



THE STATE BAR  
OF CALIFORNIA

OFFICE OF CHIEF TRIAL COUNSEL

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Justice Lee Edmon  
Randall Difuntorum  
Office of Professional Competence, Planning and Development  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105-1639

Re: Comment on proposed revisions to Rule 5-110 of the Rules of Professional  
Conduct

Dear Justice Edmon and Mr. Difuntorum:

The Office of Chief Trial Counsel (OCTC) thanks the Commission for the opportunity to again express its comments on the issues the Supreme Court referred to the State Bar in the Supreme Court's May 1, 2017 Order. With any revision to any of the Rules of Professional Conduct, OCTC wants to assure that the rules (1) protect the public; (2) are discipline rules that are not purely aspirational; and (3) are clearly written to be understood by the membership and enforceable by our office. Also, the Comments to the Rules should be used sparingly and only to elucidate, and not to expand, upon the rules themselves.

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Also, if there is going to be a proposed rule addressing the conditions required for a criminal prosecutor to issue a subpoena to present evidence about an attorney's former or current client, the rule should apply to all attorneys, not just criminal prosecutors. OCTC agrees with the Supreme Court's suggestion that such a rule substitute the term "reasonably necessary" for the term "essential" in what was subsection (E)(2) of the former proposal. The term "reasonably necessary" is a fairer, more definite and understandable, and more appropriate term. California should not discipline attorneys who honestly and reasonably believed the proposed witness was reasonably necessary. Likewise, OCTC also agrees with the Supreme Court's suggestion that such a rule substitute the term "reasonable" for the term "feasible" in what previously was subsection (E)(3). Again, the term "reasonable" is fairer, more definite, clearer, and more appropriate than "feasible."

Very truly yours,

Steven J. Moawad  
Chief Trial Counsel

