

September 24, 2016 Kehr Email to Drafting Team, cc Difuntorum, Mohr, McCurdy & Lee:

One minor drafting suggestion --- The reference to Rule 1.0.1 in paragraph (a) is not needed if defined terms are marked with an asterisk.

September 25, 2016 Harris Email to Drafting Team, cc Difuntorum, Mohr, McCurdy & Lee:

I think that is correct so long as all know what the asterisk stands for.

September 25, 2016 Kehr Email to Drafting Team, cc Difuntorum, Mohr, McCurdy & Lee:

There seems to be no reason to duplicate the reference in this Rule when we are not in any other Rule that includes an asterisked term.

September 25, 2016 Harris Email to Drafting Team, cc Difuntorum, Mohr, McCurdy & Lee:

That makes sense.

September 25, 2016 Mohr Email to Drafting Team, cc Difuntorum, McCurdy & Lee:

To respond to your question whether the reader will know what the asterisk means, the Cal. Code of Judicial Ethics provides at the beginning of its Terminology Section the following in bold font:

The first time any term listed below is used in a Rule in its defined sense, it is followed by an asterisk.

We expect to include a similar statement in rule 1.0.1, w/ the asterisk not being limited to the first time the term is used in a rule:

Whenever a term listed below is used in a Rule in its defined sense, it is followed by an asterisk.

Including the asterisk for every use makes more sense because a judge or lawyer will not necessarily read every section of a lengthy rule and see that a particular term in a later section being read is defined. Any harm to our distant arboreal relatives from universally deploying asterisks throughout the Rules should be minimal. Thanks,

Rule 1.4 [3-500] Communication with Clients

- (a) A lawyer shall:
- (1) promptly inform the client of any decision or circumstance with respect to which disclosure or the client's informed consent,* ~~as defined in Rule 1.0.1(e),¹~~ is required by these Rules or the State Bar Act;
 - (2) reasonably* consult with the client about the means by which to accomplish the client's objectives in the representation;
 - (3) keep the client reasonably* informed about significant developments relating to the representation, including promptly complying with reasonable* requests for information and copies of significant documents when necessary to keep the client so informed; and
 - (4) advise the client about any relevant limitation on the lawyer's conduct when the lawyer knows* that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably* necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer may delay transmission of information to a client if the lawyer reasonably believes* that the client would be likely to react in a way that may cause imminent harm to the client or others.
- (d) A lawyer's obligation under this Rule to provide information and documents is subject to any applicable protective order, non-disclosure agreement, or statutory limitation.

Comment

[1] A lawyer will not be subject to discipline under paragraph (a)(3) of this rule for failing to communicate insignificant or irrelevant information. (See Bus. & Prof. Code § 6068(m).) Whether a particular development is significant will generally depend on the surrounding facts and circumstances.

[2] A lawyer may comply with paragraph (a)(3) by providing to the client copies of significant documents by electronic or other means. This Rule does not prohibit a lawyer from seeking recovery of the lawyer's expense in any subsequent legal proceeding.

[3] Paragraph (c) applies during a representation and does not alter the obligations applicable at termination of a representation (see Rule 1.16(e)(1)).

[4] This Rule is not intended to create, augment, diminish, or eliminate any application of the work product rule. The obligation of the lawyer to provide work product to the client shall be governed by relevant statutory and decisional law.

¹ Phrase "as defined in Rule 1.0.1(e)" deleted as unnecessary given the asterisk.