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POST JUNE 26, 2015 AGENDA MAILING:

June 14, 2015 Kehr Email to Drafting Team, cc Difuntorum & Mohr:

- 1) I notice that in 5.3.1(a)(3) , at line 15 of the computer-marked revision, you put "Rule" in the lower case. I had thought the convention with the Rules of Court is to use the upper case.
- 2) Also, that phrase at line 15 would be slightly less wordy if you were to use the exact language of current rule 1-311 (but with the reference to the specific subparagraph): "... California Rule of Court 9.31(d)."
- 3) At line 20 on p. 2, I believe that "or" should be "and". The use of "or" would be right if line 18 were to read: "(5) 'Restricted lawyer' means a person who is:" Without that additional, and in my view unneeded language, the definition of restricted lawyer includes both the (i) and (ii) categories of persons.
- 4) I support Jim's position as stated in n. 6 but won't take the time to repeat the explanation of my view on this as I know that the Commission already has voted to expand the current rule in this manner.
- 5) My eye caught the continued use of capitalized paragraph numbers at line 54, 82, and 86.

June 14, 2015 Rothschild Email to Drafting Team, cc Difuntorum & Mohr:

I agree with all of Bob's corrections (except, of course, #4). All of those changes should be made.

June 18, 2015 Tuft Email to Drafting Team, cc Difuntorum, Mohr & A. Tuft:

I offer the following comments on revised Rule 1-311 (Rule 5.3.1):

1. Taking the least important first, the reference to paragraph (D) in Comment [2] should be paragraph (d).
2. We should reconsider the consequences of expanding this rule to include non-members who are currently disbarred or suspended in another jurisdiction. According to the State Bar's formal request that the Supreme Court approve Rule 3-311, the primary purpose of the rule "is to ensure that a disbarred, suspended, resigned or involuntarily inactive member does not become an employee of or associate with an active member and thereafter continue to perform substantially the same activities that the [former member] performed previously as an active member." [Request of the State Bar for Approval of Proposed Rule 1-311 (1995) at page 2.

That purpose is not achieved by expanding the rule to include out-of-state lawyers who are disbarred or suspended. Instead, the goal of including proposed paragraph (5)(ii) is to prohibit a lawyer from assisting another person in the unauthorized practice of law, a goal that is already achieved by rule 1-300 (proposed rule 5.5).

3. I agree with Jim Ham that Comment [1] should not be included.

June 18, 2015 Rothschild Email to Tuft, cc Drafting Team, Difuntorum, Mohr & A. Tuft:

I agree with your item 1. As to 2, I think there was a vote at the last meeting to include it. The rationale in 1995 is not necessarily the same as it is today. I suggest that we bring it up for a vote again next week, along with your #3.

June 18, 2015 Tuft Email to Rothschild, cc Drafting Team, Difuntorum, Mohr & A. Tuft:

That is fine by me.

June 18, 2015 Difuntorum Email to Tuft, cc Drafting Team, , Mohr & A. Tuft:

It was a straw vote [11 (yes), 4 (no), 1 (abstain)] that led to the team being asked to explore expanding the rule to cover certain tainted non-CA lawyers, so this change is not a done deal. To that end, attached is a revised draft rule (redline) that surgically removes the language implementing that expansion. If the Commission's majority view reflected in the straw vote changes, then the team should be ready to have a version that can be voted out.