

## McCurdy, Lauren

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**From:** Difuntorum, Randall  
**Sent:** Wednesday, September 30, 2009 3:29 PM  
**To:** McCurdy, Lauren  
**Subject:** FW: RRC Proposed Rule 1.0 Introduction;Comparison of RRC Proposed Rule 1.0.;Dashboard to Rule 1.0.  
**Attachments:** RRC - 1-100 [1-0] - Compare - Rule & Comment Explanation - DFT2 (09-28-09)MLT-KEM.doc; RRC - 1-100 [1-0] - Dash, Intro, Rule, Comment - COMBO - DFT2 (09-28-09)MLT-KEM- Cf. to DFT1.pdf; RRC - 1-100 [1-0] - Compare - Introduction - DFT2 (09-28-09)MLT-KEM.doc; RRC - 1-100 [1-0] - Dashboard - ADOPT - DFT2 (09-28-09)MLT-KEM.doc

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**From:** KEVINMOHR04@sprintpcs.com [mailto:KEVINMOHR04@sprintpcs.com] **On Behalf Of** Kevin Mohr  
**Sent:** Tuesday, September 29, 2009 6:21 PM  
**To:** Mark Tuft  
**Cc:** CommissionerJ2@gmail.com; Stan Lamport (E-mail); Kurt Melchior (E-mail); Ruvolo, Ignazio; Difuntorum, Randall  
**Subject:** Re: RRC Proposed Rule 1.0 Introduction;Comparison of RRC Proposed Rule 1.0.;Dashboard to Rule 1.0.

Mark and all:

1. I've attached a single, scaled PDF that contains the following:
  - a. Dashboard, Draft 2 (9/28/09)MLT-KEM, redline, compared to Draft 1 (9/28/09)MLT.
  - b. Introduction, Draft 2 (9/28/09)MLT-KEM, clean.
  - c. Rule & Comment Comparison Chart, Draft 2 (9/28/09)MLT-KEM, redline, compared to Draft 1 (9/28/09)MLT.
2. Clean versions of all of the foregoing, in Word.

KEM Comments.

1. Pretty much the only changes I made were stylistic (e.g., "Rule" for "rule" where warranted.)
2. Dashboard. I change the Comment description to "No ABA Model Rule counterpart" because it didn't make sense to talk about material additions or deletions when we check the "no counterpart" box for the black letter. I also ticked the "no minority" box on the second page. I'm not aware of any dissents on this Rule.
3. Rule and Comment Explanation. Again, all the changes are stylistic to conform w/ our other charts.
  - a. I do have a question. Is Comment [5] necessary given that we have recommended adoption of proposed Rule 8.5. As I recall, the comment was intended only as a placeholder pending the Commission's decision on 8.5. I would simply include the last sentence of the Comment w/ the cross-reference to 8.5 and delete the rest. What do you think?

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

Kevin

Mark Tuft wrote:

<<RRC Rule 1.0 9/28/09.DOC>> <<Comparison of RRC Proposed Rule 1.0.DOC>> <<Dashboard to Rule 1.0.DOC>>

Fellow Drafters:

Attached are the comparison charts, Introduction and "Dashboard" for proposed Rule 1.0. Please review and provide comments at your earliest convenience. The materials are due by Noon on Wednesday, September 30.

Mark L. Tuft  
Cooper, White & Cooper LLP  
201 California St.  
17th Floor  
San Francisco, CA 94111  
(415)433-1900  
(415)765-6215 (Direct Line)  
(415)433-5530 (Fax)  
(415)309-1735 (Cell)  
<mailto:mtuft@cwclaw.com>

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Kevin E. Mohr  
Professor  
Western State University College of Law  
1111 N. State College Blvd.

# Proposed Rule 1.0 [RPC 1-100]

## “Purpose and Scope of the Rules”

(Draft #7, 6/18/09)

**Summary:** Proposed Rule 1.0 provides a description of the purposes and scope of the Rules Of Professional Conduct in place of the Preamble and Scope to the ABA Model Rules. The purposes of the ~~rules-Rules~~ are to protect the public and the interests of client, to protect and promote the legal system and the administration of justice and to promote respect for and confidence in the legal profession. The ~~rules-Rules~~ apply to members of the State Bar practicing in and outside of California and to other lawyers practice law in this state. A willful violation of the ~~rules-Rules~~ is a basis for discipline. The ~~rules-Rules~~ are not intended to enlarge or restrict the law regarding the liability of lawyers to others.

### Comparison with ABA Counterpart

Rule	Comment
<input type="checkbox"/> ABA Model Rule substantially adopted	<input 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 checked="" type="checkbox"/> No ABA Model Rule counterpart	<input checked="" type="checkbox"/> No ABA Model Rule counterpart

### Primary Factors Considered

Existing California Law

Rules

RPC 1-100

Statute

Case law

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

Other Primary Factor(s)

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## Rule Revision Commission Action/Vote to Recommend Rule Adoption

(14 Members Total – votes recorded may be less than 14 due to member absences)

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Approved on 10-day Ballot, Less than Six Members Opposing Public Comment Distribution

Vote (see tally below)

Favor Rule as Recommended for Adoption \_\_\_\_  
Opposed Rule as Recommended for Adoption \_\_\_\_  
Abstain \_\_\_\_\_

Approved on Consent Calendar

Approved by consensus

Minority/Position Included on Model Rule Comparison Chart:  Yes  No

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## Stakeholders and Level of Controversy

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- No Known Stakeholders  
 The Following Stakeholders Are Known:

State Bar of California Committee on Professional Liability Insurance

- Very Controversial – Explanation:

- Moderately Controversial – Explanation:

The Commission recommends that the Model Rule Preamble and Scope not be adopted and that the purpose and scope of the ~~rules~~ Rules be included in a separate rule of professional conduct. In addition, the Commission recommends including the concept in the Model Rule Scope, ~~¶~~ paragraph 20, that a violation of a rule will not itself give rise to a civil cause of action; however, a violation of a rule may be evidence of breach of a fiduciary or other substantive duty in a non-disciplinary context.

- Not Controversial

# COMMISSION FOR THE REVISION OF THE RULES OF PROFESSIONAL CONDUCT

## Proposed Rule 1.0\* Purpose and Scope of the Rules of Professional Conduct

October 2009

(Draft rule following consideration of public comment)

### *INTRODUCTION:*

Proposed Rule 1.0 provides a description of the intended purpose and scope of the Rules Of Professional Conduct. The Rule does not have a counterpart in the ABA Model Rules. The Model Rules, instead, are preceded by a Preamble describing a lawyer's responsibilities in 13 comments and a Scope that describes how the Rules are to be applied in 8 additional comments. The Preamble and Scope to the Model Rules follows a tradition that began with the preamble to the original ABA Canons of Professional Conduct and continued with the ABA Model Code of Professional Responsibility. California has traditionally described the purpose and scope of its Rules in a separate rule and the Commission recommends that this tradition be continued in proposed Rule 1.0.

