

DRAFTING TEAM REPORT AND RECOMMENDATION: RULE 1-310

Lead Drafter: Harris
Co-Drafters: Kehr
Meeting Date: May 29 – 30, 2015

I. CURRENT CALIFORNIA RULE

Rule 1-310 Forming a Partnership with a Non-Lawyer

A member shall not form a partnership with a person who is not a lawyer if any of the activities of that partnership consist of the practice of law.

Discussion:

Rule 1-310 is not intended to govern members' activities which cannot be considered to constitute the practice of law. It is intended solely to preclude a member from being involved in the practice of law with a person who is not a lawyer.

II. DRAFTING TEAM'S RECOMMENDATION AND VOTE

There was a consensus among the subcommittee members to recommend the proposed rule as amended.

III. PROPOSED RULE (CLEAN)

Rule 1-310 Entering into Business with a Non-Lawyer

A lawyer shall not enter into business with a non-lawyer if any of the activities of the business consist of the practice of law, unless permitted by law.

Discussion:

[1] Rule 1-310 is not intended to govern members' activities that cannot be considered to constitute the practice of law. It is intended solely to preclude a member from being involved in the practice of law with a person who is not a lawyer. The intent is to encompass all business organizations of any type with non-lawyers where the activities include the practice of law, unless the activity is permitted by law.

[2] Examples of associations permitted by law include in-house counsel for companies and other entities (see rule 9.46 of the California Rules of Court.); governmental entities; authorized legal service programs (see rules 1-600 [legal service programs] and 1-650 [limited legal services programs]; certain public advocacy groups (see *NAACP v. Button* (1963) 371 U.S. 415, 433 – 444 [83 S.Ct. 328]); and registered legal services attorneys (see rule 9.45 of the California Rules of Court). This rule also is not intended to abrogate case law regarding the relationship between insurers and lawyers providing legal services to insureds. *Gafcon, Inc v. Ponsor and Associates* (2002) 98 Cal.App.4th 1388, 1406 [120 Cal.Rptr.2d 392].

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IV. PROPOSED RULE (REDLINE TO CURRENT CALIFORNIA RULE 1-310)

Rule 1-310 Entering into Business with a Non-Lawyer

A ~~member lawyer~~ shall not ~~form a partnership with a person who is not a lawyer~~ enter into business with a non-lawyer if any of the activities of ~~that partnership~~ the business consist of the practice of law, unless permitted by law.

Discussion:

[1] Rule 1-310 is not intended to govern members' activities ~~which that~~ cannot be considered to constitute the practice of law. It is intended solely to preclude a member from being involved in the practice of law with a person who is not a lawyer. The intent is to encompass all business organizations of any type with non-lawyers where the activities include the practice of law, unless the activity is permitted by law.

[2] Examples of associations permitted by law include in-house counsel for companies and other entities (see rule 9.46 of the California Rules of Court.), governmental entities; authorized legal service programs (see rules 1-600 [legal service programs] and 1-650 [limited legal services programs]; certain public advocacy groups (see *NAACP v. Button* (1963) 371 U.S. 415, 433 – 444 [83 S.Ct. 328]); and registered legal services attorneys (see rule 9.45 of the California Rules of Court). This rule also is not intended to abrogate case law regarding the relationship between insurers and lawyers providing legal services to insureds. *Gafcon, Inc v. Ponsor and Associates* (2002) 98 Cal.App.4th 1388, 1406 [120 Cal.Rptr.2d 392].

V. PUBLIC COMMENTS SUMMARY

- Commenter Name, Organization (if any), Date: No public comments have been received. OCTC comments are noted in section VI.

VI. OCTC / STATE BAR COURT COMMENTS

- **Jayne Kim, OCTC, 4/20/15:** Rule 1-310 should be expanded to prohibit not just partnerships with non-lawyers, but any association, incorporation or organization with non-lawyers where the activities include the practice of law unless the activity is permitted by law. (See section VIII for a discussion of rule amendment concepts accepted.)
- **Commenter Name, State Bar Court, Date:** No State Bar Court comments have been received.

