

RRC2 – Rule 1-100(D) [8.5]
Post-Agenda E-mails, etc. – Revised (October 19, 2015)
Eaton (Lead), Bleich, Cardona

Table of Contents

October 10, 2015 Kehr Email to Drafting Team, cc Difuntorum, Mohr & Lee:.....	1
October 11, 2015 Eaton Email to Kehr, cc Drafting Team, Difuntorum, Mohr & Lee:	1
October 11, 2015 Bleich Email to Kehr, cc Drafting Team, Difuntorum, Mohr & Lee:.....	1
October 11, 2015 Cardona Email to Kehr, cc Drafting Team, Difuntorum, Mohr & Lee:.....	1

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October 10, 2015 Kehr Email to Drafting Team, cc Difuntorum, Mohr & Lee:

Here are my comments on this proposed Rule ---

1) In paragraph (a), second sentence, "also" is not needed as the first and second sentences are directed to distinct subjects.

2) I hope that the Commission will discuss paragraph (b)(1) in one respect. If a California lawyer appears in Jurisdiction X, and if a California Rule is more demanding of the lawyer than the corresponding Rule in X, should the lawyer be entitled to skirt the California requirements? As an example, California rule 3-310(C)(1) requires informed written consent in almost all joint representations b/c it applies whenever there is a potential for a future actual conflict. The corresponding MR 1.7(a)(2) permits a lawyer to determine that there is no significant risk that the lawyer's services will be materially by the joint representation, which for many lawyers will mean never. There are variations on this example, such as: (i) when the lawyer's engagement agreement has a California choice of law provision; (ii) when one or more of the clients is a California resident; (iii) when the lawyer is engaged before the site of the litigation is chosen; and (iv) when the cite of the litigation moves, such as might happen with multidistrict litigation. My view is that a California lawyer in each of these situations should be obligated to comply with (C)(1), and that this should be the requirement even without the choice of law provision and even if all the clients are from outside California. There are other California Rules that are less restrictive than the MR parallel, such as with fee sharing, and my view is that the more restrictive standard should apply.

3) A drafting nit in the Comment: The phrase "the residents of California" could be shortened to "California residents". The avoidance of unneeded prepositional phrases is one of our drafting mandates, and it is a good one.

4) A question for those with knowledge of the disciplinary system: Should the last sentence of the Comment be limited to members of the California State Bar?

October 11, 2015 Eaton Email to Kehr, cc Drafting Team, Difuntorum, Mohr & Lee:

Thanks for your thoughtful comments, Bob. I agree with your comments 1 and 3. I have to give more thought to comment 2, but that does not require a revision in the drafting for now. I defer to those with more knowledge than I have about the disciplinary system to address your comment 4. Maybe we could ask Jim Ham without violating the open meeting law.

October 11, 2015 Bleich Email to Kehr, cc Drafting Team, Difuntorum, Mohr & Lee:

I share Dan's reactions. Thanks again for the thoughtful and careful suggestions, Bob.

October 11, 2015 Cardona Email to Kehr, cc Drafting Team, Difuntorum, Mohr & Lee:

Weighing in late, but agree as well.