission on Access to Justice, COPRAC, and the San Diego County Bar Association. Other public commenters approve of the minority position and recommend against the Rule's adoption, including, OCTC, the Orange County Bar Association and the Santa Clara Bar Association. See Public Comment Chart. The Commission has responded to each submitted comment. The Commission continues to recognize the overwhelming need for Access to Justice in California, and believes that this Rule supports a means of accomplishing it. Although the Board of Governors' Resolution expresses this policy, many members of the bar are unaware of its existence. This Rule will be a stronger policy statement if it is approved by the Supreme Court. Given the repeated statements by Presiding Justice George regarding Access to Justice issues, and the findings of the Commission on Access to Justice, it is likely that the Supreme Court would look favorably upon this Rule.

Variations in other jurisdictions. Nearly every jurisdiction has adopted some version of Model Rule 6.1. Illinois, North Carolina, Ohio, Oregon and Texas are notable exceptions, though all but North Carolina either mandate or encourage that lawyers report their pro bono activities to the bar. Of the remaining jurisdictions, there is a wide range of variation in their adoption of Model Rule 6.1, with some retaining the 1983 version, some adopting the 2002 version, and others implementing unique provisions, ranging from D.C.'s relatively short rule to Florida's rule, which establishes an elaborate pro bono framework.

<p align="center"><u>ABA Model Rule</u></p> <p align="center">Rule 6.1 Voluntary Pro Bono Publico Service</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 6.1 Voluntary Pro Bono Publico Service</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:</p>	<p>Every lawyer has, <u>as</u> a <u>matter of</u> professional responsibility to, <u>should</u> provide legal services to those unable to pay. A lawyer should aspire to render <u>provide or enable the direct delivery of</u> at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:</p>	<p>The introductory clause to proposed Rule 6.1 is based on its Model Rule counterpart. The first sentence has been revised to emphasize that the proposed Rule is hortatory, and not mandatory. The second sentence has been revised to track the language of the Board of Governors Pro Bono Resolution (2002) ("Board Resolution").</p>
<p>(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:</p>	<p>(a) provide a substantial majority of the (50) hours of legal services without fee <u>or</u> expectation of fee <u>compensation other than reimbursement of expenses</u> to:</p>	<p>Paragraph (a) is based Model Rule 6.1(a). It has been revised to track language in the Board Resolution.</p>
<p>(1) persons of limited means or</p>	<p>(1) persons of limited means or</p>	<p>Subparagraph (a)(1) is identical to Model Rule 6.1(a)(1). Although paragraph (1) of the Board Resolution refers to "indigent persons," it appears that "persons of limited means" and "indigent persons" mean the same thing, see Comment [3], so the Model Rule language is used.</p>
<p>(2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and</p>	<p>(2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and</p>	<p>Subparagraph (a)(2) is identical to Model Rule 6.1(a)(2). This subparagraph incorporates the concept of Board Resolution, paragraph (1), which urges lawyers "[to provide or enable the direct delivery of legal services] to not for profit organizations with a primary purpose of providing services to the poor or on behalf of the poor or disadvantaged."</p>

* Proposed Rule 6.1, Draft 2 (11/28/09). Redline/strikeout showing changes to the ABA Model Rule.

<p align="center"><u>ABA Model Rule</u></p> <p align="center">Rule 6.1 Voluntary Pro Bono Publico Service</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 6.1 Voluntary Pro Bono Publico Service</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>(b) provide any additional services through:</p> <p>(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;</p>	<p>(b) provide any additional services through:</p> <p>(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;</p>	<p>Subparagraph (b)(1) is identical to Model Rule 6.1(b)(1).</p>
<p>(2) delivery of legal services at a substantially reduced fee to persons of limited means; or</p>	<p>(2) delivery of legal services at a substantially reduced fee to persons of limited means; or</p>	<p>Subparagraph (b)(2) is identical to Model Rule 6.1(b)(2).</p>
<p>(3) participation in activities for improving the law, the legal system or the legal profession.</p>	<p>(3) participation in activities for improving the law, the legal system or the legal profession, <u>or increasing access to justice.</u></p>	<p>Subparagraph (b)(3) is identical to Model Rule 6.1(b)(3). The additional language at the end of the subparagraph is taken from the Board Resolution, paragraph (1).</p>

<p align="center"><u>ABA Model Rule</u> Rule 6.1 Voluntary Pro Bono Publico Service</p>	<p align="center"><u>Commission's Proposed Rule*</u> Rule 6.1 Voluntary Pro Bono Publico Service</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.</p>	<p>In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.</p>	<p>The last clause of the Rule is identical to its Model Rule counterpart. A similar concept is found in paragraph (4) of the Board Resolution.</p>

<p align="center"><u>ABA Model Rule</u></p> <p align="center">Rule 6.1 Voluntary Pro Bono Publico Service Comment</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 6.1 Voluntary Pro Bono Publico Service Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>[1] Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. The American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually. States, however, may decide to choose a higher or lower number of hours of annual service (which may be expressed as a percentage of a lawyer's professional time) depending upon local needs and local conditions. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.</p>	<p>[1] Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. The American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually. States, however, may decide to choose a higher or lower number of hours of annual service (which may be expressed as a percentage of a lawyer's professional time) depending upon local needs and local conditions. It is recognized that in ln some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.</p>	<p>Comment [1] is identical to Model Rule 6.1, cmt. [1], except that the second and third sentences have been deleted as unnecessary exposition that does not add to an understanding of the Rule.</p>
<p>[2] Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the</p>	<p>[2] Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the</p>	<p>Comment [2] is identical to Model Rule 6.1, cmt. [2].</p>

* Proposed Rule 4.1, Draft 1 (XX/XX/09). Redline/strikeout showing changes to the ABA Model Rule

<p align="center"><u>ABA Model Rule</u></p> <p align="center">Rule 6.1 Voluntary Pro Bono Publico Service Comment</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 6.1 Voluntary Pro Bono Publico Service Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.</p>	<p>disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.</p>	
<p>[3] Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.</p>	<p>[3] Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation qualified legal services program under Business and Professions Code section 6213 and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel. Legal services can be rendered to individuals under paragraph (a)(1) or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means under paragraph (a)(2). The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.</p>	<p>Comment [3] is based on Model Rule 6.1, cmt. [3]. Rather than use the generalized Model Rule definition of individuals the Rule is intended to benefit, a more precise definition based on California law has been substituted.</p> <p>Language has been added to the second sentence of the Comment to clarify the scope of conduct addressed in each of the subparagraphs of paragraph (a).</p>

<p align="center"><u>ABA Model Rule</u></p> <p align="center">Rule 6.1 Voluntary Pro Bono Publico Service Comment</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 6.1 Voluntary Pro Bono Publico Service Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.</p>	<p>[4] Because service must be provided without fee or expectation of fee <u>compensation</u>, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.</p>	<p>Comment [4] is based on Model Rule 6.1, cmt. [4]. The word "compensation" has been substituted for "fee or expectation of fee" to conform to the proposed language of the introductory clause. See Explanation of Changes for the introductory clause. The last sentence has been deleted because the adoption of Model Rule 5.4(a)(4), which permits sharing of "court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer," has not been recommended. Thus, such fee sharing would violate proposed Rule 5.4.</p>
<p>[5] While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in paragraphs (a)(1) and (2), to the extent that any hours of service remained unfulfilled, the remaining commitment can be met in a variety of ways as set forth in paragraph (b). Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in paragraphs (a)(1) and (2). Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in paragraph (b).</p>	<p>[5] While it is possible for <u>preferable that</u> a lawyer to fulfill the <u>his or her</u> annual responsibility to perform pro bono services exclusively through activities described in paragraphs (a)(1) and (2), to the extent that any hours of service remained unfulfilled, the remaining <u>lawyer's</u> commitment can be met in a variety of ways as set forth in paragraph (b). Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in paragraphs (a)(1) and (2). Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in paragraph (b).</p>	<p>Comment [5] is based on Model Rule 6.1, cmt. [5], which explains that the activities describe in paragraph (b) are an alternative to providing direct legal services. The word "preferable" has been substituted for "possible" to emphasize the preference, in conformance with the Board Resolution, that a lawyer devote most of his or her 50 hours to the direct delivery of legal services.</p>

