

Proposed Rule 5.3.1

“Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Member”

(Draft 1)

Summary: There is no ABA counterpart to this rule. It constitutes existing California Rule 1-311 with changes which for the most part are not substantive and reflect adherence to the ABA format.

- ABA Model Rule substantially adopted
- ABA Model Rule ~~substantially~~ rejected
- Some material additions to ABA Model Rule
- Some material deletions from ABA Model Rule
- No ABA Model Rule counterpart

Primary Factors Considered

- Existing California Law

Rules

Rule 3-111

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/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:

A Commission minority opposed adoption of the rule as unduly onerous and as restricting the possible rehabilitation of disciplined lawyers.

Not Controversial

COMMISSION FOR THE REVISION OF THE RULES OF PROFESSIONAL CONDUCT

Proposed Rule 5.3.1* Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Member

December 2008

(Draft rule revised following consideration of public comment)

INTRODUCTION:

There is no ABA Model Rule counterpart to proposed Rule 5.3.1. Proposed Rule 5.3.1 amends current California Rule 1-311 and continues the restrictions on a lawyer's employment of a disbarred, suspended, resigned, or involuntarily inactive member.

The Commission determined not to make substantive changes to the disciplinary standards in the existing rule because there is no ABA counterpart and the rule was adopted by the Board of Governors and approved by the Supreme Court relatively recently notwithstanding considerable opposition – the current rule was approved by the Supreme Court in 1996 and amended in 2008. The 2008 amendments were non-substantive changes that updated cross-references to several rules of court.

Proposed Rule 5.3.1 retains current rule 1-311 largely intact. The changes are not substantive and reflect adherence to ABA format. The only substantive change is to paragraph (d), providing that the notice served on the State Bar (whenever a lawyer employs a disbarred, suspended, resigned, or involuntarily inactive member) “may” be made available to the public.

* Proposed Rule, Draft 4 (6/26/07).

INTRODUCTION (Continued):

Both the current rule and the proposed Rule are intended to foster client protection by preventing a licensed lawyer from acting as a screen behind which a disbarred, suspended, resigned, or involuntarily inactive lawyer effectively could continue practicing law. To the extent the Rule permits a disbarred, etc., lawyer to work in a law firm, it also fosters client control over the engagement by requiring the employing lawyer to notify the client of the disbarred, etc., lawyer's role.

A minority of the Commission opposed adoption of the rule as unduly onerous and as restricting the possible rehabilitation of disciplined lawyers.

<p align="center">No Comparable ABA Model Rule (Text provided is current California Rule 1-311)</p>	<p align="center">Commission's Proposed Rule (Redline/strikeout showing changes to the current California Rule 1-311)</p>	<p align="center">Explanation of Changes to California Rule 1-311</p>
<p>(A) For purposes of this rule:</p> <p>(1) "Employ" means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;</p> <p>(2) "Involuntarily inactive member" means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code sections 6007, 6203(c), or California Rule of Court 958(d); and</p> <p>(3) "Resigned member" means a member who has resigned from the State Bar while disciplinary charges are pending.</p>	<p>Rule 5.3.1-311. Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Member:</p> <p>(Aa) For the purposes of this ruleRule:</p> <p>(1) "Employ" means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;</p> <p>(2) "<u>Member</u>" means a member of the State Bar of California.</p> <p><u>(3)</u> "Involuntarily inactive member" means a member who is ineligible to practice law as a result of action taken pursuant to Business and professionsProfessions Code sections 6007, 6203(ed)(1), or California Rule of Court 958(d); and</p> <p>(34) "Resigned member" means a member who has resigned from the State Bar while disciplinary charges are pending.</p>	<p>See Introduction for a general note on the changes in the proposed Rule. As noted in the Introduction, the changes for the most part are not substantive and merely reflect adherence to ABA format or correction of typographical errors in the current rule. The added language in paragraph (d) that the "State Bar may make such information available to the public" is a substantive change and is intended to obviate a possible restriction on disclosure in the interests of protecting the public.</p> <p><u>Note on the use of "lawyer" vs. "member"</u>. In keeping with the style of the ABA Model Rules, the Commission has, throughout its proposed rules, substituted "lawyer" for the term "member [of the State Bar]." Nevertheless, "member" and "resigned member" remain defined terms in proposed Rule 5.3.1 as those terms are applied to the former lawyer employee. As with current rule 1-311, the proposed Rule is limited to the employment of disciplined former members of the State Bar of California.</p>