Rule 1.0(a) enumerates four purposes of the Rules: (1) to protect the public; (2) to protect the interests of clients; (3) to protect the integrity of the legal system and promote the administration of justice and (4) to promote respect for, and confidence in, the legal professional. These four purposes are derived from the Rules themselves and from court decisions and ethics opinions that have discussed and applied the Rules. Paragraph (a) is consistent with the Model Rules and provides a more concise statement of the purpose of the Rules than the general orientation contained in the Preamble and Scope to the Model Rules.

Rule 1.0(b) describes the scope of the Rules and is derived in part from current California Rule 1-100 and provisions of the State Bar Act and from comments under the Scope section to the Model Rules. Paragraph (c) tracks Scope paragraph 21 in explaining the purpose of the comments accompanying the Rules. Paragraph (d) explains how the Rules should be cited.

*Variation in other jurisdictions.* Although most states include a preamble and scope section similar to the Model Rules, several states, including Michigan and Nevada, replace the preamble and scope with a rule which incorporates some of the paragraphs of the preface to the Model Rule.

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\* Proposed Rule 1.0, Draft 7 (6/18/07).



<p align="center"><u>Current California Rule</u></p> <p align="center">Rule 1-100 Rules of Professional Conduct, in General</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 1.0 <u>Purpose and Scope of the Rules of Professional Conduct</u>, <del>in General</del></p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>(A) Purpose and Function.</p> <p>The following rules are intended to regulate professional conduct of members of the State Bar through discipline. They have been adopted by the Board of Governors of the State Bar of California and approved by the Supreme Court of California pursuant to Business and Professions Code sections 6076 and 6077 to protect the public and to promote respect and confidence in the legal profession. These rules together with any standards adopted by the Board of Governors pursuant to these rules shall be binding upon all members of the State Bar.</p>	<p>(Aa) <del>Purpose and Function:</del> <u>The purposes of the following Rules are:</u></p> <p><del>The following rules are intended to regulate professional conduct of members of the State Bar through discipline. They have been adopted by the Board of Governors of the State Bar of California and approved by the Supreme Court of California pursuant to Business and Professions Code sections 6076 and 6077 to protect the public and to promote respect and confidence in the legal profession. These rules together with any standards adopted by the Board of Governors pursuant to these rules shall be binding upon all members of the State Bar.</del></p>	<p>Paragraph (a) provides a succinct statement of the purposes of the <del>rules</del> <u>Rules</u> in place of the more general orientation contained in the Preamble and Scope to the Model Rules. Paragraph (a) continues the approach in current California Rule 1-100(A) of describing the policies underlying the <del>rules</del> <u>Rules</u>. The paragraph expands on the purposes stated in current Rule 1-100 and is intended to provide greater guidance to lawyers in applying the <del>rule</del> <u>Rules</u>. The four purposes are derived from the <del>rules</del> <u>Rules</u> themselves and from relevant case law and ethics opinions on the purposes of the <del>rules</del> <u>Rules</u>. Each of the four stated purposes in paragraph (a) is consistent with the ABA Preamble on A Lawyer's Responsibilities and the Scope section to the Model Rules. See Model Rule, Preamble and Scope, below, particularly <del>¶¶</del> <u>paragraphs 1 through 9, 11, 12, and 17.</u></p>
	<p><u>(1) To protect the public;</u></p>	
	<p><u>(2) To protect the interests of clients;</u></p>	
	<p><u>(3) To protect the integrity of the legal system and to promote the administration of justice; and</u></p>	

\* Proposed Rule 1.0, Draft 7 (6/18/07). Redline/strikeout showing changes to the ABA Model Rule

<p align="center"><u>Current California Rule</u></p> <p align="center">Rule 1-100 Rules of Professional Conduct, in General</p>	<p align="center"><u>Commission's Proposed Rule</u></p> <p align="center">Rule 1.0 <u>Purpose and Scope of the Rules of Professional Conduct</u>, <del>in General</del></p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
	<p><a href="#">(4) To promote respect for, and confidence in, the legal profession.</a></p>	
<p>For a willful breach of any of these rules, the Board of Governors has the power to discipline members as provided by law.</p>	<p><del>For a willful breach of any of these rules, the Board of Governors has the power to discipline members as provided by law.</del></p>	<p>See <a href="#">Explanation of Changes for</a> paragraph (b) and Comments [1], [2] and [4].</p>
<p>The prohibition of certain conduct in these rules is not exclusive. Members are also bound by applicable law including the State Bar Act (Bus. &amp; Prof.Code, § 6000 et seq.) and opinions of California courts. Although not binding, opinions of ethics committees in California should be consulted by members for guidance on proper professional conduct. Ethics opinions and rules and standards promulgated by other jurisdictions and bar associations may also be considered.</p>	<p><del>The prohibition of certain conduct in these rules is not exclusive. Members are also bound by applicable law including the State Bar Act (Bus. &amp; Prof.Code, § 6000 et seq.) and opinions of California courts. Although not binding, opinions of ethics committees in California should be consulted by members for guidance on proper professional conduct. Ethics opinions and rules and standards promulgated by other jurisdictions and bar associations may also be considered.</del></p>	<p>See <a href="#">Explanation of Changes for</a> Comment [3].</p>
	<p><a href="#">(b) Scope of the Rules:</a></p> <p><a href="#">(1) These Rules, together with any standards adopted by the Board of Governors of the State Bar of California pursuant to these Rules, regulate the conduct of lawyers and are binding upon all members of the State Bar and all other lawyers practicing law in this state.</a></p>	<p>Paragraph (b) provides a separate statement of the intended scope of the <del>rules</del>Rules. Paragraph (b)(1) is derived from the last sentence in current California Rule 1-100(A). The sentence has been modified to clarify that the <del>rules</del>Rules also apply to lawyers who are not members of the State Bar and who practice law in this state pursuant to California Rules of Court and other law. See Comment [5] and proposed <del>rules</del>Rules 5.5 and 8.5. A separate statement on the scope of the <del>rules</del>Rules is consistent with the <del>ABA-Model Rules, which approach of having</del>have a separate</p>

