

December 21, 2016 Cardona Email re 1.7 to Drafting Team, cc Chair, Difuntorum, Mohr, A. Tuft, McCurdy & Lee:

With respect to the COPRAC comment, my response is as follows:

- (1) With respect to their request to delete comment 2, I do not believe it is well taken. We specifically worded the comment so that it is not an exclusive definition, but rather a list of examples that are “included” within what constitutes a matter. It is for this reason (that it lists examples of what constitutes a matter rather than exclusively defining the term) that I believe we decided it is appropriately a comment. Moreover, beyond these examples, it is left to ethics opinions and case law to define what else might be designated a matter. All that said, I do believe it would make sense to revise comment 2 to be closer to current ABA Model Rule 1.11(e), and would propose that we modify comment 2 to state as follows: “For purposes of this Rule, ‘matter’ includes any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other deliberation, decision, or action that is focused on the interests of specific persons, or a discrete and identifiable class of persons.” Our public comment response could then read: “The Commission continues to believe that as a non-exclusive list of examples of what is included within the term matter, Comment [2] is appropriately a comment. The Commission has modified Comment [2] so that the list of examples is closer to that contained in current ABA Model Rule 1.11(e), which appears appropriate for use with respect to Rules 1.7 and 1.9 as well.”
- (2) With respect to their proposed “clarifying, stylistic” revision to Comment [7], I am fine with it and think it reads better.

December 21, 2016 Eaton Email re 1.7 to Drafting Team, cc Chair, Difuntorum, Mohr, A. Tuft, McCurdy & Lee:

I agree with George’s response.

December 21, 2016 Martinez Email re 1.7 to Drafting Team, cc Chair, Difuntorum, Mohr, A. Tuft, McCurdy & Lee:

Why not add the word “transaction” to the mix? See my 10/21/16 email (attached) wherein I proposed the following language:

[2] For purposes of this Rule, “matter” includes any judicial or other proceeding, application, request for a ruling or other determination, contract, [transaction](#), claim, controversy, or other deliberation, decision, or action that is focused on the interests of specific persons*, or a discrete and identifiable class of persons*.

December 21, 2016 Cardona Email re 1.7 to Drafting Team, cc Chair, Difuntorum, Mohr, A. Tuft, McCurdy & Lee:

I would be OK with that.

December 21, 2016 Eaton Email re 1.7 to Drafting Team, cc Chair, Difuntorum, Mohr, A. Tuft, McCurdy & Lee:

OK.

December 21, 2016 Stout Email re 1.7 to Drafting Team, cc Chair, Difuntorum, Mohr, A. Tuft, McCurdy & Lee:

I'm fine with George's and Raul's responses.

December 21, 2016 Harris Email re 1.7 to Drafting Team, cc Chair, Difuntorum, Mohr, A. Tuft, McCurdy & Lee:

That works for me as well.

January 3, 2017 Mohr Email re 1.7 to Drafting Team, cc Difuntorum, A. Tuft, McCurdy & Lee:

I'm following up on the pre-holiday email exchange among the drafting team members and have attached a revised rule and Synopsis Table per the discussions had. Please review and confirm they accurately reflect your decisions. Our deadline is today but if you can let us know tomorrow morning, that will work. Thanks,

Attached:

RRC2 - [1.7][3-310] - Public Comment Synopsis Table - REV (01-03-17).doc

RRC2 - [1.7][3-310] - Rule - XDFT2 (12-21-16) - Cf. to XDFT1 (10-26-16).docx

January 3, 2017 Cardona Email re 1.7 to Drafting Team, cc Difuntorum, Mohr, A. Tuft, McCurdy & Lee:

Looks good to me. Thanks.

January 3, 2017 Eaton Email re 1.7 to Drafting Team, cc Difuntorum, Mohr, A. Tuft, McCurdy & Lee:

Fine with me.

January 3, 2017 McCurdy Email re 1.7 to Mohr, cc Difuntorum:

Sorry for the timing of this but today we received the law professors' comment on Rule 1.7 from Richard Zitrin. Andrew just finished synopsisizing it in the attached public comment table and I was about to circulate it to the team when your message came in. I don't want to piggy back on your message until you review this and decide how you would like to handle this. The deadline is actually next Monday, 1/9 (hopefully I didn't misstate the deadline in an earlier communication).

