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October 7, 2015 Kehr Email to Drafting Team, cc Difuntorum, Mohr & Lee:

1) Regarding **Rule 6.5**:

a. What is the meaning of "reasonable" in the second sentence of Comment [2]? That sentence won't provide the needed guidance without an explanation, and I'm not certain what the answer is.

b. The first sentence of Comment [3] seems only to share thoughts about the background of paragraphs (a)(1) and (2), and the balance of the Comments seems only to repeat those two Rule paragraphs without providing any explanation. I don't think that any explanation is needed, and I would remove the Comment in full.

c. I think the same is true of Comment [4], which I think could be removed in its entirety without any risk that a reader will be less the wiser.

d. There are references to Rule 1.7, 1.9 and 1.10, none of which yet have been addressed by the Commission. It should be noted that this Rule will need to be reviewed once those other Rules have been done.

2) If present I would vote against including **Rule 6.1**. My thinking on this is directed to the purely aspirational nature of the Rule, which I see as having no place in the disciplinary Rules (but I like your version better than the ABA version b/c you've made it clear that it is not a basis for professional discipline).

3) I agree with **Rule 6.3** in principle; however:

a. The ABA language is based on a misconception of what constitutes a conflict of interest. A lawyer does not have a conflict by reason of representing clients with adverse interests. A lawyer properly may represent McDonalds and Burger King. And in fact this is quite common. Think, for example, of a patent lawyer who is a polymer chemist and handles patent applications for competitors or an entertainment lawyer who represents (competing) actors. To be more accurate: "... notwithstanding that the organization serves persons in matters that would constitute a conflict of interest for the lawyer under Rule 1.7 or 1.9 if undertaken by the lawyer or the lawyer's law firm having interests adverse to a client of the lawyer.

b. I don't know why paragraph (a) refers to Rule 1.7 but not Rule 1.9.

c. I hope the Commission will discuss paragraph (b) as its meaning is unclear to me. It appears to say that a lawyer serving on a non-profit's Board could not join in a decision to drop a client of the non-profit if that client is an adversary of the lawyer's firm, even if in a matter unrelated to the firm's representation of its client. Why?

d. Regarding Comment [1]:

i. Its first and final sentences do not explain the meaning of the Rule and could be cut.

ii. Its third sentence uses the phrase "potential conflict", which is a term used in our current Rules but not MR 1.7. This could cause confusion. The same sentence again speaks of conflicting interests, which is irrelevant for in determining whether a lawyer has a conflict. If the Commission were to adopt my

change as stated in my first paragraph on this Rule, the third sentence could be removed b/c the Rule would be self-explanatory.

5. I support **Rule 6.4**; however:

a. B/c there is only one Comment, it need not be numbered.

b. It uses "client-lawyer" rather than "lawyer-client".

c. Neither its second sentence nor the Rule 1.2(b) reference explains the Rule. These could be removed.

d. The third sentence does not explain the Rule and actually seems inconsistent with it. If the Commission feels that a lawyer's law reform efforts should not target the lawyer's clients, this should be added to the Rule. This is a viable idea. See *Oasis West Realty, LLC v. Goldman*, 51 Cal.4th 811 (2011).