

From: [Kevin Mohr](#)
To: [Difuntorum, Randall](#)
Cc: [Vapnek, Paul W.](#); [Raul Martinez](#); ignazio.ruvolo@jud.ca.gov; [Jerome Sapiro](#); [McCurdy, Lauren](#); [Harry Sondheim](#)
Subject: Re: RRC - 6.5 [1-650] - III.K. - Agenda Materials
Date: Thursday, March 18, 2010 1:16:34 PM
Attachments: [RRC - 1-650 \[6-5\] - Public Comment Chart - By Commenter - DFT2.1 \(03-18-10\).doc](#)
[RRC - 1-650 \[6-5\] - Rule - Post-Adopt DFT4.1 \[7.1\] \(03-18-10\)RD-KEM - Cf.to DFT3.doc](#)

Greetings:

I've attached the following:

1. Public Comment Chart, Draft 2.1 (3/18/10), re-sorted alphabetically.
2. Rule, Post-Adoption Draft 4.1 [#7.1] (3/18/10), redline, compared to Draft 3 (11/28/10) [public comment draft]. There was a single nit in the draft Randy just circulated.

I think these are ready to go. No need for the Dashboard, Intro or Comparison Chart just yet. Thanks,

Kevin

Difuntorum, Randall wrote:

Attached is a revised draft Rule 6.5, DFT4 (redlined to the public comment draft). I reverted to the current RPC 1-650 language for all instances where Rule 1.10 was added by the Commission in the public comment draft. Accordingly, this draft is slightly different from the edits identified by Paul in his message below. For example, in reverting to the RPC 1-650 language, I retained para.(b) rather than deleting it. Let me know if this draft is acceptable. –Randy D.

From: Vapnek, Paul W. [<mailto:pwwvapnek@townsend.com>]
Sent: Thursday, March 18, 2010 12:02 PM
To: Kevin Mohr; Raul Martinez; ignazio.ruvolo@jud.ca.gov; Jerome Sapiro
Cc: McCurdy, Lauren; Harry Sondheim; Difuntorum, Randall
Subject: RE: RRC - 6.5 [1-650] - III.K. - Agenda Materials

Kevin: Thanks for the offer. I reviewed the materials last night and would add COPRAC's approval of the rule to the Comment chart. I would list their comment as:
"We support adoption of the proposed rule and are pleased that the last sentence of Comment 4 has been added in accordance with our suggestion."

Also, in light of the BOG rejection of Rule 1.10, there are changes that must be made to the proposed Rule and its Comments.

In Proposed Rule 6.5 (a) (2) the phrase "is subject to Rule 1.10" must be deleted and "has an imputed conflict of interest" (from current rule 1-650) must be substituted, and in the Explanation column on the chart the following should be the

second sentence: "The phrase "has an imputed conflict of interest" has been taken from current rule 1-650 in light of the Board of Governors' decision to disapprove proposed rule 1.10 on imputed conflicts of interest."

Proposed Rule 6.5 (b) must be deleted as there will be no Rule 1.10; and 6.5 (c) in the chart must be changed to 6.5 (b).

In Comment 1, at the bottom, it should read: "e.g. Rules 1.7 and 1.9." [rule 1.10 deleted]

In Comment 3, 8th line, delete "requires compliance with Rule 1.10" and substitute "provides that a lawyer has an imputed conflict of interest"

In Comment 4, delete in the 4th to 6th lines "paragraph (b) provides ... except as provided by paragraph (a) (2)." and in the 7th and 8th lines delete "requires the participating lawyer to comply with Rule 1.10" and substitute "provides that a lawyer has an imputed conflict of interest." Then in the 11th and 12th lines delete "By virtue of paragraph (b), however" and capitalize the M in "moreover" to begin the sentence that follows.

Finally, in Comment 5, at the bottom, the end of the last sentence should read: "Rules 1.7 and 1.9 (a) become applicable." [rule 1.10 deleted]

I trust you and my fellow drafters agree with me. I have a doctor's appointment at 2 today and will likely not be able to make all these changes to the various charts before the end of the day.