<p align="center">No Comparable ABA Model Rule (Text provided is current California Rule 1-311)</p>	<p align="center">Commission's Proposed Rule (Redline/strikeout showing changes to the current California Rule 1-311)</p>	<p align="center">Explanation of Changes to California Rule 1-311</p>
<p>(B) A member shall not employ, associate professionally with, or aid a person the member knows or reasonably should know is a disbarred, suspended, resigned, or involuntarily inactive member to perform the following on behalf of the member's client:</p> <ol style="list-style-type: none"> (1) Render legal consultation or advice to the client; (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer; (3) Appear as a representative of the client at a deposition or other discovery matter; (4) Negotiate or transact any matter for or on behalf of the client with third parties; (5) Receive, disburse or otherwise handle the client's funds; or (6) Engage in activities which constitute the practice of law. 	<p>(Bb) A memberlawyer shall not employ, associate professionally with, or aid a person the memberlawyer knows or reasonably should know is a disbarred, suspended, resigned, or involuntarily inactive member to perform the following on behalf of the member'slawyer's client:</p> <ol style="list-style-type: none"> (1) Render legal consultation or advice to the client; (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer; (3) Appear as a representative of the client at a deposition or other discovery matter; (4) Negotiate or transact any matter for or on behalf of the client with third parties; (5) Receive, disburse or otherwise handle the client's funds; or (6) Engage in activities which constitute the practice of law. 	

<p align="center">No Comparable ABA Model Rule (Text provided is current California Rule 1-311)</p>	<p align="center">Commission's Proposed Rule (Redline/strikeout showing changes to the current California Rule 1-311)</p>	<p align="center">Explanation of Changes to California Rule 1-311</p>
<p>(C) A member may employ, associate professionally with, or aid a disbarred, suspended, resigned, or involuntarily inactive member to perform research, drafting or clerical activities, including but not limited to:</p> <ol style="list-style-type: none"> (1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents; (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or (3) Accompanying an active member in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active member who will appear as the representative of the client. 	<p>(C) A memberlawyer may employ, associate professionally with, or aid a disbarred, suspended, resigned, or involuntarily inactive member to perform research, drafting or clerical activities, including but not limited to:</p> <ol style="list-style-type: none"> (1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents; (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or (3) Accompanying an active member in <u>good standing of the bar of a United States state in</u> attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active memberlawyer who will appear as the representative of the client. 	

<p align="center">No Comparable ABA Model Rule (Text provided is current California Rule 1-311)</p>	<p align="center">Commission's Proposed Rule (Redline/strikeout showing changes to the current California Rule 1-311)</p>	<p align="center">Explanation of Changes to California Rule 1-311</p>
<p>(D) Prior to or at the time of employing a person the member knows or reasonably should know is a disbarred, suspended, resigned, or involuntarily inactive member, the member shall serve upon the State Bar written notice of the employment, including a full description of such person's current bar status. The written notice shall also list the activities prohibited in paragraph (B) and state that the disbarred, suspended, resigned, or involuntarily inactive member will not perform such activities. The member shall serve similar written notice upon each client on whose specific matter such person will work, prior to or at the time of employing such person to work on the client's specific matter. The member shall obtain proof of service of the client's written notice and shall retain such proof and a true and correct copy of the client's written notice for two years following termination of the member's employment with the client.</p>	<p>(D) —prior(d) <u>Prior</u> to or at the time of employing a person the memberlawyer knows or reasonably should know is a disbarred, suspended, resigned, or involuntarily inactive member, the memberlawyer shall serve upon the State Bar written notice of the employment, including a full description of such person's current bar status. The written notice shall also list the activities prohibited in paragraph (B) and state that the disbarred, suspended, resigned, or involuntarily inactive member will not perform such activities. The memberState Bar may <u>make such information available to the public.</u> <u>The lawyer</u> shall serve similar written notice upon each client on whose specific matter such person will work, prior to or at the time of employing such person to work on the client's specific matter. The memberlawyer shall obtain proof of service of the client's written notice and shall retain such proof and a true and correct copy of the client's written notice for two years following termination of the member'slawyer's employment withby the client.</p>	

<p align="center">No Comparable ABA Model Rule (Text provided is current California Rule 1-311)</p>	<p align="center">Commission's Proposed Rule (Redline/strikeout showing changes to the current California Rule 1-311)</p>	<p align="center">Explanation of Changes to California Rule 1-311</p>
<p>(E) A member may, without client or State Bar notification, employ a disbarred, suspended, resigned, or involuntarily inactive member whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.</p> <p>(F) Upon termination of the disbarred, suspended, resigned, or involuntarily inactive member, the member shall promptly serve upon the State Bar written notice of the termination.</p>	<p>(Ee) A memberlawyer may, without client or State Bar notification, employ a disbarred, suspended, resigned, or involuntarily inactive member whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.</p> <p>(Fi) Upon termination of the <u>employment of a</u> disbarred, suspended, resigned, or involuntarily inactive member, the memberlawyer shall promptly serve upon the State Bar written notice of the termination.</p>	

