McCurdy, Lauren

Subject: FW: [Fwd: RRC - 1-310X [5.3] - Agenda Supp. K - October 16-17, 2009 Meeting]
Attachments: RRC - 1-310X [5-3] - Dashboard - ADOPT - DFT1 (09-23-09).doc; RRC - 1-310X [5-3] - Dash, Intro, Rule, Comment, Pub Com - COMBO - DFT1 (09-23-09).pdf; RRC - 1-310X [5-3] - Compare - Comment Explanation - DFT1 (09-23-09).doc; RRC - 1-310X [5-3] - Compare - Introduction - DFT1 (09-23-09)KEM.doc; RRC - 1-310X [5-3] - Compare - Rule Explanation - DFT1 (09-23-09)KEM.doc; RRC - 1-310X [5-3] - Public Comment Chart - By Commenter - DFT2 (09-23-09)KEM.doc

-------- Original Message --------
Subject: RRC - 1-310X [5.3] - Agenda Supp. K - October 16-17, 2009 Meeting
Date: Wed, 23 Sep 2009 21:12:48 -0700
From: Kevin Mohr <kemohr@charter.net>
To: Mark Tuft <MTuft@cwclaw.com>, "Raul L. Martinez" <martinez@lbbslaw.com>, Ellen Peck <pecklaw@prodigy.net>
CC: Harry Sondheim <hbsondheim@verizon.net>, Randall Difuntorum <Randall.Difuntorum@calbar.ca.gov>, Lauren McCurdy <Lauren.McCurdy@calbar.ca.gov>, "Lee, Mimi" <Mimi.Lee@calbar.ca.gov>, Kevin Mohr G <kejmohr@gmail.com>

Greetings:

I've attached the following:

1. A single scaled PDF that includes the following documents:

a. Dashboard, Draft 1 (9/23/09);

b. Introduction, Draft 1 (9/23/09)KEM;

c. Rule Comparison Chart, Draft 1 (9/23/09)KEM;

d. Comment Comparison Chart, Draft 1 (9/23/09);

e. Public Comment Chart, Draft 2 (9/23/09)KEM.

2. Word versions of each document in item #1.

KEM Notes:

1. Dashboard. I think we can all agree this is a noncontroversial rule w/o stakeholders. We'll enter the vote after the October meeting.

2. Introduction. I pretty much lifted this from Rule 5.1, which is Rule 5.3's companion rule. Does the same intro work for both rules?

3. Rule & Comment Comparison Charts. I've highlighted those parts where I have questions.

4. Public Comment Chart. No comment.

5. All the documents are clean versions.

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

Kevin

--
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Proposed Rule 5.3 [RPC 1-300]
"Responsibilities Regarding Nonlawyer Assistants"

(Draft #9.1, 6/16/07)

Summary: Proposed Rule 5.3 is closely based on Model Rule 5.3 and sets forth the responsibilities of managerial and supervising lawyers in their oversight of nonlawyer assistants. The Rule is consistent with current California law. See California rule 3-110, Discussion.

Comparison with ABA Counterpart

Rule	Comment
☑ ABA Model Rule substantially adopted	☑ ABA Model Rule substantially adopted
☐ ABA Model Rule substantially rejected	☐ ABA Model Rule substantially rejected
☐ Some material additions to ABA Model Rule	☐ Some material additions to ABA Model Rule
☐ Some material deletions from ABA Model Rule	☐ Some material deletions from ABA Model Rule
☐ No ABA Model Rule counterpart	☐ No ABA Model Rule counterpart

Primary Factors Considered

☐ Existing California Law

Rule	RPC 3-110, Discussion.
Statute	
Case law	

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

☐ Other Primary Factor(s)

Rule Revision Commission Action/Vote to Recommend Rule Adoption

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

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/Dissenting Position Included on Model Rule Comparison Chart: ☐ Yes ☑ No

Stakeholders and Level of Controversy

☑ No Known Stakeholders

☐ The Following Stakeholders Are Known:

☐ Very Controversial – Explanation:

☐ Moderately Controversial – Explanation:

☑ Not Controversial

COMMISSION FOR THE REVISION OF THE RULES OF PROFESSIONAL CONDUCT

Proposed Rule 5.3* Responsibilities Regarding Nonlawyer Assistants

September 2009
(Draft rule following consideration for public comment)