From: Kevin Mohr [<mailto:kemohr@charter.net>]
Sent: Thursday, March 18, 2010 10:03 AM
To: Vapnek, Paul W.
Cc: Lauren McCurdy
Subject: RRC - 6.5 [1-650] - III.K. - Agenda Materials

Paul:

I hope all is well and that you continue to experience reasonable health.

I've reviewed the public comment on 6.5 and there are no changes that are necessary to the Rule. I can update the public comment chart, and put together the package (other submission documents) and send them on to Lauren if you like. Please let me know if it's OK by you.

Thanks,

Kevin

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Kevin E. Mohr
Professor
Western State University College of Law
1111 N. State College Blvd.
Fullerton, CA 92831
714-459-1147
714-738-1000 x1147
714-525-2786 (FAX)
kevin_e_mohr@compuserve.com

**Rule 6.5 Limited Legal Services Programs
[Sorted by Commenter]**

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

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
2	Anonymous	A			Although commenter did not specifically reference this rule, she expressed her support for all the rules contained in Batch 6.	No response needed.
6	COPRAC	A			We support adoption of the proposed rule and are pleased that the last sentence of Comment 4 has been added in accordance with our suggestion.	No response needed.
1	McIntyre, Sandra K.	A			Agrees, with no comment.	No response needed.
5	Orange County Bar Association	A			We support the adoption of proposed Rule 6.5 and agree with the recommendations of the Commission.	No response needed.
3	San Diego County Bar Association Legal Ethics Committee	A			We approve the rule in its entirety.	No response needed.
4	Santa Clara County Bar Association	A			Agrees, with no comment.	No response needed.

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

Rule 6.5: Limited Legal Services Programs
(Commission's Proposed Rule – Post-Adopt Draft 4.1 [7.1] (3/18/10) – COMPARED TO DFT3 (11/28/09))

- (a) A lawyer who, under the auspices of a program sponsored by a court, government agency, bar association, law school, or nonprofit organization, provides short-term limited legal services to a client without reasonable expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:
- (1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and
- (2) ~~is subject to Rule 1.10~~has an imputed conflict of interest only if the lawyer knows that another lawyer associated with the lawyer in a law firm is prohibited from representation by Rule 1.7 or 1.9(a) with respect to the matter.
- (b) Except as provided in paragraph (a)(2), ~~Rule 1.10 is inapplicable to a representation governed by this Rule. A conflict of interest that arises from a lawyer's participation in a program under paragraph (a) will not be imputed to the member's law firm.~~
- (c) The personal disqualification of a lawyer participating in the program will not be imputed to other lawyers participating in the program.

COMMENT

- [1] Courts, government agencies, bar associations, law schools and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services – such as advice or the completion of legal forms – that will assist persons in

addressing their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, whenever a lawyer-client relationship is established, there usually is no expectation that the lawyer's representation of the client will continue beyond that limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically check for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, and 1.9 ~~and 1.10~~.

- [2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, these Rules and the State Bar Act, including the lawyer's duty of confidentiality under Business and Professions Code section 6068(e)(1), Rule 1.6 and Rule 1.9, are applicable to the limited representation.

- [3] A lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest. Therefore, paragraph (a)(1) requires compliance with Rules 1.7 and 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer. In addition, paragraph (a)(2) ~~requires compliance with Rule 1.10~~imputes conflicts of interest to the lawyer – only if the lawyer knows that another lawyer in the lawyer's law firm would be disqualified by Rules 1.7 or 1.9(a) in the matter.

- [4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's law firm, paragraph (b) provides that ~~Rule 1.10 is~~imputed conflicts of interest are inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that any lawyer in the lawyer's firm is prohibited from representation by Rules 1.7 or 1.9(a). By virtue of paragraph (b), moreover, a lawyer's participation in a short-term limited legal services program will not be imputed to the lawyer's law firm or preclude the lawyer's law firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program. However, once the conflict is identified, the member should be screened from the member's firm's representation of a client with interests adverse to a client that the member previously represented under the program's auspices.
- [5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, and 1.9(a) ~~and 1.10~~ become applicable.

