

**RRC2 – Rule 1-100 [1.0] & Rule 1-650 [6.1, 6.2, 6.3, 6.4, 6.5]
Post-Agenda E-mails, etc. – Revised (May 30, 2016)
Martinez (Lead), Harris, Rothschild**

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May 23, 2016 Eaton Email to Difuntorum, Mohr, McCurdy:

I appreciate the drafting team's thoughtful suggested comment on this important topic. I regret that I am unable to support it.

Unlike the other proposed comments to Proposed Rule 1.0, proposed comment 5 offers no "guidance for interpreting and practicing in compliance with the Rules." Under Proposed Rule 1.0(c), that is the only proper purpose of a comment. The stated benefits of this comment that the drafting identifies, such as enhancing the ability of legal services organizations to recruit, make this point especially clear.

Adding such a comment consequently also would conflict with paragraph 5 of the Commission Charter that comments should be used "sparingly" to "elucidate" the rule to which it is appended. This comment does not do that. Instead, it introduces a distinct concept altogether untethered to its rule.

There are other concepts, such as civility, which lawyers also should be encouraged to embrace. The Rules of Professional Conduct is not the place to offer that encouragement. The existing State Bar Resolution, similar local bar resolutions, and awards given out by a range of bar and other organizations are the proper vehicles to advance worthy goals such as this that do not fit in the Rules.

I agree with the drafting team that this concept does not belong in a preamble either, for the reasons given by the team. But I do not believe it belongs as a Comment either.

May 23, 2016 Kehr Email to Difuntorum, Mohr, McCurdy:

I generally agree with the recommended new Comment [5] to Rule 1.0, which I think does a good job of handling the Commission's directions to the drafting team, but have these minor suggestions ---

1) In the first sentence, the second part seems not to follow from the introductory phrase. I suggest replacing that sentence with something along these lines: "The disciplinary standards created by these Rules are not intended to address all aspects of a lawyer's professional obligations."

2) In the second sentence, I would insert "and advisor" after "representative". Alternatively, the sentence might focus more on its intended object if it were replaced with the following: "In addition to being a representative and advisor of clients, a lawyer is an officer of the legal system with special responsibilities for the quality of justice."

3) Later in the paragraph there appears "fifty (50)". That redundancy made sense in the era of handwritten instruments that might be altered by a clever dissembler. It no longer makes sense and now seems Dickensian. The Style Guide for State Bar Rules directs us to not employ this redundancy and to use words for numbers up to ninety-nine.

May 23, 2016 Marlaud Email re 6.1 to Drafting Team, cc Chair, Difuntorum, Mohr, McCurdy & Lee:

Please see attached OCTC memo with comments concerning Pro Bono Guidance. 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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F. Consideration of Alternatives for Promoting/Encouraging Pro Bono Service

Promoting pro bono services is a positive action, but it is merely aspiration in this context. The Rules of Professional Conduct are disciplinary standards and should not be revised to add aspirational statements.

May 25, 2016 Difuntorum Email re 6.1 to Drafting Team, cc Mohr, A. Tuft, McCurdy & Lee:

FYI see article at link below re Justice Sotomayor's views on pro bono as a professional responsibility. –Randy D.

<http://www.nationallawjournal.com/home/id=1202757812765/Sotomayor-Urges-Mandatory-Pro-Bono-for-All-Lawyers?mcode=1202617074964&curindex=3#comments>

May 25, 2016 Martinez Email re 6.1 to Drafting Team, cc Mohr, A. Tuft, McCurdy & Lee:

I had seen that article last week, too. It would be a great thought if we were to go back and revisit the idea of making pro bono mandatory. But for now, we have our marching orders.