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May 22, 2016 Kehr Email to Difuntorum & Mohr:

I do not support this Rule. If the policy decision is to provide useful information to potential clients about the important topic of a lawyer's malpractice protection - for which there are good arguments - neither the current California rule nor this proposal does so. It is not useful for a client to know (by implication) that the lawyer is insured if the insurance is insufficient to the circumstances. That might be the situation if the amount of coverage is less than the amounts involved in the representation or if the lawyer's malpractice policy has declining limits. There would be substance to the rule if the lawyer were required to provide this information.

Under the assumption the Commission will vote to retain this rule more or less in its current form, I have these drafting suggestions:

- 1) Comment [1] provides a basis for discipline rather than an explanation of the Rule and should be moved into the Rule. This could be accomplished by adding at the end of paragraph (a): "This paragraph applies to engagements with new clients and to new engagements with a returning clients."
- 2) Comment [5] does not explain the Rule and could be dropped entirely. It explains the underlying policy, and we have attempted to avoid Comments that do only that.

May 23, 2016 Marlaud Email to Drafting Team, cc Chair, Difuntorum, Mohr, McCurdy & Lee:

Please see attached OCTC memo with comments concerning ABA MR 1.8.8 [3-400]. Please consider these comments in preparation for the June meeting.

Attached:

RRC2 - [4-100][3-400][3-410][3-700][1.8.5A][6.1][1.10][1.18][2.3][3.9][4.1][4.4][5.7][8.3] - 05-19-16 OCTC Memo to RRC2.pdf

May 19, 2016 OCTC Memo [Dresser] to RRC2:

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C. Rule 3-410 [Disclosure of Professional Liability Insurance]

Please see OCTC's March 25, 2016 comment.

March 25, 2016 OCTC Email to RRC2:

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H. Rule 3-410 [Disclosure of Professional Liability Insurance]

OCTC does not recommend any revisions to rule 3-410 and has no objection to the rule providing specific language to be used by the membership in advising clients of the status of their professional liability insurance.

May 27, 2016 Clinch Email to Drafting Team, cc Difuntorum, Mohr, McCurdy & Lee:

When the drafters of rule 3-410 met we discussed whether or not to include the addition of an exception to the requirement of disclosure of professional liability insurance to clients. The recommendation was that after "(c) This Rule does not apply to:" the following should be added: "(2) "a court-appointed lawyer in a criminal or civil action or proceeding with respect to the matter in which the lawyer has been appointed." This additional exception was recommended by the first Commission because of raised concern that "disclosure of the lack of insurance may impede the development of a lawyer-client relationship."

I have since learned that most counties (if not all) require that appointed counsel sign a contract with their county prior to being added to the appointed counsel list. One of the contract's requirements is that appointed counsel must carry professional liability insurance. Because of this requirement, there should be no conflict of interest between client and appointed counsel on this issue.

Since this suggested addition to rule 3-410 [Rule 1.4.2] doesn't appear to be warranted, it is my suggestion that it be deleted from the proposed Rule.

May 27, 2016 Inlender Email to Drafting Team, cc Difuntorum, Mohr, McCurdy & Lee:

I agree with this change.

May 27, 2016 Clinch Email to Drafting Team, cc Difuntorum, Mohr, McCurdy & Lee:

This issue was discussed. At that time the exception was agreed upon. However, I wasn't given this information until after our meeting.