Rule 6.5: Limited Legal Services Programs
(Commission's Proposed Rule – Clean [DFT4.1])

- (a) A lawyer who, under the auspices of a program sponsored by a court, government agency, bar association, law school, or nonprofit organization, provides short-term limited legal services to a client without reasonable expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:
 - (1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and
 - (2) has an imputed conflict of interest only if the lawyer knows that another lawyer associated with the lawyer in a law firm is prohibited from representation by Rule 1.7 or 1.9(a) with respect to the matter.
- (b) Except as provided in paragraph (a)(2), a conflict of interest that arises from a lawyer's participation in a program under paragraph (a) will not be imputed to the member's law firm.
- (c) The personal disqualification of a lawyer participating in the program will not be imputed to other lawyers participating in the program.

COMMENT

- [1] Courts, government agencies, bar associations, law schools and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services – such as advice or the completion of legal forms – that will assist persons in addressing their legal problems without further representation by a

lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, whenever a lawyer-client relationship is established, there usually is no expectation that the lawyer's representation of the client will continue beyond that limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically check for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7 and 1.9.

- [2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, these Rules and the State Bar Act, including the lawyer's duty of confidentiality under Business and Professions Code section 6068(e)(1), Rule 1.6 and Rule 1.9, are applicable to the limited representation.

- [3] A lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest. Therefore, paragraph (a)(1) requires compliance with Rules 1.7 and 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer. In addition, paragraph (a)(2) imputes conflicts of interest to the lawyer only if the lawyer knows that another lawyer in the lawyer's law firm would be disqualified by Rules 1.7 or 1.9(a) in the matter.

- [4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's law firm, paragraph (b) provides that imputed conflicts of interest are inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that any lawyer in the lawyer's firm is prohibited from representation by Rules 1.7 or 1.9(a). By virtue of paragraph (b), moreover, a lawyer's participation in a short-term limited legal services program will not be imputed to the lawyer's law firm or preclude the lawyer's law firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program. However, once the conflict is identified, the member should be screened from the member's firm's representation of a client with interests adverse to a client that the member previously represented under the program's auspices.
- [5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7 and 1.9(a) become applicable.



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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:

Proposed New Rule No./ Title: Rule 6.2 – Accepting Appointments

(5) Proposed Rule 6.2 is substantively identical to the ABA Model Rule.

The Commission notes that some of its members do not recommend this Rule, because it would allow a lawyer to reject an appointment to represent a client the lawyer considers “repugnant.” This minority argues that lawyers are traditionally obliged to represent people they may consider “repugnant,” such as some criminal or unpopular clients.

However, the policy behind proposed Rule 6.2 correctly recognizes that, in some cases, a client may be so repugnant to a lawyer as to impair the lawyer’s ability to represent the client. In these cases, it would be a conflict of interest for the lawyer to represent the client. Thus, Rule 6.2, while it permits lawyers to decline appointments by a tribunal in limited circumstances, does so for a proper purpose – and a purpose that may be in the “repugnant” client’s best interests. After all, another appointed attorney may not find the client so repugnant that the attorney-client relationship would be impaired.

Furthermore, the comments to the proposed rule contain a substantive exception that helps to address the minority’s concerns. Specifically, Comment 1 to proposed Rule 6.2 contains a cross-reference to Cal. Bus. & Prof. Code § 6068(h), which states that it is the duty of a lawyer “[n]ever to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.” Thus, the comments acknowledge that an attorney cannot decline an appointment simply because a client is unpopular.

CONCLUSION: We approve the new rule in its entirety.

LEC Rule Volunteer Name(s): Ross G. Simmons

Old Rule No./Title: CRPC 1-650 Limited Legal Services Programs

Proposed New Rule No./ Title: CRPC 6.5 Limited Legal Services Programs

(5) Proposed CRPC 6.5 largely embodies recently adopted CRPC 1-650. This is not surprising. The Rules Revision Commission was involved in the rule’s inception in the spring of 2009, approval and adoption of which was pursued on an expedited basis under the auspices of meeting a demand for *pro bono* legal services in view of the recent economic downturn. Existing CRPC 1-650 was adopted by the California Supreme Court by order dated June 29, 2009, modified by the Court for clarification.

