

AGENDA ITEM

MAY 126
Rule 1-650,
Rules of Professional Conduct,
Return from Public Comment

DATE: April 24, 2009

TO: Members of the Board of Governors
Members of the Board Committee on Regulation, Admissions and Discipline

FROM: Randall Difuntorum, Director, Professional Competence

RE: Proposed New Rule 1-650, Rules of Professional Conduct of the State Bar of California – Return From Public Comment

EXECUTIVE SUMMARY

This agenda item is a report on the public comment received on proposed new Rule of Professional Conduct (“RPC”) 1-650, a rule patterned on American Bar Association Model Rule 6.5 (“MR 6.5”). Like MR 6.5, new RPC 1-650 would impose limitations on conflicts of interest rules that would otherwise apply to a lawyer participating in a limited legal service program.

At its March 5, 2009 meeting, the State Bar’s Board Committee on Planning, Program Development and Budget (“Board Committee on Planning”) considered the issue of expedited adoption of new RPC 1-650 in response to the increased need in lawyer volunteers in legal service programs to assist the many California residents seeking legal assistance due to the severe economic downturn. Among these persons are California residents who are facing foreclosure or who require other legal assistance with mortgage loan modification. In a ballot taken after its meeting, the Board Committee on Planning authorized a 30-day public comment distribution of proposed new RPC 1-650.

The public comment period ended on April 17, 2009. As of the date of this memorandum, 23 comments have been received. Staff has reviewed the comments and recommends some modest revisions in response to the comments. The comments are also being reviewed by the Rules Revision Commission that is scheduled to meet on May 8 & 9, 2009. Input from the Rules Revision Commission will be reported when this item is presented. Staff recommends that the Board adopt the proposed new rule, as amended in response to public comment, and direct that it be transmitted to the Supreme Court for approval. Board members with questions about this matter may contact Randall Difuntorum at (415) 538-2161.

BACKGROUND AND ISSUE

This agenda item presents a report on the public comments received on proposed new RPC 1-650 (Limited Legal Services Programs). (The text of proposed new RPC 1-650, as amended following consideration of public comment, is provided as Attachment 1. A redline/strikeout version showing the changes to the public comment version is provided as Attachment 2.) The Rules of Professional Conduct are attorney conduct rules the violation of which will subject an attorney to discipline. Pursuant to statute, the State Bar of California has the authority to formulate amendments to the Rules of Professional Conduct. (Bus. & Prof. Code sec. 6076.) Amendments adopted by the State Bar are submitted to the Supreme Court for approval. When approved by the Supreme Court, the amendments are binding upon all members of the State Bar. (Bus. & Prof. Code sec. 6077.)

At its March 5, 2009 meeting, the Board Committee on Planning considered the issue of expedited adoption of new RPC 1-650 in response to the increased need in lawyer volunteers in legal service programs to assist the many California residents seeking legal assistance due to the severe economic downturn. Among these persons are: unemployed workers; bankruptcy debtors; crime victims, including victims of increased domestic violence; and thousands of California residents who are facing foreclosure or who require other legal assistance with mortgage loan modification. (The staff memorandum considered by the Board Committee on Planning is provided as Attachment 3.) In a ballot taken after its meeting, the Board Committee on Planning authorized a 30-day public comment distribution of proposed new RPC 1-650.

The public comment period ended on April 17, 2009. This agenda item reports on the twenty-three public comments received. Staff has reviewed the comments and recommends some modest revisions in response to the comments. The comments are also being reviewed by the Rules Revision Commission (“the Commission”) that is scheduled to meet on May 8 & 9, 2009. Input from the Commission will be reported when this item is presented. This item presents a recommendation that the Board adopt the proposed new rule, as amended in response to public comment, and authorize staff to transmit it to the Supreme Court for approval.

SUMMARY OF PROPOSAL

Existing professional responsibility standards provide that lawyers are prohibited from representing clients with conflicting interests. (See RPC 3-310 and State Bar Formal Opinion No. 1998-152.)¹ In general, these standards apply to a lawyer who is a member of a law firm who wishes to participate in a legal service program by rendering limited legal advice and assistance to clients who otherwise might not receive any legal assistance. A conflict of interest may arise from a lawyer’s personal representation of clients with conflicting interests and may also arise by imputation, either imputed from a lawyer to the lawyer’s firm or vice a versa. Consequently, the specter of both personal and imputed conflicts of interest may deter some lawyers and law firms from participating in legal service programs.

¹ Links to the State Bar rules and ethics opinions, including RPC 3-310 and State Bar Formal Opinion No. 1998-152, are available at: <http://www.calbar.ca.gov/ethics> .

The ABA Model Rules include MR 6.5, a rule adopted by a majority of states, which places limits on the application of conflicts rules to a lawyer who participates in certain legal service programs. The California rules do not include a rule comparable to MR 6.5. Proposed new RPC 1-650 would fill this void and alleviate one obstacle to potential increased lawyer participation in legal service programs. Specifically, when participating in a limited legal service program, the proposed rule would limit a lawyer's exposure to conflicts of interest to only those representations where the lawyer knows that either a personal or imputed conflict is present.² In addition the proposed rule would limit conflicts of interest that might otherwise be imputed to the lawyer's law firm as a result of the lawyer's participation in a limited legal service program.³

Like MR 6.5, the public policy basis of RPC 1-650 is stated in the comments to the rule. In part, the Discussion section to RPC 1-650 provides:

[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 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, wherever a lawyer-client relationship is established, there 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 screen for conflicts of interest as is generally required before undertaking a representation. . . . ¶ [3] A member who is representing a client in circumstances addressed by rule 1-650 ordinarily is not able to check systematically for conflicts of interest. Therefore, paragraph (A)(1) requires compliance with rule 3-310 only if the member

² Proposed new RPC 1-650(A) provides:

(A) A member 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 expectation by either the member or the client that the member will provide continuing representation in the matter:

(1) is subject to rule 3-310 only if the member knows that the representation of the client involves a conflict of interest; and

(2) is subject to an imputed conflict of interest only if the member knows that another lawyer associated with the member in a law firm would be subject to a conflict of interest under rule 3-310 with respect to the matter.

³ Proposed new RPC 1-650(B) provides: "(B) Except as provided in paragraph (A)(2), a conflict of interest that arises from a member's participation in a program under paragraph (A) will not be imputed to the member's law firm."

knows that the representation presents a conflict of interest for the member. . . . ¶ [4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the member's law firm, paragraph (B) provides that imputed conflicts are inapplicable to a representation governed by this rule except as provided by paragraph (A)(2).

Given the purpose and policy of proposed new RPC 1-650, Board adoption of the rule would be responsive to Recommendation 11 of the *Action Plan for Justice*, a report of the California Commission on the Access to Justice published in April 2007. Adopting MR 6.5 was one of four pro bono resolutions in the *Action Plan for Justice*⁴. As discussed in the report, it is anticipated that adoption of a new rule would facilitate attorney participation in advice and counsel clinics, a key service provided by legal service programs.

REPORT ON PUBLIC COMMENTS RECEIVED

The 30-day public comment period began on March 17, 2009 and ended on April 17, 2009. This agenda item reports on the twenty-three public comments received. A synopsis of the public comments is provided as Attachment 4. The full text of the written comments and a table listing the public commentators and their respective position on the proposed rule is provided as Attachment 5. Of these twenty-three written comments, nineteen support the proposed new rule and four support the rule but recommend amendments. None of the public comments received oppose adoption of the rule.

Among the points raised in support of the proposed rule are the following.

- 1) The proposed rule is substantially the same as rules already successful in a majority of states.
- 2) Adoption of the rule would allow a greater percentage of lawyers to meet or exceed the Board of Governor's recommended fifty hours of annual pro bono participation.
- 3) The participation of lawyers in pro bono clinics is blocked by the imputed conflicts rules.
- 4) The proposed rule is a modest step that can make a significant difference, and has already worked well in many other jurisdictions.
- 5) One of the most challenging aspects of the current economic downturn is the ability to provide legal services and the proposed rule would dramatically improve this ability.
- 6) Ironically, the economic downturn means that there are more volunteers available from larger firms so the proposed rule is desperately needed now.

⁴ The report is available at http://calbar.ca.gov/calbar/pdf/reports/2007_Action=Plan-Justice.pdf

- 7) The proposed rule will provide law firms with the assurance they need to confidently participate in legal services programs.
- 8) The proposed rule is not only a laudable modification of California Rules of Professional Conduct, but is absolutely essential.
- 9) The proposed rule is not inconsistent with the objective of Rule 3-310 because pro bono advice and counsel is limited in both scope and time.
- 10) The proposed rule only abrogates conflicts of interest that are unknown to a lawyer at the time of their limited pro bono service so there is unlikely to be any actual impact on the duty of loyalty owed by the lawyer.
- 11) If California is to maintain its position as the nation's leader in the development and utilization of rules that meet the needs of clients and lawyers, then the proposed rule should be adopted forthwith.
- 12) The proposed rule offers a collateral benefit of enhancing the public image of the legal profession.
- 13) Despite the significant commitment made by many law firms, the demand for pro bono legal services continues to outstrip conventional resources.
- 14) Absent the proposed rule, the vital assistance of clinics could be delayed because of precautions by lawyers to protect their other client-lawyer relationships from imputed disqualification.
- 15) The current rules regarding potential conflicts of interest discourage some pools of potential volunteers.
- 16) The proposed rule would assuage the concerns of law firms that are otherwise reluctant to do pro bono work due to possible conflicts of interest.
- 17) The proposed rule achieves the proper balance between client protection and meeting the needs of the disadvantaged.

The suggested amendments offered by four of the public commentators present three possible changes to the rule as circulated for public comment.

The first change is to paragraph (A) of the proposed rule.⁵ The suggestion is to delete the language referring to Business and Professions Code section 6213 and to add "or" after "law school" so that paragraph (A) would read:

(A) A member 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

⁵ Refer to the public comment letters from: the Commission on Access to Justice; the Legal Aid Association of California; and the comment letter on behalf of "Multiple Law Firms."

expectation by either the member or the client that the member will provide continuing representation in the matter: . . .

Staff recommends that this change be implemented.⁶ The rationale for this change is that the language recommended for deletion is redundant and potentially confusing. By deleting this language, the first sentence would adequately identify the relevant categories of legal service programs without the possibility of misinterpreting the Business and Professions Code citation as a qualifier that extends to all of the categories of legal service programs. The cited section primarily relates to IOLTA and status as an IOLTA recipient is not a condition precedent for a legal service program to be within the scope of the proposed rule. In addition, this change would revert paragraph (A) back to the language of the Commission's original draft rule that was submitted to the Board but subsequently modified as the draft was sent out for public comment.

The second change, in concept, is a clarification of Discussion paragraph [1] that would soften the current absolute language stating that a client-lawyer relationship is formed in every instance that a limited legal service program renders services through advice hotlines/clinics and pro se counseling programs.⁷ Specifically, this change would revise the second sentence of Discussion paragraph [1] to read:

In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, wherever a lawyer-client relationship is established, there is no expectation that the lawyer's representation of the client will continue beyond that limited consultation.