<p align="center"><u>Current California Rule</u> Rule 1-100 Rules of Professional Conduct, in General</p>	<p align="center"><u>Commission's Proposed Rule</u> Rule 1.0 <u>Purpose and Scope of the Rules of Professional Conduct</u>, <del>in General</del></p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
		<p>Scope section as an introduction to the Model Rules. See Model Rule, Scope, below.</p>
	<p><a href="#">(2) A willful violation of these Rules is a basis for discipline.</a></p>	<p>Paragraph (b)(2) is based on Model Rule Scope, <del>¶</del> <a href="#">paragraph 19</a>, and conforms to the second paragraph in current California Rule 1-100(A).</p>
<p>These rules are not intended to create new civil causes of action. Nothing in these rules shall be deemed to create, augment, diminish, or eliminate any substantive legal duty of lawyers or the non-disciplinary consequences of violating such a duty.</p>	<p><del>These rules are not intended to create new civil causes of action. Nothing in these rules shall be deemed to create, augment, diminish, or eliminate any substantive legal duty of lawyers or the non-disciplinary consequences of violating such a duty.</del></p>	<p>See <a href="#">Explanation of Changes for</a> paragraph (b)(3) and Comment [2].</p>
	<p><a href="#">(3) Nothing in these Rules or the comments to the Rules is intended to enlarge or to restrict the law regarding the liability of lawyers to others.</a></p>	<p>Paragraph (b)(3) is based on Model Rule Scope, <del>paragraph</del> <a href="#">¶</a> <del>20</del>, and replaces the fourth paragraph in current California Rule 1-100(A). Paragraph (b)(3), as amplified by Comment [2] below, embodies the concept stated in Model Rule Scope, <del>¶</del> <a href="#">paragraph 20</a>, and existing case law, that a violation of a rule does not itself give rise to a civil cause of action; however, a violation of a rule may be evidence of breach of a lawyer's fiduciary or other legal duty in a non-disciplinary context.</p>
<p>(B) Definitions.</p> <p>(1) "Law Firm" means:</p> <p>(a) two or more lawyers whose activities</p>	<p><del>(B) Definitions.</del></p> <p><del>(1) "Law Firm" means:</del></p> <p><del>(a) two or more lawyers whose activities</del></p>	<p>The definitions in current California Rule 1-100(B) have been moved to a separate terminology rule (proposed <del>rule</del> <a href="#">Rule 1.0.1</a>) to conform to Model Rule 1.0 on "Terminology."</p>

<p align="center"><b>Current California Rule</b></p> <p align="center"><b>Rule 1-100 Rules of Professional Conduct, in General</b></p>	<p align="center"><b>Commission's Proposed Rule*</b></p> <p align="center"><b>Rule 1.0 Purpose and Scope of the Rules of Professional Conduct, <del>in General</del></b></p>	<p align="center"><b>Explanation of Changes to the ABA Model Rule</b></p>
<p>constitute the practice of law, and who share its profits, expenses, and liabilities; or</p> <p>(b) a law corporation which employs more than one lawyer; or</p> <p>(c) a division, department, office, or group within a business entity, which includes more than one lawyer who performs legal services for the business entity; or</p> <p>(d) a publicly funded entity which employs more than one lawyer to perform legal services.</p>	<p><del>constitute the practice of law, and who share its profits, expenses, and liabilities; or</del></p> <p><del>(b) a law corporation which employs more than one lawyer; or</del></p> <p><del>(c) a division, department, office, or group within a business entity, which includes more than one lawyer who performs legal services for the business entity; or</del></p> <p><del>(d) a publicly funded entity which employs more than one lawyer to perform legal services.</del></p>	
<p>(2) "Member" means a member of the State Bar of California.</p>	<p><del>(2) "Member" means a member of the State Bar of California.</del></p>	
<p>(3) "Lawyer" means a member of the State Bar of California or a person who is admitted in good standing of and eligible to practice before the bar of any United States court or the highest court of the District of Columbia or any state, territory, or insular possession of the United States, or is licensed to practice law in, or is admitted in good standing and eligible to practice before the bar of the highest court of, a foreign country or any political subdivision</p>	<p><del>(3) "Lawyer" means a member of the State Bar of California or a person who is admitted in good standing of and eligible to practice before the bar of any United States court or the highest court of the District of Columbia or any state, territory, or insular possession of the United States, or is licensed to practice law in, or is admitted in good standing and eligible to practice before the bar of the highest court of, a foreign country or any political subdivision</del></p>	

<p align="center"><b>Current California Rule</b></p> <p align="center"><b>Rule 1-100 Rules of Professional Conduct, in General</b></p>	<p align="center"><b>Commission's Proposed Rule*</b></p> <p align="center"><b>Rule 1.0 <u>Purpose and Scope of the Rules of Professional Conduct</u>, <del>in General</del></b></p>	<p align="center"><b><u>Explanation of Changes to the ABA Model Rule</u></b></p>
thereof.	<del>thereof.</del>	
(4) "Associate" means an employee or fellow employee who is employed as a lawyer.	<del>(4) "Associate" means an employee or fellow employee who is employed as a lawyer.</del>	
(5) "Shareholder" means a shareholder in a professional corporation pursuant to Business and Professions Code section 6160 et seq.	<del>(5) "Shareholder" means a shareholder in a professional corporation pursuant to Business and Professions Code section 6160 et seq.</del>	
<p>(C) Purpose of Discussions.</p> <p>Because it is a practical impossibility to convey in black letter form all of the nuances of these disciplinary rules, the comments contained in the Discussions of the rules, while they do not add independent basis for imposing discipline, are intended to provide guidance for interpreting the rules and practicing in compliance with them.</p>	<p><del>(C) Purpose of Discussions.</del></p> <p><del>Because it is a practical impossibility to convey in black letter form all of the nuances of these disciplinary rules, the comments contained in the Discussions of the rules, while they do not add independent basis for imposing discipline, are intended to provide guidance for interpreting the rules and practicing in compliance with them.</del></p>	See <a href="#">Explanation of Changes for</a> paragraph (c).
	<p>(c) <a href="#">Comments: The comments following the Rules do not add obligations to the Rules but provide guidance for their interpretation and for acting in compliance with the Rules.</a></p>	Paragraph (c) is derived from the last sentence in Model Rule, Scope, <del>¶ paragraph</del> 14, and the first sentence in ¶ 21. See Model Rule, Preamble and Scope, below. The paragraph is intended to replace current California Rule 1-100(C).
(D) Geographic Scope of Rules.	<del>(D) Geographic Scope of Rules.</del>	The <del>rule provision</del> on the disciplinary authority over lawyers who are members of the State Bar practicing in and outside of this