Its objective is to relax the general application of conflict of interest rules, and their imputing effects in connection with provision of “short-term limited legal services to a client without [reasonable] expectation by either the lawyer or the client that the lawyer will provide continuing representation in the manner.” For its own sake, MR 6.5, upon which the proposed California rule is based, has evoked little controversy, and has been adopted little variation in nearly all Model Rule jurisdictions.

As was true with CRPC 1-650, the coverage of proposed CRPC 6.5 is slightly broader than its

Model Rules counterpart, not limited to non-profit programs, but defined to include programs “sponsored by a court, government agency, bar association, law school or non-profit organization.”

The author proposes approval of the new rule in its entirety, in that (1) this rule has only recently been adopted and, its proposal in this context follows conclusions based on that deliberate process, (2) it has since been approved (following pointed, deliberate modification) by the California Supreme Court (3) it is consistent with a national standard that developed without California’s participation, but which promotes worthy public and professional interests worthy of California’s joinder.

CONCLUSION: We approve the new rule in its entirety.

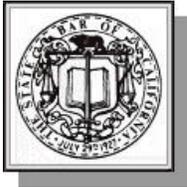
~~LEC Rule Volunteer Name(s): David McGowan~~

~~Old Rule No./Title: 1-700 (Member as candidate for judicial office)~~

~~Proposed New Rule No./ Title: 8.2 “Judicial and Legal Officials”~~

~~(5) The proposed rule requires candidates for judicial office to comply with the canons of judicial ethics and requires that lawyers not lie about judges. The proposed rule tracks the ABA rule except that it adds provisions for appointed rather than elected judges.~~

~~CONCLUSION: We approve the new rule in its entirety.~~



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.

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PC

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F-2010-381d Sandra McIntyre [6.5]

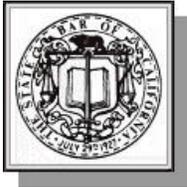
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THE STATE BAR OF CALIFORNIA

PROPOSED RULES OF PROFESSIONAL CONDUCT

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All information submitted is regarded as public record.

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Your Information

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Commenting on behalf of an organization

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(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

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03/01/2010 

Period

PC

File :

F-2010-382m SCCBA [6.5]

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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 Levindofske
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 6.5 – Limited Legal Services Programs**

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:

Proposed Rule 6.5 facilitates a lawyer's participation in limited legal services programs, such as call-in hotlines. The proposed Rule is based upon current Rule 1-650, and the changes being proposed are either non-substantive or intended to conform the Rule to well-settled California law.

The proposed Rule permits lawyers to participate in limited legal services programs, such as call-in hotlines, which are sponsored by a court, government agency, bar association, law school, or non-profit organization without reasonable expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter.

Because such programs are normally operated under circumstances where it is not feasible for the lawyer to systematically check for conflicts of interest, as is generally required before undertaking a representation, the otherwise applicable conflict rules are not imposed upon the lawyer unless the lawyer knows that the limited service representation presents a conflict of interest with his or her clients or clients of his or her law firm. Other Rules of Professional Conduct, such as those requiring that the lawyer secure the client's informed consent to the limited scope of the representation, are applicable.

The OCBA supports the adoption of proposed Rule 6.5 and agrees with the recommendations of the Commission.



**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 6.5

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.

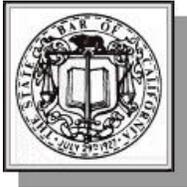
COPRAC has reviewed the provisions of proposed Rule 6.5 (which is substantially similar to recently adopted Rule 1-650), and we support adoption of such proposed rule. Please see our letter dated April 17, 2009, to Ms. Audrey Hollins, Office of Professional Competence, Planning and Development of the State Bar of California, in support of Rule 1-650 (a copy of which is attached hereto). In particular, we appreciate and support the addition of the last sentence of Comment [4], which COPRAC had suggested be added to the corresponding paragraph of the Discussion for Rule 1-650 at the time it was being proposed.