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VII. COMPARISON OF PROPOSED RULE TO APPROACHES IN OTHER JURISDICTIONS (NATIONAL BACKDROP)

ILLINOIS RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

- (a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:
- (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
 - (2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;
 - (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and
 - (4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.
- (b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.
- (c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.
- (d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
- (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
 - (2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or
 - (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

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The ABA State Adoption Chart for Model Rule 5.4, whose paragraph (b) is the counterpart to rule 1-310, is posted at:

- http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_5_4.pdf

9 states have adopted 5.4 verbatim (AZ, AR, DE, IL, MT, NE, NH, VT, WI); 41 jurisdictions have adopted something substantially similar to model rule 5.4 (AL, AK, CO, CT, DC, FL, GA, HI, IA, ID, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, NC, ND, NJ, NM, NV, NY, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WY); and 1 state has adopted something substantially different to model rule 5.4 (CA). The District of Columbia authorizes certain business combinations between lawyers and non-lawyers. Some legal commentators have critically examined the issue of lawyer / non-lawyer combinations with regard to expanding access to legal services for middle and lower income individuals.¹

VIII. CONCEPTS ACCEPTED/REJECTED; CHANGES IN DUTIES; NON-SUBSTANTIVE CHANGES; ALTERNATIVES CONSIDERED

Concepts Accepted (Pros and Cons):

- Implement changes to address each of the known issues.
 - Pros: Improves public protection. A business organization that engages in law practice commits UPL whether the form of the business is a partnership, as stated in the current rule, or any other form of business association. Compromised legal judgment and impairment of the protections against revelation of confidential information could result. Using “enter into business with a non-lawyer” prevents a lawyer from avoiding application of the Rule by entering a non-partnership arrangement with a non-lawyer. Although the Discussion to the current rule suggests that the rule applies to any form of business organization by speaking of the rule precluding a lawyer “from being involved in the practice of law with a person who is not a lawyer”, the use of “partnership” in the rule could be read as being more limited than the harm being addressed. This also responds to the Supreme Court’s concern about possible conflicts between rules and their comments.
 - Ensures California’s existing laws permitting lawyers to participate with governmental entities, legal services programs and certain other organizations continues to be honored.
 - Cons: There are no known cons to adopting the proposed rule.

Concepts Rejected (Pros and Cons):

- Retain the existing language referring to partnerships with no changes.
 - Pros: Comports with and simply states CA’s longstanding policy of preventing non-lawyers from practicing law with lawyers.

¹ See *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement* (2014) 82 Fordham L. Rev. 2587.

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- Cons: Arguably does not list all types of other organizations contained in the prohibition against lawyers practicing law with non-lawyers.

Changes in Duties/Substantive Changes to the Current Rule:

- The current rule refers to “forming” a partnership with a person who is not a lawyer. While the use of “forming” can be understood as applying whether a lawyer joins an existing partnership or helps to create a new one, the use of “forming” is likely to mean only the initial creation when applied to a corporation or limited liability company; we therefore recommend replacing “forming” with “enter into business” so as to make clear that the rule covers both a lawyer’s initial creation of the business and the lawyer joining an existing business.

Non-Substantive Changes to the Current Rule:

- The proposed rule also clarifies that associations with non-lawyers which are permitted by law do not violate this rule and Discussion.
- The paragraph added to the Discussion section is intended to clarify the added phrase “unless permitted by law” and resulted from communications with OCTC.

Alternatives Considered:

- Keep current rule without any changes (rejected); Use language “any association, incorporation or organization” with non-lawyers (rejected); Use language “partnership or other organization” (rejected)
- Incorporate language allowing some form of organization in which a financial interest is held or managerial authority is exercised by an individual non-lawyer who performs professional services or provides a multidisciplinary practice combination. (rejected)
- The question of third-party case or matter funding was discussed but it was determined that the issue should be deferred. Lawyers routinely work with vendors and others. Participation with vendors and outsourcing has been the subject of much comment². There would need to be significantly more study with specific data before determining if there is a need for modifications of the rule with regard to this topic, and whether any such change would be consistent with the statutory prohibition on UPL.