<p align="center"><u>Current California Rule</u></p> <p align="center">Rule 1-100 Rules of Professional Conduct, in General</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 1.0 <u>Purpose and Scope of the Rules of Professional Conduct</u>, <del>in General</del></p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>(1) As to members:</p> <p>These rules shall govern the activities of members in and outside this state, except as members lawfully practicing outside this state may be specifically required by a jurisdiction in which they are practicing to follow rules of professional conduct different from these rules.</p> <p>(2) As to lawyers from other jurisdictions who are not members:</p> <p>These rules shall also govern the activities of lawyers while engaged in the performance of lawyer functions in this state; but nothing contained in these rules shall be deemed to authorize the performance of such functions by such persons in this state except as otherwise permitted by law.</p>	<p><del>(1) — As to members:</del></p> <p><del>These rules shall govern the activities of members in and outside this state, except as members lawfully practicing outside this state may be specifically required by a jurisdiction in which they are practicing to follow rules of professional conduct different from these rules.</del></p> <p><del>(2) — As to lawyers from other jurisdictions who are not members:</del></p> <p><del>These rules shall also govern the activities of lawyers while engaged in the performance of lawyer functions in this state; but nothing contained in these rules shall be deemed to authorize the performance of such functions by such persons in this state except as otherwise permitted by law.</del></p>	<p>state and other lawyers practicing in this state has been moved to proposed <del>rule</del>-Rule 8.5 to be consistent with the Model Rules. As a result, a statement regarding the geographic scope of the <del>rules</del> <u>Rules</u> is provided in Comment [5] with a cross reference to proposed <del>rule</del>-Rule 8.5.</p>
<p>(E) These rules may be cited and referred to as “Rules of Professional Conduct of the State Bar of California.”</p>	<p><del>(Ed)</del> <u>Title</u>: These <del>rules may be cited and referred to as</del> <u>Rules are the</u> “<u>California</u> Rules of Professional Conduct <del>of the State Bar of California.</del>”</p>	<p>Paragraph (d) is based on current California Rule 1-100(<del>DE</del>) and identifies how the <del>rules</del>-<u>Rules</u> should be referred to and cited.</p>

<p align="center"><b>Current California Rule</b></p> <p align="center"><b>Rule 1-100 Rules of Professional Conduct, in General</b></p> <p align="center"><b>Discussion</b></p>	<p align="center"><b>Commission's Proposed Rule</b></p> <p align="center"><b>Rule 1.0 <u>Purpose and Scope of the Rules of Professional Conduct</u>, <del>in General</del></b></p> <p align="center"><b>Comment</b></p>	<p align="center"><b>Explanation of Changes to the ABA Model Rule</b></p>
<p>Discussion</p>	<p><del>Discussion</del><u>Comment</u></p> <p>[1] <u>The Rules of Professional Conduct are Rules of the Supreme Court of California regulating lawyer conduct in this state. (See <i>In re Attorney Discipline System</i> (1998) 19 Cal. 4th 582, 593-597 [79 Cal Rptr.2d 836]; <i>Howard v. Babcock</i> (1993) 6 Cal. 4th 409, 418 [25 Cal Rptr.2d 80]. The Rules have been adopted by the Board of Governors of the State Bar of California and approved by the Supreme Court pursuant to Business and Professions Code sections 6076 and 6077. The Supreme Court of California has inherent power to regulate the practice of law in California, including the power to admit and discipline lawyers practicing in this jurisdiction. (<i>Hustedt v. Workers' Comp. Appeals Bd.</i> (1981) 30 Cal.3d 329, 336 [178 Cal.Rptr. 801]; <i>Santa Clara County Counsel Attorneys Association v. Woodside</i> (1994) 7 Cal.4th 525, 542-543 [28 Cal.Rptr.2d 617] and see Business and Professions Code section 6100.)</u></p>	<p>Comment [1] confirms that the <del>rules</del><u>Rules</u>, when approved, are the <del>rules</del><u>Rules</u> of the Supreme Court and that the Supreme Court has inherent power to regulate the practice of law in California and ultimate authority over lawyer conduct in this state. The comment is based on case decisions and provisions of the State Bar Act and is derived in part from current California Rule 1-100(A). The comment does not have a direct counterpart in the Model Rules, although it is consistent with provisions in the Preamble to the Model Rules, particularly <del>¶¶</del><u>paragraphs</u> 10–11. See Model Rules, Preamble and Scope, below.</p>
<p>The Rules of Professional Conduct are intended to establish the standards for members for purposes of discipline (See <i>Ames v. State Bar</i> (1973) 8 Cal.3d 910 [106 Cal.Rptr. 489].) The fact that a member has engaged in conduct that may be contrary to these rules does not automatically give rise to a civil cause of action. (See <i>Noble v. Sears Roebuck &amp;</i></p>	<p>[2] The Rules <del>of Professional Conduct</del> are <del>intended</del><u>designed</u> to <del>establish the standards</del><u>provide guidance to lawyers and to provide a structure for members for purposes of regulating conduct through discipline.</u> (See <i>Ames v. State Bar</i> (1973) 8 Cal.3d 910 [106 Cal.Rptr. 489].) <del>The fact that a member has engaged in conduct that may be</del></p>	<p>Comment [2] is based on provisions in the Preamble and Scope to the Model Rules, particularly <del>¶¶</del><u>paragraphs</u> 16, 19 and 20, and also on current case law in California. The comment reinforces <u>the principle in</u> paragraph (b)(2) that the <del>rules</del><u>Rules</u> are not intended to expand civil liability for lawyers. At the same time, the comment recognizes, as does Scope, <del>¶</del><u>paragraph</u> 20 of the Model Rules and California case law, that a violation of a rule</p>