INTRODUCTION:

Proposed Rule 5.3, which substantially tracks Model Rule 5.3, imposes a duty on partners, lawyers with comparable managerial authority, and lawyers who directly supervise other lawyers, to oversee the conduct of nonlawyers within a law firm or other organization, including corporate and government legal departments, and legal services organizations. The Rule does not impose vicarious liability, i.e., the doctrine of respondeat superior is not applicable. Rather, a supervising lawyer is subject to discipline only if the lawyer fails to make reasonable efforts to ensure compliance with the Rules by nonlawyers under the lawyer's supervision, orders or ratifies the misconduct of a nonlawyer, or has knowledge of the nonlawyer's misconduct and fails to take steps to prevent or mitigate the consequences. The Comment to the proposed Rule largely tracks the Model Rule comment.

Current California Law and Variations in Other Jurisdictions. Model Rule 5.3 is the rule in nearly every jurisdiction, with only minor variations. For example, both Illinois and New Hampshire impose Rule 5.3's duties on "each" managing partner, in effect preventing such managerial partners from delegating responsibility to a single managing partner. New York and New Jersey both provide for discipline of a law firm, in addition to the individual lawyers in the firm, under Rule 5.3. All jurisdictions have adopted some version of Model Rule 5.3(c). California does not have a counterpart to Rule 5.3. However, the Discussion to current rule 3-110 provides that the duties set forth in the rule include the duty to supervise the work of subordinate lawyers and non-lawyer employees and agents. Proposed Rule 5.3 establishes in a separate rule the principle of supervisory responsibility and is consistent with existing California case law.

* Proposed Rule 5.3, Draft 9.1 (6/16/07)

ABA Model Rule Rule 5.3 Responsibilities Regarding Nonlawyer Assistants	Commission's Proposed Rule* Rule 5.3 Responsibilities Regarding Nonlawyer Assistants	Explanation of Changes to the ABA Model Rule
With respect to a nonlawyer employed or retained by or associated with a lawyer:	With respect to a nonlawyer employed or retained by or associated with a lawyer:	The Introductory paragraph to proposed Rule 5.3 is identical to Model Rule 5.3.
(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;	(a) a partner in a law firm,[1] and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the ~~person's~~nonlawyer's conduct is compatible with the professional obligations of the lawyer;	Paragraph (a) largely tracks Model Rule 5.3(a), except for two clarifying changes: (1) the phrase "in a law firm" has been added after the words, "a partner," to create a parallel construction with the clause that follows and also to conform to the syntax used in the related Rule 5.1; and (2) "nonlawyer" has been substituted for "person" to refer back to the word "nonlawyer" that is used in the introductory clause.
(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and	(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and	Paragraph (b) is identical to Model Rule 5.3(b).
(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:	(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:	Paragraph (c) largely tracks Model Rule 5.3(c), except tha the clause, "individually or together with other lawyers" has been added to subparagraph (c)(2) to parallel the language used in paragraph (a).[2] The deletion of this language is an apparent oversight by the Model Rule drafters.

* Proposed Rule 5.3, Draft 9.1 (6/16/07). Redline/strikeout showing changes to the ABA Model Rule

[1] **Consultant's Note**: Is this added phrase really necessary? We added it because it is the structure used in 5.1. Nevertheless, I would delete it. See also footnote 2.

[2] **Consultant's Note**: If this statement in the Explanation column is accurate, then shouldn't we also insert "in a law firm" after the word "partner" in the first line of subparagraph (c)(2)? However, if you agree with my recommendation concerning the deletion of "in a law firm" in paragraph (a), see footnote 1, then no change need be made here.

ABA Model Rule Rule 5.3 Responsibilities Regarding Nonlawyer Assistants	Commission's Proposed Rule* Rule 5.3 Responsibilities Regarding Nonlawyer Assistants	Explanation of Changes to the ABA Model Rule
(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or	(1) the lawyer orders or, with ~~the~~ knowledge of the specific conduct, ratifies the conduct involved; or	
(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.	(2) the lawyer is a partner, or individually or together with other lawyers has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.	