<p align="center"><u>ABA Model Rule</u></p> <p align="center">Rule 6.1 Voluntary Pro Bono Publico Service Comment</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 6.1 Voluntary Pro Bono Publico Service Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.</p>	<p>[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims, claims under the California Fair Employment and Housing Act, and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.</p>	<p>Comment [6] is based on Model Rule 6.1, cmt. [6]. A reference to claims brought under the California Fair Employment and Housing Act has been added to avoid suggesting that the services described in the Comment are limited to those arising under the U.S. Constitution or federal statutes.</p>
<p>[7] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.</p>	<p>[7] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and acceptance Acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.</p>	<p>Comment [7] is based on Model Rule 6.1, cmt. [7]. The reference to "judicare programs" has been deleted because there are few such programs in California.</p>
<p>[8] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal</p>	<p>[8] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession, or that are designed to increase access to justice. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging</p>	<p>Comment [8] is based on Model Rule 6.1, cmt. [8]. The references to programs designed to increase access to justice has been added because of the California's well-documented needs in this area. See also Explanation of Changes for paragraph (b)(3).</p>

<p align="center"><u>ABA Model Rule</u></p> <p align="center">Rule 6.1 Voluntary Pro Bono Publico Service Comment</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 6.1 Voluntary Pro Bono Publico Service Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>system or the profession are a few examples of the many activities that fall within this paragraph.</p>	<p>in legislative lobbying to improve the law, the legal system or the profession, or to increase access to justice are a few examples of the many activities that fall within this paragraph.</p>	
<p>[9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.</p>	<p>[9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.</p>	<p>Comment [9] is identical to Model Rule 6.1, cmt. [9].</p>
<p>[10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.</p>	<p>[10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.</p>	<p>Comment [10] is identical to Model Rule 6.1, cmt. [10].</p>

<p align="center"><u>ABA Model Rule</u></p> <p align="center">Rule 6.1 Voluntary Pro Bono Publico Service Comment</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 6.1 Voluntary Pro Bono Publico Service Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>[11]Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule.</p>	<p>[11]Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule.</p>	<p>Comment [11] is identical to Model Rule 6.1, cmt. [11].</p>
<p>[12]The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.</p>	<p>[12]The responsibility set forth in this Rule is not intended to be enforced<u>enforceable</u> through disciplinary process.</p>	<p>Comment [12] is based on Model Rule 6.1, cmt. [12]. The word “enforceable” has been substituted for “intended to be enforced” to emphasize that a lawyer’s failure to achieve the number of hours of service suggested by the Rule is not a basis for discipline.</p>

Rule 6.1: Voluntary Pro Bono Publico Service
(Commission's Proposed Rule – Clean Version)

Every lawyer, as a matter of professional responsibility, should provide legal services to those unable to pay. A lawyer should provide or enable the direct delivery of at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

- (a) provide a substantial majority of the (50) hours of legal services without expectation of compensation other than reimbursement of expenses to:
 - (1) persons of limited means or
 - (2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and
- (b) provide any additional services through:
 - (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
 - (2) delivery of legal services at a substantially reduced fee to persons of limited means; or

- (3) participation in activities for improving the law, the legal system or the legal profession, or increasing access to justice.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

COMMENT

- [1] Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. In some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.
- [2] Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons

of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.

- [3] Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in a qualified legal services program under Business and Professions Code section 6213 and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel. Legal services can be rendered to individuals under paragraph (a)(1) or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means under paragraph (a)(2). The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.
- [4] Because service must be provided without compensation, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section.
- [5] While it is preferable that a lawyer fulfill his or her annual responsibility to perform pro bono services through activities described in paragraphs (a)(1) and (2), the lawyer's commitment can be met in a variety of ways as set forth in paragraph (b). Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in paragraphs (a)(1) and (2). Accordingly, where

those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in paragraph (b).

- [6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims, claims under the California Fair Employment and Housing Act, and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.
- [7] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.
- [8] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession, or that are designed to increase access to justice. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession, or to increase access to justice are a few examples of the many activities that fall within this paragraph.

- [9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.
- [10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.
- [11] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule.
- [12] The responsibility set forth in this Rule is not enforceable through disciplinary process.

**Rule 6.1 Voluntary Pro Bono Service
[Sorted by Commenter]**

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

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
1	Anonymous	A			Although commenter did not specifically reference this rule, she expressed her support for all the rules contained in Batch 6.	No response required.
6	California Commission on Access to Justice	A			<p>The California Commission on Access to Justice strong supports proposed rule 6.1. We believe that its inclusion will go a long way toward achieving the goal of establishing a fair and equitable justice system. By emphasizing the professional obligation of all lawyers, and providing a framework for pro bono service, the new rule should result in substantially increased legal assistance being made available to vulnerable individuals throughout our state.</p> <p>There is one change that we think would strengthen this rule and avoid unnecessary confusion. As you are aware, there is more than one definition of pro bono. The one in Model Rule 6.1 is different from the one promoted by the national Pro Bono Institute, which is followed by most large firms across the country. Both of those definitions are different from the pro bono resolution adopted in California by the Board of Governors, and used in many of our State Bar activities over the past 30 years.</p>	<p>No response required.</p> <p>The Commission disagrees. While large law firms play a important role in the delivery of pro bono legal services, other lawyers in smaller and solo practice also provide considerable pro bono service. The Commission specifically considered and approved this broader definition of pro bono service. One Commission member who endorsed legal services for those who cannot afford to pay, also expressed his belief that attorneys who devote their services for the social good should be included in the definition of pro bono and that their service should count. This is not intended to dilute or diminish the</p>

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

**Rule 6.1 Voluntary Pro Bono Service
[Sorted by Commenter]**

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

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
					<p>We believe that the confusion that might exist because of these different definitions can be avoided if we eliminate part of subsection (b)(1), and recommend that everything after “civil liberties or public rights” be eliminated. In other words, section (b)(1) would now read:</p> <p style="padding-left: 40px;">provide any additional services through:</p> <p style="padding-left: 80px;">(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights;</p> <p>The deleted section offers an alternative suggestion for how the “additional” pro bono service can be provided, and the main disagreement among the various pro bono definitions has to do with how the “additional” pro bono obligation can be fulfilled. By limiting (b)(1) to legal services at no fee, or a reduced fee, and by expanding it beyond straight legal aid work to include civil rights, civil liberties and public rights, this section would offer an additional type of service that lawyers can offer while fulfilling their pro bono obligation that stays quite true to the true need for pro bono. Only lawyers can offer legal help for low-income, vulnerable</p>	<p>Commission's recognition that Access to Justice is the primary goal. Although the Commission considered whether to include specific activities such as Law Day, mediation, MCLE, among others, the Commission approved inclusion of these concepts.</p>