IX. OPEN ISSUES/CONCEPTS FOR THE COMMISSION TO CONSIDER

- It is assumed the Commission will substitute “lawyer” for “member” throughout the Rules.
- The Commission has yet to decide the organization and numbering of the new Rules and the use of the current California numbering should be considered a place holder not an endorsement.
- We have used “non-lawyer” (as do the current California rules) rather than “nonlawyer” (as does the ABA); we mention this not because we consider it an open issue but only to alert other drafting teams for purposes of drafting consistency.

² See ABA Formal Opinion. No. 08-451; California State Bar Formal Opinion No. 2010-179; California State Bar Formal Opinion No. 1971-25; Los Angeles County Bar Assn. Formal Opinion No. 374 (1978))

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- We have replaced “which” with “that” in the first line of the Discussion in order to conform to § 4.3A of the Guidelines for Drafting and Editing Court Rules

X. COMMENTS FROM DRAFTING TEAM MEMBERS OR OTHER COMMISSION MEMBERS

Harris

- [04/30/15]: Email Comment

[T]he practice of law. “[I]n a larger sense it includes legal advice and counsel and the preparation of legal instruments and contracts by which legal rights are secured although such matter may or may not be depending in a court.” *People v. Merchants Protective Corp.* (1922) 189 Cal. 531, 535. This language was restated in *Crawford v. State Bar* (1960) 54 Cal.2d 659, 667.

[F]ailing to update the language preventing non-lawyers from entering business combinations with non-lawyers risks compromised legal judgment and protection for clients. Included in this are the protections against revelation of confidential information contained in Rule 3-100 and California Business and Professions Code Section 6068.

In drafting, remove ambiguities and clarify the Rule’s protection without broadening it to the point of interfering with office efficiency or access to legal services. “A lawyer may outsource legal or nonlegal support services provided the lawyer remains ultimately responsible for rendering competent legal services to the client under Model Rule 1.1” (Aug 25, 2008) ABA Comm. on Ethics and Professional Responsibility Formal Opinion 08-451.

[P]roviders of legal financing and lines of credit (can be viewed) as vendors or suppliers. The question of harm involves whether the lawyer remains ultimately responsible for rendering competent legal services to the client and whether the arrangement impairs or infringes on the ability of the lawyer to provide legal advice and counsel. Approached in the wrong way, restrictions on legal financing could impair the ability of lawyers to provide competent legal services. At present this is an issue that would at the least need significantly more study with specific data provided before determining whether there was a need for additional modifications.

- [5/11/15]: The email dated 5/11/15 from Lead Drafter Lee Harris to Randall Difuntorum, Kevin Mohr and Co-Drafter Robert Kehr contains within it the content of all of the relevant emails relating to the substantive issues discussed in the drafting of Rule 1-310.

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XI. RECOMMENDATION AND PROPOSED COMMISSION RESOLUTION

Recommendation:

Adopt proposed amended rule 1-310.

Proposed Resolution:

RESOLVED: That the Commission adopts proposed amended rule 1-310 as set forth in this report.

XII. DISSENTING POSITION(S)

None.

XIII. FINAL COMMISSION VOTE/ACTION

[Date of Vote]

[Action: Proposed amended rule adopted or not adopted]

[Record of Roll Call Vote]

CURRENT CALIFORNIA RULE 1-310
“Forming a Partnership with a Non-Lawyer”

I. Text of Current Rule:

Rule 1-310 Forming a Partnership With a Non-Lawyer

A member shall not form a partnership with a person who is not a lawyer if any of the activities of that partnership consist of the practice of law.

Discussion:

Rule 1-310 is not intended to govern members’ activities which cannot be considered to constitute the practice of law. It is intended solely to preclude a member from being involved in the practice of law with a person who is not a lawyer.

II. Background/Purpose:

Rule 1-310 was first promulgated as rule 3-103 in 1975 as a part of the comprehensive amendments to the original 1928 Rules of Professional Conduct. The text of rule 3-103¹ is substantially the same as current rule 1-310. In the 1972 Final Report of the State Bar’s Special Committee to Study the ABA Code of Professional Responsibility, the Committee’s explanation for the rule simply states that: “Rule 3-103 represents the provisions of the ABA Code DR 3-103.” The ABA’s January 15, 1969 preliminary draft of the Code of Professional Responsibility includes a brief explanatory note concerning DR 3-103 that cites ABA Opinion 316 (1967) and states:

[L]awyers licensed in different jurisdictions may, under certain circumstances, enter “into an arrangement for the practice of law” and that a lawyer licensed in State A is not, for such purpose, a layman in State B.