Also, I've inquired as to the status of the contractor agreement but have not heard back yet. I'll be in touch as soon as I know more.

January 3, 2017 Martinez Email re 1.7 to Drafting Team, cc Difuntorum, Mohr, A. Tuft, McCurdy & Lee:

I don't think this incorporates our email exchange of Nov. 16 and your redraft of Comment [1] with which I agree (see attached).

November 16, 2016 Martinez Email re 1.7 to Drafting Team, cc Difuntorum & Mohr:

The following issue has been bothering me. Comment [1] states:

A directly adverse conflict under paragraph (a) occurs when: (i) a lawyer accepts representation of more than one client in a matter in which the interests of the clients actually conflict; or (ii) a lawyer, while representing a client, accepts in another matter the representation of a person* or organization who, in the first matter, is directly adverse to the lawyer's client.

The highlighted language seems to derive from 3-310(C)(3). I question whether we should have imported the concept of 310(C)(3) with all its baggage (as reflected in the effort in 1998 to add a (C)(4)).

For example, a law firm represents client A against client B. The law firm is later asked to represent B in unrelated litigation that is in no way adverse to client A. The highlighted language seems to say the second representation is not permissible without consent of client A.

Kevin, does the ABA go that far? Is this really direct adversity? Are we conflating adversity with loyalty?

By deleting the highlighted language in January we can avoid confusion in the future. Does anyone agree?

November 16, 2016 Mohr Email re 1.7 to Martinez, cc Drafting Team & Difuntorum:

I think you are correct. The sentence imports into the comment subparagraphs (C)(2) and (C)(3) of current rule 3-310. By doing that, it appears to unnecessarily limit the intended scope of proposed rule 1.7(a), which provides:

- (a) A lawyer shall not, without informed written consent* from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.

As you noted, phantom paragraph (C)(4) was proposed in 1998. The 1998 proposal not only would have added a (C)(4), but also would have revised (C)(3) to conform it to (C)(4). The two paragraphs would have provided (I've substituted this Commission's style conventions, e.g., "lawyer" for "member"):

A lawyer shall not without the informed written consent of each client:

* * *

- (3) accept representation of a person or entity the lawyer knows or reasonably should know is an opposing party to a client in a separate matter in which the lawyer or the lawyer's law firm currently represents the client.

- (4) accept representation of a person or entity in a litigation matter in which the lawyer knows or reasonably should know an opposing party is a client of the lawyer or the lawyer's law firm, except as otherwise permitted or required by law.

I'm not suggesting that we substitute the foregoing (3) and (4) in the comment sentence. Rather, I think we should just delete that sentence because, as drafted, it unnecessarily limits the scope of proposed 1.7(a), which is intended to avoid the problem of missing (C)(4).

Comment [1] could be redrafted as follows in January:

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. The duty of undivided loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed written consent.* Thus, absent consent, a lawyer may not act as an advocate in one matter against a person* the lawyer represents in some other matter, even when the matters are wholly unrelated. See *Flatt v. Superior Court* (1994) 9 Cal.4th 275 [36 Cal.Rptr.2d 537]. ~~A directly adverse conflict under paragraph (a) occurs when: (i) a lawyer accepts representation of more than one client in a matter in which the interests of the clients actually conflict; or (ii) a lawyer, while representing a client, accepts in another matter the representation of a person* or organization who, in the first matter, is directly adverse to the lawyer's client.~~ Similarly, ~~direct~~ **Direct** adversity can arise when a lawyer cross-examines a non-party witness who is the lawyer's client in another matter, if the examination is likely to harm or embarrass the witness. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require informed written consent* of the respective clients.

Alternatively, the deleted sentence above could be rewritten so that it does not appear to define the scope of "directly adverse," for example, as follows:

A directly adverse conflict under paragraph (a) ~~occurs when: (i) can arise in a number of ways, for example, when~~ a lawyer accepts representation of more than one client in a matter in which the interests of the clients actually conflict; ~~or (ii) when~~ a lawyer, while representing a client, accepts in another matter the representation of a person* or organization who, in the first matter, is directly adverse to the lawyer's client.