<p align="center"><b>Current California Rule</b></p> <p align="center"><b>Rule 1-100 Rules of Professional Conduct, in General</b></p> <p align="center"><b>Discussion</b></p>	<p align="center"><b>Commission's Proposed Rule</b></p> <p align="center"><b>Rule 1.0 <u>Purpose and Scope of the Rules of Professional Conduct, in General</u></b></p> <p align="center"><b>Comment</b></p>	<p align="center"><b>Explanation of Changes to the ABA Model Rule</b></p>
<p>Co. (1973) 33 Cal.App.3d 654 [109 Cal.Rptr. 269]; Wilhelm v. Pray, Price, Williams &amp; Russell (1986) 186 Cal.App.3d 1324 [231 Cal.Rptr. 355].) These rules are not intended to supercede existing law relating to members in non-disciplinary contexts. (See, e.g., Klemm v. Superior Court (1977) 75 Cal.App.3d 893 [142 Cal.Rptr. 509] (motion for disqualification of counsel due to a conflict of interest); Academy of California Optometrists, Inc. v. Superior Court (1975) 51 Cal.App.3d 999 [124 Cal.Rptr. 668] (duty to return client files); Chronometrics, Inc. v. Sysgen, Inc. (1980) 110 Cal.App.3d 597 [168 Cal.Rptr. 196] (disqualification of member appropriate remedy for improper communication with adverse party).</p>	<p><del>contrary</del>Therefore, failure to <del>these rules</del>comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. Because the Rules are not designed to be a basis for civil liability, a violation of a rule does not automatically itself give rise to a civil cause of action for enforcement of a rule or for damages caused by failure to comply with the rule. (See <i>Stanley v. Richmond</i> (1995) 35 Cal.App.4th 1070, 1097 [41 Cal.Rptr.2d 768]; <i>Noble v. Sears Roebuck &amp; Co.</i> (1973) 33 Cal.App.3d 654, 658 [109 Cal.Rptr. 269]; <i>Wilhelm v. Pray, Price, Williams &amp; Russell</i> (1986) 186 Cal.App.3d 1324, 1333 [231 Cal.Rptr. 355].) <del>These rules are not intended to supercede existing law relating to members</del>Nevertheless, a lawyer's violation of a rule may be evidence of breach of a lawyer's fiduciary or other substantive legal duty in a non-disciplinary <del>contexts</del>context. (See, <i>Stanley v. Richmond, supra</i>, 35 Cal.App.4th at p. 1086; <i>Mirabito v. Liccardo</i> (1992) 4 Cal.App.4th 41, 44 [5 Cal.Rptr.2d 571].) A violation of the rule may have other non-disciplinary consequences. (See e.g., <i>Klemm v. Superior Court</i> (1977) 75 Cal.App.3d 893 [142 Cal.Rptr. 509] (<del>motion for disqualification of counsel due to a conflict of interest</del>); <i>Academy of California Optometrists, Inc. v. Superior Court</i> (1975) 51 Cal.App.3d 999 [124 Cal.Rptr. 668] (duty to return client files); <i>Fletcher v. Davis</i> (2004) 33 Cal.4th 61 [14 Cal.Rptr.3d 58] (enforcement of attorney's lien); <i>Chambers v. Kay</i> (2002) 29 Cal.4th 142 [126 Cal.Rptr.2d 536] (enforcement of fee sharing agreement); <i>Chronometrics, Inc. v. Sysgen, Inc.</i></p>	<p>may be evidence of breach of a lawyer's fiduciary or other substantive duty in a non-disciplinary context. Relevant cases are included to provide guidance for lawyers in understanding the scope of the <del>rules</del>Rules. Comment [2] is intended to replace the first paragraph of <del>the Discussion to</del> current California <del>Rule-rule</del> 1-100, which is believed to be outdated and would mislead lawyers if retained in the <del>rules</del>Rules.</p>

<p align="center"><b>Current California Rule</b> Rule 1-100 Rules of Professional Conduct, in General Discussion</p>	<p align="center"><b>Commission's Proposed Rule</b> Rule 1.0 <b>Purpose and Scope of the Rules of Professional Conduct, in General</b> Comment</p>	<p align="center"><b>Explanation of Changes to the ABA Model Rule</b></p>
	<p>(1980) 110 Cal.App.3d 597 [168 Cal.Rptr. 196] (<del>disqualification of member appropriate remedy for improper</del> communication with <del>adverse</del> <u>represented</u> party).)</p>	
	<p>[3] <u>These Rules are not the sole basis of lawyer regulation. Lawyers authorized to practice law in California are also bound by applicable law including the State Bar Act (Business and Professions Code section 6000 et. seq.), other statutes, rules of court, and the opinions of California courts. Although not binding, issued opinions of ethics committees in California should be consulted for guidance on proper professional conduct. Ethics opinions of other bar associations may also be considered to the extent they relate to rules and laws that are consistent with the rules and laws of this state.</u></p>	<p>Comment [3] is based on the third paragraph in current California Rule 1-100(A). It is intended to remind lawyers that the <del>rules</del> <u>Rules</u> are not the exclusive source of lawyer regulation in California and that lawyers are also bound by the State Bar Act and other law. The comment is consistent with provisions in the Preamble and Scope to the Model Rules, particularly the first sentence in <del>¶</del> <u>paragraph</u> 7, and <del>¶¶</del> <u>paragraphs</u> 15 and 17. See Model Rules, Preamble and Scope, below.</p>
	<p>[4] <u>Under paragraph (b)(2), a willful violation of a rule does not require that the lawyer intend to violate the rule. (Phillips v. State Bar (1989) 49 Cal.3d 944, 952 [264 Cal.Rptr. 346]; and see Business and Professions Code section 6077.)</u></p>	<p>Comment [4] is intended to amplify paragraph (b)(2) by providing guidance on what constitutes a willful violation of the <del>rules</del> <u>Rules</u>.</p>
	<p>[5] <u>These Rules govern the conduct of members of the State Bar in and outside this state, except as members of the State Bar may be specifically required by a jurisdiction in which they are lawfully practicing to follow rules of professional conduct</u></p>	<p>Comment [5] is based on current California Rule 1-100(D). Disciplinary authority over members of the State Bar practicing in and outside California and other lawyers practicing law in this state and issues of choice of law are covered in proposed <del>rule</del> <u>Rule</u> 8.5 to be consistent with the Model Rules.</p>

<p align="center"><b>Current California Rule</b>  <b>Rule 1-100 Rules of Professional Conduct, in General</b>  <b>Discussion</b></p>	<p align="center"><b>Commission's Proposed Rule</b>  <b>Rule 1.0 <u>Purpose and Scope of the Rules of Professional Conduct</u>, <del>in General</del></b>  <b>Comment</b></p>	<p align="center"><b><u>Explanation of Changes to the ABA Model Rule</u></b></p>
	<p><a href="#">different from these Rules. These Rules also govern the conduct of other lawyers practicing in this state, but nothing contained in these Rules shall be deemed to authorize the practice of law by such persons in this state except as otherwise permitted by law. For the disciplinary authority of this state and choice of law, see Rule 8.5.</a></p>	
<p>Law firm, as defined by subparagraph (B)(1), is not intended to include an association of lawyers who do not share profits, expenses, and liabilities. The subparagraph is not intended to imply that a law firm may include a person who is not a member in violation of the law governing the unauthorized practice of law.</p>	<p><del>Law firm, as defined by subparagraph (B)(1), is not intended to include an association of lawyers who do not share profits, expenses, and liabilities. The subparagraph is not intended to imply that a law firm may include a person who is not a member in violation of the law governing the unauthorized practice of law.</del></p>	<p><a href="#">See Explanation of Changes for current California rule 1-100(B) (Definitions).</a></p>

## Rule 1.0: Purpose and Scope of the Rules of Professional Conduct.

### STATE VARIATIONS

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

**Connecticut** adds: “Client’ or ‘person’ as used in these Rules includes an authorized representative unless otherwise stated.”