Thank you for your consideration of our comments.

Very truly yours,

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.

* Date

01/26/2010 

Period

PC

File :

F-2010-378 Esther [multiple].pdf

Commented On:

Specify:

Submitted via:

Online

* Required

Proposed Rule 6.5 [1-650]

“Limited Legal Services Programs”

(Post-Adoption Draft 3 [#6], 11/28/09)

Summary: Proposed Rule 6.5 is based upon recently approved rule 1-650, which in turn was based on Model Rule 6.5, and facilitates lawyer’s participation in limited legal services programs such as call-in hotlines. Most of the changes from rule 1-650 are non-substantive, and have been made to conform the language of the proposed Rule to that of the other proposed rules, e.g., changing “member” to “lawyer” and substituting proposed new rule numbers for existing rule numbers. See Introduction.

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 checked="" type="checkbox"/> Some material additions to ABA Model Rule	<input checked="" 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

Rules

RPC 1-650

Statute

Case law

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

Other Primary Factor(s)

(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:

California Commission on Access to Justice.

Very Controversial – Explanation:

Moderately Controversial – Explanation:

Not Controversial

COMMISSION FOR THE REVISION OF THE RULES OF PROFESSIONAL CONDUCT

Proposed Rule 6.5* Limited Legal Services Programs

November 2009

(Draft rule to be considered for public comment.)

INTRODUCTION:

Proposed Rule 6.5 is based upon recently approved rule 1-650, which in turn was based on Model Rule 6.5. Most of the changes from rule 1-650 are non-substantive, and have been made to conform the language of the proposed Rule to that of the other proposed rules, e.g., changing “member” to “lawyer” and substituting proposed new rule numbers for existing rule numbers. Most of the rest of the changes are for purposes of clarifying the language of the proposed Rule. In addition, the Commission recommends two other language changes intended to conform the Rule to well-settled California law and to provide guidance to lawyers on protecting confidential information they might have acquired under the auspices of a program governed under the Rule. See Explanation of Changes for paragraph (a) and Comment [4], respectively.

Variations in other jurisdictions. Nearly every jurisdiction has adopted some version of Model Rule 6.5, with little variation.

* Proposed Rule 6.5, Post-Adoption Draft 3 [#6] (11/28/09).

<p align="center"><u>ABA Model Rule</u></p> <p align="center">Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs</p>	<p align="center"><u>Commission’s Proposed Rule*</u></p> <p align="center">Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:</p>	<p>(a) A lawyer who, under the auspices of a program sponsored by a <u>court, government agency, bar association, law school, or</u> nonprofit organization or court, provides short-term limited legal services to a client without <u>reasonable</u> expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:</p>	<p>Note that the title of the Rule has been shortened because, unlike the Model Rule, proposed Rule 6.5 is not limited to nonprofit organizations.</p> <p>The changes to paragraph (a) were first made in rule 1-650 to expand the list of organizations covered by the Rule.</p> <p>The word “reasonable” has been added as a modifier of “expectation” to comport with current California law on the formation of a lawyer-client relationship. See, e.g., <i>Zenith Insurance v. Cozen O’Connor</i> (2009)148 Cal. App.4th 998, 1010; Cal. State Bar Formal Ethics Opn. 2003-161.</p>
<p>(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and</p>	<p>(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and</p>	<p>Subparagraph (a)(1) is identical to Model Rule 6.5(a)(1).</p>
<p>(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.</p>	<p>(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified<u>prohibited from representation</u> by Rule 1.7 or 1.9(a) with respect to the matter.</p>	<p>Subparagraph (a)(2) is based on Model Rule 6.5(a)(2). The phrase, “prohibited from representation” has been carried forward from current rule 1-650(A)(2); it is a more accurate statement than “disqualified” in the rule context.</p>

