



The State Bar of California

II.F. Prospective Rule 5.7
09-17-21 CTJG Meeting
Open Session

DATE: September 10, 2021

TO: Closing the Justice Gap Working Group (CTJG)

FROM: Marta Alcumbrac and Kevin Mohr

SUBJECT: Proposed Rule of Professional Conduct 5.7

EXECUTIVE SUMMARY

The assignment addressed is whether the Closing the Justice Gap Working Group (“CTJG” or “Working Group”) should recommend that the Board of Trustees release for public comment some version of ABA Model Rule of Professional Conduct 5.7 addressing the delivery of nonlegal services provided by lawyers and businesses owned or affiliated with lawyers. We recommend that CTJG should make such a recommendation. This memo discusses the current status of the law in California and explains why California historically has not yet adopted a version of rule 5.7. (See Section B.) In Section C, the memo discusses the pros and cons of California adopting such a rule and explains briefly how ATILS proposed rule reflects current California law. The memo concludes that the proposed rule 5.7 included in the Final Report of the Access Through Innovation in Legal Services Task Force (“ATILS”) accurately captures the nuanced California case law on this topic. (See Section D.)

Working Group members are asked to:

1. Review this memo and the provided resources;
2. Be prepared to ask any questions about this rule revision task; and
3. Consider submitting comments on the options for change discussed in the memo and the advantages and disadvantages of implementing such a change.

Introduction

This memorandum sets forth a report, as requested by the Chair at the April 9, 2021 CTJG meeting, that addresses the following four questions:

- (1) Scope of assignment: What has the CTJG been asked to advise on?
- (2) What is the status quo (current rules and/or statutes and how they operate)?

- (3) What are possible options for change, and what are the recognized advantages/disadvantages?
- (4) What steps should we take (request presentations, conduct interviews, review studies, etc.) to reach a fully informed recommendation?

A. SCOPE OF THE ASSIGNMENT: WHAT HAS THE CTJG BEEN ASKED TO ADVISE ON?

This assignment originates from the Task Force on Access Through Innovation of Legal Services ([ATILS](#)) [Final Report and Recommendations](#), that was submitted to the State Bar Board of Trustees in March 2020. ATILS Recommendation No. 3 stated:

Issue for Public Comment a New Rule of Professional Conduct 5.7 Addressing the Delivery of Nonlegal Services Provided by Lawyers and Businesses Owned or Affiliated with Lawyers

The Board did not act immediately on ATILS' request. Instead, in establishing the CTJG, the Board approved a [charter](#) that states in part: "The working group will develop specific recommendations," including "Amendments to the California Rules of Professional Conduct regarding the delivery of nonlegal services by lawyers and businesses owned or affiliated with lawyers, including proposed rule 5.7 developed by the Task Force on Access Through Innovation of Legal Services." ATILS' proposed rule 5.7 is provided as Attachment 1 to this memorandum.

B. WHAT IS THE STATUS QUO (CURRENT RULES AND/OR STATUTES AND HOW THEY OPERATE)?

1. Introduction

ABA Model Rule 5.7 addresses the duties of lawyers who provide "law-related" services as opposed to "legal" services. The rule is intended to avoid client confusion regarding the protections a client can expect when a lawyer, whether through the lawyer's law firm or a separate entity, provides ancillary services. The concern is that a client might assume that these services afford the same ethical protections as the client would expect from services delivered in a lawyer-client relationship. Model Rule 5.7 places the burden on the lawyer to inform the client and clarify that such services do not provide those protections. If the burden is not met, then the Rules of Professional Conduct will apply to the lawyer's provision of the services, i.e., the lawyer is required to perform the same duties a lawyer owes a client being provided legal services and advice, including the duties of competence, confidentiality, exercise of independent judgment and loyalty, and failure to comply with those duties can result in the lawyer's being subject to discipline.

ATILS' proposed rule 5.7 employed the same general approach as ABA Model Rule 5.7 in addressing the issue of a lawyer providing nonlegal or law-related services. In explaining the status quo, it is helpful to be familiar with ABA Model Rule 5.7 and state variations as well as the current state of a lawyer providing nonlegal services in California. We first discuss ABA Model Rule and then discuss the California approach in the absence of a rule corresponding to Model Rule 5.7. We also briefly touch on the history regarding the Rules Revision Commission's consideration of, and ultimate rejection of, the concept underlying a rule 5.7.

2. **ABA Model Rule 5.7 and Similar Rules Adopted by Various Jurisdictions**

ABA Model Rule 5.7 Overview

The text of Model Rule 5.7 provides:

Rule 5.7: Responsibilities Regarding Law-related Services

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

In addition to the rule text, the rule includes 11 Comments. For the full text of ABA Model Rule 5.7, see [link](#).

The **introductory clause of paragraph (a)** sets forth the rule's operative language, i.e., that a lawyer who is providing law-related services remains subject to discipline under the rules of professional conduct if the law-related services are provided in the manner described in either subparagraph (a)(1) or (a)(2).

Paragraph (a)(1) presents a situation where the lawyer is providing law-related services that are "not distinct" from the lawyer's provision of legal services to a client. Such services, when

provided by the lawyer or the lawyer's firm to a client who has or had also retained the lawyer for legal services, might include a tax preparation business, e.g., N.D. Ethics Op. 01-03 (5/4/2001) or financial planning services, e.g., Ind. Ethics Op. 02-01, at least when they are provided in a way that the services are "not distinct" from the lawyer's legal services.