**District of Columbia** defines “matter” as “any litigation, administrative proceeding, lobbying activity, application, claim, investigation, arrest, charge or accusation, the drafting of a contract, a negotiation, estate or family relationship practice issue, or any other representation, except as expressly limited in a particular rule.”

**Illinois** retains the 1983 version of the ABA Terminology, retains the definitions of “confidence” and “secret” derived from DR 4-101(A) of the ABA Model Code of Professional Responsibility, and adds the following terminology:

“Contingent fee agreement” denotes an agreement for the provision of legal services by a lawyer under which the amount of the lawyer’s compensation is contingent in whole or in part upon the successful completion of the subject matter of the agreement, regardless of whether the fee is established by formula or is a fixed amount.

“Disclose” or “disclosure” denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

“Person” denotes natural persons, partnerships, business corporations, not-for-profit corporations, public and quasi-public corporations, municipal corporations, State and Federal governmental bodies and agencies, or any other type of lawfully existing entity.

**Massachusetts:** Rule 9.1 retains the 1983 version of the ABA Terminology and adds a definition of a “qualified legal assistance organization.” Amended Comment 3 to Rule 9.1 provides as follows: “The final category of qualified legal assistance organization requires that the organization ‘receives no profit from the rendition of legal services.’ That condition refers to the entire legal services operation of the organization; it does not prohibit the receipt of a court-awarded fee that would result in a ‘profit’ from that particular lawsuit.”

**New York** defines “fraud” as follows:

“Fraud” does not include conduct, although characterized as fraudulent by statute or administrative rule which lacks an element of scienter, deceit, intent to mislead, or knowing failure to correct misrepresentations which can be reasonably expected to induce detrimental reliance by another.

New York also defines “domestic relations matters,” and defines “tribunal” to include “all courts, arbitrators and other adjudicatory bodies.”

**Ohio:** Rule 1.0 defines “fraud” and “fraudulent” as denoting “conduct that has an intent to deceive and is either of the following:”

(1) an actual or implied misrepresentation of a material fact that is made either with knowledge of its falsity or with such utter disregard and recklessness about its falsity that knowledge may be inferred; (2) a knowing concealment of a material fact where there is a duty to disclose the material fact.

**Oregon** adds or alters the meaning of a number of phrases, including “electronic communication, “informed consent,” “law firm,” “knowingly,” and “matter.”

**Texas** generally retains the 1983 version of the ABA Terminology, but modifies some of the 1983 definitions and adds others that are neither in the 1983 nor current versions of the ABA Terminology. Specifically, Texas includes the following definitions:

“Adjudicatory Official” denotes a person who serves on a Tribunal.

“Adjudicatory Proceeding” denotes the consideration of a matter by a Tribunal.

“Competent” or “Competence” denotes possession or the ability to timely acquire the legal knowledge, skill, and training reasonably necessary for the representation of the client.

“Firm” or “Law firm” denotes a lawyer or lawyers in a private firm; or a lawyer or lawyers employed in the legal department of a corporation, legal services organization, or other organization, or in a unit of government.

“Fitness” denotes those qualities of physical, mental and psychological health that enable a person to discharge a lawyer’s responsibilities to clients in conformity with the Texas Disciplinary Rules of Professional Conduct. Normally a lack of fitness is indicated most clearly by a persistent inability to discharge, or unreliability in carrying out, significant obligations.

“Should know” when used in reference to a lawyer denotes that a reasonable lawyer under the same or similar circumstances would know the matter in question.

“Substantial” when used in reference to degree or extent denotes a matter of meaningful significance or involvement.

“Tribunal” denotes any governmental body or official or any other person engaged in a process of resolving a particular dispute or controversy. “Tribunal” includes such institutions as courts and administrative agencies when engaging in adjudicatory or licensing activities as defined by applicable law or rules of practice or procedure, as well as judges, magistrates, special masters, referees, arbitrators, mediators, hearing officers and comparable persons empowered to resolve or to recommend a resolution of a particular matter; but it does not include jurors, prospective jurors, legislative bodies or their committees, members or staffs, nor does it include other governmental bodies when acting in a legislative or rule-making capacity.

**Virginia** retains the 1983 version of the Terminology section and adds:

“Should’ when used in reference to a lawyer’s action denotes an aspirational rather than a mandatory standard.”

**Wisconsin:** Wisconsin adds or alters the meaning of a number of phrases, including “consultation,” “firm,” “misrepresentation,” and “prosecutor.”

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

Given the recent measures taken to expedite the completion of the rule revision project, the purpose of this letter is to lay out the assignments for which you are a lead drafter that are scheduled to be discussed during the Commission's upcoming September, October and November meetings. A "rolling assignments agenda" is enclosed that covers all of the matters that must be completed at those meetings. This agenda format is being used due to the short turnaround time between these meetings and the interest of many Commission members in working on assignments for future meetings when they have an opportunity to do so. The assignments are considered "rolling" because, for example, any rule that is not completed at the September meeting should be treated as automatically re-assigned and carried forward to the October meeting. Accordingly, the Commission is facing a significant challenge to complete fully each assigned rule in order to avoid a domino effect of rules that are not finished.

Because the Commission has been given a mandate to meet a rigorous schedule of deliverables to the Board for action, it is very important that all assignments be submitted by the assignment due dates. As emphasized by the Chair, if a lead drafter anticipates a conflict, or a conflict unexpectedly arises, that interferes with the ability to complete an assignment, the lead drafter must take the initiative to make alternate arrangements with the codrafters so that the assignment can be submitted by the due date.

Below is a list of your lead draft assignments for the next meeting, September 11, 2009, to be held at the San Diego State Bar Annual Meeting. Enclosed are materials for those assignments. Below that list is a list of assignments for the subsequent meetings in November and October. Materials for those assignments will be distributed soon. If you need any those materials immediately, then please send me an email with a copy to Randy and Kevin. Codrafter responsibilities are not listed. Please refer to the rolling agenda document which identifies the drafting team for each rule assignment. In addition staff will prepare an updated chart listing all rule assignments by Commission member.

Your continued hard work and dedication to this important project is appreciated, and don't forget that staff and the Commission Consultant are here to help so please feel free to contact us for assistance.