Staff recommends that this change be implemented.⁸ The rationale for this change is that the examples listed in this sentence include activities that clearly involve formation of a client-lawyer relationship (namely, legal advice hotlines and legal advice clinics) but also includes pro se counseling programs which are a type of legal service activity that can be rendered without the formation of a client-lawyer relationship. Accordingly, it is an appropriate clarification to replace the absolute language with a conditional phrase.

The third change is from the Standing Committee on Professional Responsibility and Conduct ("COPRAC"). COPRAC would add a new sentence at the end of Discussion paragraph [4] concerning screening. The new sentence would state:

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.

⁶ Staff has reviewed the change and has concluded that the change would not require re-distribution for public comment.

⁷ Refer to the public comment letters from: the Commission on Access to Justice; and the Legal Aid Association of California.

⁸ Staff has reviewed the change and has concluded that the change would not require re-distribution for public comment.

While COPRAC has astutely linked the concept of imputed conflicts that is present in the proposed rule to the related concept of “ethical walls” or screening, staff does not recommend that this change be implemented in this expedited rule. Instead, if the Board concurs, staff will assure that the Commission considers this change as the Commission continues its study of ABA Model Rule 1.10 [Imputation of Conflicts: General Rule] and all of the other ABA rules that concern imputed conflicts and screening, including the Commission’s work on a proposed version of Model Rule 6.5 that would be a part of the Commission’s final report and recommendation. To add a screening element to the instant rule would be premature and potentially problematic because the issue of screening requires a fuller treatment that accounts for all related rules.⁹

To summarize, the public comments overwhelmingly support, if not urge, adoption of proposed rule 1-650. Of the three possible amendments recommended by public commentators, staff recommends that two be implemented and the third be referred to the Commission. Staff recommends that the Board adopt proposed rule 1-650 as modified in response to the public comments.¹⁰

EFFECTIVE DATE OF PROPOSAL

Amendments to the Rules of Professional Conduct require Supreme Court approval and, if approved, such amendments ordinarily become operative in 30-days. However, given the Board’s goal of expedited promulgation of new RPC 1-650, the Board should consider including a request that if the Supreme Court acts to approve the new rule that the Supreme Court consider issuing an order stating the new rule becomes operative “forthwith,” that is, as of the day of the Court’s order.

FISCAL AND PERSONNEL IMPACT

The Board’s adoption of the proposed new rule does not involve any unbudgeted fiscal or personnel impact.

⁹ For example, in the ABA Model Rules, Model Rule 1.0 [Terminology] includes paragraph (k) that defines the term “screened” as it is used throughout the ABA Model Rules. The current California rules have no similar definition because the California rules do not include the concept of screening. Adding COPRAC’s suggested sentence to the rule 1-650 discussion section would introduce the concept of screening without the necessary framework of any definition.

¹⁰ The Commission subcommittee assigned to review the public comments on proposed Rule 1-650 has submitted its recommendation to the full Commission. A majority of that subcommittee endorses the modifications to paragraph (A) and Discussion paragraph [1]. A majority of the subcommittee is not recommending implementation of COPRAC’s screening addition to Discussion paragraph [4]. The full Commission will meet on May 8 & 9, 2009 to consider the subcommittee’s recommendations. The Commission’s action will be reported at the Board’s May meetings.

RULE AMENDMENTS

Subject to the Supreme Court's decision on whether to approve the proposed new rule, the Board action requested by this agenda item would add a new rule to the Rules of Professional Conduct of the State Bar of California.

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

None.

RECOMMENDATION AND PROPOSED BOARD COMMITTEE AND BOARD RESOLUTIONS

Staff recommends that the Board adopt proposed new rule 1-650, as modified in response to the public comments received, and direct that it be submitted to the California Supreme Court with a recommendation that the Supreme Court approve the rule.

Proposed Board Committee Resolution

Should the Board Committee on Regulation, Admissions and Discipline Oversight agree with the recommendation that proposed new rule 1-650 (Limited Legal Service Programs) of the Rules of Professional Conduct be adopted by the Board and transmitted for approval to the Supreme Court, adoption of the following resolution would be appropriate:

RESOLVED, following publication for comment and consideration of comments received, that the Board Committee on Regulation, Admissions and Discipline Oversight, recommends that the Board of Governors of the State Bar of California adopt, Rule 1-650, Rules of Professional Conduct of the State Bar of California, in the form attached to these minutes and made a part hereof, and hereby directs that said rule be transmitted by staff to the Supreme Court with a request that it be approved by the Court.

Proposed Board Resolution

Should the Board of Governors concur with the recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, adoption of the following resolution would be appropriate:

RESOLVED, following publication for comment and consideration of comments received, that the Board of Governors of the State Bar of California hereby adopts Rule 1-650, Rules of Professional Conduct of the State Bar of California, in the form attached to these minutes and made a part hereof, and hereby directs that said rule be transmitted by staff to the Supreme Court with the request that it be approved by the Court.

**PROPOSED RULE 1-650 (CLEAN VERSION)
AS REVISED FOLLOWING CONSIDERATION OF PUBLIC COMMENTS**

Rule 1-650. Limited Legal Services Programs

- (A) A member 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 expectation by either the member or the client that the member will provide continuing representation in the matter:
- (1) is subject to rule 3-310 only if the member knows that the representation of the client involves a conflict of interest; and
 - (2) is subject to an imputed conflict of interest only if the member knows that another lawyer associated with the member in a law firm would be subject to a conflict of interest under rule 3-310 with respect to the matter.
- (B) Except as provided in paragraph (A)(2), a conflict of interest that arises from a member's participation in a program under paragraph (A) will not be imputed to the member's law firm.

Discussion:

[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 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, wherever a lawyer-client relationship is established, there 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 screen for conflicts of interest as is generally required before undertaking a representation.

[2] A member who provides short-term limited legal services pursuant to rule 1-650 must secure the client's informed consent to the limited scope of the representation. If a short-term limited representation would not be reasonable under the circumstances, the member may offer advice to the client but must also advise the client of the need for further assistance of counsel. See rule 3-110. Except as provided in this rule 1-650, the Rules of Professional Conduct and the State Bar Act, including the member's duty of confidentiality under Business and Professions Code § 6068(e)(1), are applicable to the limited representation.

ATTACHMENT 1

**PROPOSED RULE 1-650 (CLEAN VERSION)
AS REVISED FOLLOWING CONSIDERATION OF PUBLIC COMMENTS**

[3] A member who is representing a client in the circumstances addressed by rule 1-650 ordinarily is not able to check systematically for conflicts of interest. Therefore, paragraph (A)(1) requires compliance with rule 3-310 only if the member knows that the representation presents a conflict of interest for the member. In addition, paragraph (A)(2) subjects the member to imputed conflicts of interest only if the member knows that another lawyer in the member's law firm is disqualified by rule 3-310.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the member'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) makes the participating member subject to imputed conflicts of interest when the lawyer knows that any lawyer in the member's law firm is disqualified by rule 3-310. By virtue of paragraph (B), moreover, a member's participation in a short-term limited legal services program will not be imputed to the member's law firm or preclude the member'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.

[5] If, after commencing a short-term limited representation in accordance with rule 1-650, a member undertakes to represent the client in the matter on an ongoing basis, rule 3-310 and all other rules become applicable.

ATTACHMENT 2

PROPOSED RULE 1-650
AS REVISED FOLLOWING CONSIDERATION OF PUBLIC COMMENTS
(Redline/Strikeout Version Showing Changes To The Public Comment Version)

Rule 1-650. Limited Legal Services Programs

- (A) A member who, under the auspices of a program sponsored by a court, government agency, bar association, law school, or nonprofit organization, ~~or a qualified legal services project or qualified support center within the meaning of Business and Professions Code § 6213~~, provides short-term limited legal services to a client without expectation by either the member or the client that the member will provide continuing representation in the matter:
- (1) is subject to rule 3-310 only if the member knows that the representation of the client involves a conflict of interest; and
 - (2) is subject to an imputed conflict of interest only if the member knows that another lawyer associated with the member in a law firm would be subject to a conflict of interest under rule 3-310 with respect to the matter.
- (B) Except as provided in paragraph (A)(2), a conflict of interest that arises from a member's participation in a program under paragraph (A) will not be imputed to the member's law firm.

Discussion:

[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 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, wherever a lawyer-client relationship is established, ~~but~~ there 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 for conflicts of interest as is generally required before undertaking a representation.

[2] A member who provides short-term limited legal services pursuant to rule 1-650 must secure the client's informed consent to the limited scope of the representation. If a short-term limited representation would not be reasonable under the circumstances, the member may offer advice to the client but must also advise the client of the need for further assistance of counsel. See rule 3-110. Except as provided in this rule 1-650, the Rules of Professional Conduct and the State Bar Act,

ATTACHMENT 2

PROPOSED RULE 1-650
AS REVISED FOLLOWING CONSIDERATION OF PUBLIC COMMENTS
(Redline/Strikeout Version Showing Changes To The Public Comment Version)

including the member's duty of confidentiality under Business and Professions Code § 6068(e)(1), are applicable to the limited representation.

[3] A member who is representing a client in the circumstances addressed by rule 1-650 ordinarily is not able to check systematically for conflicts of interest. Therefore, paragraph (A)(1) requires compliance with rule 3-310 only if the member knows that the representation presents a conflict of interest for the member. In addition, paragraph (A)(2) subjects the member to imputed conflicts of interest only if the member knows that another lawyer in the member's law firm is disqualified by rule 3-310.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the member'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) makes the participating member subject to imputed conflicts of interest when the lawyer knows that any lawyer in the member's law firm is disqualified by rule 3-310. By virtue of paragraph (B), moreover, a member's participation in a short-term limited legal services program will not be imputed to the member's law firm or preclude the member'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.

[5] If, after commencing a short-term limited representation in accordance with rule 1-650, a member undertakes to represent the client in the matter on an ongoing basis, rule 3-310 and all other rules become applicable.



**THE STATE BAR
OF CALIFORNIA**

180 HOWARD STREET, SAN FRANCISCO, CA 94105-1639

**OFFICE OF PROFESSIONAL COMPETENCE,
PLANNING & DEVELOPMENT**

TELEPHONE: (415) 538-2167

DATE: March 11, 2009

TO: Members, Board Committee on Planning, Program Development & Budget

FROM: Staff, Special Commission for the Revision of the Rules of Professional Conduct

RE: Request for Public Comment Authorization on a Proposed New California Rule of Profession Conduct 1-650 (Limited Legal Services Programs)

EXECUTIVE SUMMARY

This agenda item requests board committee authorization to publish a proposed new Rule of Professional Conduct (“RPC”) 1-650 in the form attached for a 30-day public comment period.

The new RPC is proposed on an expedited basis and is separate from the comprehensive review of all of the California RPCs that the Commission is currently conducting. If the Board adopts proposed RPC 1-650 following public comment and directs its transmittal to the Supreme Court for approval, the Commission will continue its efforts to consider a proposal for a permanent RPC on the same subject as part of its overall effort to recommend comprehensive amendments for the California RPCs.