ABA Model Rule Rule 5.3 Responsibilities Regarding Nonlawyer Assistants Comment	Commission's Proposed Rule Rule 5.3 Responsibilities Regarding Nonlawyer Assistants Comment	Explanation of Changes to the ABA Model Rule
[1] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.	[1] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose confidential information relating to representation of the client, and should be responsible for their work product. (See, e.g., *Waysman v. State Bar* (1986) 41 Cal.3d 452 [224 Cal.Rptr. 101]; *Trousil v. State Bar* (1985) 38 Cal.3d 337, 342 [211 Cal.Rptr. 525]; *Palomo v. State Bar* (1984) 36 Cal.3d 785 [205 Cal.Rptr. 834]; *Crane v. State Bar* (1981) 30 Cal.3d 117, 122 [177 Cal.Rptr. 670]; *Black v. State Bar* (1972) 7 Cal.3d 676, 692 [103 Cal.Rptr. 288]; *Vaughn v. State Bar* (1972) 6 Cal.3d 847, 857-858 [100 Cal.Rptr. 713]; *Moore v. State Bar* (1964) 62 Cal.2d 74, 81 [41 Cal.Rptr. 161].) The measures employed in instructing and supervising nonlawyers should take account of the fact that they ~~do~~may not have legal training~~ and are not subject to professional discipline~~.	Comment [1] largely tracks Model Rule 5.3, cmt. [1]. The word "confidential" has been added to the phrase, "information relating to the representation of the client," because that term ("confidential information relating to the representation of the client") is a defined term in these Rules. See proposed Rule 1.6, cmts. [3] et seq. Citations to several cases have been added for guidance. These citations are largely carried over from the Discussion to current rule 3-110 ("Competence"). The word "instructing" has been added to the last sentence of Comment [1] because instruction of nonlawyers of their responsibilities as employees of the law firm is an important component of providing assurance nonlawyers' conduct is compatible with the lawyer's professional obligations. The word "may" has been substituted for "do" because some nonlawyers will have had legal training. Finally, the last clause of the last sentence of Comment [1] has been deleted because whether a nonlawyer employee is personally subject to discipline is irrelevant to the care a lawyer should take in that person's instruction and supervision.

ABA Model Rule Rule 5.3 Responsibilities Regarding Nonlawyer Assistants Comment	Commission's Proposed Rule Rule 5.3 Responsibilities Regarding Nonlawyer Assistants Comment	Explanation of Changes to the ABA Model Rule
[2] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Rules of Professional Conduct. See Comment [1] to Rule 5.1. Paragraph (b) applies to lawyers who have supervisory authority over the work of a nonlawyer. Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.	[2] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Rules of Professional Conduct. See Comment [~~1~~2] to Rule 5.1. [1]Paragraph (~~b~~a) applies to lawyers ~~who have supervisory~~with managerial authority ~~over the work of a nonlawyer.~~ in corporate and government legal departments and legal service organizations as well as to partners and other managing lawyers in private law firms. [3] Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.	The next to last sentence of Model Rule 5.3, [2] has been deleted because it simply restates paragraph (b). In its place, a sentence has been added to clarify that the obligations set forth in Rule 5.3 apply equally to lawyers with managerial authority in corporate and government legal departments and legal service organizations. Comment [3] is identical to the last sentence of Model Rule 5.3, cmt. [2]. The sentence, which addresses a different part of the rule than the remainder of Comment [2], has been moved to its own comment for clarification.[2]

[1] **Consultant's Note**: Although the deleted second sentence of MR 5.3, cmt. [2] states the obvious, I recommend that we restore it. Then the last two sentences of Comment [2] would provide:

> Paragraph (a) applies to lawyers with managerial authority in corporate and government legal departments and legal service organizations as well as to partners and other managing lawyers in private law firms. Paragraph (b) applies to lawyers who have supervisory authority over the work of a nonlawyer.

[2] **Consultant's Note**: Is it necessary to break out the last sentence into its own comment? I would put it back in Comment [2].

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants.
[Sorted by Commenter]

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

No.	Commenter	Position[1]	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
1	COPRAC	A			Support as drafted.	No action needed.
3	Orange County Bar Association	A			Support as drafted.	No action needed.
4	San Diego County Bar Association	A			Support as drafted.	No action needed.
2	San Francisco, Bar Association of	M			While concept is implicit in California's current rules, adoption of the ABA's explicit rule is helpful. Comment [1] should be revised to delete the reference to "confidential information" and insert the phrase to "all information relating to the representation, whatever its source."	No action needed. Commission disagreed and did not make the requested change. The complete term, "confidential information relating to the representation of the client," is a defined term in the Rules. Changing the term would cause confusion.