* Proposed Rule 6.5, Draft 3 [6] (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 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.</p>	<p>(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.</p>	<p>Paragraph (b) is identical to Model Rule 6.5(b).</p>
	<p>(c) <u>The personal disqualification of a lawyer participating in the program will not be imputed to other lawyers participating in the program.</u></p>	<p>Paragraph (c) has no counterpart in Model Rule 6.5. The California Supreme Court added this paragraph to proposed rule 1-650, which the Board of Governors had adopted and sent to the Supreme Court. Paragraph (c), which is taken from the last sentence of Model Rule 6.5, cmt. [4], is identical to current rule 1-650(C).</p>

<p align="center"><u>ABA Model Rule</u></p> <p align="center">Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs</p> <p align="center">Comment</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs</p> <p align="center">Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services — such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.</p>	<p>[1] Legal services organizations Courts, courts government agencies, bar associations, law schools and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services — such as advice or the completion of legal forms – that will assist persons to address in addressing their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, whenever a client-lawyer-client relationship is established, but there usually is no expectation that the lawyer's representation of the client will continue beyond the that limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen check for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.</p>	<p>Comment [1] is based on Model Rule 6.5, cmt. [1]. Changes were made in the first sentence to conform to the changes in paragraph (a). See Explanation of Changes for paragraph (a) and carry forward revisions made by the Supreme Court in approving rule 1-650.</p> <p>This is the language approved by the Supreme Court in rule 1-650. There was some controversy concerning the issue of the formation of an attorney client relationship when lawyers assist others who have legal problems; it appears that the Court inserted “whenever” to avoid specifying that such a relationship is always formed.</p> <p>The word “check” has been substituted for “screen” to avoid confusion that an ethical screen is required when a lawyer participates in a program governed by this Rule.</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 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs</p> <p align="center">Comment</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs</p> <p align="center">Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.</p>	<p>[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the<u>these</u> Rules of Professional Conduct<u>and the State Bar Act</u>, including Rules<u>the lawyer's duty of confidentiality under Business and Professions Code section 6068(e)(1), Rule 1.6 and Rule 1.9(e)</u>, are applicable to the limited representation.</p>	<p>Comment [2] is based on Model Rule 6.5, cmt. [2]. References have been added to the State Bar Act, which also regulates lawyer conduct in California, and Bus. & Prof. Code § 6068(e)(1), which in California also governs a lawyer's duty of confidentiality. Finally, because the duty of confidentiality is also relevant in proposed Rule 1.9(a) and (b), the limitation of Rule 1.9's applicability to 1.9(c) has been stricken.</p>
<p>[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.</p>	<p>[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest. <u>Therefore</u>, paragraph (a)(1) requires compliance with Rules 1.7 or<u>and</u> 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer. <u>In addition</u>, and<u>paragraph (a)(2) requires compliance</u> with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's <u>law</u> firm is<u>would be</u> disqualified by Rules 1.7 or 1.9(a) in the matter.</p>	<p>Comment [3] is based on Model Rule 6.5, cmt. [3]. Changes have been made to specifically clarify what is required by each subparagraph of paragraph (a) and to carry forward revisions the California Supreme Court made to rule 1-650.</p>

<p align="center"><u>ABA Model Rule</u></p> <p align="center">Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs</p> <p align="center">Comment</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs</p> <p align="center">Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.</p>	<p>[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's <u>law</u> firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that <u>any lawyer in</u> the lawyer's firm is disqualified<u>prohibited from representation</u> by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however<u>moreover</u>, a lawyer's participation in a short-term limited legal services program will not <u>be imputed to the lawyer's law firm or</u> preclude the lawyer's <u>law</u> firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program. <u>However, once the conflict is identified, the member should be screened from the member's firm's representation of a client with interests adverse to a client that the member previously represented under the program's auspices.</u></p>	<p>Comment [4] is based on Model Rule 6.5, cmt. [4]. Changes to the Comment carry forward changes the Supreme Court approved in rule 1-650.</p> <p>The last sentence of Comment [4] has been added at the suggestion of COPRAC to clarify the actions a law firm should take once a conflict has been identified.</p>