**Rule 6.1 Voluntary Pro Bono Service
[Sorted by Commenter]**

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

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
					<p>Californians, and we believe that any broader definition of pro bono would undermine the important need of addressing the legal needs of the most vulnerable among us.</p> <p>This definition is within the definition used by the Pro Bono Institute, and we do want to avoid adopting any rule that causes confusion (and possibly the result that less pro bono will be done by large firms.)</p>	
7	Committee on Professional Responsibility and Conduct ("COPRAC")	A			<p>COPRAC supports adoption of proposed Rule 6.1. While several members of our committee are sympathetic to the view of the Commission's minority and question whether this aspirational statement should be included in the rules, the majority supports the Rule. Given the importance of our professional obligation to improve access to justice, and recognizing the enormous unmet need for counsel for persons of limited means, we favor adoption of the Rule.</p> <p>Recognizing, however, that there remains some controversy about including this Rule with other rules which are obviously concerned with potential disciplinary issues, we have four suggestions for changes that would make it clearer that Rule 6.1 is aspirational.</p>	<p>The Commission agrees with the majority of COPRAC's members who support the proposed rule.</p> <p>The Commission responds to COPRAC's suggested revisions as follows:</p>

**Rule 6.1 Voluntary Pro Bono Service
[Sorted by Commenter]**

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

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
					<p>1. We would retain the ABA language in the opening paragraph stating that lawyers are to “aspire to” provide pro bono services. We think this is sufficiently important to be included in the text of the rule.</p> <p>2. We recommend incorporating the language of Comment [12] into the body of the Rule.</p> <p>3. We would also change Comment [12] to state that the rule is not enforceable through the “disciplinary process or otherwise.”</p> <p>4. We would preface the last sentence of Comment [12] with “Notwithstanding Rule 1.0(b)(2),”.</p> <p>By making very clear that this rule is different from most of the other rules, the Commission need not further address other concerns raised by COPRAC members regarding the terminology in the Rule which is, in some</p>	<p>1. The Commission considered the word “aspire to” but substituted “every lawyer, as a matter of professional responsibility, should” to convey this concept. The Commission concluded it was appropriate to recognize that this Rule derives from a lawyer’s professional responsibilities to the justice system.</p> <p>2. The Commission discussed moving Comment [12] into the body of the Rule but determined that placing the provision in the Comment achieved the same effect.</p> <p>3. While the Commission has included a statement that the rule is not enforceable through the disciplinary process, “or otherwise” has not been included. COPRAC has offered no example of any other possible means or risk of enforcement, or explained, if such means exist, how a disciplinary rule could provide immunity from its application.</p> <p>4. The Commission disagrees with the commenter’s suggestion. Including a reference to proposed Rule 1.0(b)(2), which provides “[a] wilful violation of these Rules is a basis for discipline,” would add nothing to the sentence’s substance.</p>

**Rule 6.1 Voluntary Pro Bono Service
[Sorted by Commenter]**

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

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
					parts, somewhat vague and unclear. (For example, eligibility for group representation in (b)(1) is not well-defined.) Since no one would be subject to punishment for an incorrect interpretation of the Rule, we agree that retention of the imprecise ABA language is appropriate.	
5	Office of the Chief Trial Counsel	D			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.	The Commission disagrees. Some form of the rule has been adopted in a substantial majority of states. Access to Justice is an overwhelming problem in California and including proposed Rule 6.1 (and Comments), in the rules of professional conduct will have no effect on the remainder of the disciplinary rules.
4	Orange County Bar Association	D			We support adoption of the minority's view to leave this aspirational statement that lawyers should strive to provide pro bono legal services out of the disciplinary-based rules being considered.	The Commission disagrees. In recommending the adoption of this Rule, the Commission recognizes the overwhelming need for Access to Justice in California, and this rule supports a means of accomplishing it. Although the Board of Governors' Resolution expresses this policy, many members of the bar are unaware of its existence. This Rule will be a stronger policy statement if it is approved by the Supreme Court. Given the repeated statements by Presiding Justice George regarding Access to Justice issues, and the findings of the Commission on Access to Justice, it is likely that the Supreme Court would look favorably upon such a rule.

**Rule 6.1 Voluntary Pro Bono Service
[Sorted by Commenter]**

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

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
					<p>If the Commission decides to adopt this Rule, we urge the Commission to utilize the 1983 ABA Model Rule language for proposed Rule 6.1. This older version of the Model Rule promoting pro bono service not only encapsulates the overall intent of the ABA's current Model Rule (and the California Board of Governors' 2002 Pro Bono Resolution), but it also artfully avoids the imposition of the type of hourly and financial commitments that the minority view of the proposed Rule found to be either economically unacceptable, or simply not attainable, for some practitioners:</p> <p>"A lawyer should render public interest service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means."</p> <p>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.</p>	<p>The Commission disagrees that the older version of Model Rule 6.1 is preferable. The Commission considered and voted on specific aspects of pro bono service including Law Day activities, MCLE instruction, and mediation and arbitration activities. These examples offer attorneys a broad range of activities beyond the direct provision of legal services and financial support.</p> <p>The Commission disagrees. Members of the Commission recognize the overwhelming need for Access to Justice in California, and this rule supports a means of accomplishing it, whether or not it is enforceable as a disciplinary rule. Such a rule presents a strong policy statement consistent with comments expressed by Presiding Justice</p>

**Rule 6.1 Voluntary Pro Bono Service
[Sorted by Commenter]**

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

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
						George regarding Access to Justice issues, as well as the findings of the Commission on Access to Justice. It is likely that the Supreme Court would look favorably upon such a rule.
2	San Diego County Bar Association Legal Ethics Committee	A			We approve the new rule in its entirety.	No response required.
3	Santa Clara County Bar Association	D			We recommend against including this as a disciplinary rule. Our Association fully supports encouraging lawyers to provide pro bono services to persons of limited means. However, this rule is hortatory in nature and is not a rule of conduct that can or should be subject to discipline.	The Commission disagrees. As the rule states in its title, it sets forth the parameters of "Voluntary" Pro Bono Service. Although this rule will not subject an attorney to discipline, it nevertheless sets forth an important principle that every attorney should contribute to Access to Justice.



**SAN DIEGO COUNTY
BAR ASSOCIATION**

February 12, 2010

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

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

Dear Ms. Hollins:

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

Sincerely,

Patrick L. Hosey, President
San Diego County Bar Association

Enclosures

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

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

Coversheet

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

Format for Analyses:

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

Yes [] No []

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

Yes [] No []

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

Yes [] No []

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

Yes [] No []

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

Format for Recommendations:

[] We approve the new rule in its entirety.

[] We approve the new rule with modifications.*

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

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

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

Summaries Follow:

LEC Rule Volunteer Name(s): David Cameron Carr

Old Rule No./Title: n/a

Proposed New Rule No./ Title: 4.4 Respect for Rights of Third Persons

~~(5) The Commissions arguments against adopting the current ABA Model Rule 4.4(a) are not persuasive. A prohibition against “means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person “would not chill legitimate litigation tactics. ABA Model Rule 4.4(a) should be adopted verbatim. Draft rule 4.4(b) restricts itself to in, documents that “obviously appears to be privileged or confidential” consistent with Rico v. Mitsubishi. It should be adopted as drafted by the Commission.~~

~~**CONCLUSION:** Although modified approval was recommended, the LEC vote was 7-6 in support of modified approval. Since the Rules Revision vote was 5-5, the LEC is recommending NO position be taken given the close split in hopes that further revisions will develop consensus.~~

LEC Rule Volunteer Name(s): Robert S. Gerber

Old Rule No./Title: No prior Cal. R. Prof. Conduct; but see Cal. Bus. & Prof. Code Section 6073.

Proposed New Rule No./ Title: Proposed Rule 6.1, Voluntary Pro Bono Publico Service

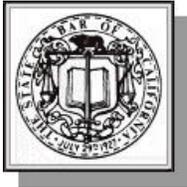
(5) The primary issue concerning this rule is whether pro bono publico services ought to be placed in the disciplinary rules or not. In the past, the “aspirational” goals of such service have been set out in Bus. & Prof. Code Section 6073 and have not been part of the Cal. R. Prof. Conduct. This differs from the ABA Model Code provisions adopted by the vast majority of the states. This rule change would bring California in line with the majority of the states. *However, to make it clear, this rule change would NOT impose any disciplinary authority on the State Bar for a lawyer’s failure to provide pro bono publico services.* The goal remains aspirational, as clarified specifically in Comment 12 to the Rule, which states that “The responsibility set forth in this Rule is not enforceable through disciplinary process.”