Expedited action is needed because thousands of Californians are facing serious legal issues due to the severe economic downturn in the state and the nation. Thousands of California residents are being foreclosed out of their homes and many renters are being evicted because their landlords are foreclosed; domestic violence is on the rise; and unemployment, guardianship, bankruptcy and other legal needs are increasing. These Californians are contacting advice and counsel clinics seeking legal assistance. Attorneys from law firms would be available to provide the needed assistance, but they fear doing so because California does not have a Rule of Professional Conduct that would provide some protection from imputed conflicts. Because it is impractical to conduct thorough conflict checks in the limited services situations contemplated, a firm could face serious conflicts of interest as a result of one of its lawyers helping out at a clinic. Proposed new RPC 1-650 would loosen the scope of the conflicts rules to facilitate lawyers participating in the limited legal services programs identified in the rule and permit them to provide the kind of limited legal services that are being sought, without fear of creating unwanted conflicts for the firm.

Board members with questions about this agenda item may contact Mary Yen at (415) 538-2369 or Lauren McCurdy at (415) 538-2107.

ATTACHMENT 3

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BACKGROUND

The Special Commission for the Revision of the Rules of Professional Conduct has been studying whether to recommend that California adopt an RPC based on the policy of American Bar Association's Model RPC 6.5 (Nonprofit and Court-Annexed Limited Legal Services Programs) as part of its overall effort to recommend comprehensive amendments for the California RPCs.

Adoption of a California RPC based on ABA Model RPC 6.5 is Recommendation 11 of the *Action Plan for Justice*, a Report of The California Commission on Access to Justice published in April 2007.¹ Adopting ABA Model Rule 6.5 was one of four pro bono resolutions in the *Action Plan for Justice*. Specifically, adopting the rule would facilitate attorney participation in advice and counsel clinics. The discussion of Recommendation 11 [Adopt ABA Model Rule 6.5 to facilitate attorney participation in advice and counsel clinics] states:

Model Rule 6.5 allows attorneys working in legal services and court-based advice and counsel or brief service clinics to assist clients, unless the attorney has actual knowledge of a conflict. Those volunteer attorneys would also not bring the conflict of the client served at the clinic back to the law firm.

California's ethical rules prohibit advice on a specific set of facts even at an event such as Annual Law Day clinics, if anyone in any of the firm's offices represents the adverse party. Clearing conflicts at a drop-in clinic is so burdensome that few firms attempt it.

In states that have adopted Model Rule 6.5, attorneys are able to staff clinics in poor neighborhoods and assist any client with advice and counsel or brief service as long as they have no actual knowledge of a conflict within the firm. Pro bono law firms in these states have developed a broad range of new clinical models under this Model Rule. Adoption of Model Rule 6.5 would allow far greater participation by California's law firms in providing basic counsel to thousands of low-income residents.

The State Bar should recommend to the Supreme Court that it adopt the principles contained in ABA Model Rule 6.5 into the California Rules of Professional Conduct.

At the February 20, 2009 meeting of the Special Commission for the Revision of the RPCs, there was discussion of interest from the Board of Governors in expediting consideration of adopting the policy of ABA Model Rule 6.5 in a new California RPC. Since publication of *The Action Plan* in 2007, there has been a significant increase in the need for resources for legal services programs, and adoption of a rule based on ABA Model Rule 6.5 would facilitate more pro bono

¹ This Report is available at http://calbar.ca.gov/calbar/pdfs/reports/2007_Action-Plan-Justice.pdf.

ATTACHMENT 3

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support at this time, when it would really make a difference. Because of the severe downturn in the state and national economies, the legal services delivery system is facing a “perfect storm” -- significant reductions in grants and contributions at the same time as there is a huge increase in the numbers of eligible clients facing serious legal issues. Thousands of low-income Californians are being evicted from homes due to the foreclosure crisis, and many of them are becoming homeless, at least temporarily, because they have no other options. Domestic violence cases are on the rise. Unemployment, guardianship, bankruptcy and other legal needs are also increasing.

Following discussion at the February 20th meeting, the Special Commission voted on two alternative drafts for the expedited rule. The attached proposal for a new RPC 1-650 is supported by the Commission by a vote of 12-1 favoring the language of the rule itself, and 10-2 favoring the Discussion.²

PROPOSED NEW CALIFORNIA RULE OF PROFESSIONAL CONDUCT 1-650

New RPC 1-650 would apply to short-term limited legal services provided to a client under the auspices of a program sponsored by a court, government agency, bar association, law school, nonprofit organization, a qualified legal services project, or a qualified support center where there is no expectation by the attorney or client that the attorney will provide continuing representation. In this circumstance, 1) the attorney is subject to RPC 3-310 [Avoiding the Representation of Adverse Interests] only if the attorney knows that the representation of the client involves a conflict of interest; and 2) the attorney is subject to an imputed conflict of interest only if the attorney knows that another lawyer associated with the attorney in a law firm would be subject to a conflict of interest under RPC 3-310 with respect to the matter. Except for this latter imputed conflict of interest, a conflict of interest arising from the attorney’s participation in one of the sponsored programs will not be imputed to the attorney’s law firm.

The Discussion section contains five comments. Comment [1] discusses the circumstances under which the rule would apply. Comment [2] states that an attorney who provides legal services under the rule must secure the client’s informed consent to the limited scope of the representation, what the attorney must do if a short-term limited representation would not be reasonable under the circumstances, and that, except as provided in the rule, the Rules of Professional Conduct and the State Bar Act apply to the limited representation. Comment [3] discusses application of the rule to what would ordinarily be an obligation to check systematically for conflicts of interest. Comment [4]

² After the vote by the Commission, staff of the Office of Legal Services, Access and Fairness Planning offered a technical language modification. The Commission’s leadership is aware of the modification. The attached proposed Rule 1-650 is the recommendation of the Commission with the technical modification incorporated.

At the February 20, 2009 meeting, the Commission had voted by a close margin to consider an expedited rule *without* any Discussion section. However, a Discussion is provided in proposed RPC 1-650 so that the Board of Governors can decide whether to include the Discussion section. ABA Model RPC 6.5 contains a Discussion section, which served as the basis for the Discussion in proposed RPC 1-650.

ATTACHMENT 3

Board Committee on Planning, Program Development & Budget
Agenda Item re RPC 1-650
March 11, 2009
Page 4

offers discussion on the imputed conflicts of interest aspect of the rule. Comment [5] states that if, after the short-term representation commences, an attorney undertakes to represent the client in the matter on an ongoing basis, RPC 3-310 and all other rules become applicable.

The new rule is recommended with number 1-650 so that the rule follows current RPC 1-600 (Legal Services Programs).

PUBLIC COMMENT REQUEST

It is requested that your Board Committee authorize a 30-day public comment period on proposed RPC 1-650.³ The 30-day period is warranted by the need to expedite the proposed rule, and is intended to allow the item to return from public comment in time for the Board's meeting in May 2009.

FISCAL IMPACT

None expected.

BOARD BOOK IMPACT

None expected.

PROPOSED BOARD COMMITTEE ACTION

Should the Board Committee on Planning, Program Development & Budget concur with the recommendation of the Special Commission for the Revision of the Rules of Professional Conduct, adoption of the following resolution would be appropriate:

RESOLVED, that the Board Committee on Planning, Program Development & Budget authorizes for publication in the form attached, for a thirty-day comment period, proposed new California Rule of Professional Conduct 1-650; and it is

FURTHER RESOLVED that publication of the foregoing is not, and shall not be construed as, a recommendation of approval by the Board Committee.

Attachment:

Proposed new Rule of Professional Conduct 1-650 (Limited Legal Services Programs)

³ State Bar Rule 1.10(A) states that the board committee can shorten the usual public comment period of 45-days to a minimum of 30 days.

ATTACHMENT

**Proposed New Rule 1-650 of the
Rules of Professional Conduct of the State Bar of California**

(For public comment, March 2009)

Rule 1-650. Limited Legal Services Programs

- (A) A member who, under the auspices of a program sponsored by a court, government agency, bar association, law school, nonprofit organization, or a qualified legal services project or qualified support center within the meaning of Business and Professions Code § 6213, provides short-term limited legal services to a client without expectation by either the member or the client that the member will provide continuing representation in the matter:
- (1) is subject to rule 3-310 only if the member knows that the representation of the client involves a conflict of interest; and
 - (2) is subject to an imputed conflict of interest only if the member knows that another lawyer associated with the member in a law firm would be subject to a conflict of interest under rule 3-310 with respect to the matter.
- (B) Except as provided in paragraph (A)(2), a conflict of interest that arises from a member's participation in a program under paragraph (A) will not be imputed to the member's law firm.

Discussion:

[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 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 lawyer-client 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.

[2] A member who provides short-term limited legal services pursuant to rule 1-650 must secure the client's informed consent to the limited scope of the representation. If a short-term limited representation would not be reasonable under the circumstances, the member may offer advice to the client but must also advise the client of the need for further assistance of counsel. See rule 3-110. Except as provided in this rule 1-650, the Rules of Professional Conduct and the State Bar Act, including the member's duty of confidentiality under Business and Professions Code § 6068(e)(1), are applicable to the limited representation.

ATTACHMENT 3

[3] A member who is representing a client in the circumstances addressed by rule 1-650 ordinarily is not able to check systematically for conflicts of interest. Therefore, paragraph (A)(1) requires compliance with rule 3-310 only if the member knows that the representation presents a conflict of interest for the member. In addition, paragraph (A)(2) subjects the member to imputed conflicts of interest only if the member knows that another lawyer in the member's law firm is disqualified by rule 3-310.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the member'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) makes the participating member subject to imputed conflicts of interest when the lawyer knows that any lawyer in the member's law firm is disqualified by rule 3-310. By virtue of paragraph (B), moreover, a member's participation in a short-term limited legal services program will not be imputed to the member's law firm or preclude the member'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.

[5] If, after commencing a short-term limited representation in accordance with rule 1-650, a member undertakes to represent the client in the matter on an ongoing basis, rule 3-310 and all other rules become applicable.

ATTACHMENT 4
Proposed New Rule 1-650
Synopsis of Public Comments

(rev. 4/22/09)

(Total Comments = 23; Agree = 19; Disagree = 0; Agree w/ Modification = 4)

COMMENTATOR (Organization or Person)	DATE RECEIVED	POSITION (Agree, Disagree, or Agree Only If Modified)	SYNOPSIS	STAFF RESPONSE
David Ackerly	4/14/2009	Agree	The proposed rule will help expand access to justice. It would allow lawyers to meet or exceed the Board of Governor's target of at least 50 hours of annual pro bono service.	This comment concurs with the State Bar's proposal.
Bar Association of San Francisco	4/16/2009	Agree	<i>(NOTE: This commentator checked the box on the public comment form indicating agreement with the proposed rule but chose to provide no additional comments.)</i>	This comment concurs with the State Bar's proposal.
Bar Association of San Francisco, Barristers Club	4/16/2009	Agree	The proposed rule warrants support in order to increase access to pro bono legal services.	This comment concurs with the State Bar's proposal.
Bar Association of San Francisco, Volunteer Legal Services Program (Tiela Chalmers)	4/16/2009	Agree	One of the most challenging aspects of the economic downturn is the increase in the demand for legal services and conflicts of interests are an obstacle to volunteer participation, particularly for larger firms.	This comment concurs with the State Bar's proposal.
Bar Association of San Francisco, Volunteer Legal Services Program (Christopher F. Emley)	4/16/2009	Agree	The proposed rule would be extremely helpful in dispelling doubts about potential conflicts held by some potential volunteers.	This comment concurs with the State Bar's proposal.
Javier Bastidas	4/16/2009	Agree	<i>(NOTE: This commentator checked the box on the public comment form indicating agreement with the proposed rule but chose to provide no additional comments.)</i>	This comment concurs with the State Bar's proposal.