ASSIGNMENTS FOR SEPTEMBER MEETING

**September 11, 2009 Meeting**

**Assignments Due: Wed., 9/2/09**

1. **III.A. Rule 1.0 Purpose and Scope of the Rules [1-100]** (Post Public Comment Rule Draft #7 dated 6/18/07)

**Codrafters:** Julien, Lamport, Melchior, Ruvolo

**Assignment:** (1) a chart comparing proposed Rule 1.0 to relevant parts of the MR Preamble and Scope; (2) a "dashboard" cover sheet; and (3) a chart summarizing the public comment received and the Commission's response.

2. **III.M. Rule 5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers [N/A]** (June 2009 Comparison Chart - Post Public Comment Rule Draft #9 dated 6/1/09)

**Codrafters:** Martinez, Peck

**Assignment:** (1) a chart comparing proposed Rule 5.1 to MR 5.1; (2) a “dashboard” cover sheet; and (3) a chart summarizing the public comment received and the Commission’s response.

3. **III.N. Rule 5.2 Responsibilities of a Subordinate Lawyer [N/A]**  
(Post Public Comment Rule Draft #5.2 dated 6/16/07)

**Codrafters:** Martinez, Peck

**Assignment:** (1) a chart comparing proposed Rule 5.2 to MR 5.2; (2) a “dashboard” cover sheet; and (3) a chart summarizing the public comment received and the Commission’s response.

4. **III.O. Rule 5.3 Responsibilities Regarding Nonlawyer Assistants [N/A]** (Post Public Comment Rule Draft #9.1 dated 6/16/07)

**Codrafters:** Martinez, Peck

**Assignment:** (1) a chart comparing proposed Rule 5.3 to MR 5.3; (2) a “dashboard” cover sheet; and (3) a chart summarizing the public comment received and the Commission’s response.

ASSIGNMENTS FOR OCTOBER MEETING

October 16 & 17, 2009 Meeting

**Assignments Due: Wed., 9/30/09**

No lead drafter assignments.

(NOTE: This is in addition to any assigned rule not completed at the September meeting.)

ASSIGNMENTS FOR NOVEMBER MEETING

November 6 & 7, 2009 Meeting

**Assignments Due: Wed., 11/28/09**

1. **III.QQ. Rule 4.2 Communication with a Represented Person [2-100]** (Post Public Comment Draft #17.4 dated 1/5/09)

**Codrafters:** MARTINEZ (Co-lead), Voogd

**Assignment:** (1) a chart comparing proposed Rule 4.2 to MR 4.2; (2) a “dashboard” cover sheet; and (3) a chart summarizing the public comment received and the Commission’s response.

2. **III.RR. Rule 4.3 Dealing with Unrepresented Person [n/a]** (Post Public Comment Draft #5.1 dated 10/15/08; awaiting further discussion at the same time as MR 4.4 and the Commission’s proposed Rule 4.2(e))

**Codrafters:** MARTINEZ (co-lead), Voogd

**Assignment:** (1) a chart comparing proposed Rule 4.3 to MR 4.3; (2) a “dashboard” cover sheet; and (3) a chart summarizing the public comment received and the Commission’s response.

3. **III.SS. Rule 5.4 Professional Independence [1-310][1-320][1-600]** (Post Public Comment Draft #13.2 dated 1/8/09 to be revised following the January 2009 meeting)

**Codrafters:** Martinez, Peck

**Assignment:** (1) a chart comparing proposed Rule 5.4 to MR 5.4; (2) a “dashboard” cover sheet; and (3) a chart summarizing the public comment received and the Commission’s response.

4. **IV.C. Rule 4.1 Truthfulness in Statements to Others [N/A]** (new matter assigning the preparation of a first draft rule in a MR comparison chart format)

**Codrafters:** MARTINEZ, Voogd

**Assignment:** (1) a chart comparing proposed Rule 4.1 to MR 4.1; and (2) a “dashboard” cover sheet. (If a California version of the MR is not recommended, then the chart should show the MR as stricken.)

5. **IV.D. Rule 4.4 Respect for Rights of 3rd Persons [N/A]** (new matter assigning the preparation of a first draft rule in a MR comparison chart format)

**Codrafters:** MARTINEZ (co-lead), Voogd

**Assignment:** (1) a chart comparing proposed Rule 4.4 to MR 4.4; and (2) a “dashboard” cover sheet. (If a California version of the MR is not recommended, then the chart should show the MR as stricken.)

6. **IV.R. Rule 3-410 Insurance Disclosure** [adopted by the Sup. Ct. operative 1/1/10)

**Codrafters:** Foy, Julien, Kehr, Martinez

**Assignment:** (1) a comparison chart with any recommended changes to the anticipated new RPC 1-650; and (2) a “dashboard” cover sheet.

(NOTE: This is in addition to any assigned rule not completed at the September meeting.)

**September 18, 2009 McCurdy E-mail to Tuft, cc Difuntorum & KEM:**

In response to your request for materials for 1.0 and 4.3, here are the materials previously sent out on 1.0. I’ve included the final, updated Dashboard template. I’m going to check my e-mail and send any revised or additional materials on Rule 1.0 sent out by Kevin since these drafts were sent, and will forward anything I find separately.

We are still working up the assignment materials for 4.3, and hope to begin sending them out to the lead drafters this afternoon.

**Attachments:**

Dashboard Template, Revised (9/14/09)

Introduction Template, Revised (8/11/09)

Cal. Rule 1-100 (2009) – Current

Proposed Rule 1.0, Post-PCD [#7] (6/18/07)

Proposed Rule 1.0, Post-PCD [#7] (6/18/07), redline, compared to current rule 1-100

Public Comment Chart, Template (8/27/09)

**September 25, 2009 Tuft E-mail to McCurdy & KEM:**

I am sorry to ask this of you, but could one of you send me the templates, rules, comments, dashboards and public comments for these two rules [1.0 and 4.3] in Word. I have what you sent earlier on rule 1.0, but every time I try to open the word document for some reason it switches to rule 5.2. I am sure the problem is at my end, but I am unable to solve it. I hope to work on these rules this weekend. Thanks and sorry to bother you.

**September 25, 2009 KEM E-mail to Tuft, cc McCurdy:**

Here are the 1.0 materials, including my cumulative meeting notes. Please let me know if you have any problems opening the attachments.

**Attached:**

- Dashboard Template (9/23/09)
- Introduction Template (9/18/09)KEM
- Rule & Comment Template (9/18/09)KEM
- Public Comment Chart Template (9/18/09)KEM
- KEM Cumulative Notes for 1.0 (3/14/07)

**September 26, 2009 Tuft E-mail to KEM, cc Difuntorum:**

I am working on Rule 1.0. Why does the comparison chart compare the rule to the current California rule? I don't think we do that with any other rule. The ABA does not have a comparable rule, but does have the preamble and scope sections to which I was going to refer.