Other than this “controversial” aspect of the rule, nothing about the rule change is significant from a policy perspective. I fully support the rule as proposed.

CONCLUSION: We approve the new rule in its entirety.

~~LEC Rule Volunteer Name(s): Erin Gibson~~

~~Old Rule No./Title: n/a~~



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.

The Santa Clara County Bar Association recommends against including this as a disciplinary rule. Our Association fully supports encouraging lawyers to provide pro bono services to persons of limited means. However, this rule is hortatory in nature and is not a rule of conduct that can or should be subject to discipline.

OFFICE USE ONLY.

* Date

03/01/2010 

Period

PC

File :

F-2010-382k SCCBA [6.1]

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March 9, 2010

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

Re: Twelve Proposed New or Amended Rules of Professional Conduct

Dear Ms. Hollins:

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

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

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

Sincerely,

ORANGE COUNTY BAR ASSOCIATION

Trudy Levindofsky
Executive Director

MEMORANDUM

Date: February 24, 2010

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

From: Orange County Bar Association ("OCBA")

Re: **Proposed Rule 6.1 – Voluntary Pro Bono Service**

Founded over 100 years ago, the Orange County Bar Association has over 7,000 members, making it one of the largest voluntary bar associations in California. The OCBA Board of Directors, made up of practitioners from large and small firms, with varied civil and criminal practices, and of differing ethnic backgrounds and political leanings, has approved this comment prepared by the Professionalism and Ethics Committee.

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

The OCBA has considered the majority and minority views for this proposed Rule and supports adoption of the minority's view. The minority's view, succinctly stated, is to leave this aspirational statement that lawyers should strive to provide pro bono legal services out of the disciplinary-based rules being considered. In other words, since this proposed Rule has no legal effect, but is, instead, a restatement of a "tradition" of service, or an "aspiration" that individual lawyers in California should strive to obtain, it should not be adopted.

Should the Commission not follow the minority view, as outlined above, and instead adopt this proposed Rule in some form, then we urge the Commission to re-evaluate the historical comments and the actions taken by other states which have considered and/or adopted some version of this Model Rule.

In particular, the OCBA urges the Commission to utilize the 1983 ABA Model Rule language for proposed Rule 6.1. This older version of the Model Rule promoting pro bono service not only encapsulates the overall intent of the ABA's current Model Rule (and the California Board of Governors' 2002 Pro Bono Resolution), but it also artfully avoids the imposition of the type of hourly and financial commitments that the minority view of the proposed Rule found to be either economically unacceptable, or simply not attainable, for some practitioners.

This 1983 version is still imposed on the attorneys of the States of Connecticut, Georgia, Indiana, Kansas, Michigan, Missouri, Pennsylvania and South Carolina, and states:

A lawyer should render public interest service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or

the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

This is a well-stated and concise set of goals that each lawyer, based on his or her individual practices and financial constraints, should strive to achieve. In addition, it takes into account the varying economic circumstances that are faced by today's lawyers, and lawyers in the future, as recognized by the minority.

By being broad in scope, this language also takes into account the varying types of practices engaged in by lawyers that may make it impracticable for them to spend 50 hours in pro bono service, over the course of a year, as specified in the current Model Rule.

This is not a mandatory or disciplinary rule, as stated in Comment [12] of both the Model Rule and proposed Rule 6.1, and, therefore, a lawyer does not face sanctions for his or her failure to reach or exceed the 50 hours per year of pro bono service specified in the Rule; nevertheless, certain practitioners in, for example, the corporate securities arena or an "in house" counsel position, may not be able to meet this goal. They may provide their time to local bar associations and/or educational activities, but they are highly unlikely to be in the position to offer a readily needed specialty to persons of limited means as compared to, for example, those who are family law practitioners or wills and trust practitioners.

Moreover, the Rule (whether one is considering the Model Rule or the proposed Rule), makes no provision or even a comment about those who are not on a full-time schedule, such as deployed military members of the Bar who may not be engaged in the practice of law over the course of a year, or a part-time lawyer, who may be able to provide only a pro-rata share of his or her time to pro bono service, but cannot meet the number of hours specified in the Rule. In addition, the Model Rule seems to rank, or provide a hierarchy of the type of services that are considered to be more important than others. For example, local bar activities, which do contribute to the quality of legal services provided to the public at large, appear to be ranked below performance of single matter services for a client who cannot pay a lawyer's fees, or can only pay at a reduced rate.

In all, if a rule to promote pro bono service is to be adopted by the Commission, then using the 1983 language will permit California to avoid some of the pitfalls of the current Model Rule and, yet, still state the laudable goals that California lawyers should aspire to meet.

CALIFORNIA COMMISSION ON ACCESS TO JUSTICE

c/o State Bar of California - 180 Howard Street - San Francisco, CA 94105 - (415) 538-2251- (415) 538-2524/fax

March 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 Rule 6.1 – Voluntary Pro Bono Publico Service;
Proposed amendment**

Dear Ms. Hollins:

On behalf of the California Commission on Access to Justice, I write in strong support of proposed rule 6.1, and to suggest a modification of that proposed rule.

We are very pleased that the pro bono goal identified in this rule is being proposed for inclusion in our Rules of Professional Conduct. We believe that its inclusion will go a long way toward achieving the goal of establishing a fair and equitable justice system. By emphasizing the professional obligation of all lawyers, and providing a framework for pro bono service, the new rule should result in substantially increased legal assistance being made available to vulnerable individuals throughout our state.

There is one change that we think would strengthen this rule and avoid unnecessary confusion. As you are aware, there is more than one definition of pro bono. The one in Model Rule 6.1 is different from the one promoted by the national Pro Bono Institute, which is followed by most large firms across the country. Both of those definitions are different from the pro bono resolution adopted in California by the Board of Governors, and used in many of our State Bar activities over the past 30 years.

We believe that the confusion that might exist because of these different definitions can be avoided if we eliminate part of subsection (b)(1), and recommend that everything after “civil liberties or public rights” be eliminated. In other words, section (b)(1) would now read:

provide any additional services through:

- (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights;

The deleted section offers an alternative suggestion for how the “additional” pro bono service can be provided, and the main disagreement among the various pro bono definitions has to do with how the “additional” pro bono obligation can be fulfilled.

By limiting (b)(1) to legal services at no fee, or a reduced fee, and by expanding it beyond straight legal aid work to include civil rights, civil liberties and public rights, this section would offer an additional type of service that lawyers can offer while fulfilling their pro bono obligation that stays quite true to the true need for pro bono. Only lawyers can offer legal help for low-income, vulnerable Californians, and we believe that any broader definition of pro bono would undermine the important need of addressing the legal needs of the most vulnerable among us.

This definition is within the definition used by the Pro Bono Institute, and we do want to avoid adopting any rule that causes confusion (and possibly the result that less pro bono will be done by large firms.)

Thank you for taking these comments into consideration, and we hope you will contact us if you have any questions.

Respectfully submitted,

A handwritten signature in black ink, reading "Ronald B. Robie". The signature is written in a cursive, flowing style.