The corresponding Model Rule comments, [6] (on which our cmt. [1] is loosely based) and [7] provide:

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the

other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

[7] Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

I'll highlight this for further consideration in January. Thanks,

November 16, 2016 Martinez Email re 1.7 to Mohr, cc Drafting Team, Difuntorum, McCurdy & Lee:

Thanks, Kevin. I would prefer deleting the sentence in Comment 1 as you propose. I think we should stay away from trying to incorporate the 1998 language which has its own set of problems and could open a can of worms. With respect to the option of rewriting the comment to explain “directly adverse” my concern is that the second clause --“when a lawyer, while representing a client, accepts in another matter the representation of a person* or organization who, in the first matter, is directly adverse to the lawyer’s client”—continues to perpetuate the ambiguous language in 3-310(C)(3).

I also have the concern as to whether--specific rules aside—as a matter of *ethical policy* the Rule should prohibit a lawyer from representing a client’s adversary in an unrelated matter. I don’t see this as “direct adversity” and am unsure of the ethical harm to either client. *Flatt* commented, in *dictum*, that “A client who learns that his or her lawyer is also representing a litigation adversary, even with respect to a matter wholly unrelated to the one for which counsel was retained, cannot long be expected to sustain the level of confidence and trust in counsel that is one of the foundations of the professional relationship.” *Flatt v. Superior Court* (1994) 9 Cal.4th 275, 285. I’m not convinced this is a correct statement unless the clients’ interests (as in *Flatt*) are actually adverse in the two matters.

Finally, I agree it would be good to add ABA Comment [7] and tweak our loosely based Comment [1] to conform more closely with ABA Comment [6].

January 3, 2017 Cardona Email re 1.7 to Drafting Team, cc Difuntorum, Mohr, A. Tuft, McCurdy & Lee:

With respect to Comment 1, I would prefer the alternative that retains the two examples, but clarifies that they are only examples and not an exclusive definition. I have no problem with adding ABA Comment 7.

January 3, 2017 Stout Email re 1.7 to Drafting Team, cc Difuntorum, Mohr, A. Tuft, McCurdy & Lee:

I tend to agree with George.

January 3, 2017 Eaton Email re 1.7 to Drafting Team, cc Difuntorum, Mohr, A. Tuft, McCurdy & Lee:

As do I.

January 3, 2017 Martinez Email re 1.7 to Drafting Team, cc Difuntorum, Mohr, A. Tuft, McCurdy & Lee:

George, the problem I have is with example (ii) of Comment [1] which I am not convinced is ethically a correct principle. That is, can a lawyer represent a client's adversary in a completely unrelated matter? The second matter is not at all adverse to the client in any way. There is no direct adversity at all. In fact, example (ii) actually expands on the black letter of the Rule. So I would delete the following:

ii) a lawyer, while representing a client, accepts in another matter the representation of a person* or organization who, in the first matter, is directly adverse to the lawyer's client.

January 3, 2017 Harris Email re 1.7 to Drafting Team, cc Difuntorum, Mohr, A. Tuft, McCurdy & Lee:

I agree with Dan, Dean and George.

January 3, 2017 Mohr Email re 1.7 to Drafting Team, cc Difuntorum, A. Tuft, McCurdy & Lee:

I apologize for giving this material to you in pieces. We received a comment from the law professors early this morning that I overlooked. I've attached revision 2 of the Synopsis Table, with the professors' comments and proposed responses to the two points they make.

Also, I've been informed that I was wrong about the deadline for submission. It is not until next Monday, 1/9/17. I apologize for that false alarm if you're in the mood, please take a look at this now. :-)

As to the ongoing discussion about Comment [1] and MR 1.7, comment [7], would a brief teleconference be more productive? Thanks,

Attached:

RRC2 - [1.7][3-310] - Public Comment Synopsis Table - REV2 (01-03-17).doc

January 3, 2017 Cardona Email re 1.7 to Drafting Team, cc Difuntorum, Mohr, A. Tuft, McCurdy & Lee:

I read Kevin's email as suggesting that he was OK with the proposed modification to Comment 1 because he viewed the definitional language as unduly limiting what could constitute a direct adversity conflict, not because he viewed example ii as being overbroad? In addition, example ii appears to be consistent with ABA Comment 7, which looks like an application of example ii in a transactional setting – ie, a direct adverse conflict is posed where I represent B in litigation matter A, and I am asked to represent S in a transactional matter T in which S will be adverse to B, even though A and T are completely unrelated? If this poses a direct adversity conflict (which I think it does), then isn't a direct adversity conflict also posed by the converse (which is example ii) – ie, I represent S in a transactional matter T in which S is adverse to B, and I am then asked to represent B in unrelated litigation matter A?