The problem with doing a comparison chart for the Preamble and Scope (P&S) of the Model Rules is that you end up w/ a chart that is over 20 rows long that contains 20 rows of strikeouts before you even get to our proposed rule. Not very useful. What we've been doing w/ Cal. Rules w/ no MR counterpart is to show in the redline the changes to the current California Rule. Several examples that come to mind are proposed Rules 2.4.1 (L as Temporary Judge); 1.8.11 (Relationship w/ Opposing Lawyer); and 1.8.12 (Purchasing Property at a Foreclosure).

I agree that our proposed Rule 1.0 is intended to replace the MRs' P&S. Please discuss the P&S in the Introduction and the third column of the Comparison Chart, pointing out where our rule and the P&S contain similar concepts. You can also assume that we will insert a clean version of the P&S as part of the package we submit to BOG. If you like, you can refer the reader to P&S each time you discuss it by stating: "See Model Rule, Preamble and Scope, below." We can insert it after the clean version of proposed Rule 1.0 but before the public comment chart.

Randy, does that make sense to you? I was thinking Lauren or Mimi can prepare a clean version of the P&S as they have been doing for each of our proposed rules.

**September 26, 2009 Tuft E-mail to KEM, cc Difuntorum & McCurdy:**

Ok. I would rather not have to explain the differences between the proposed rule and the current California rule unless it is necessary.

**September 26, 2009 KEM E-mail to Tuft, cc Difuntorum & McCurdy:**

Instead of explaining each difference between Rule 1.0 and current rule 1-100, how about including something like the following in the Introduction:

By recommending that the Model Rule Preamble and Scope not be adopted and including in a rule an explanation of the purpose and scope of the Rules, the Commission carries forward the approach in the current California Rules of providing a succinct statement of the policies underlying the Rules that is intended to provide guidance to lawyers in interpreting their applicability. Proposed paragraphs (a) and (b) replace paragraphs (A) of current rule 1-100, and paragraph (c) replaces current rule 1-100(C). The Commission also recommends moving the definition section in current rule 1-100(B) into a separate Terminology rule, as is done in the Model Rules. In addition, the Commission recommends moving the Geographic Scope section in current rule 1-100(D) to proposed Rule 8.5, again as is done in the Model Rules.

Then, in the Explanation column for the stricken parts in the Comparison Chart, simply state: "See Introduction, paragraph \_\_\_\_\_."

That would leave only the last paragraph of current rule 1-100(A) that requires an explanation, and you can simply state something along the following lines in that provision's Explanation column: "The substance of the last paragraph of current rule have been moved to Comment [2] and been updated to reflect developments in the law."

**September 26, 2009 Tuft E-mail to KEM, cc Difuntorum & McCurdy:**

It does help. I will work it into what I am drafting and send to and the drafting team to chew on.

**September 28, 2009 Difuntorum E-mail to Tuft & KEM, cc McCurdy:**

This evolving approach for presenting Rule 1.0 seems fine to me. I do believe that our audience (the BOG and Sup. Ct. ) will want to know how the proposed rule stacks up against both the ABA and the existing CA rule. If there is an intended substantive change, then that should be explicit. Below is the excerpt from the Batch 1 Interim Report to the Supreme Court on the post public comment version of Rule 1.0. Hope this helps.

**September 28, 2009 Tuft E-mail to Drafters (Julien, Lampport, Melchior, Ruvolo), cc Chair & Staff:**

Attached are the comparison charts, Introduction and "Dashboard" for proposed Rule 1.0. Please review and provide comments at your earliest convenience. The materials are due by Noon on Wednesday, September 30.

**Attachments:**

- Dashboard, Draft 1 (9/28/09)MLT
- Introduction, Draft 1 (9/28/09)MLT

- Rule & Comment Chart, Draft 1 (9/28/09)MLT
- Public Comment Chart, Draft 1 (9/28/09)MLT

**September 28, 2009 Lee E-mail to Drafters, cc Chair & Staff:**

Attached you will find a clean version of the Scope and Preamble of the ABA Model Rules.

**September 28, 2009 Ruvolo E-mail to Drafters, cc Chair & Staff:**

These documents look fine to me. On the Dashboard, I am not sure this rule will be “moderately controversial.”

**September 29, 2009 KEM E-mail to Drafters, cc Chair & Staff:**

Mark and all:

1. I've attached a single, scaled PDF that contains the following:
  - a. Dashboard, Draft 2 (9/28/09)MLT-KEM, redline, compared to Draft 1 (9/28/09)MLT.
  - b. Introduction, Draft 2 (9/28/09)MLT-KEM, clean.
  - c. Rule & Comment Comparison Chart, Draft 2 (9/28/09)MLT-KEM, redline, compared to Draft 1 (9/28/09)MLT.
2. Clean versions of all of the foregoing, in Word.

KEM Comments.

1. Pretty much the only changes I made were stylistic (e.g., "Rule" for "rule" where warranted.)
2. Dashboard. I change the Comment description to "No ABA Model Rule counterpart" because it didn't make sense to talk about material additions or deletions when we check the "no counterpart" box for the black letter. I also ticked the "no minority" box on the second page. I'm not aware of any dissents on this Rule.
3. Rule and Comment Explanation. Again, all the changes are stylistic to conform w/ our other charts.

a. I do have a question. Is Comment [5] necessary given that we have recommended adoption of proposed Rule 8.5. As I recall, the comment was intended only as a placeholder pending the Commission's decision on 8.5. I would simply include the last sentence of the Comment w/ the cross-reference to 8.5 and delete the rest. What do you think?

Please let me know if you have any questions.

**September 29, 2009 Tuft E-mail to KEM, cc Drafters, Chair & Staff:**

I am ok with your changes, Kevin. I also don't object to the change to comment 5 your recommend.

**October 12, 2009 Melchior E-mail to RRC List:**

**Rule 1.0:** nit: in dashboard, l. 6, "practice" should be "practicing"

P. 15, comment 4: how about stating the obverse as well, i.e., what kind of conscious or knowing conduct is **not willful** -- assuming there is any case law to that effect, which there may not be??

**October 12, 2009 Sapiro E-mail to RRC List:**

1. In the next to last line of the first paragraph of the Introduction, I would insert a comma after the word "rule."
2. I recommend that we break up paragraph (a)(3). Each of the first two paragraphs states a single purpose, but this one states two. I would make the phrase "to promote the administration of justice" a new paragraph (4) and renumber (4) to become (5).
3. At page 7 of 10, in the explanation of changes column, third line of the last paragraph, I would delete the word "current."