<p align="center">No Comparable ABA Model Rule (Text provided is current California Rule 1-311)</p>	<p align="center">Commission's Proposed Rule (Redline/strikeout showing changes to the current California Rule 1-311)</p>	<p align="center">Explanation of Changes to California Rule 1-311</p>
<p><i>Discussion:</i></p> <p>For discussion of the activities that constitute the practice of law, see <i>Farnham v. State Bar</i> (1976) 17 Cal.3d 605 [131 Cal.Rptr. 611]; <i>Bluestein v. State Bar</i> (1974) 13 Cal.3d 162 [118 Cal.Rptr. 175]; <i>Baron v. City of Los Angeles</i> (1970) 2 Cal.3d 535 [86 Cal.Rptr. 673]; <i>Crawford v. State Bar</i> (1960) 54 Cal.2d 659 [7 Cal.Rptr. 746]; <i>People v. Merchants Protective Corporation</i> (1922) 189 Cal. 531, 535 [209 P. 363]; <i>People v. Landlords Professional Services</i> (1989) 215 Cal.App.3d 1599 [264 Cal.Rptr. 548]; and <i>People v. Sipper</i> (1943) 61 Cal.App.2d Supp. 844 [142 P.2d 960].)</p> <p>Paragraph (D) is not intended to prevent or discourage a member from fully discussing with the client the activities that will be performed by the disbarred, suspended, resigned, or involuntarily inactive member on the client's matter. If a member's client is an organization, then the written notice required by paragraph (D) shall be served upon the highest authorized officer, employee, or constituent overseeing the particular engagement. (See rule 3-600.)</p>	<p>Discussion:Comment</p> <p>For discussion of the activities that constitute the practice of law, see <i>Farnham v. State Bar</i> (1976) 17 Cal.3d 605 [131 Cal.Rptr. 611]; <i>Bluestein v. State Bar</i> (1974) 13 Cal.3d 162 [118 Cal.Rptr. 175]; <i>Baron v. City of Los Angeles</i> (1970) 2 Cal.3d 535 [86 Cal.Rptr. 673]; <i>Crawford v. State Bar</i> (1960) 54 Cal.2d 659 [7 Cal.Rptr. 746]; <i>People v. Merchants Protective Corporation</i> (1922) 189 Cal. 531, 535 [209 p. 363]; <i>People v. Landlords Professional Services</i> (1989) 215 Cal.App.3d 1599 [264 Cal.Rptr. 548]; and <i>People v. Sipper</i> (1943) 61 Cal.App.2d Supp. 844 [142 p.2d 960].)</p> <p>[1] Paragraph (Dd) is not intended to prevent or discourage a membermember lawyer from fully discussing with the client the activities that will be performed by the disbarred, suspended, resigned, or involuntarily inactive member on the client's matter. If a member'smember's lawyer's client is an organization, then the written notice required by paragraph (Dd) shall be served upon the highest authorized officer, employee, or constituent overseeing the particular engagement. (See rule 3-600Rule [1.13].)</p>	

<p align="center">No Comparable ABA Model Rule (Text provided is current California Rule 1-311)</p>	<p align="center">Commission's Proposed Rule (Redline/strikeout showing changes to the current California Rule 1-311)</p>	<p align="center">Explanation of Changes to California Rule 1-311</p>
<p>Nothing in rule 1-311 shall be deemed to limit or preclude any activity engaged in pursuant to rules 983, 983.1, 983.2, and 988 of the California Rules of Court, or any local rule of a federal district court concerning admission pro hac vice.</p>	<p>[2] Nothing in rule 1-311this Rule shall be deemed to limit or preclude any activity engaged in pursuant to rules 983, 983.1, 983.2, and 988Rules 9.45 [registered legal services attorneys], 9.46 [registered in-house counsel] 9.47 [attorneys practicing law temporarily in California as part of litigation], 9.48 [non-litigating attorneys temporarily in California to provide legal services], 9.40 [counsel pro hac vice], 9.41 [appearances by military counsel], 9.42 [certified law students], 9.43 [out-of-state attorney arbitration counsel program] and 9.44 [registered foreign legal consultant] of the California Rules of Court, or any local rule of a federal district court concerning admission <i>pro hac vice</i>.</p>	