California Commission on Access to Justice	4/15/2009	Agree, Suggests Modifications	The proposed rule would implement a key recommendation of the Access Commission's 2007 <i>Action Plan for Justice</i> . The language in para. (A) referring to B&P §6213 should be deleted. Discussion para. [1] should be revised to clarify that a lawyer-client relationship is not established as a result of any and all legal services assistance.	Staff recommends implementation of the suggested modifications.
Committee on Professional Responsibility & Conduct (COPRAC)	4/17/2009	Agree, Suggests Modifications	Pro bono clients deserve advice that is competent and conflicts free. Discussion paragraph [4] should be revised to address screening by adding a new sentence at the end stating: "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."	Staff recommends that the concept of the suggested modifications be referred to the Rules Revision Commission.
Kelly M. Dermody	4/16/2009	Agree	When the need for legal services is at an all-time high, it is critical for the profession to take steps to support pro bono efforts.	This comment concurs with the State Bar's proposal.
Pam Fulmer	4/16/2009	Agree	The proposed rule will result in a large number of lawyers being willing to take on more pro bono representations at clinics.	This comment concurs with the State Bar's proposal.
Jennifer Greengold	4/16/2009	Agree	The proposed rule would assuage the concerns of law firms that are otherwise reluctant to do pro bono work due to possible conflicts of interest.	This comment concurs with the State Bar's proposal.
Inner City Law Center	4/13/2009	Agree	Expeditious adoption is urged to create new opportunities for pro bono participation.	This comment concurs with the State Bar's proposal.
Teresa Johnson	4/16/2009	Agree	<i>(NOTE: This commentator checked the box on the public comment form indicating agreement with the proposed rule but chose to provide no additional comments.)</i>	This comment concurs with the State Bar's proposal.

Legal Aid Association of California	4/17/2009	Agree, Suggests Modifications	The proposed rule will provide the assurance that law firms and lawyers need to fully participate in programs which provide limited legal assistance to people in need. The language in para. (A) referring to B&P §6213 should be deleted. Discussion para. [1] should be revised to clarify that a lawyer-client relationship is not established as a result of any and all legal services assistance.	Staff recommends implementation of the concept of the suggested modifications.
Los Angeles County Bar Access to Justice Committee	4/16/2009	Agree	The ability of volunteers to participate in clinics is particularly important to lawyers who are unable to take on extended representations. The proposed rule achieves the proper balance between client protection and meeting the needs of disadvantaged clients.	This comment concurs with the State Bar's proposal.
Los Angeles County Bar Professional Responsibility and Ethics Committee	4/16/2009	Agree	The proposed rule is not inconsistent with the objective of Rule 3-310 because pro bono advice and counsel is limited in both scope and time. The proposed rule only abrogates conflicts of interest that are unknown to a lawyer at the time of their limited pro bono service so there is unlikely to be any actual impact on the duty of loyalty owed by the lawyer.	This comment concurs with the State Bar's proposal.
James Mink	4/16/2009	Agree	<i>(NOTE: This commentator checked the box on the public comment form indicating agreement with the proposed rule but chose to provide no additional comments.)</i>	This comment concurs with the State Bar's proposal.

(...Continued)

<p>Multiple Law Firms (O'Melveny & Myers LLP; Bingham McCutchen LLP; Sheppard Mullin Richter & Hampton LLP; Wilson Sonsini Goodrich & Rosati PC; Morrison & Foerster LLP; McDermott Will & Emery LLP; Proskauer Rose LLP; Pillsbury Winthrop Shaw Pittman LLP; Nixon Peabody LLP; K&L Gates LLP; Dewey LeBoeuf LLP; Gibson Dunn & Crutcher LLP; Paul Hastings Janofsky & Walker LLP; Dechert LLP; Baker Botts LLP; DLA Piper US LLP; Baker McKenzie Int'l; Duane Morris LLP; Cooley Godward Kronish LLP; Dykema; Hunton & Williams; Manatt, Phelps & Phillips LLP; and Bryan Cave LLP)</p>	<p>4/16/2009</p>	<p>Agree, Suggests Modifications</p>	<p>Despite the significant commitment made by many law firms, the demand for pro bono legal services continues to outstrip conventional resources. Clinics and similar programs are an indispensable means of making immediate basic counsel available to a large number of clients whose needs can be met on an expedited basis. From the standpoint of drafting simplicity and logic, the language in para. (A) referring to B&P §6213 should be deleted. It is not necessary and may cause confusion.</p>	<p>Staff recommends implementation of the suggested modification.</p>
<p>Jenie Oh</p>	<p>4/16/2009</p>	<p>Agree</p>	<p><i>(NOTE: This commentator checked the box on the public comment form indicating agreement with the proposed rule but chose to provide no additional comments.)</i></p>	<p>This comment concurs with the State Bar's proposal.</p>
<p>Public Counsel</p>	<p>4/16/2009</p>	<p>Agree</p>	<p>The limited loosening of the conflicts rules by the proposed new rule would facilitate lawyers participating in clinics without fear of creating unwanted conflicts for the firm.</p>	<p>This comment concurs with the State Bar's proposal.</p>
<p>Jeffrey Ross</p>	<p>4/16/2009</p>	<p>Agree</p>	<p>The proposed rule is an important tool for providing services to the poor and unrepresented.</p>	<p>This comment concurs with the State Bar's proposal.</p>

Tracey Salisbury	4/17/2009	Agree	<i>(NOTE: This commentator checked the box on the public comment form indicating agreement with the proposed rule but chose to provide no additional comments.)</i>	This comment concurs with the State Bar's proposal.
Mary S. Twomey	4/16/2009	Agree	As a social worker involved in family law and landlord tenant cases, anything that can help increase pro bono involvement for low income clients is appreciated.	This comment concurs with the State Bar's proposal.

Overview of Comments Received on Proposed New Rule 1-650

COMMENTATOR (Individual/Organization)	SUBMITTED BY	POSITION (Agree, Disagree, or Agree if Modified)
David Ackerly	David Ackerly	Agree
Bar Association of San Francisco	Carlos Martinez	Agree
Bar Association of San Francisco, Barristers Club	Kiran Jain	Agree
Bar Association of San Francisco, Volunteer Legal Services Program	Tiela Chalmers	Agree
Bar Association of San Francisco, Volunteer Legal Services Program	Christopher F. Emley	Agree
Javier Bastidas	Javier Bastidas	Agree
California Commission on Access to Justice	Hon. Steven K. Austin	Agree if Modified
COPRAC	Suzanne M. Mellard	Agree if Modified
Kelly M. Dermody	Kelly M. Dermody	Agree
Pam Fulmer	Pam Fulmer	Agree
Jennifer Greengold	Jennifer Greengold	Agree
Inner City Law Center	Adam Murray	Agree
Teresa Johnson	Teresa Johnson	Agree
Legal Aid Association of California	Julia R. Wilson	Agree if Modified
Los Angeles County Bar Access to Justice Committee	Toby J. Rothschild	Agree
Los Angeles County Bar Professional Responsibility and Ethics Committee	Joel A. Osman	Agree
James Mink	James Mink	Agree
Multiple Law Firms (O'Melveny & Myers LLP; Bingham McCutchen LLP; Sheppard Mullin Richter & Hampton LLP; Wilson Sonsini Goodrich & Rosati PC; Morrison & Foerster LLP; McDermott Will & Emery LLP; Proskauer Rose LLP; Pillsbury Winthrop Shaw Pittman LLP; Nixon Peabody LLP; K&L Gates LLP; Dewey LeBoeuf LLP; Gibson Dunn & Crutcher LLP; Paul Hastings Janofsky & Walker LLP; Dechert LLP; Baker Botts LLP; DLA Piper US LLP; Baker McKenzie Int'l; Duane Morris LLP; Cooley Godward Kronish LLP; Dykema; Hunton & Williams; Manatt, Phelps & Phillips LLP; and Bryan Cave LLP)	Mark S. Checov and David A. Lash	Agree if Modified
Jenie Oh	Jenie Oh	Agree
Public Counsel	Elizabeth Bluestein	Agree
Jeffrey Ross	Jeffrey Ross	Agree
Tracey Salisbury	Tracey Salisbury	Agree
Mary S. Twomey	Mary S. Twomey	Agree

From the choices below, we ask that you indicate your position on the Proposed rule. You may submit a comment below or provide an attachment regardless of whether you indicate your position from the choices.



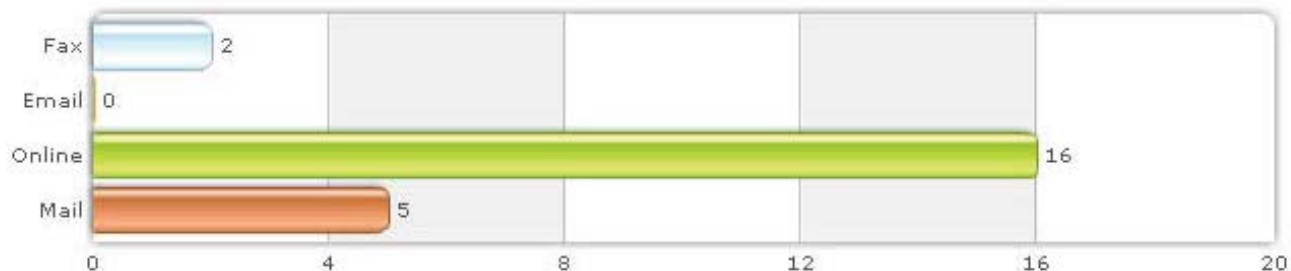
Total Number of Responses for this Item: 23

Commenting on behalf of an organization



Total Number of Responses for this Item: 23

Submitted via:



Total Number of Responses for this Item: 23



THE STATE BAR OF CALIFORNIA

NEW PROPOSED RULE OF PROFESSIONAL CONDUCT 1-650

Limited Legal Services Programs

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. *All information submitted is regarded as public record.*

DEADLINE TO SUBMIT COMMENT IS: APRIL 17, 2009

Your Information

Professional Affiliation	<input type="text" value="Directing Attorney, Homeless Veterans Project, Inner C"/>	Commenting on behalf of an organization	<input type="radio"/> Yes
			<input checked="" type="radio"/> No
Name	<input type="text" value="David Ackerly"/>		
City	<input type="text" value="Los Angeles"/>	State	<input type="text" value="California"/>
Email address (You will receive a copy of your comment submission.)	<input type="text" value="dackerly@innercitylaw.org"/>		

The following documents are available and can be viewed by clicking on the links

[Proposed Rule 1-650 Public Comment Notice](#)

[Proposed Rule 1-650 Agenda Item & Attachment.pdf](#)

[Proposed Rule 1-650 \(clean version & redline comparison to ABA MR 6.5\).pdf](#)

[Proposed Rule 1-650 \(clean version\).doc](#)


From the choices below, we ask that you indicate your position on the Proposed rule. You may submit 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.