Hon. Ronald B. Robie, Associate Justice, 3rd District,
California Court of Appeal
Chair, California Commission on Access to Justice

PUBLIC INTEREST CLEARINGHOUSE

California's Catalyst for Justice

433 California Street, Suite 815 ♦ San Francisco, CA 94104

Phone 415-834-0100 ♦ Fax 415-834-0202 ♦ www.pic.org

March 12, 2010

Audrey Hollins
Office of Professional Competence, Planning and Development
The State Bar of California
180 Howard Street
San Francisco, CA 94105
Submitted via facsimile to 415-538-2171

RE: Comments on Proposed Rule 6.1: Voluntary Pro Bono Publico Service

Dear Ms. Hollins,

The Public Interest Clearinghouse strongly supports the inclusion of an aspirational rule on pro bono in the Rules of Professional Conduct of the State Bar of California. PIC believes that even an aspirational rule not intended to be the basis for discipline would be valuable because it would provide formal recognition in California that all lawyers have a professional responsibility to perform pro bono work.

The Public Interest Clearinghouse (PIC) works to expand access to legal help for underserved Californians by building infrastructure and partnerships in the legal community. PIC's statewide Pro Bono Initiative supports pro bono efforts at the statewide, regional and local levels. PIC works closely with all sectors of the California legal community – including law firms, law schools and students, and the legal services nonprofits – to increase access to justice by increasing the pro bono resources available to assist low-income and other disadvantaged Californians.

Comments Regarding the Proposed Rule

Pro bono participation and financial support by lawyers are needed now more than ever in California. The need for legal services to the poor continues to increase especially in the current economic recession. However, funding for legal services at the state level remains tenuous at best as California faces a multi-billion dollar deficit in 2009-2010 and 2010-2011, and interest on lawyers trust accounts continues to drop, from \$22 million in 2008 -2009 to \$7 million in 2009 - 2010. All but a handful of states including California have adopted some form of ABA Model Rule 6.1 and the time is ripe for California to adopt an aspirational pro bono rule that encourages pro bono. PIC supports an aspirational pro bono rule. However, PIC has significant concerns about the definition of pro bono used in this proposed rule.

There are already two other definitions of "pro bono" in use in California. The first is the national Pro Bono Institute's ("PBI") definition, which is employed in the Pro Bono Law Firm Challenge that many large California law firms have signed, committing these firms to provide pro bono legal services to low-income and disadvantaged individuals and families and non-profit groups in an amount equal to 5 or 3 percent of the firm's total billable hours. Many localities have adopted a local version of the pledge using the same definition. Many large firms use the Pro Bono Institute definition not only in California, but nationally, and have adopted firm-wide pro bono policies, pro bono approval procedures, and reporting mechanisms based on this definition. Firms have indicated that they would not be able to monitor or report on pro bono activity based on a different definition because of the degree to which the Pro Bono Institute definition has been institutionalized within their firms. In addition, because the law firms use this definition, the legal services and nonprofit providers that partner with these firms and provide pro bono cases and matters to them also use the PBI definition.

The second definition of pro bono already in use in California is the definition set forth in the State Bar Pro Bono Resolution that this organization adopted in 1989 and reaffirmed in 2002. This definition is used by local bar associations, IOLTA funded legal services and pro bono programs, and State Bar certified lawyer referral services throughout the state. (Please see the attachment at the end of this letter for a comparison of the three definitions).

PIC strongly advocates that proposed Rule 6.1 not create yet another definition of pro bono in California by adopting the modified version of the ABA Model Rule. Instead, proposed Rule 6.1 should employ either the definition of pro bono set forth in the Resolution or the PBI definition of pro bono. Given the widespread use of the PBI definition by California's large law firms, and therefore also by the nonprofit legal services and pro bono partners that provide them with pro bono cases and matters, PIC recommends that the proposed Rule 6.1 should adopt the PBI definition.

The Resolution definition and the PBI definition were both intentionally drafted to be narrower than the definition in the Model Rule, excluding certain categories of volunteer legal work that are not focused on providing legal services to those with limited means or addressing issues of significant public importance. Both the Resolution and the PBI definitions are consistent with criteria for the President's Pro Bono Service Awards established by the Board of Governors in 1983 as well as the Wiley W. Manuel Certificate for Pro Bono Legal Services. (This certificate program was created shortly after the 1989 Resolution was adopted to recognize California attorneys who contribute at least 50 hours of pro bono service annually.)

It is critical for the State Bar of California to maintain a consistent and unified voice with respect to pro bono, and introducing a third definition of pro bono that is broader than both the PBI definition and the Resolution definition is likely to cause confusion and divert attention from the key goal here, which is to encourage more pro bono activity for people of limited means and related to issues of significant public importance.

Recommendations on the Proposed Rule

1. (a): Delete "a substantial majority of the" and replace with "at least". PIC believes 50 hours of pro bono legal services should be the minimum as stated in the Pro Bono Resolution.
2. Change (b) (1), (2) and (3) to reflect the Pro Bono Institute definition of pro bono. If the Commission is inclined to retain the ABA Model Rule language as proposed, or to adopt the language of the Pro Bono Resolution, then PIC strongly encourages the Commission to first seek input and public comment specifically on the pro bono definition from stakeholders.

Recommendations on the Comments to the Proposed Rule

Comment [1]: PIC supports the proposed language.

Comment [2]: Replace "a substantial majority" with "all." Also, PIC recommends adding language with respect to "legislative lobbying" and "administrative rule making" that relates those activities to increasing access to justice for persons of limited means or addressing other systemic issues on behalf of clients of limited means.

Comment [3]: PIC supports the proposed language.

Comment [4]: Retain the last sentence and replace "to contribute an appropriate portion of such fees" with "to make a contribution". Donation of statutory attorneys' fees to the legal services organization through which the attorney is doing pro bono work has been a widely accepted practice in California and nationally. By not linking the contribution to the award of attorneys' fee, there is no fee sharing issue and thus no violation of proposed Rule 5.4.

Comment [5]: Delete both references to "judges". Proposed Rule 6.1 applies only to lawyers.

Comment [6]: PIC supports the proposed language.

Comment [7]: No longer applicable with the elimination of (b)(1), (2) and (3).

Comment [8]: Same as Comment [7]. Additionally, serving on bar association committees, taking part in Law Day activities, acting as a legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession are not generally considered pro bono activities and should not be included in the comments.

Comment [9]: PIC supports the comments but recommends inserting "at least" before "reasonably equivalent."

Comment [10]: PIC supports the proposed language.

Comment [11]: After "law firms", add "corporate and governmental legal departments, and other employers of lawyers" and delete "in the firm". The comment should be broadened to include lawyers in other practice settings and not limited to law firms.

Comment [12]: PIC supports the proposed language.

PIC thanks the State Bar and the Commission for this opportunity to provide comment on this important proposed Rule.

Sincerely,

Julia R. Wilson
Executive Director

Comparison of the Three Potential Definitions of Pro Bono:

<u>Proposed Rule 6.1</u>	<u>PBI Pro Bono Law Firm Challenge</u>	<u>State Bar Pro Bono Resolution</u>
<p>(1) Delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their</p> <p>(2) organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise in appropriate;</p> <p>(3) Delivery of legal services at a substantially reduced fee to persons of limited means, or</p> <p>(4) Participation in activities for improving the law, the legal system or the legal profession, or increasing access to justice.</p>	<p>7 (a) the delivery of legal services to persons of limited means or to charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means;</p> <p>(b) the provision of legal assistance to individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties or public rights; and</p> <p>(c) the provision of legal assistance to charitable, religious, civic, community, governmental or educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate.</p>	<p>(1) ...the direct delivery of legal services, without expectation of compensation other than reimbursement of expenses, to indigent individuals, or to not-for-profit organizations with a primary purpose of providing services to the poor or on behalf of the poor or disadvantaged, not-for-profit organizations with a purpose of improving the law and the legal system, or increasing access to justice;</p>



THE STATE BAR OF
CALIFORNIA

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1639

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March 12, 2010

Randall Difuntorum, Director
Office of Professional Competence & Planning
State Bar of California
180 Howard Street
San Francisco, California 94105

re: Comments of the Office of the Chief Trial Counsel to Proposed
Amendments to the Rules of Professional Conduct

Dear Mr. Difuntorum:

Preliminarily, the Office of the Chief Trial Counsel (OCTC) would like to thank Harry B. Sondheim, Chair, Mark L. Tuft and Paul W. Vapnek, Co-Chairs, and the members of the Commission for the Revision of the Rules of Professional Conduct, for the opportunity to submit comments to the proposed amendments to the Rules of Professional Conduct, as released for public comment by the Board of Governors in January 2010. We appreciate the Commission's considerable efforts in crafting rules of conduct for California attorneys relevant to our contemporary legal environment. While we concur with most of the Commission's recommendations, we raise some points of disagreement. Our disagreement is offered in the spirit of aiding in the adoption of rules which can be practically and fairly applied in a uniform fashion by the prosecutor. We hope you find our thoughts helpful.