[1] A = AGREE with proposed Rule D = DISAGREE with proposed Rule M = AGREE ONLY IF MODIFIED NI = NOT INDICATED

Rule 5.3: Responsibilities Regarding Nonlawyer Assistants

STATE VARIATIONS

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

California has no provision comparable to ABA Model Rule 5.3.

Georgia adds a new Rule 5.3(d) that indirectly restricts the activities of suspended or disbarred lawyers who work in a law office.

Illinois: Rule 5.3(a) applies to "[t]he lawyer, and, in a law firm, each partner," and refers to the professional obligations of the lawyer "and the firm." Illinois Rule 5.3(b) applies to "each" lawyer having direct supervisory authority.

New Hampshire: Rules 5.3(a) and (b) impose duties on "each" partner in a firm, "each" lawyer with comparable managerial authority, and "each" lawyer with direct supervisory authority. Separately, New Hampshire Supreme Court Rule 35 (Guidelines for the Utilization by Lawyers of the Services of Legal Assistants under the New Hampshire Rules of Professional Conduct) contains nine rules for using the services of legal assistants in compliance with Rule 5.3. For example, Rule 1 provides:

> It is the responsibility of the lawyer to take all steps reasonably necessary to ensure that a legal assistant for whose work the lawyer is responsible does not provide legal advice or otherwise engage in the unauthorized practice of law; provided, however, that with adequate lawyer supervision the legal assistant may provide information concerning legal matters and otherwise act as permitted under these rules.

New Jersey: Rule 5.3(a) provides that "every lawyer or organization authorized by the Court Rules to practice law in this jurisdiction shall adopt and maintain reasonable efforts to ensure that the conduct of nonlawyers retained or employed by the lawyer, law firm or organization is compatible with the professional obligations of the lawyer." In addition, New Jersey has added Rule 5.3(c)(3), which provides that a lawyer is responsible for the conduct of a nonlawyer employee if "the lawyer has failed to make reasonable investigation of circumstances that would disclose past instances of conduct by the nonlawyer incompatible with the professional obligations of a lawyer, which evidence a propensity for such conduct."

New York: See New York's DR 1-104(C) under Selected State Variations for Rule 5.1. DR 1-104(D) makes a lawyer responsible for conduct of a nonlawyer subordinate or lawyer if, among other things, the lawyer "in the exercise of reasonable management or supervisory authority should have known of the conduct so that reasonable remedial action... could have been taken at a time when its consequences... could have been avoided or mitigated."

Oregon: Rule 5.3(b) begins: "except as provided by Rule 8.4(b)...." Under Oregon Rule 8.4(b), it is generally not professional misconduct for a lawyer to give advice about or to supervise "lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights" provided the lawyer otherwise abides by the Rules of Professional Conduct.

Rhode Island: Immediately after the Comment to Rule 5.3, Rhode Island includes a lengthy set of "Guidelines" for the use of legal assistants. These "Guidelines" are a heavily modified version of the ABA Model Guidelines for the Utilization of Paralegal Services (see Related, Materials below). For example, Rhode Island's Guideline 3, which is closely related to Rule 5.3, provides as follows:

> 3. A lawyer shall direct a legal assistant to avoid any conduct which if engaged in by a lawyer would violate the Rules of Professional Conduct. In particular, the lawyer shall instruct the legal assistant regarding the confidential nature of the attorney/client relationship, and shall direct the legal assistant to refrain from disclosing any confidential information obtained from a client or in connection with representation of a client.

Texas relegates ABA Model Rule 5.3(a) to Comment 2 after Texas Rule 5.03. The Comment applies to "[e]ach lawyer in a position of authority in a law firm or in a government agency," including lawyers having supervisory authority or "intermediate managerial responsibilities in the law department of any enterprise or government agency." Texas Rule 5.03(b), which is equivalent to ABA Model Rule 5.3(c), subjects a lawyer to discipline for a nonlawyer's misconduct if (1) the lawyer orders, "encourages, or permits" the conduct involved; or (2) the lawyer:

> (i) is a partner in the law firm in which the person is employed, retained by, or associated with; or is the general counsel of a government agency's legal department in which the person is employed, retained by or associated with; or has direct supervisory authority over such person; and
>
> (ii) with knowledge of such misconduct by the nonlawyer knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of that person's misconduct.