Proposed Rule 1-650 will help expand access to justice in California. Many private attorneys are unable to take on full representation for poor clients on a pro bono basis. They could participate in clinics because the time commitment is limited to the length of the clinic, but are blocked by the imputed conflicts rule. Rule 1-650 would allow these attorneys to meet or exceed the State Bar Board of Governors' suggested target of at least 50 hours of pro bono legal services a year. This increase in pro bono participation will result in many more poor clients being able to meet with an attorney and receive counsel and advice on their legal issues.

Attachments

You may upload up to **three** attachments commenting on the rule you selected from the drop down box in the previous section. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. **Files must be less than 1 megabyte (1,000,000 bytes) in size.** For help with uploading file attachments, click the  next to **Attachment**.

Attachment 

Attachment 

Attachment 

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THE STATE BAR OF CALIFORNIA

NEW PROPOSED RULE OF PROFESSIONAL CONDUCT 1-650



Limited Legal Services Programs

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Your Information

Professional Affiliation 	<input type="text" value="Bar Association of San Francisco"/>	Commenting on behalf of an organization 	<input checked="" type="radio"/> Yes <input type="radio"/> No
Name	<input type="text" value="Carlos Martinez"/>		
City	<input type="text" value="San Francisco"/>	State	<input type="text" value="California"/>
Email address (You will receive a copy of your comment submission.)	<input type="text" value="cmartinez@sfbar.org"/>		

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[Proposed Rule 1-650 \(clean version\).doc](#)

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- AGREE with this proposed Rule
 DISAGREE with this proposed Rule
 AGREE ONLY IF MODIFIED

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THE STATE BAR OF CALIFORNIA

NEW PROPOSED RULE OF PROFESSIONAL CONDUCT 1-650

Limited Legal Services Programs

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Your Information

Professional Affiliation	<input type="text" value="Bar Association of San Francisco, Barristers Club"/>	Commenting on behalf of an organization	<input checked="" type="radio"/> Yes <input type="radio"/> No
Name	<input type="text" value="Kiran Jain"/>		
City	<input type="text" value="Oakland"/>	State	<input type="text" value="California"/>
Email address (You will receive a copy of your comment submission.)	<input type="text" value="kjain@oaklandcityattorney.org"/>		

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From the choices below, we ask that you indicate your position on the Proposed rule. You may submit 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 this proposed rule in order to increase access to pro bono legal services.



THE STATE BAR OF CALIFORNIA

NEW PROPOSED RULE OF PROFESSIONAL CONDUCT 1-650

Limited Legal Services Programs

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Your Information

Professional Affiliation ?	<input type="text" value="Volunteer Legal Services Program of the Bar Association of San Francisco"/>	Commenting on behalf of an organization ?	<input checked="" type="radio"/> Yes <input type="radio"/> No
Name	<input type="text" value="Tiela Chalmers"/>		
City	<input type="text" value="San Francisco"/>	State	<input type="text" value="California"/>
Email address (You will receive a copy of your comment submission.)	<input type="text" value="tchalmers@sfbar.org"/>		

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From the choices below, we ask that you indicate your position on the Proposed rule. You may submit 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.


This rule would dramatically improve our ability to deliver legal services to low income communities. One of the most challenging aspects of this economic downturn has been the increase in the demand for legal services (as more people fall into poverty, and people have more legal problems due to foreclosure, eviction, consumer debt collection and employment issues) while at the same time there has been a decrease in the supply of services (due to cuts in funding for legal services). To address this, many of us are turning more and more to clinic models, so that we can serve the volumes of people in an efficient way. But the conflicts situations have made this a challenge, particularly for volunteers from larger firms.


And ironically, we have more volunteers from larger firms now -- with the economic downturn, these lawyers are not as busy, and willing to volunteer. Solo and small firm attorneys, by contrast, while still stalwart volunteers, are really scrambling to keep their heads above water and paid work coming in. So this rule is particularly desperately needed now.


[CONTINUED...SEE ATTACHMENT]

Attachments

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Attachment 

Attachment 

Attachment 

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ATTACHMENT 5

ENTER COMMENTS HERE.

This rule would dramatically improve our ability to deliver legal services to low income communities. One of the most challenging aspects of this economic downturn has been the increase in the demand for legal services (as more people fall into poverty, and people have more legal problems due to foreclosure, eviction, consumer debt collection and employment issues) while at the same time there has been a decrease in the supply of services (due to cuts in funding for legal services). To address this, many of us are turning more and more to clinic models, so that we can serve the volumes of people in an efficient way. But the conflicts situations have made this a challenge, particularly for volunteers from larger firms.

And ironically, we have more volunteers from larger firms now -- with the economic downturn, these lawyers are not as busy, and willing to volunteer. Solo and small firm attorneys, by contrast, while still stalwart volunteers, are really scrambling to keep their heads above water and paid work coming in. So this rule is particularly desperately needed now.

Even when this economic downturn is over, however, the rule will be crucial. Not every client needs full scope representation, and clinics are an important way to provide service, to triage those who need further help, and to help a large number of people.

I urge you to adopt the new rule 1-650, and appreciate that you are taking it under consideration. I would be happy to address the matter further if that would be helpful, or to answer any questions.



THE STATE BAR OF CALIFORNIA

NEW PROPOSED RULE OF PROFESSIONAL CONDUCT 1-650

Limited Legal Services Programs

PUBLIC COMMENT FORM

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DEADLINE TO SUBMIT COMMENT IS: APRIL 17, 2009

Your Information

Professional Affiliation ?	<input type="text" value="BASF, Volunteer Legal Services Program"/>	Commenting on behalf of an organization ?	<input checked="" type="radio"/> Yes <input type="radio"/> No
Name	<input type="text" value="Christopher F. Emley"/>		
City	<input type="text" value="San Francisco"/>	State	<input type="text" value="California"/>
Email address (You will receive a copy of your comment submission.)	<input type="text" value="cfemley@earthlink.net"/>		

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[Proposed Rule 1-650 \(clean version\).doc](#)

From the choices below, we ask that you indicate your position on the Proposed rule. You may submit 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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This would be an extremely helpful change, dispelling lingering doubts held by some of our potential volunteer lawyers. You already know about the significant upsurge in demand for volunteer advice counsel. We meet much of the demand with drop-in clinics. They're easier to staff and oversee. But the current rules regarding potential conflicts do discourage some pools of potential volunteers.

Please adopt the proposed Rule.



THE STATE BAR OF CALIFORNIA

NEW PROPOSED RULE OF PROFESSIONAL CONDUCT 1-650



Limited Legal Services Programs

PUBLIC COMMENT FORM

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DEADLINE TO SUBMIT COMMENT IS: APRIL 17, 2009

Your Information

Professional Affiliation 	<input type="text"/>	Commenting on behalf of an organization 	<input type="radio"/> Yes <input type="radio"/> No
Name	<input type="text" value="Javier Bastidas"/>		
City	<input type="text" value="San Francisco"/>	State	<input type="text" value="California"/>
Email address (You will receive a copy of your comment submission.)	<input type="text" value="jbastidas@sfbar.org"/>		

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- AGREE with this proposed Rule
 DISAGREE with this proposed Rule
 AGREE ONLY IF MODIFIED

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CALIFORNIA COMMISSION ON ACCESS TO JUSTICE

c/o State Bar of California - 180 Howard Street - San Francisco, CA 94105 - (415) 538-2251- (415) 538-2524/fax

HON. STEVEN K. AUSTIN
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MARY LAVERY FLYNN
*Director, Legal Services Outreach
State Bar of California
San Francisco*

April 14, 2009

Audrey Hollins
Office of Professional Competence, Planning and Development
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed Rule 1-650

Dear Ms. Hollins:

On behalf of the California Commission on Access to Justice, I am writing to support adoption of proposed Rule of Professional Conduct 1-650 and to suggest two minor changes to the proposed rule, described below. We wholeheartedly endorse this effort to expedite consideration of this rule by the Supreme Court, and appreciate the work of the Rule Revision Commission in developing this thoughtful approach to the issues.

The California Commission on Access to Justice was established in 1996 to pursue long-term strategies to improve access to justice for low and moderate-income Californians. The Commission includes appointees from the Governor, the Attorney General, the President Pro Tem of the Senate, the Speaker of the Assembly, the California Judicial Council, California Judges Association, the State Bar of California, Consumer Attorneys of California, California Chamber of Commerce, California Labor Federation, League of Women Voters, the California Council of Churches, and the Council of California County Law Librarians.

Adoption of proposed Rule 1-650 would implement a key recommendation of the Access Commission's 2007 *Action Plan for Justice*.** Recommendation 11 urged adoption of ABA Model Rule 6.5 "...to facilitate attorney participation in advice and counsel clinics." The Action Plan went on to say that "Clearing conflicts at a drop in clinic is so burdensome that few firms attempt it."

Given the extreme legal need that exists in our low-income communities, we believe that it is critical to do whatever we can to facilitate pro bono and eliminate unnecessary barriers. This Rule is a modest step that can make a significant difference, and has already worked well in many other jurisdictions.

The two proposed changes we would make to Proposed Rule 1-650 are:

1. Remove the specific language in the Rule that refers to specific programs that qualify for the Legal Services Trust Fund program according to statute. Because all of the programs that would qualify under this provision are already covered by the other categories listed in the Rule – law schools and nonprofits – this language is redundant and potentially misleading. We therefore urge its removal. [On lines 5-7, we propose removing “..or a qualified legal services project within the meaning of Business and Professions Code Section 6213(a).” We also propose adding on line 5 the word “or” between “law school” and “nonprofit organization.”]
2. In paragraph [1] of the notes, we urge modifying the language to take out the inference that an attorney-client relationship is always established in each of these drop-in clinics. There is now a self-help center in every county Superior Court in the state, and the guidelines for those centers, which were adopted by the Judicial Council, provide that the self-help centers be structured in such a way as to not establish an attorney-client relationship. They do not use the term “client,” they make sure individuals know that no confidentiality is established, and they are careful to provide information, but not advice. Therefore, paragraph [1] needs to be modified to accurately state the current situation in California – an attorney-client relationship is not always established at these clinics. We suggest the way to do that is to add, on line 29 the word “wherever” before “a lawyer-client relationship is established,” and then take out the word “but”so that the note would read:

In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, wherever a lawyer-client relationship is established, there is no expectation that the lawyer’s representation of the client will continue beyond the limited consultation.

Thank you for giving us this opportunity to comment. Please let me know if we can provide any additional information for the Commission’s consideration.