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

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

Rule 4.1 Truthfulness in Statements to Others.

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

Rule 4.4 Respect for the Rights of Third Persons.

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

Rule 6.1 Voluntary Pro bono Publico Service.

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

Rule 6.2 Accepting Appointments.

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

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

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



**THE STATE BAR
OF CALIFORNIA**

180 HOWARD STREET, SAN FRANCISCO, CA 94105-1639

**COMMITTEE ON PROFESSIONAL
RESPONSIBILITY AND CONDUCT**

TELEPHONE: (415) 538-2161

March 12, 2010

Harry B. Sondheim, Chair
Commission for the Revision of the
Rules of Professional Conduct
State Bar of California
180 Howard Street
San Francisco, CA 94105

RE: Proposed Rule 6.1

Dear Mr. Sondheim:

The State Bar of California's Committee on Professional Responsibility and Conduct (COPRAC) appreciates the opportunity to comment on the proposed amendments to the Rules of Professional Conduct of the State Bar of California, pursuant to the request of the Board Committee on Regulation, Admissions & Discipline Oversight (RAD) for public comment.

COPRAC has reviewed the provisions of proposed Rule 6.1 and offers the following comments.

COPRAC supports adoption of proposed Rule 6.1. While several members of our committee are sympathetic to the view of the Commission's minority and question whether this aspirational statement should be included in the rules, the majority supports the Rule. Given the importance of our professional obligation to improve access to justice, and recognizing the enormous unmet need for counsel for persons of limited means, we favor adoption of the Rule.

Recognizing, however, that there remains some controversy about including this Rule with other rules which are obviously concerned with potential disciplinary issues, we have four suggestions for changes that would make it clearer that Rule 6.1 is aspirational. First, we would retain the ABA language in the opening paragraph stating that lawyers are to "aspire to" provide pro bono services. We think this is sufficiently important to be included in the text of the rule. Second, we recommend incorporating the language of Comment [12] into the body of the Rule. Third, we would also change Comment [12] to state that the rule is not enforceable through the "disciplinary process or otherwise." Fourth, we would preface the last sentence of Comment [12] with "Notwithstanding Rule 1.0(b)(2),".

By making very clear that this rule is different from most of the other rules, the Commission need not further address other concerns raised by COPRAC members regarding the terminology in the Rule which is, in some parts, somewhat vague and unclear. (For example, eligibility for group representation in (b)(1) is not well-defined.) Since no one would be subject to punishment

for an incorrect interpretation of the Rule, we agree that retention of the imprecise ABA language is appropriate.

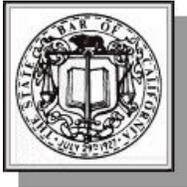
Thank you for your consideration of our comments.

Very truly yours,

A handwritten signature in black ink that reads "Carole J. Buckner". The signature is written in a cursive style with a large, prominent initial "C".

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.

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01/26/2010 

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File :

F-2010-378 Esther [multiple].pdf

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Table of Contents

July 1, 2006 Kehr E-mail to Sondheim, cc Difuntorum & KEM: 1

August 27, 2009 McCurdy E-mail to Snyder, cc Chair, Vapnek, Tuft & Staff: 3

October 21, 2009 Snyder E-mail to McCurdy, cc KEM:..... 5

October 21, 2009 KEM E-mail to Snyder, cc McCurdy:..... 5

October 22, 2009 Snyder E-mail to KEM:..... 5

October 22, 2009 McCurdy E-mail to Snyder, cc KEM:..... 5

October 24, 2009 Snyder E-mail to KEM:..... 6

October 27, 2009 KEM E-mail to Snyder:..... 6

October 27, 2009 Snyder E-mail to Drafters (Foy, Julien, Ruvolo, Voogd), cc Chair & Staff:..... 6

November 1, 2009 Sapiro E-mail to RRC: 7

November 3, 2009 Sondheim E-mail to RRC: 7

November 3, 2009 Sondheim E-mail to RRC: 7

November 6, 2009 Kehr E-mail to RRC:..... 8

November 9, 2009 KEM E-mail to Difuntorum, cc McCurdy & Lee: 8

December 1, 2009 KEM E-mail to Drafters, cc Chair & Staff: 9

December 15, 2009 Difuntorum E-mail to McCurdy, cc Lee, Yen, Andrew Tuft & KEM: 10

March 10, 2010 McCurdy E-mail to Drafters (Snyder, Foy, Julien & Ruvolo), cc Chair, Vice-Chairs & Staff: 11

March 11, 2010 KEM E-mail to Drafters, cc Chair, Vice-Chairs & Staff: 12

March 15, 2010 Snyder E-mail to Drafters, cc Chair, Vice-Chairs & Staff:..... 12

March 15, 2010 Ruvolo E-mail to Snyder, cc Drafters, Chair, Vice-Chairs & Staff: 12

March 15, 2010 McCurdy E-mail to Drafters, cc Chair, Vice-Chairs & Staff:..... 12

March 15, 2010 Snyder E-mail to Drafters, cc Chair, Vice-Chairs & Staff:..... 13

March 16, 2010 KEM E-mail to Snyder, cc Drafters, Chair, Vice-Chairs & Staff:..... 13

March 17, 2010 Snyder E-mail to Drafters, cc Chair, Vice-Chairs & Staff:..... 14

March 17, 2010 Tuft E-mail to Snyder, cc Drafters, Chair, Vice-Chairs & Staff: 14

March 17, 2010 Foy E-mail to Snyder, cc Drafters, Chair, Vice-Chairs & Staff:..... 14

March 17, 2010 Snyder E-mail to Foy, cc Drafters, Chair, Vice-Chairs & Staff:..... 14

March 17, 2010 Foy E-mail to Snyder, cc Drafters, Chair, Vice-Chairs & Staff:..... 15

March 18, 2010 McCurdy E-mail to Snyder, cc KEM: 15

March 18, 2010 KEM E-mail to Snyder & McCurdy:..... 15

March 18, 2010 Snyder E-mail to McCurdy & Difuntorum, cc Chair, Lee & KEM: 15

March 18, 2010 KEM E-mail to McCurdy & Difuntorum, cc Drafters, Chair & Staff: 15

March 18, 2010 KEM E-mail to McCurdy & Difuntorum: 16

March 19, 2010 McCurdy E-mail to Drafters, cc Chair, Vice-Chairs & Staff:..... 16

March 20, 2010 Kehr E-mail to RRC: 16

March 22, 2010 McCurdy E-mail to Snyder & KEM, cc Difuntorum: 17

March 22, 2010 KEM E-mail to McCurdy, cc Snyder & Difuntorum: 17

March 22, 2010 Sapiro E-mail to RRC List: 17

March 22, 2010 KEM E-mail to Snyder:..... 17

March 23, 2010 Snyder E-mail to KEM:..... 18

March 23, 2010 KEM E-mail to Snyder:..... 18

**RRC – Rule 6.1 [MR 6.1]
E-mails, etc., -- Revised (3/24/2010)**

March 23, 2010 KEM E-mail to RRC:	18
March 23, 2010 Melchior E-mail to RRC:	19
March 23, 2010 Sondheim E-mail to RRC:.....	19