Virginia: Rule 5.3(c)(2) applies if a lawyer knows "or should have known" of the conduct in question.

Table of Contents

May 31, 2005 Tuft Memo to RRC: 1
June 1, 2005 Martinez E-mail to RRC: 1
June 1, 2005 Sapiro E-mail to RRC: 8
June 4, 2005 Kehr Memo to RRC: 9
July 31, 2006 COPRAC (Lewis) Comment (12/1/06 Meeting Materials, p. 263): 9
October 10, 2006 SDCBA Comment (12/1/06 Meeting Materials, pp. 265-265): 9
October 15, 2006 BASF Comment (12/1/06 Meeting Materials, pp. 266-268): 9
November 2, 2006 Tuft Memo to RRC: 9
November 27, 2006 Sapiro E-mail to RRC: 10
January 11, 2007 Tuft E-mail to RRC re Public Comment Revision Draft of Rule 5.1: 11
January 11, 2007 Tuft E-mail to RRC re Public Comment Revisions re Rules 5.2 & 5.3: 11
January 22, 2007 Kehr E-mail to RRC: 11
February 26, 2007 KEM E-mail to Lauren M & Randy, cc to Drafters, re Draft 7 of Rule 5.1: 12
March 4, 2007 Sapiro E-mail to RRC List re Rule 5.1: 12
March 8, 2007 Martinez E-mail re Rule 5.1: 13
May 1, 2007 Martinez E-mail to Drafters: 14
June 6, 2007 McCurdy E-mail to RRC: 15
June 6, 2007 Melchior E-mail to RRC: 15
August 27, 2009 McCurdy E-mail to Tuft, cc Chair, Vapnek, Tuft & Staff: 16
September 23, 2009 KEM E-mail to Drafters (Tuft, Martinez, Peck), cc Chair & Staff: 19
September 24, 2009 Peck E-mail to Drafters, cc Chair & Staff: 19
October 12, 2009 Sapiro E-mail to RRC List: 20

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 23, 2009 KEM E-mail to Drafters (Tuft, Martinez, Peck), cc Chair & Staff:

I've attached the following:

1. A single scaled PDF that includes the following documents:

    a. Dashboard, Draft 1 (9/23/09);

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    c. Rule Comparison Chart, Draft 1 (9/23/09)KEM;

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2. Word versions of each document in item #1.

KEM Notes:

1. Dashboard. I think we can all agree this is a noncontroversial rule w/o stakeholders. We'll enter the vote after the October meeting.

2. Introduction. I pretty much lifted this from Rule 5.1, which is Rule 5.3's companion rule. Does the same intro work for both rules?

3. Rule & Comment Comparison Charts. I've highlighted those parts where I have questions.

4. Public Comment Chart. No comment.

5. All the documents are clean versions.

Please let me know if you have any questions.

September 24, 2009 Peck E-mail to Drafters, cc Chair & Staff:

From my perspective, this rule is good to go on the agenda.

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

1. I object to the use of the phrase "confidential information relating to the representation of the client" in proposed Comment [1]. That phrase is too narrow. Section 6068(e) has a broader prohibition. Any confidential information must be safeguarded, whether it relates to the representation of a client or not. If I employ a secretary or a paralegal, he or she should not be at liberty to broadcast confidential information merely because it is not within the scope of my representation of a client. I should have a corresponding duty to prohibit that conduct. Gossip should be prohibited, not encouraged, by our rules.

2. At page 1 of 2, in the explanation of changes column, last paragraph, the word "tha" should be "that."

3. I still do not like this rule because of its pyramiding of "reasonable efforts" upon "reasonable assurance." To me, that brings negligence standards into our disciplinary rule, when the standard of discipline ought to be "willful" violations. However, I have lost that battle before and do not request that it be reconsidered on that ground.

4. However, I do vote "no" on this rule because of the confidentiality problem discussed above. If we put this rule out, I request permission to add a dissent.