Sincerely,



Hon. Steven K. Austin, Chair
California Commission on Access to Justice

**THE STATE BAR
OF CALIFORNIA**

180 HOWARD STREET, SAN FRANCISCO, CA 94105-1639

**COMMITTEE ON PROFESSIONAL
RESPONSIBILITY AND CONDUCT**

TELEPHONE: (415) 538-2107

April 17, 2009

Audrey Hollins
Office of Professional Competence,
Planning and Development
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed New Rule of Professional Conduct 1-650

Dear Ms. Hollins,

On behalf of the State Bar's Standing Committee on Professional Responsibility and Conduct (COPRAC), we provide the following comments on Proposed New California Rule of Professional Conduct 1-650 (Limited Legal Services Programs). For the reasons set forth below, COPRAC supports adoption of rule 1-650, but recommends some changes to paragraph 4 of the Discussion.

By way of background, COPRAC notes that for years the Board of Governors and the California Commission on Access to Justice have encouraged the participation of California attorneys in the performance of pro bono work. For example, in its Pro Bono Resolution, first adopted in 1989 and modified in 2002, the Board of Governors urges all attorneys to devote at least 50 hours per year to legal services to indigent individuals or to not-for-profit legal service organizations without expectation of compensation other than reimbursement of expenses. The Resolution also urges all law firms and governmental and corporate employers to promote and support the involvement of associates and partners in pro bono and other public service activities.

Pro bono clients deserve advice that is competent and conflict-free. By the same token, members who volunteer their services, and their law firms that permit and encourage them to do so, should have reasonable assurance that their pro bono work will not result in disqualification because of conflicts of interest between the firm's clients and the pro bono clients to whom the member has provided short-term limited legal services pursuant to proposed rule 1-650. This is clearly the intent of proposed rule 1-650.

Paragraph 4 of the Discussion to proposed rule 1-650 currently reads,

Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the member'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) makes the participating member subject to imputed conflicts of interest when the lawyer knows that any lawyer in the member's law firm is disqualified by rule 3-310. By virtue of paragraph (B), moreover, a member's participation in a short-term limited legal services program will not be imputed to the member's law firm or preclude the member's law firm from

ATTACHMENT 5

Letter to Audrey Hollins

April 17, 2009

Page 2 of 2

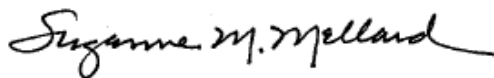
undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

Proposed rule 1-650 is based on ABA Model Rule 6.5. Similarly, paragraph 4 of the Discussion on rule 1-650 is based on paragraph 4 of the Comments to Model Rule 6.5. Model Rule 6.5 references Model Rule 1.10, which under certain circumstances requires screening to avoid imputation of conflicts of interest arising from a former representation. Contrary to the ABA Model Rule 1.10, the California Rules of Professional Conduct have no screening provision. Similarly, proposed rule 1-650(A)(2) does not discuss screening. COPRAC agrees that a firm employing a member who provided short-term limited legal services to a pro bono client pursuant to rule 1-650 should not run the risk of being disqualified if, unknown to the member, one of the firm's clients is directly adverse to the member's pro bono client or if the firm subsequently undertakes the representation of a client adverse to the member's pro bono client in a substantially related matter. However, COPRAC believes that under such circumstances, the member should be screened from the firm's engagement. Thus, COPRAC recommends that Discussion paragraph 4 be modified to read as follows (changes underscored):

Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the member'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) makes the participating member subject to imputed conflicts of interest when the lawyer knows that any lawyer in the member's law firm is disqualified by rule 3-310. By virtue of paragraph (B), moreover, a member's participation in a short-term limited legal services program will not be imputed to the member's law firm or preclude the member'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.

COPRAC thanks you for the opportunity to comment on proposed rule 1-650.

Very truly yours,



Suzanne M. Mellard, Chair
Committee on Professional
Responsibility and Conduct

copy: Mark Taxy, Staff Counsel
COPRAC Members



THE STATE BAR OF CALIFORNIA

NEW PROPOSED RULE OF PROFESSIONAL CONDUCT 1-650

Limited Legal Services Programs

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. *All information submitted is regarded as public record.*

DEADLINE TO SUBMIT COMMENT IS: APRIL 17, 2009

Your Information

Professional Affiliation	<input type="text" value="Lieff, Cabraser, Heimann & Bernstein, LLP"/>	Commenting on behalf of an organization	<input type="radio"/> Yes <input checked="" type="radio"/> No
Name	<input type="text" value="Kelly M. Dermody"/>		
City	<input type="text" value="San Francisco"/>	State	<input type="text" value="California"/>
Email address (You will receive a copy of your comment submission.)	<input type="text" value="kdermody@LCHB.com"/>		

The following documents are available and can be viewed by clicking on the links

[Proposed Rule 1-650 Public Comment Notice](#)

[Proposed Rule 1-650 Agenda Item & Attachment.pdf](#)

[Proposed Rule 1-650 \(clean version & redline comparison to ABA MR 6.5\).pdf](#)

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From the choices below, we ask that you indicate your position on the Proposed rule. You may submit 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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At this time, when the need for legal services for low-income people is at an all-time high, it is critical that the legal profession take all reasonable steps to encourage and support pro bono legal services. This proposed Rule is a very significant step in this effort.



THE STATE BAR OF CALIFORNIA

NEW PROPOSED RULE OF PROFESSIONAL CONDUCT 1-650



Limited Legal Services Programs

PUBLIC COMMENT FORM

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DEADLINE TO SUBMIT COMMENT IS: APRIL 17, 2009

Your Information

Professional Affiliation 	<input type="text" value="Partner in law firm"/>	Commenting on behalf of an organization 	<input type="radio"/> Yes
			<input checked="" type="radio"/> No
Name	<input type="text" value="Pam Fulmer"/>		
City	<input type="text" value="Alamo"/>	State	<input type="text" value="California"/>
Email address (You will receive a copy of your comment submission.)	<input type="text" value="mdapkf@mac.com"/>		

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- AGREE with this proposed Rule
- DISAGREE with this proposed Rule
- AGREE ONLY IF MODIFIED

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I believe that this proposed rule will result in larger numbers of attorneys being willing to take on more pro bono representations at legal walk-in clinics, etc.



THE STATE BAR OF CALIFORNIA

NEW PROPOSED RULE OF PROFESSIONAL CONDUCT 1-650

Limited Legal Services Programs

PUBLIC COMMENT FORM

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DEADLINE TO SUBMIT COMMENT IS: APRIL 17, 2009

Your Information

Professional Affiliation ?	<input type="text" value="Legal Services Attorney"/>	Commenting on behalf of an organization ?	<input type="radio"/> Yes
			<input checked="" type="radio"/> No
Name	<input type="text" value="Jennifer Greengold"/>		
City	<input type="text" value="San Francisco"/>	State	<input type="text" value="California"/>
Email address (You will receive a copy of your comment submission.)	<input type="text" value="jennifer.greengold@gmail.com"/>		

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- 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.

This proposed rule would be enormously helpful to legal services organizations and the clients they serve. In particular, it would assuage the concerns of law firms that are otherwise reluctant to take on pro bono work in light of possible conflicts of interest.

INNER

CITY

LAW

CENTER

Audrey Hollins
Office of Professional Competence, Planning and Development
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed Rule 1-650

Dear Ms. Hollins:

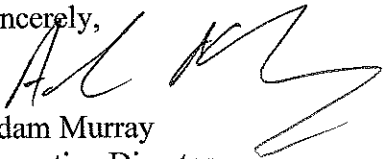
Inner City Law Center in Los Angeles provides direct legal services to more than 2,000 clients a year in the Skid Row area of Los Angeles. Given current budget constraints and the desire of many California attorneys to provide pro bono legal services, pro bono has the greatest potential for growth to help us meet the legal needs of the growing number of poor people in and around downtown Los Angeles.

California pro bono attorneys are, for the most part, prevented from participating in clinics and drop-in centers due to imputed conflict rules. Proposed Rule 1-650—which is substantially the same as rules already successful in a majority of states—would allow private attorneys to help screen clients and provide limited legal advice without any continuing attorney-client relationship. Only if a pro bono attorney has personal knowledge of a conflict with an existing client of the firm would the pro bono attorney be prevented from providing limited counsel and advice.

Since a large number of firms and individual attorneys seek pro bono opportunities that are regularly scheduled and have no continuing representation, adoption of Rule 1-650 could open a variety of creative ways for Inner City Law Center to expand legal outreach in Skid Row. Adoption would also allow a greater percentage of California attorneys to meet or exceed the State Bar Board of Governors recommended 50 hour of pro bono participation each year.

Inner City Law Center urges expeditious adoption of Proposed Rule 1-650, and we look forward to creating new opportunities for pro bono attorneys to help pursue greater access to justice for the poor in California.

Sincerely,


Adam Murray
Executive Director

Executive Director
Adam Murray

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1309 E. Seventh St. Los Angeles, CA 90021

T (213) 891-2880

www.innercitylaw.org

Founded on the basic principle that every human being should be treated with dignity and respect at all times, Inner City Law Center has been serving the poorest and most vulnerable individuals and families in Los Angeles County since 1980. ICLC provides representation and social service advocacy to over 2,000 homeless and working poor clients each year. ICLC is the only full-time provider of legal services headquartered on Skid Row and is widely recognized for its expertise in housing issues, as well as government and veterans benefits.



THE STATE BAR OF CALIFORNIA

NEW PROPOSED RULE OF PROFESSIONAL CONDUCT 1-650



Limited Legal Services Programs

PUBLIC COMMENT FORM

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DEADLINE TO SUBMIT COMMENT IS: APRIL 17, 2009

Your Information

Professional Affiliation 	<input type="text" value="Partner in Law firm"/>	Commenting on behalf of an organization 	<input type="radio"/> Yes
			<input checked="" type="radio"/> No
Name	<input type="text" value="Teresa Johnson"/>		
City	<input type="text" value="San Francisco"/>	State	<input type="text" value="California"/>
Email address (You will receive a copy of your comment submission.)	<input type="text" value="tjohnson@howardrice.com"/>		

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- AGREE with this proposed Rule
- DISAGREE with this proposed Rule
- AGREE ONLY IF MODIFIED

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"The Unified Voice of Legal Services"



April 17, 2009

Audrey Hollins
Office of Professional Competence, Planning and Development
State Bar of California
180 Howard Street
San Francisco, CA 94105

Submitted via facsimile to 415-538-2171

Re: Proposed Rule 1-650 - SUPPORT

Dear Ms. Hollins:

I am writing on behalf of the Legal Aid Association of California (LAAC) to express strong support for Proposed Rule 1-650 on behalf of our membership of legal services nonprofits in California.

Founded in 1984, the Legal Aid Association of California (LAAC) is a non-profit organization created for the purpose of ensuring the effective delivery of legal services to low-income and underserved people and families throughout California. LAAC is the statewide membership organization for more than 70 non-profit legal services organizations in the state.

Our members provide high-quality legal services to our state's most vulnerable populations. These services to low-income and other underrepresented individuals form an essential safety net in California and often ensure that the programs' clients have access to life's basic necessities, such as food, safe and affordable housing, freedom from violence, health care, employment, economic self-sufficiency, and access to the legal system. Many of our member programs provide services to clients through clinics or other such programs where volunteer lawyers provide short-term limited legal services – such as advice or the completion of legal forms – that assist persons to address their legal problems without further representation by a lawyer. Proposed Rule 1-650 will significantly improve legal services programs' ability to recruit and partner with law firms and pro bono attorneys to increase services to clients in need.

