

**Bermudez, Pat**

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**From:** andersonmovius [maanderson@aya.yale.edu]  
**Sent:** Wednesday, February 20, 2008 6:02 PM  
**To:** Bermudez, Pat  
**Subject:** SUBJECT: Proposed Revisions to State Bar Rules, Title 1, Division 2, Rule 1.10(A), Shortening of Public Comment Period

I oppose changing the current standard from 90 days to 45. The whole point of a public comment period is to allow sufficient time for public comment. Under the current rule, if an emergency exists, the board can set a period of as little as 30 days. In this day & age, 90 days may seem a long time, but to me, this is actually quite short. Having participated in many rule-making and public processes, I can attest that 90 days is often not adequate enough to allow full public input. If the board, in a particular case, believes that less time is appropriate, it may make that determination on its own. I see no reason to change the current rule.

Sincerely,

Mark Alexander Anderson

**'EXHIBIT**

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**Bermudez, Pat**

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**From:** Chip Welch [chip\_welch@hotmail.com]  
**Sent:** Monday, February 25, 2008 2:23 PM  
**To:** Bermudez, Pat  
**Subject:** Comment on shortening the public comment period

Dear California Bar:

RE: Proposed Revisions to State Bar Rules, Title 1, Division 2, Rule 1.10(A), Shortening of Public Comment Period

I just read in the Bar Journal that you are proposing to shorten the public comment period from 90 days to a standard 45-day period that could be shortened to 30 days in some cases. I oppose this change. As an out-of-state lawyer, I often do not receive notice of proposed rule changes until they are printed in the California Bar Journal. Shortening the public comment period as proposed would often prevent lawyers like me from having an opportunity to comment on important proposed rule changes.

For example, I just received my copy of the Bar Journal a few days ago containing the public comment notice for this rule change and included a deadline of Feb. 26 for public comment. If this rule change had been implemented, I would have received notice of this rule change too late to submit this comment.

The current rule already allows the Board to shorten the comment period to 30 days. There is no need to change the current rule. Allowing the longer public comment period allows for greater public discussion to occur and will result in improved decisions. The current 90-day public comment period serves a useful purpose in allowing a greater opportunity for the public to participate in the rulemaking process. Please retain the current 90-day comment period.

If you really want to improve the public comment process, you should start by allowing the public to opt into an email list that would automatically send out email notification of proposed rule changes and comment deadlines.

Sincerely,

Lyman C. Welch (Cal. Bar ID #206258)

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2/25/2008

**Bermudez, Pat**

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**From:** Ross G. Simmons [ross@rblaw.com]  
**Sent:** Tuesday, February 26, 2008 6:17 PM  
**To:** Bermudez, Pat  
**Subject:** Proposed Revisions to Rule 1.10(A), State Bar Rules

Dear Ms. Bermudez:

As discussed in context, this reply to the subject Public Comment is from the Legal Ethics Committee of the San Diego County Bar Association. We are grateful for the opportunity to participate in this important process.

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2/27/2008

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February 26, 2008

**VIA ELECTRONIC MAIL, FACSIMILE AND FIRST CLASS MAIL**

Pat Bermudez  
The State Bar of California  
Office of General Counsel  
180 Howard Street  
San Francisco, CA 94105-1639

Re: Reply of Legal Ethics Committee, San Diego County Bar Association  
Request for Public Comment to Proposed Revision to State Bar Rules, Title 1, Division  
2, Rule 1.10(A) Shortening of Public Comment Period

Dear Ms. Bermudez:

I am the Vice-Chair of the Legal Ethics Committee ("LEC") of the San Diego County Bar Association ("SDCBA"). On today's date, I have just returned from our regular, monthly meeting, in which context the referenced Proposed Revision to the State Bar Rules was considered. By unanimous vote of the LEC, I write on its behalf to respectfully *oppose* the referenced Proposal (calling for revision to Rule 1.10(A) of the State Bar Rules to shorten the existing ninety (90)-day comment period to a standard forty-five (45)-day period).

In view of such unusual unanimity, I convey this sentiment as ardently as I am capable.

Although the LEC does not have authority to speak for the SDCBA generally, we believe that the import of this significant change warrants the attention of the SDCBA's full Board of Directors. In accord, we will be presenting this matter to the full Board in the ordinary course, and it will be conveying its formal position separately (based in part, presumably, on the views of its LEC). In anticipation of that effort, and with irony duly noted, we respectfully request that the SDCBA be granted additional time within which to provide its response.