(Special Committee for the Evaluation of Professional Ethics, Code of Professional Responsibility, Preliminary Draft, January 15, 1969, at page 49.)

In 1989, the California Rules were the subject of another comprehensive revision that included a complete reorganization and renumbering of the rules. Rule 3-103 was renumbered as rule 1-310 and the State Bar’s submission to the Supreme Court stated that “[n]o substantive changes to current rule 3-103 are proposed.” However, the 1989 report recommended that a new Discussion section be added. The non-substantive revisions streamlined the phrase “member of the State Bar” to “member” and changed the phrase “activities of *the* partnership” to “activities of *that* partnership” (emphasis added). The new Discussion section added two sentences that are substantially similar to those that appear in the current rule. The 1989 rule as approved by the Supreme Court provided:

¹ The 1975 version of the then new rule 3-103 states: “A member of the State Bar shall not form a partnership with a person not licensed to practice law if any of the activities of the partnership consist of the practice of law.”

Rule 1-310 Forming a Partnership With a Non-Lawyer

A member shall not form a partnership with *a person not licensed to practice law* if any of the activities of that partnership consist of the practice of law.

Discussion:

Rule 1-310 is not intended to govern members' activities which cannot be considered to constitute the practice of law. It is intended solely to preclude a member from being involved in the practice of law with *a person not licensed to practice law*. (Emphasis added).

The phrase "a person not licensed to practice law" caused an anomaly in rule 1-310 that was addressed in 1992. In both the rule proper and in the Discussion section, the phrase was replaced with the phrase "a person who is not a lawyer." The State Bar's submission to the Supreme Court provided the following explanation:

The proposed amendments to the rule and to the Discussion section, in conjunction with the proposed amendment to rule 1-100(B)(3), are intended to correct an ambiguity in the current rules. Current rule 1-100(B)(3) defines "lawyer" as a person licensed to practice law somewhere in the United States. Current rule 1-310 is titled "Forming a Partnership With a Non-Lawyer" (emphasis added) and prohibits the formation of a partnership "with a person not licensed to practice law" if any of the activities of that partnership consist of the practice of law. Lawyers from other countries are licensed to practice law, but do not fit within the current definition of "lawyer." Thus, an ambiguity exists between the title and the text (and the Discussion section) regarding foreign-licensed attorneys.

Proposed amendments to rule 1-310 and to the Discussion section would conform the title of the rule with the text and the Discussion section and would conform the rule to the definition of "lawyer" proposed in rule 1-100(B)(3). These proposed amendments are intended to clarify that formation of partnerships (to engage in the practice of law) with foreign-licensed attorneys are not prohibited under rule 1-310.

(Request that the Supreme Court of California Approve Amendments to the Rules of Professional Conduct of the State Bar of California, and Memorandum and Supporting Documents in Explanation, December, 1991, at pages 9-10.) The Supreme Court approved the amended rule, operative September 14, 1992.

III. Input from the State Bar Office of the Chief Trial Counsel (OCTC):

A. 2001 Letter to the First Commission Conveying Comprehensive Comments on Possible Rule Revisions:

OCTC did not comment on rule 1-310 but did comment on rule 1-300 ("Unauthorized Practice of Law"). This comment on rule 1-300 has been

provided to the Commission's rule 1-300 drafting team but because OCTC's comment might also be relevant to rule 1-310, it is provided here.

Rule 1-300. Unauthorized Practice of law.

OCTC recommends clarifying the rule pertaining to the unauthorized practice of law. The proposed new language is as follows:

...

(C) A member must not practice law with or in the form of a law corporation or association authorized to practice law for a profit if:

(1) a non-lawyer, or suspended or disbarred or resigned or inactive member owns any interest therein;

(2) a non-lawyer, or suspended or disbarred or resigned or inactive member, or an individual not licensed in California has the right to direct or control the professional judgment of the member.