Even before the current economic downturn, our member nonprofit legal services providers did not have the resources required to serve the large numbers of clients who approach them seeking help. Now, thousands more Californians are facing serious legal issues such as foreclosure and bankruptcy. The need for pro bono attorneys to assist legal services programs meet this overwhelming demand for services faced by the programs is evident, and that demand is increasing dramatically.

ATTACHMENT 5

Legal Aid Association of California
Proposed Rule 1-650: SUPPORT
April 17, 2009
Page 2 of 2

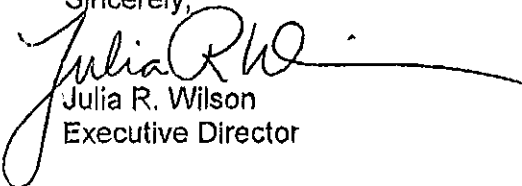
We encourage the State Bar to adopt two small modifications to the current Proposed Rule, to eliminate one redundancy and to clarify some information in the discussion section, as described below:

- The language in 1-650(A) is redundant, as all qualified legal services programs or support centers within the meaning of Business and Professions Code § 6213 are necessarily nonprofit corporations. Therefore, we would encourage that the Board of Governors simply remove the reference to "qualified legal services programs or support centers within the meaning of Business and Professions Code § 6213."
- We would also encourage a slight modification to Note [1] in the Discussion section to reflect that some clinics, including those that only distribute legal information as opposed to legal advice, do not necessarily lead to the establishment of an attorney-client relationship. We suggest that the following phrase be modified to read:
"In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, if a lawyer-client relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation."

Proposed Rule 1-650 will provide the assurance that law firms and volunteer attorneys need to fully participate in the programs which provide limited legal assistance to people in need. The legal communities in other states have had the benefit of Rule 6.5 for some time, and it will be a great help to have the equivalent protection in California. The proposed rule achieves the proper balance between client protection and meeting the needs of the disadvantaged. We believe that the proposed rule, with the discussion section, provides the California legal community with the clarity and comfort that will permit law firms and volunteer attorneys to better meet their ethical obligation to serve the many clients who would otherwise go without legal advice or assistance.

For these reasons, LAAC and our more than 70 member legal services nonprofits, strongly support the adoption of Proposed Rule 1-650. We thank the State Bar for pursuing this important course of action, and we hope that the rule can be adopted as expeditiously as possible.

Sincerely,



Julia R. Wilson
Executive Director

(323) 801-7978
 (323) 801-7945 fax
 trothschild@lafba.org



LACBA

**LOS ANGELES COUNTY
 BAR ASSOCIATION**

April 15, 2009

VIA FAX (415) 538-2171, ORIGINAL POSTED BY U.S. MAIL

Audrey Hollins
 Office of Professional Competence, Planning and Development
 State Bar of California
 180 Howard Street
 San Francisco, CA 94105

Re: Proposed Rule of Professional Conduct 1-650

Dear Ms. Hollins:

The Los Angeles County Bar Access to Justice Committee is committed to expanding access to justice for the poor and disadvantaged in our community. We are writing to support Proposed Rule 1-650 which will address the difficult issue of pro bono participation in legal aid clinics that provide walk-in advice and counsel to clients in need of assistance.

The need for pro bono attorneys to assist legal services programs meet the overwhelming demand for services faced by the programs is evident. In light of the huge increase in foreclosures and legal problems related to them, the demand is increasing dramatically. Proposed Rule 1-650 will provide law firms with the assurance they need to confidently participate in the programs which provide limited legal assistance to people in need. Our colleagues in other states have had the benefit of Rule 6.5 for some time, and it will be a great help to have the equivalent protection in California.

With regard to the proposed rule, we feel it achieves the proper balance between client protection and meeting the needs of the disadvantaged. We believe that the proposed rule, with the discussion sections, will provide private attorneys with the clarity and confidence needed to participate in legal aid clinics and will, as a result, provide pro bono attorneys with a crucial opportunity to assist the needy. The ability to participate in clinics is particularly important to those attorneys unable to take on more extended representation of the poor and disadvantaged. For that reason Proposed Rule 1-650 will aid those attorneys in meeting their ethical obligation to serve the many clients who would otherwise go without legal advice or assistance.

Thank you very much for pursuing this course. We hope that the rule can be adopted expeditiously and allow us to go forward in our work with the legal services community.

Sincerely,

Toby J. Rothschild, Chair
 Access to Justice Committee

cc: Danette E. Meyers, President

MAILING ADDRESS:
 P O Box 55020
 Los Angeles CA 90055-2020
 TELEPHONE: 213.627.2727
 FACSIMILE: 213.896.6500
 WEB SITE: www.lacba.org

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LUCY VARPETIAN

NORMA J. WILLIAMS

ROBIN L. YEAGER



LACBA

**LOS ANGELES COUNTY
BAR ASSOCIATION**

WRITER'S DIRECT LINE:

(909) 612-3921
(909) 612-3920 fax
josman@travelers.com

April 16, 2009

VIA FAX (415) 538-2171, ORIGINAL POSTED BY U.S. MAIL

MAILING ADDRESS:

P O Box 55020
Los Angeles CA 90055-2020
TELEPHONE: 213.627.2727
FACSIMILE: 213.896.6500
WEB SITE: www.lacba.org

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DANETTE E. MEYERS

President-Elect

DOON MIKE ANTHONY

Senior Vice President

ALAN K. STEINBRECHER

Vice President

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Audrey Hollins
Office of Professional Competence, Planning and Development
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Comments on Proposed New California Rule of Professional Conduct 1-650

Dear Ms. Hollins:

The Los Angeles County Bar Association Professional Responsibility and Ethics Committee ("PREC") is pleased to provide its comments regarding proposed California Rule of Professional Conduct 1-650.

The PREC has carefully considered proposed Rule 1-650 and believes that it is not only a laudable modification of the California Rules of Professional Conduct, but is absolutely essential.

As a result of the current economic crisis, more people than ever before in California, particularly those facing the loss of their homes, are in need of the legal assistance offered by clinics and other organizations staffed by attorneys providing their time on a pro bono basis. The need for attorneys to volunteer to provide such advice and counsel is thus equally great, if not greater. Proposed Rule 1-650 eliminates one potential disincentive for attorneys who would otherwise be willing to volunteer their time for these programs – the possibility that such representation would unwittingly give rise to a conflict of interest for the attorney or an imputed conflict of interest to his/her firm in violation of the Rules of Professional Conduct.

We believe that proposed Rule 1-650 is not inconsistent with the objectives of Rule 3-310. Specifically, because such pro bono advice and counsel is limited in scope and time, and Rule 1-650 applies only to conflicts of interest unknown to the attorney at the time of the pro bono representation, there is unlikely to be any actual impact on the duty of loyalty owed by the attorney and his/her firm to current clients. For these same reasons, there is unlikely to be any adverse impact on the attorney's duty of confidentiality – and that of his/her firm – to former clients. Moreover, because the exception to Rule 3-310 that proposed Rule 1-650 would create is narrowly

ATTACHMENT 5

Audrey Hollins
Re: LACBA PREC Comments on Proposed Rule 1-650

April 16, 2009
Page 2 of 2

circumscribed, there should be no danger that the Rule 3-310 would be swallowed by this exception – i.e., the strict prohibitions against attorney conflicts of interests will continue in all other contexts.

Also supporting the adoption of proposed Rule 1-650 is the fact that many other states have adopted similar rules based upon Rule 6.5 of the ABA Model Rules of Professional Responsibility. If California is to maintain its position as the nation's leader in the development and utilization of rules of professional conduct that address the needs of clients and attorneys, proposed Rule 1-650 should be adopted forthwith.

In addition, we believe that the comments accompanying the rule should be retained if the rule is adopted. These comments will provide valuable guidance to members as they attempt to comply with the rule.

Simply put, proposed Rule 1-650 is desperately needed. This rule facilitates the provision of legal services to individuals most in need of those services, and who would otherwise have to go without. The proposed rule also promotes pro bono work by members of the bar, enabling attorneys to give back to society, with a collateral benefit of enhancing the public image of the profession. Furthermore, the proposed rule does not, as a practical matter, undermine the objectives of Rule 3-310 – insuring that attorneys honor their duties of loyalty and confidentiality to their clients.

For each of these reasons, the PREC strongly supports the adoption of proposed Rule 1-650.

Very truly yours,



Joel A. Osman
Chair
Professional Responsibility and Ethics Committee

cc: Danette E. Meyers, President



THE STATE BAR OF CALIFORNIA

NEW PROPOSED RULE OF PROFESSIONAL CONDUCT 1-650

Limited Legal Services Programs

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. *All information submitted is regarded as public record.*

DEADLINE TO SUBMIT COMMENT IS: APRIL 17, 2009

Your Information

Professional Affiliation 	<input type="text"/>	Commenting on behalf of an organization 	<input type="radio"/> Yes <input type="radio"/> No
Name	<input type="text" value="James Mink"/>		
City	<input type="text" value="San Francisco"/>	State	<input type="text" value="California"/>
Email address (You will receive a copy of your comment submission.)	<input type="text" value="jlmink@jonesday.com"/>		

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[Proposed Rule 1-650 \(clean version\).doc](#)

From the choices below, we ask that you indicate your position on the Proposed rule. You may submit 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
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O'MELVENY & MYERS LLP

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April 16, 2009

OUR FILE NUMBER
600,000-4

VIA EMAIL AND U.S. MAIL

Ms. Audrey Hollins
Office of Professional Competence
Planning and Development
State Bar of California
180 Howard Street
San Francisco, California 94105

WRITER'S DIRECT DIAL
213-430-8366
WRITER'S E-MAIL ADDRESS
dlash@omm.com
mchecov@omm.com

Re: Support for Proposed California Rule of Professional Conduct 1-650

Dear Ms. Hollins:

On behalf of the law firms listed on the attached Exhibit A, each having one or more offices within the State of California, we are writing to support proposed California Rule of Professional Conduct 1-650. The authors of this letter are Martin S. Checov, the General Counsel of O'Melveny & Myers LLP and David A. Lash, world-wide Managing Counsel of O'Melveny's public interest and *pro bono* services.

Proposed Rule 1-650, which tracks ABA Model Rule 6.5 facilitating *pro bono* representations by law firms in other states (and non-California offices of the undersigned law firms), addresses important concerns regarding the imputation of conflicts of interest to the law firm whose attorneys participate in legal aid clinics or other legal services programs by providing, on a *pro bono* basis, limited-scope walk-in advice and counsel to low-income clients in need of assistance.

Each of the undersigned firms, through its attorneys and staff, is actively engaged in the provision of critical *pro bono* legal services to low-income individuals, families, organizations and communities, representing an important component of the delivery system for *pro bono* legal services. Despite the significant commitment made by the undersigned firms and by other lawyers throughout the state, the demand for essential *pro bono* legal services continues to outstrip conventional resources. Staffed by such lawyers, limited-scope *pro bono* walk-in clinics and other similar legal services programs—whether sponsored by a legal aid program, a court, a bar association, a law school or other similar entity—are an indispensable means of making immediate basic and essential counsel available to a large number of clients whose needs are best met on an expedited basis.