<p align="center"><u>ABA Model Rule</u></p> <p align="center">Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs</p> <p align="center">Comment</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs</p> <p align="center">Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.</p>	<p>[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.</p>	<p>Comment [5] is identical to Model Rule 6.5, cmt. [5].</p>

Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Program

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 counterpart to ABA Model Rule 6.5. Connecticut adds the following paragraph that is identical to Comment 2 to ABA Rule 6.5:

(b) A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to, the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

New Hampshire: Rule 6.5(a) applies only to a "one time consultation with a client" instead of the ABA's version "short-term limited legal services to a client." Also, echoing ABA Comment 2 to Rule 6.5, New Hampshire's Rule 6.5(c) provides that "Rules 1.6 and 1.9(c) are applicable to a representation governed by this Rule." Finally, a special New Hampshire Comment states as follows:

Should a lawyer participating in a one-time consultation under this Rule later discover that the lawyer's firm was representing or later undertook the representation of an adverse client, the prior participation of the attorney will not

preclude the lawyer's firm from continuing or undertaking representation of such adverse client. But the participating lawyer will be disqualified and must be screened from any involvement with the firm's adverse client. See ABA Comment [4].

New York: On November 9, 2007, effective immediately, New York's courts adopted a new DR 5-101-a (22 NYCRR §1220-a) that generally parallels ABA Model Rule 6.5 but adds the following three paragraphs:

(c) Short-term limited legal services are services providing legal advice or representation free of charge as part of a program described in subdivision (a) with no expectation that the assistance will continue beyond what is necessary to complete an initial consultation, representation or court appearance.

(d) The lawyer providing short-term limited legal services must secure the client's informed consent to the limited scope of the representation, and such representation shall be subject to the provisions of DR 4-101.

(e) The provisions of this section shall not apply where the court before which the representation is pending determines that a conflict of interest exists or, if during the

course of the representation, the attorney providing the services become aware of the existence of a conflict of interest precluding continued representation.

Wisconsin: Rule 6.5(a) also applies to a program sponsored by “a bar association” or “an accredited law school.”

**RRC – Rule 6.5 [1-650]
E-mails, etc. – Revised (3/24/2010)**

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March 10, 2010 McCurdy E-mail to Drafters (Vapnek, Martinez, Ruvolo, Sapiro), cc Chair, Vice-Chairs & Staff:

Rule 6.5 Drafting Team (VAPNEK, Martinez, Ruvolo, Sapiro):

This message provides the assignment background materials for Rule 6.5 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 - 1-650 [6-5] - Dashboard - ADOPT - DFT3 (03-10-10).doc
RRC - 1-650 [6-5] - Compare - Introduction - DFT4 (11-28-09)KEM-ML.doc
RRC - 1-650 [6-5] - Compare - Rule & Comment Explanation - DFT4 (11-28-09)KEM-ML.doc
RRC - 1-650 [6-5] - Rule - Post-Adopt DFT3 [6] (11-28-09)RD-CLEAN LAND.doc
RRC - 1-650 [6-5] - Public Comment Complete - REV (03-10-10).pdf
RRC - 1-650 [6-5] - Public Comment Chart - By Commenter - DFT1 (03-10-10)AT.doc
RRC - [6-5] - 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 McCurdy E-mail to Drafters, cc Chair, Vice-Chairs & Staff:

This message provides an updated public comment compilation adding comments received since the materials I transmitted with the message below. Please go ahead and add any missing comment synopses and responses yourself in the extra rows at the bottom of the table. If you run out of rows, simply press the TAB key in the last cell of the last row and a new row will appear.

Since the last transmission, comments from the following commenters were received:

COPRAC

Any additional comments received will be sent to you as soon as they are received.