**Rule 5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntary Inactive Member.
[Sorted by Commenter]**

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

No.	Commentator	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
1	COPRAC	agree			Support as drafted	No action needed
2	Los Angeles County Bar Association	disagree			the rule should be abandoned because it effectively precludes any disbarred or suspended lawyer from working in any capacity in the law	Commission disagreed
3	Bar Association of San Francisco	Disagree support only if modified			information regarding employment of a disbarred, suspended, resigned, or involuntarily inactive lawyer should not be made public as that would drastically limit opportunities for rehabilitation	Commission slightly modified the rule to delete the language saying that the State Bar "shall" make such information public and added language saying that state the State Bar "may" make the information it public
4	San Diego County Bar Association	agree			Support as drafted	No action needed
5						

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

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August 27, 2009 McCurdy E-mail to Voogd, 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.B. Rule 1.0.1 Definition of "Law Firm" [1-100(B)(1)]** (Post Public Comment Rule Draft dated 6/16/07) and a global terminology rule [MR 1.0, RPC 1-100(B)]

Codrafters: Julien, Kehr, Sapiro

Assignment: (1) a chart comparing a proposed California version of a global terminology rule to MR 1.0 (including a comparison of the Commission's Rule 1.0.1 definition of "Law Firm" to MR 1.0(c)); (2) a "dashboard" cover sheet; and (3) a chart summarizing the public comment received on the Commission's Rule 1.0.1 definition of "Law Firm" and the Commission's response.

2. **III.K. Rule 3.1 Meritorious Claims and Contentions [3-200]** (April 2009 Comparison Chart - Post Public Comment Rule Draft #4 dated 6/26/07)

Codrafters: Ruvolo, Tuft

**RRC – Rule 5.3.1 [1-311]
E-mails, etc. – Revised (10/13/2009)**

Assignment: (1) a chart comparing proposed Rule 3.1 to MR 3.1; (2) a “dashboard” cover sheet; and (3) a chart summarizing the public comment received and the Commission’s response.

3. **III.L. Rule 3.2 Expediting Litigation [N/A]** (Dec. 2008 Comparison Chart; a rule is not recommended for adoption)

Codrafters: None

Assignment: (1) a chart comparing proposed Rule 3.2 to MR 3.2; and (2) a “dashboard” cover sheet.

4. **III.P. Rule 5.3.1 Employment of Disbarred Member [1-311]**
(Dec. 2008 Comparison Chart – Post Public Comment Rule Draft #4 dated 6/26/07)

Codrafters: Lamport

Assignment: (1) a chart comparing proposed Rule 5.3.1 to RPC 1-311; (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

1. **III.DD. Rule 1.8.5 Payment of Expenses for a Client [4-210]** (Post Public Comment Draft #7.3 dated 7/5/08)

Codrafters: Julien, Kehr

Assignment: (1) a chart comparing proposed Rule 1.8.5 to MR 1.8(e); (2) a “dashboard” cover sheet; and (3) a chart summarizing the public comment received and the Commission’s response.

(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. **IV.K. Possible Rule re: Class Action (no counterpart rules)**
(possible rule last considered at the September 2006 meeting; see also the comments to proposed Rule 1.7)

Codrafters: Martinez, Sapiro (w/Karpman)

Assignment: (1) a recommendation whether to adopt a new rule addressing this subject and if a new rule is recommended it should be accompanied by a chart with the first column blank, the clean version of the proposed new rule in the second column, and an explanation for each part of the proposed rule in the third column; and (2) a “dashboard” cover sheet.

2. **IV.L. Possible Rule re: Hourly Fee (Record Time)** (no counterpart rules) (possible rule last considered at the August 2004 meeting; see also email compilation dated 1/31/08)

Codrafters: Foy, Peck

Assignment: (1) a recommendation whether to adopt a new rule addressing this subject and if a new rule is recommended it should be accompanied by a chart

**RRC – Rule 5.3.1 [1-311]
E-mails, etc. – Revised (10/13/2009)**

with the first column blank, the clean version of the proposed new rule in the second column, and an explanation for each part of the proposed rule in the third column; and (2) a “dashboard” cover sheet.

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

September 24, 2009 McCurdy E-mail to Voogd, cc Chair, Difuntorum & KEM:

I’m resending the assignment message I sent you for the September meeting, with all of the various materials for your upcoming assignments. In addition to a submission on Rule 1.8.5, (III.DD.) (assignment background materials sent to you by e-mail on Sept. 18th), we are also looking for materials for the following assignments that were carried over from the September meeting, to be submitted by September 30th for the October meeting:

Rule 3.1

Rule 3.2

Rule 5.3.1

I have also attached the most current Dashboard template for you to use. You can copy and paste any entries from the Dashboards sent out earlier into the revised Dashboard template provided (the last attachment to this message – named “Dashboard Template for Adoption V4 rev. 9-14-09.doc (43 KB).”