January 3, 2017 Martinez Email re 1.7 to Drafting Team, cc Difuntorum, Mohr, A. Tuft, McCurdy & Lee:

George, I see those examples as situations where the adversity occurs in the second matter. My concern is where Attorney A represents General Motors in litigation against Ford. Attorney A is then asked to represent Ford in unrelated litigation against Sony. Example ii would prohibit the second representation because Attorney A is accepting in another matter the representation of a person* or organization who, in the first matter, is directly adverse to the lawyer's client." This might be fixed by the following deletion:

- ii) a lawyer, while representing a client, accepts in another matter the representation of a person* or organization who ~~in the first matter,~~ is directly adverse to the lawyer's client.

January 4, 2017 Mohr Email re 1.7 to Drafting Team, cc Difuntorum, A. Tuft, McCurdy & Lee:

I apologize for the length of this email but after reviewing the email exchange among the drafting team members, in particular the exchanges between Raul and George, I propose it as food for thought for the teleconference tomorrow.

First, I think George accurately represented my thoughts in his 5:35 p.m. email from yesterday. My concern with the sentence in the public comment draft is that it is too narrow, i.e., it effectively imports into the comment current rule 3-310(C)(3), which the first Commission recognized was too narrow and which COPRAC subsequently attempted to correct by adding a (C)(4) [i.e., the references you might have heard to the "phantom (C)(4)"].

In my 11/16/16 email, I suggested two alternatives:

- (1) Simply deleting the definitional sentence in Comment [1] ("A directly adverse conflict under paragraph (a) occurs when: (i) a lawyer accepts representation of more than one client in a matter in which the interests of the clients actually conflict; or (ii) a lawyer, while representing a client, accepts in another matter the representation of a person* or organization who, in the first matter, is directly adverse to the lawyer's client.") or
- (2) Revising the sentence to clarify it is not an exclusive definition but rather a recitation of examples of direct adversity ("A directly adverse conflict under paragraph ~~(a) occurs when:~~ ~~(i)~~ can arise in a number of ways, for example, when a lawyer accepts representation of more than one client in a matter in which the interests of the clients actually conflict; or ~~(ii)~~ when a lawyer, while representing a client, accepts in another matter the representation of a person* or organization who, in the first matter, is directly adverse to the lawyer's client.

Second, the exchange between George and Raul has convinced me that the second alternative should be used.

Third, I do not think that Raul's suggestion in his 5:56 p.m. email is a fix; it instead would confuse the issue by removing a critical phrase from what is currently (C)(3). To explain that, let me first address the first example.

The first example involves a situation where a lawyer agrees to represent two clients in the same matter where the clients' interests actually (rather than "potentially") conflict. This could occur in litigation where the lawyer has accepted joint representation of an employer and

employee in a tort action, a situation that is not unusual. In most instances, there is only the potential that a conflict will arise between employer and employee so long as the employee was acting within the scope of employment. However, once the lawyer knows the employee was acting outside the scope of employment, thus negating respondeat superior and the employer's liability, an actual conflict has arisen as employer and employee are now directly adverse. I don't think anyone has a problem with that.

In the second example where, for example, Client A (Plaintiff) is suing Defendant in Matter I, and Defendant then retains lawyer to defend Defendant (now Client B) in Matter II against unknown plaintiff, direct adversity is created **in Matter I** (Client A's interests are directly adverse to what is now Client B) by virtue of the Client B's retention of lawyer (or law firm more realistically) in Matter II, i.e., Matter I is now:

Plaintiff (Client A) v. Defendant (Client B).

