

**RRC2 – Rule 1-400 [7.1 to 7.6]
Post-Agenda E-mails, etc. – Revised (January 19, 2016)
Langford (Lead), Brown, Kornberg & Tuft**

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January 12, 2016 McCurdy Email to Commission, Advisors, Liaisons & Staff:

The Office of Chief Trial Counsel's comments on the rules under consideration at the January meeting are attached. Please review them in preparation for the discussion at the January meeting.

Attached:

RRC2 - [1-100(B)][1-120][1-400][2-300][2-400][3-120][3-200][1.14] - 01-12-16 OCTC Memo to RRC2.docx

RRC2 - [1-100(B)][1-120][1-400][2-300][2-400][3-120][3-200][1.14] - 01-12-16 OCTC Memo to RRC2.pdf

January 12, 2016 OCTC Memo to RRC2:

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C. Rule 1-400: Advertising and Solicitation

See OCTC's October 2015 comment.

October 15, 2015 Kim (OCTC) Email to Langford, cc Blumenthal, Charles Murray (OCTC), Kevin Taylor (OCTC), Gregory Dresser (OCTC) & Difuntorum:

I'm following up from our earlier communications re: rule 1-400 Standards to inform you that OCTC supports retaining Standards 1, 2, 4, 5, 6, 7, 8, 12, 13, 14, 15, and 16 listed below. Standards 3, 9 and 10, however, may be superfluous given that the conduct and situations described within those Standards are clearly covered by the language of the rule itself.

From our perspective, the Standards serve multiple purposes, such as:

- They provide guidance to attorneys to avoid potential violations,
- They educate the general public about what types of conduct may violate an attorney's ethical duties, and
- They assist OCTC in its evaluation and resolution of complaints involving attorney advertising and solicitation.

More specifically to the last point, OCTC staff value the Standards and find them helpful in evaluating rule 1-400 allegations and resolving complaints at the Intake level. Intake staff may close a complaint with a warning or resource letter that references or directs an attorney to an applicable Standard. In addition, the Standards are valuable to OCTC enforcement staff when investigating and prosecuting more serious allegations under the rule. We find most useful the Standards which address disclaimers; misrepresentations; clarity/accuracy; and reasonable time, place, and manner restrictions.

We hope this information is helpful to you. I believe you and I were already in agreement that the *Central Hudson Gas* case does not support lifting of all restrictions on advertising. If you wish to discuss or need further information for the conference call next week, please let me know.

Standards to retain:

- (1) A "communication" which contains guarantees, warranties, or predictions regarding the result of the representation.

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- (2) A "communication" which contains testimonials about or endorsements of a member unless such communication also contains an express disclaimer such as "this testimonial or endorsement does not constitute a guarantee, warranty, or prediction regarding the outcome of your legal matter."
- (4) A "communication" which is transmitted at the scene of an accident or at or en route to a hospital, emergency care center, or other health care facility.
- (5) A "communication," except professional announcements, seeking professional employment for pecuniary gain, which is transmitted by mail or equivalent means which does not bear the word "Advertisement," "Newsletter" or words of similar import in 12 point print on the first page. If such communication, including firm brochures, newsletters, recent legal development advisories, and similar materials, is transmitted in an envelope, the envelope shall bear the word "Advertisement," "Newsletter" or words of similar import on the outside thereof.
- (6) A "communication" in the form of a firm name, trade name, fictitious name, or other professional designation which states or implies a relationship between any member in private practice and a government agency or instrumentality or a public or non-profit legal services organization.
- (7) A "communication" in the form of a firm name, trade name, fictitious name, or other professional designation which states or implies that a member has a relationship to any other lawyer or a law firm as a partner or associate, or officer or shareholder pursuant to Business and professions Code sections 6160-6172 unless such relationship in fact exists.
- (8) A "communication" which states or implies that a member or law firm is "of counsel" to another lawyer or a law firm unless the former has a relationship with the latter (other than as a partner or associate, or officer or shareholder pursuant to Business and professions Code sections 6160-6172) which is close, personal, continuous, and regular.
- (12) A "communication," except professional announcements, in the form of an advertisement primarily directed to seeking professional employment primarily for pecuniary gain transmitted to the general public or any substantial portion thereof by mail or equivalent means or by means of television, radio, newspaper, magazine or other form of commercial mass media which does not state the name of the member responsible for the communication. When the communication is made on behalf of a law firm, the communication shall state the name of at least one member responsible for it.
- (13) A "communication" which contains a dramatization unless such communication contains a disclaimer which states "this is a dramatization" or words of similar import.
- (14) A "communication" which states or implies "no fee without recovery" unless such communication also expressly discloses whether or not the client will be liable for costs.
- (15) A "communication" which states or implies that a member is able to provide legal services in a language other than English unless the member can actually provide legal services in such language or the communication also states in the language of the communication (a) the employment title of the person who speaks such language and (b) that the person is not a member of the State Bar of California, if that is the case.

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(16) An unsolicited "communication" transmitted to the general public or any substantial portion thereof primarily directed to seeking professional employment primarily for pecuniary gain which sets forth a specific fee or range of fees for a particular service where, in fact, the member charges a greater fee than advertised in such communication within a period of 90 days following dissemination of such communication, unless such communication expressly specifies a shorter period of time regarding the advertised fee. Where the communication is published in the classified or "yellow pages" section of telephone, business or legal directories or in other media not published more frequently than once a year, the member shall conform to the advertised fee for a period of one year from initial publication, unless such communication expressly specifies a shorter period of time regarding the advertised fee.