Attached:

RRC - 1-650 [6-5] - Public Comment Complete - REV (03-15-10).pdf

RRC - 1-650 [6-5] - Public Comment Chart - By Commenter - DFT1.1 (03-15-10)AT.doc

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

I've reviewed the public comment on 6.5 and there are no changes that are necessary to the Rule. I can update the public comment chart, and put together the package (other submission documents) and send them on to Lauren if you like. Please let me know if it's OK by you.

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

Thanks for the offer. I reviewed the materials last night and would add COPRAC's approval of the rule to the Comment chart. I would list their comment as:

"We support adoption of the proposed rule and are pleased that the last sentence of Comment 4 has been added in accordance with our suggestion."

Also, in light of the BOG rejection of Rule 1.10, there are changes that must be made to the proposed Rule and its Comments.

In Proposed Rule 6.5 (a) (2) the phrase "is subject to Rule 1.10" must be deleted and "has an imputed conflict of interest" (from current rule 1-650) must be substituted, and in the Explanation

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column on the chart the following should be the second sentence: "The phrase "has an imputed conflict of interest" has been taken from current rule 1-650 in light of the Board of Governors' decision to disapprove proposed rule 1.10 on imputed conflicts of interest."

Proposed Rule 6.5 (b) must be deleted as there will be no Rule 1.10; and 6.5 (c) in the chart must be changed to 6.5 (b).

In Comment 1, at the bottom, it should read: "e.g. Rules 1.7 and 1.9." [rule 1.10 deleted]

In Comment 3, 8th line, delete "requires compliance with Rule 1.10" and substitute "provides that a lawyer has an imputed conflict of interest"

In Comment 4, delete in the 4th to 6th lines "paragraph (b) provides ... except as provided by paragraph (a) (2)." and in the 7th and 8th lines delete "requires the participating lawyer to comply with Rule 1.10" and substitute "provides that a lawyer has an imputed conflict of interest." Then in the 11th and 12th lines delete "By virtue of paragraph (b), however" and capitalize the M in "moreover" to begin the sentence that follows.

Finally, in Comment 5, at the bottom, the end of the last sentence should read: "Rules 1.7 and 1.9 (a) become applicable." [rule 1.10 deleted]

I trust you and my fellow drafters agree with me. I have a doctor's appointment at 2 today and will likely not be able to make all these changes to the various charts before the end of the day.

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

Attached is DFT1 of a Public Commenter Chart. I've added COPRAC per Paul's instructions and indicated a uniform RRC response of "No response needed" for all of the comments received as they all were in agreement with the proposed rule.

Attached:

RRC - 1-650 [6-5] - Public Comment Chart - By Commenter - DFT2 (03-18-10).doc

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

Attached is a revised draft Rule 6.5, DFT4 (redlined to the public comment draft). I reverted to the current RPC 1-650 language for all instances where Rule 1.10 was added by the Commission in the public comment draft. Accordingly, this draft is slightly different from the edits identified by Paul in his message below. For example, in reverting to the RPC 1-650 language, I retained para.(b) rather than deleting it. Let me know if this draft is acceptable.

Attached:

RRC - 1-650 [6-5] - Rule - Post-Adopt DFT4 [7] (03-18-10) - Cf. to DFT3.doc

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

Your revisions are fine with me.

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

I've attached the following:

1. Public Comment Chart, Draft 2.1 (3/18/10), re-sorted alphabetically.
2. Rule, Post-Adoption Draft 4.1 [#7.1] (3/18/10), redline, compared to Draft 3 (11/28/10) [public comment draft]. There was a single nit in the draft Randy just circulated.

I think these are ready to go. No need for the Dashboard, Intro or Comparison Chart just yet.

March 20, 2010 Kehr E-mail to RRC:

Here is my single comment on these materials: In the last line of revised paragraph (b), "member's" should be: "lawyer's".

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

In commenting on the proposed rule last week, I overlooked that there is a word that should be changed in paragraph (b). In the last line of that paragraph on Agenda materials page 539, the word "member's" should be "lawyer's."

March 23, 2010 Sondheim E-mail to RRC List:

Unless there is an objection by Wednesday, the nits mentioned by Bob and Jerry will be deemed approved and we will just vote on the rule.