If the phrase "in the first matter" is removed as Raul has suggested, you remove the direct adversity and the example no longer functions as an example of direct adversity, which exists only in Matter I (the first matter).

Flatt v. Superior Court & Phantom (C)(4). Flatt involved an entirely different situation and is what COPRAC hoped to capture in its 1998 proposed (C)(4). In Flatt, a prospective client (Client B) sought to hire law firm to sue a defendant, who in fact was already a client (Client A) of law firm in **Matter I**:

Unknown Plaintiff v. Client A (Defendant)

Client B wanted to retain law firm to sue Client A in Matter II. If the firm had accepted the matter, then the direct adversity would have been created **in Matter II**. COPRAC realized that (C)(3) did not cover that situation and proposed (C)(4) to describe it. Here is what COPRAC proposed as new (C)(3) and (C)(4) in its 1998 proposal:

(C) A member shall not, without the informed written consent of each client:

* * *

~~(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.~~ Accept representation of a person or entity the member knows or reasonably should know is an opposing party to a client in a separate matter in which the member or the member's law firm currently represents the client.

(4) Accept representation of a person or entity in a litigation matter in which the member knows or reasonably should know an opposing party is a client of the member or the member's law firm, except as otherwise permitted or required by law.

In short, (C)(3) is current (C)(3), worded slightly differently. The focus is on the current representation (C)(4) is Flatt. The reference to "litigation matter" in (C)(4) is there to assuage Hollywood transactional lawyers. The proposal was never adopted or approved, so there is a gap in the current rule. This Commission has remedied by adopting something similar to the Model Rule language in 1.7(a). Comment [1] is intended to clarify when (a), as opposed to (b), applies.

Fourth, we could add a third example to Comment [1] to clarify the foregoing, which would be something along the lines of proposed (C)(4) above, but without the "litigation" reference:

A directly adverse conflict under paragraph (a) can arise in a number of ways, for example, when: (i) a lawyer accepts representation of more than one client in a matter in which the interests of the clients actually conflict; ~~or~~ (ii) ~~when~~ a lawyer, while representing a client, accepts in another matter the representation of a person* or organization who, in the first matter, is directly adverse to the lawyer's client; or (iii) a lawyer accepts representation of a person in a matter in which an opposing party is a client of the lawyer or the lawyer's law firm.

Further, MR 1.7, cmt. [7], could also be added to clarify that the rule applies to transactional matters as well as litigation matters.

Again, food for thought in anticipation of tomorrow's call. Thanks,

January 5, 2017 Eaton Email re 1.7 to Drafting Team, cc Difuntorum, Mohr, A. Tuft, McCurdy & Lee:

This is very helpful food for thought. I like the fourth alternative at the end of your email, but am concerned that the third example would expand the scope of the text of the rule in contravention of our Charter. My initial preference would be somehow to revise the language of the blackletter rule so that third example plainly is encompassed within it.

January 5, 2017 Mohr Email re 1.7 to Drafting Team, cc Difuntorum, A. Tuft, McCurdy & Lee:

I've attached a revised draft of the rule, XDRAFT2.1, which incorporates the change Dan references below. This for discussion purposes only and also to put the sentence in the context of the entire comment. (See next paragraph re this.) I think that deletion of the third sentence of Comment [1], as Raul has suggested, might still be on the table.

To respond to Dan's concern that the third example expands the scope of the text, I disagree. It is simply a statement of Flatt, which is cited in the third sentence of the comment as the authority for the rule against direct adversity. The third sentence of the comment is as close as the rule comes to a definition of direct adversity. The fourth revised sentence of the Comment simply describes, by way of examples, several ways in which a directly adverse conflict of interest can arise. I don't think these examples should be put in the black letter; that would be a reversion to current rule 3-310's approach, a "checklist" approach.