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

Rule 6.1 Drafting Team (SNYDER, Foy, Julien, Ruvolo):

This message provides the assignment background materials for Rule 6.1 on the March agenda. **The assignment deadline is Thursday, March 18, 2010.**

This message includes the following draft documents:

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

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

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

Attached:

- RRC - [6-1] - Dashboard - ADOPT - DFT2 (03-10-10).doc
- RRC - [6-1] - Compare - Introduction - DFT1 (11-28-09)KEM-LM.doc
- RRC - [6-1] - Compare - Rule & Comment Explanation - DFT2 (11-28-09) LM.doc
- RRC - [6-1] - Rule - DFT2 (11-28-09)-CLEAN-LAND.doc
- RRC - [6-1] - Public Comment Complete - REV (03-10-10).pdf
- RRC - [6-1] - Public Comment Chart - By Commenter - DFT1 (03-10-10)AT.doc
- RRC - [6-1] - State Variations (2009).pdf

March 11, 2010 KEM E-mail to Drafters, cc Chair, Vice-Chairs & Staff:

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

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

Please let me know if you have any questions.

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

Attached is a proposed draft of the Public Comment Chart. See my additions in yellow. There would be no revisions to the rule. Please let me know what you think.

Attached:

RRC - [6-1] - Public Comment Chart - By Commenter - DFT2 (03-15-10)DS.doc

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

Looks fine to me.

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

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.

Attached:

Zip file containing:

F-2010-384 Jill Smith BHFS [3.9].pdf

F-2010-386 CBIA [3.9].pdf

F-2010-387 CA Commission on Access Justice [6.1].pdf

F-2010-388 Public Interest Clearinghouse [6.1].pdf

F-2010-389 Latham Watkins [3.9].pdf

F-2010-390 Brett Jolley [3.9].pdf

F-2010-391 BASF [1.18].pdf

F-2010-392a State Bar OCTC [1.0.1].pdf

F-2010-392b State Bar OCTC [1.11].pdf

F-2010-392c State Bar OCTC [1.17].pdf

F-2010-392d State Bar OCTC [1.18].pdf

F-2010-392e State Bar OCTC [3.9].pdf
F-2010-392f State Bar OCTC [4.1].pdf
F-2010-392g State Bar OCTC [4.4].pdf
F-2010-392h State Bar OCTC [6.1].pdf
F-2010-392i State Bar OCTC [6.2].pdf
F-2010-392j State Bar OCTC [8.2].pdf
F-2010-393 CYLA [6.1].pdf
F-2010-394a David Ivester [3.9].pdf
F-2010-394b David Ivester [4.1].pdf
F-2010-395 Louise Renne [3.9].pdf
F-2010-396a US Attorney's Office [1.11].pdf
F-2010-396b US Attorney's Office [4.1].pdf
F-2010-397a COPRAC [1.0.1].pdf
F-2010-397b COPRAC [1.4.1].pdf
F-2010-397c COPRAC [1.11].pdf
F-2010-397d COPRAC [1.17].pdf
F-2010-397e COPRAC [1.18].pdf
F-2010-397f COPRAC [3.9].pdf
F-2010-397g COPRAC [4.1].pdf
F-2010-397h COPRAC [4.4].pdf
F-2010-397i COPRAC [6.1].pdf
F-2010-397j COPRAC [6.2].pdf
F-2010-397k COPRAC [6.5].pdf
F-2010-397l COPRAC [8.2].pdf

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

Lauren sent additional comments today. Therefore, I've included them in this revised Commenter chart.

I would like you to pay particular attention to the Comment by the California Commission on Access to Justice. They enthusiastically support such a rule. However, I do not agree with their proposed revision to the rule. Please see my proposed response.

Included in this chart is COPRAC, OCTC and CYLA, too.

Please let me know what you think of my suggested responses.

Attached:

RRC - [6-1] - Public Comment Chart - By Commenter - DFT2.1 (03-15-10)DS.doc

March 16, 2010 KEM E-mail to Snyder, cc Drafters, Chair, Vice-Chairs & Staff:

I've reviewed your chart and have made some suggested revisions. I've attached the following:

1. Public Comment Chart, Draft 2.2 (3/16/10)DS-KEM, redline, compared to Draft 2.1 (10/15/10)DS, the draft you circulated last night.
2. Public Comment Chart, Draft 2.2 (3/16/10)DS-KEM, clean.

Notes & Comments:

The only substantive disagreement I have is with your recommendation to follow COPRAC's suggestion #4. See page 2 and footnote 2 in the redline version.

I've also resorted the chart alphabetically.

Please let me know if you have any questions.

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

Attached is the proposed Commenter chart which includes my work and Kevin's additional suggestions. I'm sorry we could not get this to you earlier. However, as you may be aware, we received a number of the Comments only yesterday after my completion of a prior draft.

Note, that the CYLA comment is apparently still unofficial. We need to hear something about that soon or it should be taken out. Hopefully, Randy or Lauren will let us know today whether it should be included and discussed.

Please get back to me as soon as possible, and let me know what your comments. I will finalize the remainder of the documents by tomorrow morning. **The assignment deadline is tomorrow, Thursday, March 18, 2010.**

Attached:

RRC - [6-1] - Public Comment Chart - By Commenter - DFT2.3 (03-17-10)DS-KEM.doc

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

I am fine with your responses to the public comments to this rule.

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

Thank you for your careful and excellent drafting. My only suggestion is that we use a single, uniform response to all of the comments expressing the view that the rule is solely aspirational and therefore should not be included among what are otherwise disciplinary rules. Right now, there are several different responses varying slightly in detail and emphasis, but I think it would be better to use a single, broadly worded response, e.g., the first of the responses to the Orange County Bar Association comments (line 8).

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

Thanks for reviewing this and providing your comments. I had originally thought of repeating the same response over and over, but thought it better not to sound stilted - like a canned response. While some of the commenters seemed to have similar criticisms that it is "aspirational" or "hortatory" - each differed slightly. I thought it might be better to tailor the responses since it also flows as a document from beginning to end and builds on the Access to

Justice concept depending on how detailed the comment is. Do you feel strongly about this? I'm getting short of time to make revisions because I'm working on a rush project for work.

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

I don't feel strongly about the uniformity of response, though I'm not sure we can assume commenters and others who review the comment chart will read from beginning to end and therefore appreciate the development of the Commission's response through the document. Fine to go with your current draft.

March 18, 2010 McCurdy E-mail to Snyder, cc KEM:

Dom, In follow-up to our conversation this morning concerning the CYLA comment, we expect to receive word tomorrow, so unfortunately, for purposes of our mailing today, any reference to the CYLA comment in any of your materials should be removed. However, we should save a version of your materials with the references to the CYLA comment in it because we will likely circulate the updated materials prior to the meeting once we receive the go ahead. If you have only have a reference to it in the commenter chart then send me a soft copy and I can save a version with it and create a new version omitting it.

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

I'll update the chart and save the responses to the CYLA comments. I should have you the materials shortly.

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

I think this is in as "final" a form as I can make it. Please let me know if there's anything else I need to do. I hope I've done it correctly.

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

I've attached the following, all in Word:

1. Dashboard, Draft 3 (3/18/10). Minor changes highlighted in yellow.
2. Introduction, Draft 2 (3/18/10). I've added a section called "public comment".
3. Rule & Comment Comparison Chart, Draft 2 (11/28/09). No change.
4. Rule, Draft 2 (11/28/09). This is the public comment draft. No changes are recommended.
5. Public Comment Chart, Draft 2.4 (3/18/10). Because the official CYLA comment has not yet been submitted, I've deleted the CYLA row from the Chart (but have save it in Draft 2.3 (3/17/10).)