Absent this proposed rule, the provision of vital assistance in such clinics could be delayed because of precautions—in particular the desire to perform comprehensive conflict searches before any advice can be dispensed—that participating firms consider necessary to protect their other client relationships from imputed disqualification. In some cases, delay may be irreversibly prejudicial to the client's protection.

We believe proposed Rule of Professional Responsibility 1-650 achieves the proper balance between meeting the often-urgent legal needs of those who cannot otherwise afford legal services, on the one hand, and the duty of loyalty to other clients of firms whose lawyers volunteer for such programs, on the other. The proposed rule and its accompanying commentary will afford such firms sufficient certainty in regard to the possible imputation of conflicts of interest to enable their lawyers to participate fully in legal aid clinics that supply critically important legal services.

As proposed, Rule of Professional Responsibility 1-650 reads:

Rule 1-650. Limited Legal Services Programs

- (A) *A member 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 expectation by either the member or the client that the member will provide continuing representation in the matter:*
- (1) *is subject to rule 3-310 only if the member knows that the representation of the client involves a conflict of interest; and*
 - (2) *is subject to an imputed conflict of interest only if the member knows that another lawyer associated with the member in a law firm would be subject to a conflict of interest under rule 3-310 with respect to the matter.*
- (B) *Except as provided in paragraph (A)(2), a conflict of interest that arises from a member's participation in a program under paragraph (A) will not be imputed to the member's law firm.*

This draft language represents a revision made to subparagraph (A) as originally presented in the draft attached to the March 11, 2009 memo to the Committee on Planning, Program Development & Budget from the staff of the Special Commission for the Revision of the Rules of Professional Conduct. The revision is as follows:

(A) A member who, under the auspices of a program sponsored by a court, government agency, bar association, law school, <u>or</u> nonprofit organization, ~~or a qualified legal services project or qualified support center within the meaning of Business and Professions Code § 6213~~

We consider this change to be appropriate from the standpoint of drafting simplicity, accuracy and logic. The undersigned strongly support the current version appearing in italics above, making the deletion reflected in the redlined language, for the following reasons:

O'MELVENY & MYERS LLP

Ms. Audrey Hollins, April 16, 2009 - Page 3


1. “[Q]ualified legal services projects” and “qualified support centers” within the meaning of Business and Professions Code § 6213 are wholly subsumed within the preceding general references to courts, government agencies, bar associations, law schools and nonprofit organizations and are therefore wholly redundant. As a result, their inclusion through the disjunctive “or” may cause unnecessary confusion and suggest—erroneously—that they were intended to condition or limit the scope of the preceding general references.

2. The terms “qualified legal services projects” and “qualified support centers” are defined by Business and Professions Code § 6213 for the purpose of determining eligibility for receiving IOLTA payments, a categorization which is not germane to attorney conflict of interest issues to which the proposed rule pertains.

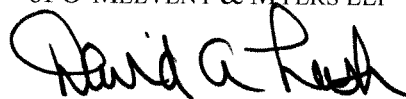
3. The inclusion of express statutory cross-references creates an unnecessary risk that future amendments to other statutes may have an unforeseen and unintended impact on the rule of professional conduct.

It is our hope that the rule in the form endorsed by the undersigned can be adopted expeditiously, and would be pleased to offer any assistance you may be deem appropriate.

Very truly yours,



Martin S. Checov
of O'MELVENY & MYERS LLP



David A. Lash
for O'MELVENY & MYERS LLP

MSC:DAL:bab

Enclosure: Exhibit A

EXHIBIT A

FIRMS JOINING IN SUPPORT:

Peter H. Carson, Esq.
BINGHAM MCCUTCHEN LLP

Janis M. Meyer, Esq.
DEWEY LEBOEUF LLP

D. Ronald Ryland, Esq.
General Counsel
SHEPPARD MULLIN RICHTER &
HAMPTON LLP

Dean J. Kitchens, Esq.
Kevin S. Rosen, Esq.
GIBSON DUNN & CRUTCHER LLP

Donald E. Bradley, Esq.
General Counsel
WILSON SONSINI GOODRICH &
ROSATI PC

Eve M. Coddon, Esq.
PAUL HASTINGS JANOFSKY &
WALKER LLP

Douglas L. Hendricks, Esq.
MORRISON & FOERSTER LLP

Arthur Newbold, Esq.
DECHERT LLP

Jon Dean, Esq.
MCDERMOTT WILL & EMERY LLP

Bryant C. Boren, Esq.
BAKER BOTTS L.L.P.

Robert J. Kafin, Esq.
PROSKAUER ROSE LLP

Brian Forbes, Esq.
DLA PIPER US LLP

Ronald E. Van Buskirk, Esq.
PILLSBURY WINTRHOP SHAW
PITTMAN LLP

Edward J. Zulkey, Esq.
BAKER MCKENZIE INTERNATIONAL

Robert C. Bernius, Esq.
NIXON PEABODY LLP

Michael J. Silverman, Esq.
DUANE MORRIS LLP

James R. Segerdahl, Esq.
K&L GATES LLP

Christopher A. Westover, Esq.
Maureen Alger, Esq.
COOLEY GODWARD KRONISH LLP

Barbara A. Caulfied, Esq.
Dean Hansell
DEWEY LEBOEUF LLP

Lori McAllister, Esq.
DYKEMA

ATTACHMENT 5

Chris M. Amantea, Esq.
Hunton & Williams

John W. Amberg, Esq.
BRYAN CAVE LLP

William T. Quicksilver, Esq.
Cristin M. Zeisler, Esq.
MANATT, PHELPS & PHILLIPS, LLP

Michael J. Silverman, Esq.
DUANE MORRIS LLP



THE STATE BAR OF CALIFORNIA

NEW PROPOSED RULE OF PROFESSIONAL CONDUCT 1-650



Limited Legal Services Programs

PUBLIC COMMENT FORM

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DEADLINE TO SUBMIT COMMENT IS: APRIL 17, 2009

Your Information

Professional Affiliation 	<input type="text"/>	Commenting on behalf of an organization 	<input type="radio"/> Yes <input type="radio"/> No
Name	<input type="text" value="Jenie Oh"/>		
City	<input type="text" value="Los Angeles"/>	State	<input type="text" value="California"/>
Email address (You will receive a copy of your comment submission.)	<input type="text" value="jenieoh@gmail.com"/>		

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- AGREE with this proposed Rule
 DISAGREE with this proposed Rule
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THE STATE BAR OF CALIFORNIA

NEW PROPOSED RULE OF PROFESSIONAL CONDUCT 1-650

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Professional Affiliation Commenting on behalf of an organization Yes No

Name

City State

Email address
(You will receive a copy of your comment submission.)

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Public Counsel strongly supports the adoption of Proposed Rule 1-650, which would remove barriers to participation in pro bono legal clinics.

Public Counsel is the public interest law office of the L.A. County and Beverly Hills Bar Associations and the Southern California affiliate of the Lawyers' Committee for Civil Rights Under Law. Public Counsel is dedicated to advancing equal justice under law by delivering pro bono legal services to the most vulnerable members of our community, including abused and abandoned children, homeless families and veterans, senior citizens, victims of consumer fraud and nonprofit organizations serving low-income communities, and mobilizing the pro bono resources of the community's attorneys and law students.

Even before the current economic downturn, nonprofit legal services providers such as Public Counsel did not have the resources to serve even half of the number of clients who approach us seeking help. Now, thousands more Californians are facing serious legal issues such as foreclosure and bankruptcy. If pro bono assistance is not available to

[SEE ATTACHMENT]

ATTACHMENT 5

Public Counsel strongly supports the adoption of Proposed Rule 1-650, which would remove barriers to participation in pro bono legal clinics.

Public Counsel is the public interest law office of the L.A. County and Beverly Hills Bar Associations and the Southern California affiliate of the Lawyers' Committee for Civil Rights Under Law. Public Counsel is dedicated to advancing equal justice under law by delivering pro bono legal services to the most vulnerable members of our community, including abused and abandoned children, homeless families and veterans, senior citizens, victims of consumer fraud and nonprofit organizations serving low-income communities, and mobilizing the pro bono resources of the community's attorneys and law students.

Even before the current economic downturn, nonprofit legal services providers such as Public Counsel did not have the resources to serve even half of the number of clients who approach us seeking help. Now, thousands more Californians are facing serious legal issues such as foreclosure and bankruptcy. If pro bono assistance is not available to these clients, many of them have no other choice but to handle their legal claims without any help from an attorney. In such circumstances, limited assistance legal clinics are playing an increasingly important role in improving access to justice.

We believe that Proposed Rule 1-650 would greatly enhance our ability to serve our clients by making it possible for more law firm attorneys to participate in legal clinics. Law firm attorneys are very interested in participating in pro bono clinics, but they fear participating in clinics that give legal advice because of the existing imputed conflicts rules. The limited loosening of these rules by Proposed Rule 1-650 would facilitate lawyers participating in clinics that provide limited legal services that are so sorely needed, without fear of creating unwanted conflicts for the firm.

For these reasons, we strongly support adoption of Proposed Rule 1-650.



THE STATE BAR OF CALIFORNIA

NEW PROPOSED RULE OF PROFESSIONAL CONDUCT 1-650



Limited Legal Services Programs

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Professional Affiliation 	<input type="text"/>	Commenting on behalf of an organization 	<input type="radio"/> Yes <input checked="" type="radio"/> No
Name	<input type="text" value="Jeffrey Ross"/>		
City	<input type="text" value="San Francisco"/>	State	<input type="text" value="California"/>
Email address (You will receive a copy of your comment submission.)	<input type="text" value="jeff.ross@pillsburylaw.com"/>		

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The proposed rule is an important tool for providing services to the poor and unrepresented. Please enact the rule.



THE STATE BAR OF CALIFORNIA

NEW PROPOSED RULE OF PROFESSIONAL CONDUCT 1-650



Limited Legal Services Programs

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Your Information

Professional Affiliation 	<input type="text" value="Shartsis Friese LLP"/>	Commenting on behalf of an organization 	<input type="radio"/> Yes
			<input checked="" type="radio"/> No
Name	<input type="text" value="Tracy Salisbury"/>		
City	<input type="text" value="San Francisco"/>	State	<input type="text" value="California"/>
Email address (You will receive a copy of your comment submission.)	<input type="text" value="tsalisbury@sflaw.com"/>		

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Your Information

Professional Affiliation 	<input type="text"/>	Commenting on behalf of an organization 	<input type="radio"/> Yes <input type="radio"/> No
Name	<input type="text" value="Mary S. Twomey"/>		
City	<input type="text" value="San Francisco"/>	State	<input type="text" value="California"/>
Email address (You will receive a copy of your comment submission.)	<input type="text" value="marytwomey1@gmail.com"/>		

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As a social worker who has accompanied clients to court in family law and landlord tenant cases, I know how important it is for clients to have access to legal representation. I urge the State Bar to pass Proposed Rule 1-650 - anything that can help to increase rates of pro bono involvement for low income clients is appreciated. Thank you.