Finally, in footnote 1 regarding Comment [4], I raise a concern about a last-minute change made during the October meeting that I think is wrong. Please review the footnote so we can discuss during the teleconference. Thanks,

Attached:

RRC2 - [1.7][3-310] - Rule - XDFT2.1 (01-05-17) - Cf. to XDFT1 (10-26-16).docx

January 5, 2017 Mohr Email re 1.7 to Drafting Team, cc Difuntorum, A. Tuft, McCurdy & Lee:

**RRC2 – Rule 3-310 [1.7, 1.8.6, 1.8.7, 1.8.11, 1.9, 1.10, 1.11, 1.12]
E-mails, etc. – Revised (January 16, 2017)
Drafting Team: Martinez (Lead), Cardona, Eaton, Harris, Stout**

Thanks to all for a quick and productive phone call. As discussed, I'm attaching the most recent version of the Synopsis Table, together with copies of the law professors letter we received on Tuesday in both PDF and Word. Please let us know by this Monday, 1/9/17, whether you agree with those responses. I believe everyone has already signed off on the responses to COPRAC, but please feel free to take another look at those and make any changes you believe are appropriate.

I've also attached the revised rule as agreed to during the call with the changes to Comment [4], in both Word and PDF. Thanks,

Attached:

RRC2 - [1.7][3-310] - Rule - XDFT2.2 (01-05-17) - Cf. to XDFT1 (10-26-16).docx
RRC2 - [1.7][3-310] - Rule - XDFT2.2 (01-05-17) - Cf. to XDFT1 (10-26-16).pdf
RRC2 - [1.7][3-310] - PubCom - Law Professors (Zitrin) - Y-2016-8a-[1.7]-EM.pdf
RRC2 - [1.7][3-310] - PubCom - Law Professors (Zitrin) - Y-2016-8a-[1.7]-EM.doc
RRC2 - [1.7][3-310] - Public Comment Synopsis Table - REV2 (01-03-17).doc

January 9, 2017 McCurdy Email re 1.7 to Drafting Team, cc Chair, Difuntorum, Mohr, Marlaud & Lee:

Rule 1.7 Drafting Team:

The public comment deadline is today at midnight. We've received the following additional public comments on Rule 1.7 (attached).

1. US DOJ
2. OCTC
3. Stan Lamport

Please review and submit an updated public comment synopsis table and any revised rule draft by close of business on Wednesday, January 11th. Some comments have not yet been added to the synopsis table, but we didn't want to delay in circulating these materials.

Thank you.

Attached:

RRC2 - [1.7][3-310] - Public Comment Synopsis Table - REV3.1 (01-09-17).doc
RRC2 - [1.7][3-310] - PubCom - Lamport Stanley Y-2016-18a-[1.7]-EM.pdf
RRC2 - [1.7][3-310] - PubCom - OCTC 01-09-17 Public Comment Letter.pdf
RRC2 - [1.7][3-310] - PubCom - US Department of Justice (Ludwig) Y-2016-12 [1.7]-FS.pdf

January 13, 2017 Difuntorum Email re 1.7 to Drafting Team, cc Difuntorum, Mohr, McCurdy & Lee:

Rule 1.7 Drafting Team:

The public comment synopsis table (attached) indicates that the Commission agrees with certain points and is revising several comments to the rule. However, we do not have a proposed revised draft rule for the agenda posting. Is the team's game plan to test the waters with the full Commission before initiating any drafting? Let us know. We can add a note to the

**RRC2 – Rule 3-310 [1.7, 1.8.6, 1.8.7, 1.8.11, 1.9, 1.10, 1.11, 1.12]
E-mails, etc. – Revised (January 16, 2017)
Drafting Team: Martinez (Lead), Cardona, Eaton, Harris, Stout**

table that the revisions identified in the responses are tentative and that a proposed amended rule is not included at this time. Thanks.

Attached:

RRC2 - [1.7][3-310] - Public Comment Synopsis Table Y - REV3.2 (01-10-17)KEM.pdf

January 13, 2017 Cardona Email re 1.7 to Drafting Team, cc Difuntorum, Mohr, McCurdy & Lee:

Attached is a draft previously circulated by Kevin which I think reflects what we agreed to in our conference call.

Attached:

RRC2 - [1.7][3-310] - Rule - XDFT2.2 (01-05-17) - Cf. to XDFT1 (10-26-16).pdf

January 12, 2017 Martinez Email re 1.7 to Drafting Team, cc Difuntorum, Mohr, McCurdy & Lee:

I don't think the intent was to test the waters. We added "transaction" to Comment [2] but I am unsure of any the other changes after our conference call on 1/5.