Notes and Comments:

1. Only one comment. Given the negative public comment received from CYLA, OCTC, OCBA and SCCBA, we should consider identifying this Rule as "very controversial". At present it is listed as moderately controversial.

Please let me know if you have any questions.

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

Dom and I sent in dueling e-mails a few minutes apart on Rule 6.1. I've communicated w/ her and we decided you should use ALL the documents that are attached to my e-mail instead of the corresponding ones attached to hers. The time of my e-mail is 11:20 a.m.

Please let me know if you have any questions.

March 19, 2010 McCurdy E-mail to Drafters, cc Chair, Vice-Chairs & Staff:

The March meeting agenda materials should be arriving at your offices or places of residence today.

The e-mail comment deadline for these items is **Wednesday, March 24th**.

The following items that are not included in your package and should also be reviewed in preparation for the meeting are attached to this message:

1. The CYLA comment on Rule 6.1 is now "official" the only addition is a disclaimer at the end of the letter (a public commenter chart with the CYLA entry is also attached); and
2. A late comment on Rule 6.1 from the State Bar Standing Committee on the Delivery of Legal Services (SCDLS).

Attached:

RRC - [6-1] - CYLA Public Comment - Official - F-2010-393.pdf

RRC - [6-1] - SCDLS - Legal Services - Public Comment - F-2010-398.pdf

RRC - [6-1] - Public Comment Chart - By Commenter - DFT2.3 (03-17-10)DS-KEM2.doc

March 20, 2010 Kehr E-mail to RRC:

Here are my comments on these materials:

1. Why does the Rule place the number 50 within parentheses? I don't see any explanation of this. I suspect this simply copies the MR where I imagine the parentheses was used to indicate that the number might be varied in the adoption process.
2. I'm not certain that I understand the point of COPRAC's comment 4 on agenda p. 472, but if adopted it might be read as turning 6.1 into a disciplinary rule. That seems to me to be another reason to not follow this recommendation.

March 22, 2010 McCurdy E-mail to Snyder & KEM, cc Difuntorum:

This message provides an updated Public Commenter Chart for 6.1 adding a synopsis for the comment from the Standing Committee on Delivery of Legal Services - SCDLS (highlighted in green). We added it to the last version of the chart submitted by Kevin with message below. Please let me know if you would like me to circulate this to the entire committee now, or if you would like to take to update the RRC response column first, prior to my re-circulating this to the members.

Attached:

RRC - [6-1] - Public Comment Chart - By Commenter - DFT2.4 (03-22-10)DS-KEM.doc

March 22, 2010 KEM E-mail to McCurdy, cc Snyder & Difuntorum:

To avoid confusion, I've revised what you just sent by inserting the CYLA comments & the RRC responses to them that appeared in an earlier Draft, but were taken out when we were advised the CYLA comment was "unofficial." According to your 3/19 e-mail, the substance of the "official" is identical to the substance of the "unofficial," so we can just put them back in.

The attached file therefore is the one Dom and I should work with. We need to provide responses to SCDLS's comment. The file is named:

RRC - [6-1] - Public Comment Chart - By Commenter - DFT2.5 (03-22-10)DS-KEM.doc

The next file you get from us will be 2.6! I hope.

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

1. I disagree with the commenters who would make this into a disciplinary rule. It would be like resurrecting the draft: if not universal, it would breed contempt for our rules.
2. Did we vote to put the minimum standard at fifty hours per year? If so, I would not put it in parentheses in the introductory paragraph or in paragraph (a).

March 22, 2010 KEM E-mail to Snyder:

As we discussed earlier, I've attached Draft 2.6 of the Public Comment Chart. Please review my responses. I don't think we need to go into too much detail on this. I'd like to get it out to the Commission members for their responses and/or suggestions.

If you agree with the responses I drafted, let me know and I'll make any necessary changes to the Rule (I think the only change I recommend is to delete "judges" in Comment [5].) In addition, given that most commenters don't like this -- it's either not appropriate for a disciplinary rule (e.g., the bar associations, OCTC) or it is not sufficiently narrow (CYLA, SCDLS) -- we should probably redo the Dashboard and designate it as "very controversial". I can also do a quick revision of the Introduction to include a brief summary of public comment. Let me know what you think.

March 23, 2010 Snyder E-mail to KEM:

I made a couple of "tweaks" which you are free to accept or reject. I essentially agree with all of the responses, and with the deletion of "judges" in Comment [5]. Here's a redline. Let me know what you think.

March 23, 2010 KEM E-mail to Snyder:

I agree w/ your tweaks. I'll revise the Dash and Intro and sent them w/ the revised PC Chart to Lauren for distribution to the Commission.

March 23, 2010 KEM E-mail to RRC:

I've attached to this e-mail a single, scaled PDF file that includes the following:

1. Dashboard, Draft 3.1 (3/23/10);
2. Introduction, Draft 2.1 (3/23/10);
3. Rule & Comment Chart, Draft 3 (3/23/10);
4. Rule, Draft 3 (3/23/10), redline, compared to Pub Comment Draft [#2] (11/28/09);
5. Public Comment Chart, Draft 2.6 (3/23/10)DS-KEM.

I have also attached the full public comment of the State Bar's Standing Committee on the Delivery of Legal Services ("SCDLS") and the Cal. Young Lawyer's Ass'n ("CYLA"). These comments were not included in the public comment chart in the agenda materials, the former because the drafters did not receive it until yesterday and the latter because we were advised that the comment that had been submitted was unofficial and that we should hold off consideration until we received an official CYLA comment. Please read the notes and comments below, which should help you with your review of the attached.

Notes & Comments:

1. Our apologies for sending this to you at this late hour but the public comment by two apparent stakeholders is deserving of careful consideration at our meeting. CYLA objects to having any rule at all. The drafters believe, as noted by Toby Rothschild at our November meeting, that an RPC will make the pro bono policy more accessible and will also have more impact as coming from the Supreme Court.
2. SCDLS takes the position that the definition of pro bono the RRC has recommended is too broad and should be narrowed along the lines of the BOG Resolution and the Pro Bono Institute's definition. The drafters believe that the Model Rule definition, as revised in our rule, is appropriate. Please see Response to SCDLS in the Public Comment Chart, paragraph 2.
3. The principal document to review is the public comment chart. New matter that has been added since the agenda mailing is shaded in gray.

**RRC – Rule 6.1 [MR 6.1]
E-mails, etc., -- Revised (3/24/2010)**

4. Dashboard. The drafters recommend that level of controversy for this rule be changed to "very controversial". Given the positions of SCDLS and CYLA, this rule needs to be discussed by RAC at its May 2010 meeting and a policy decision made by the BOG.
5. Introduction. Additions have been made to the Public Comment section, in redline.
6. Rule & Comment Chart. The parentheses around "50" have been removed and reference to "judges" in Comment [5] stricken.
7. Rule, Draft 3, compared to PCD. Same as item #6, above.
8. Public Comment Chart, Draft 2.6. As noted in 1 & 2 above, the comments from SCDLS and CYLA, and the suggested responses of the RRC thereto, have been added.

Please let me know if you have any questions.

March 23, 2010 Melchior E-mail to RRC:

While I continue to support the minority position fully, here's a nit: at p. 7 you mean Chief Justice George, not Presiding Justice.

March 23, 2010 Sondheim E-mail to RRC:

1. Revised Commenter Chart, p. 2: The last sentence of the RRC Response seems awkward. I don't understand the relationship between the "specific activities" and "these concepts." What concepts?
2. Revised Commenter Chart, p. 8: See item 1, supra.