Attachments:

Rule 1.0.1

- Dashboard for Law Firm Definition (8/27/09)
- Introduction Template (8/27/09)
- Rule Chart Template (8/27/09)
- Comment Chart Template (8/27/09)
- Public Comment Chart, Draft 1 (8/27/09)
- State Variations (2009)
- Rule 1.0.1 [Law Firm], Post-PCD (6/16/07), Cf. to MR 1.0(c).
- Rule 1.0.1 [Law Firm], Post-PCD (6/16/07), Annotated
- Rule 1.0.1 [Law Firm], Post-PCD (6/16/07), Clean
- Rule 1.0.1 [Law Firm], Post-PCD (6/16/07), Cf. to PCD

Rule 3.1 [3-200]

- Dashboard (8/27/09)
- Introduction, Draft 2 (6/1/09)
- Rule Chart, Draft 2 (6/1/09)
- Comment Chart, Draft 2 (6/1/09)
- Public Comment Chart, Draft 1 (8/27/09)
- State Variations (2009)

Rule 3.2 [3-200]

- Dashboard (8/27/09)

- Introduction, Draft 3 (12/14/08)KEM
- Rule Chart, Draft 3 (12/14/08)KEM
- Comment Chart, Draft 3 (12/14/08)KEM
- Public Comment Chart, Draft 1 (8/27/09)
- State Variations (2009)

Rule 5.3.1 [1-311]

- Dashboard (8/27/09)
- Introduction, Draft 3.1 (12/17/08)KEM
- Rule Chart, Draft 3.1 (12/17/08)KEM
- Comment Chart, Draft 3.1 (12/17/08)KEM
- Public Comment Chart, Draft 1 (8/27/09)

September 30, 2009 Voogd E-mail to McCurdy:

The assignment is 1) a chart comparing proposed Rule 5.3.1 to RPC 1-311; (2) a “dashboard” cover sheet; and (3) a chart summarizing the public comment received and the Commission’s response.

I think we have the chart already. See comparison attachment. I have modified the public comment chart. See public comment attachment.

The dashboard is the third attachment. Again I could not find the vote tally.

Attachments:

- Dashboard, Draft 1 (9/30/09)AV
- Rule & Comment Chart, Draft 4 (8/27/09)KEM-RD
- Public Comment Chart, Draft 1.1 (9/30/09)AV

October 3, 2009 KEM Note to File (updated 10/12/09):

I’ve updated Tony’s submissions and added the Introduction that had been completed in December 2008. The draft numbers are:

- Dashboard, Draft 2 (10/3/09)AV-KEM
- Introduction, Draft 5 (10/3/09)KEM-RD
- Rule & Comment Chart, Draft 5 (10/3/09)KEM-RD
- Public Comment Chart, Draft 2.1 (10/12/09)AV-KEM-HBS

October 11, 2009 Sondheim E-mail to RRC:

The Dashboard indicates no minority position included, but it is included.

The Commentator Chart indicates the Commission disagreed with LACBA, but gives no reason.

In the RRC response to BASF, the word "it" should be deleted in the last line.

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

I request that the following be added to the statement of the minority position.

This rule inhibits legitimate efforts to rehabilitate disbarred or suspended lawyers who have to demonstrate an ability to practice. It also does not distinguish between lawyers who have been disciplined for conduct that suggests that they are a threat to the public and those who are not, for example a lawyer who has forgotten to pay bar dues.

Lawyers may employ others who are not subject to the proscriptions of this rule. For example, a lawyer may employ without restriction a convicted felon who has never been admitted to practice law. That felon may be hired as a secretary, paralegal, or law clerk, with no notice to the bar at all. So long as the lawyer and the former lawyer do not deceive clients, the public, or others about the status of the former lawyer, the bar should not so burden the former lawyer that he or she finds it difficult or impossible to obtain legitimate employment that permits rehabilitation.

This rule is not needed to prevent a former lawyer from practicing law, from forming a partnership with a lawyer, or from being hired to perform legal services by new or former clients. Those acts are prohibited by other rules and by the State Bar Act. Former lawyers should not also be treated as pariahs, who cannot perform tasks that any other nonlawyer may lawfully perform except under restrictions that make such employment burdensome and unlikely.

I vote “no” on this rule and “no” on whether it should be sent to the Board in its present form.

Nevertheless, I agree that this rule is ready [with dissent] to go to the Board.