Background:

I first noticed the referenced Public Comment request listed at Page 14 of the February, 2008, California Bar Journal. It is likely that there were other, earlier ways I could have found this item, but I simply did not. Nor did any of my colleagues on the LEC.

I requested that the Chair of the LEC place the matter on its agenda, and immediately, she did. This is an extremely important issue to the LEC, since we do our utmost to actively, faithfully reply to Public Comment Requests made by the State Bar's Committee on Professional Responsibility and Conduct, its Special Commission for the Revision of the Rules of

Professional Conduct, and other Public Comment requests to which we are privy that have a bearing on issues related to the professional responsibility of attorneys, which is our charge.

This matter was addressed by the LEC at its first opportunity following my fortuitous discovery. That was today, and as conveyed, the LEC unanimously voted to oppose the Proposal.

The LEC is an advisory committee of the Board of Directors of the SDCBA, whose composition is approved by the SDCBA President and whose members serve at her will. Standing alone, it does not have authority to speak for the SDCBA nor its members directly, which as one might surmise, is left to its Board of Directors. Accordingly, this correspondence reflects the position of those attending the LEC meeting today, but otherwise who are without authority to speak for their parent organization or its members under the circumstances presented. This will be remedied, but not before the comment period expires.

Rationale:

While we reply with the utmost respect and gratitude, I have nothing erudite or authoritative to provide you to bolster our opposition.

I can only say that I have been a member of the LEC since 1991, having served as Chair for four years and am presently in my third year as Vice Chair. The topics we speak to are, more often than not, extraordinarily complex and important. Indeed, most are the result of many, many months, more often years of what is clearly tireless work by volunteer attorneys and State Bar staff, who reduce it to a form worthy of requesting Public Comment. This is to say, we view these matters of such moment, and approach them in like fashion. They deserve as much.

The LEC meets monthly, and needs time between these meetings to intelligently consider these Public Comment requests. In turn, our Board of Directors meets monthly, and needs time between its meetings to intelligently consider the LEC's work prompted by these Public Comment requests.

It follows that I have been struggling to satisfy ninety (90)-day comment periods for my entire LEC career, most often satisfying the constraint with mere days (or as is true today, hours) to spare. Indeed, on occasion I implore the relevant Committee for additional time within which to respond. Sometimes that request is granted. Sometimes it is not, and I assure you, there is nothing hollower than the effort undertaken and resources dedicated to affording deference and respect to the State Bar's Public Comment requests, only to be ignored on idle technicalities and out of convenience.

No, we do not believe the system should be rendered more "convenient," and the technicalities more prohibitive. I am confident this impact is unintended, and certainly I understand the logistics faced by the State Bar in these matters. Still, you must know that adoption of this Proposal will for all intents and purposes prohibit the SDCBA, and most assuredly, the LEC from effectively participating in those State Bar endeavors with which it is charged. In this regard, the subject Proposal is spot on. No public comment is far more efficient than receipt thereof.

The ninety (90)-day norm is important, and deviation should only come for good reason. Inconvenience is the inevitable bane of public participation; the importance of the latter, however, makes tolerance of the former imperative.

Conclusion:

The Executive Summary of this Proposal provides that “there is concern over the length of time it takes to implement rule changes.” That concern is shared. The Proposal posits that the process is cumbersome and inefficient. In contrast, it is all that we can do to effectively participate in the present regime, such that it ought not to be routinely halved.

The LEC respectfully requests that Rule 1.10(A) of the State Bar Rules remain unmodified. Its members work hard toward support of, and actively participate in supporting the State Bar President, its Board of Governors and various committees and sub-organizations. Let us.

Sincerely,

**THE SIMMONS FIRM, ALC**



By: Ross G. Simmons

RGS:bjm

cc (with copy of proposal):

- Wendy Patrick Mazzarella, Chair, Legal Ethics Committee,  
San Diego County Bar Association
- Heather Rosing, President, San Diego County Bar Association
- Audrey Hollins, Office of Professional Competence, Planning and Development,  
State Bar of California
- Lauren McCurdy, Committee on Professional Responsibility & Conduct,  
State Bar of California
- Bonnie M. Dumanis, District 9 Representative, Board of Governors,  
State Bar of California