OCTC COMMENTS:

OCTC recommends no changes to sections (A) and (B) to rule 1-300, but does recommend a new section (C), which will be applicable to law corporations. Law corporations are entitled to practice law in this state so long as they meet the requirements set forth in the law corporation rules. While the law corporation rules prohibit non-lawyers from owning or directing such entities, there is no stated consequence for the individuals who participate in such an operation. This new section, then, would attempt to fill that gap and make clear that lawyers who participate in such activity will be considered to have aided in the unauthorized practice of law, whether or not they have any ownership interest in the entity. It will also help prevent a suspended or disbarred attorney from directly or indirectly controlling a law corporation when they are not entitled to practice. As currently written, some suspended attorneys could attempt to control a law corporation and its employees while ineligible to practice law.

As discussed below, (see Sections IV and VIII), the reference to "partnership" might be too narrow given the current range of forms of practice in which lawyers associate.

B. New Comments from OCTC:

(Note: OCTC is expected to provide new comments on this rule. These comments will be distributed to the drafting team when they are received from OCTC.)

IV. Potential Deficiencies in the Current Rule:

A. See above input from OCTC.

B. Reference to a “partnership” may be too narrow. Professional Competence staff observes that a literal and narrow interpretation of the term “partnership” may suggest to lawyers and the public that an attorney is permitted to form a corporation or other joint business enterprise with a nonlawyer where the activities of that corporation or business consist of the practice of law. The drafting team might want to consider the issue of whether the reference to the formation of a “partnership” should be changed to a broader reference to the formation of a “partnership or other organization.” (See also OCTC’s comment with respect to rule 1-300 in Section III., above.)

V. California Context:

A. Aiding in the unauthorized practice of law; fee sharing with non-lawyers. Rule 1-300(A) prohibits a lawyer from aiding any person or entity in the unauthorized practice of law. Other California laws prohibit the unauthorized practice of law in California. Among these other laws are Business and Professions Code section 6125 et seq. stating that perpetrators are guilty of a misdemeanor punishable by a fine, imprisonment, or both. Unauthorized practice of law may also be enforced under laws prohibiting unfair competition. (See, *People v. Landlords Professional Services* (1989) 215 Cal.App.3d 1599, applying the Unfair Competition Act, Business and Professions Code sections 17200 – 17208. See also, Opinion of the California Attorney General No. 93-303 (August 30, 1993).)

Rule 1-320 prohibits, with certain exceptions, a lawyer from directly or indirectly sharing fees for legal services with a nonlawyer.

Rule 1-600, in part, provides that a lawyer shall not participate in a nongovernmental organization furnishing legal services that allows any third person to interfere with the lawyer’s independence of professional judgment.

B. Corporations Practicing Law. Rule 1-300(A) includes a prohibition against aiding an *entity* in the unauthorized practice of law. Certain entities are authorized to practice law in California. The State Bar registers Professional Law Corporations and Limited Liability Partnerships pursuant to code sections and State Bar rules. (See Business and Professions Code sections 6160 et seq. (re law corporations) and sections 6174 and 6174.5 (re limited liability partnerships).)

Some nonprofit entities may also be authorized to practice law. (See *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221].)

VI. Approach In Other Jurisdictions (National Backdrop):

A. Other jurisdictions. Similar to rule 1-310, other jurisdictions prohibit a lawyer from forming a partnership with a non-lawyer if any of the activities of the

partnership consist of the practice of law. The ABA Model Rule counterpart is ABA Model Rule 5.4(b). Every other jurisdiction has adopted some version of Model Rule 5.4, which contains several other paragraphs that address fee sharing with non-lawyers (paragraph (a)) and avoiding a non-lawyer's interference with the lawyer's professional judgment (paragraphs (c) and (d)). The ABA State Adoption Chart for ABA Model Rule 5.4 is found at:

http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_5_4.authcheckdam.pdf

B. Alternative Litigation Funding; Passive Investment in the Practice of Law. The Professional Competence staff notes that the concept of alternative litigation funding and passive investment in the practice of law might be regarded as emerging issues in attorney professional responsibility. Both concepts can involve a joint business arrangement between a lawyer and a nonlawyer where the joint venture includes a practice of law activity. See: Report on the Ethical Implications of Third-Party Litigation Funding by the Ethics Committee of the Commercial and Federal Litigation Section of the New York State Bar Association, April 16, 2013;² "Committee Okays Litigation Funding Bill Despite Concerns" by David Gialanella, New Jersey Law Journal, March 18, 2015;³ and District of Columbia Bar Association Ethics Opinion 362 (re Non-lawyer Ownership of Discovery Service Vendors). See also: ABA Ethics 20/20 Working Group on Alternative Business Structures, April 5, 2011, Issues Paper Concerning Alternative Business Structures.⁴ The drafting team may want to consider whether developments in these areas might have an impact on the future application and enforcement of rule 1-310.

C. Multi-Disciplinary Practice. In 2001, a State Bar of California Task Force on Multidisciplinary Practice issued a report that provided an overview of regulatory issues arising from possible reforms that would permit lawyers and other professionals to offer consumers "one-stop shopping" for professional services.⁵ The Office of Professional Competence staff notes that although this approach did not gain traction in California or with the ABA, it is possible that it might be revisited at some time in the future. The drafting team might want to consider whether potential developments in this area might have an impact on the future application and enforcement of rule 1-310.

² Posted online at: <http://www.nysba.org/workarea/DownloadAsset.aspx?id=25665>.

³ Posted online at: <http://www.njlawjournal.com/id=1202720958062/Committee-OKs-Litigation-Funding-Bill-Despite-Concerns?sreturn=20150316130717>.

⁴ Posted online at: http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/abs_issues_paper.authcheckdam.pdf.

⁵ Posted online at: http://www.calbar.ca.gov/portals/0/documents/reports/2001_MDP-Report.pdf.

VII. Public Comment Received by the First Commission:

The clean text of a proposed new rule 5.4 drafted by the first Commission and adopted by the Board to replace provisions of rule 1-310 and rule 1-320 (fee sharing with non-lawyers), together with the synopsis of public comments received on that proposed rule and the full text of those comments are attached. Although this proposed rule differs from rule 1-310, the drafting team may consider to what extent, if any, the public comments received might offer helpful information in analyzing the current rule.

To facilitate the review and to appreciate the relevance of these public comments, a redline comparison of the proposed rule showing changes to rule 1-310 is also enclosed with the public comments received. However, given the Board's charge to engage in a comprehensive review of the current rules and to retain the historical nature of the California Rules as "a clear and enforceable articulation of disciplinary standards," a drafting team that considers amendments developed by the first Commission should not presume that the approach taken by the first Commission was appropriate to achieve those objectives.

VIII. Potential Issues Identified by Professional Competence Staff following Review of the Proposed Rule Developed by the First Commission and Adopted by the Board:

Bearing in mind the Commission's Charter to engage in a comprehensive review of the current rules and to retain the historical nature of the California Rules as "a clear and enforceable articulation of disciplinary standards," Professional Competence staff identified the following rule amendment issue that the drafting team might consider.

Whether the reference to the formation of a "partnership" should be changed to a broader reference to the formation of a "partnership or other organization."

The drafting team need not address this issue. For example, if after critically evaluating an issue addressed by a revision made by the first Commission, the drafting team determines that the revision does not address an actual (as opposed to theoretical) public protection deficiency in the current rule, then the drafting team should hesitate to recommend a change to the current rule despite the prior decision by the first Commission and the Board to address the issue. (Note: The issue listed above may have already been mentioned earlier in this assignment document. Multiple references in this assignment document to a particular issue do not necessarily warrant the drafting team taking action on an issue and recommending a rule change.)

IX. Research Resources:

- *In the Matter of Phillips* (Rev. Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315
- *In the Matter of Bragg* (Rev. Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615
- *In the Matter of Jones* (Rev. Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411
- [California State Bar Formal Op. No. 1999-154](#)
- [California State Bar Formal Op. No. 1995-142](#)

- [California State Bar Formal Op. No. 1995-141](#)
- [Los Angeles County Bar Association Formal Op. No. 518](#) (2006)
- [Los Angeles County Bar Association Formal Op. No. 510](#) (2003)
- [Los Angeles County Bar Association Formal Op. No. 488](#) (1996)