Paragraph (a)(2) presents a situation where the law-related services are provided either directly by the lawyer or lawyer's law firm, or by a separate entity controlled by the lawyer or firm, but the lawyer has not taken "reasonable measures" to assure that the person who is to receive the law-related services knows the services are not legal services and that the protections afforded by a lawyer-client relationship do not attach. The practical effect of subparagraph (a)(2) is to permit a lawyer who provides such ancillary services to opt-out of being regulated under the Rules. So long as the lawyer takes "reasonable measures," e.g., provides the person using the ancillary services with a sufficient explanation that the services do not afford the protections available from the lawyer-client relationship, e.g., duty of confidentiality, then the lawyer will not be subject to the Rules when providing those services. As to what those "reasonable measures" should include, Comment [6] provides some guidance:

"[6] In taking the reasonable measures referred to in paragraph (a)(2) to assure that a person using law-related services understands the practical effect or significance of the inapplicability of the Rules of Professional Conduct, the lawyer should communicate to the person receiving the law-related services, in a manner sufficient to assure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client-lawyer relationship. The communication should be made before entering into an agreement for provision of or providing law-related services, and preferably should be in writing."

In one case, it was held that the lawyer advising his former legal clients that he was retired and now offering accounting and "business advice" services did not constitute "reasonable measures" to opt out of the Rules. See, *In re Matter of Rost* (Kan. 2009) 211 P.3d 145.

Paragraph (b) provides a definition of "law-related services." Comment [9] to Model Rule 5.7 provides some guidance on the kinds of activities that might constitute "law-related" services:

[9] A broad range of economic and other interests of clients may be served by lawyers' engaging in the delivery of law-related services. Examples of law-related services include providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical or environmental consulting.

State Adoptions of Model Rule 5.7

According to the ABA, the rule has been adopted in most jurisdictions, with 29 jurisdictions having adopted a rule identical to Model Rule 5.7.¹ Five jurisdictions have adopted a rule that is substantially similar to Model Rule 5.7.² Four jurisdictions have adopted a version of the rule with substantial variations from the organization or substance of the Model Rule.³ Thirteen jurisdictions, including California, have not adopted any version of Model Rule 5.7.⁴ [ABA, Variations of the Model Rules of Professional Conduct, Rule 5.7 \(1/2/2020\)](#).

3. California Law Concerning Law-related Services

As noted, California is one of the 13 jurisdictions that have not adopted any version of Model Rule 5.7 or any rule that expressly addresses a lawyer's provision of law-related or non-legal services. The only mention in the California Rules of Professional Conduct of a lawyer being subject to discipline for conduct outside the practice of law is Comment [2] to Rule 1.0, which states: "While the rules are intended to regulate professional conduct of lawyers, a violation of a rule can occur when a lawyer is not practicing law or acting in a professional capacity." Although no rule that might be violated when a lawyer is not practicing law or acting in a professional capacity is identified, several provisions of Rule 8.4 ("Misconduct") could be violated in such situations. For example, Rule 8.4(b) and (c) are not limited to a lawyer's conduct as a lawyer.⁵

Despite there not being an explicit rule addressing the issue, there are numerous cases and ethics opinions that provide guidance to lawyers on how to proceed in providing nonlegal services.

¹ The 29 jurisdictions are: Alaska, Arkansas, Colorado, Delaware, District of Columbia, Indiana, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, North Dakota, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming.

² The five jurisdictions are: Georgia, Idaho, Massachusetts, North Carolina and Wisconsin.

³ The four jurisdictions are: Florida, New York, Ohio and Pennsylvania. Arizona previously resided in this category but repealed its version of rule 5.7, effective January 1, 2021, in conjunction with its repeal of Arizona Rule 5.4.

⁴ The 13 jurisdictions are: Alabama, Arizona, California, Connecticut, Hawaii, Illinois, Kentucky, Louisiana, Montana, Nevada, New Jersey, Oregon, Texas.

⁵ Cal. Rule 8.4(b) and (c) provide it is professional misconduct for a lawyer to:

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud,* deceit, or reckless or intentional misrepresentation;

California Case Law and Other Authority

The general concept of attorney provision of nonlegal services refers to services provided by a lawyer that might reasonably be performed in conjunction with the practice of law, including services that may be lawfully performed by a person who is not authorized to practice law. One example is the provision of real estate broker services to a client by an attorney who is also licensed as a real estate broker (see State Bar Formal Op. No. [1982-69](#)).⁶ There is a substantial amount of California case law and other authority that addresses the application of the Rules of Professional Conduct when a lawyer is providing services that would not be considered the unauthorized practice of law if provided by a nonlawyer. The First Rules Revision Commission recommended that no version of Model Rule 5.7 should be adopted “because California authorities, including case law and ethics opinions, offer broader and more nuanced guidance, thereby affording better public protection,” and that certain terms and standards in the Model Rule “are materially inconsistent with existing California authorities.” Rules and Standards Not Adopted, p. 30, and the Second Rules Revision Commission reasoned that “[a]ppropriate guidance is currently provided by other California authorities.”

“Law-related” or “non-legal” services defined.

Under California law, the concept of a “non-legal service” has been defined as “services that are not performed as part of the practice of law and which may be performed by non-lawyers without constituting the practice of law.” [Cal. State Bar Formal Op. 1995-141](#). This differs from the term “law-related services,” which as defined by Model Rule 5.7, means “services that might reasonably be performed *in conjunction with and in substance are related to the provision of legal services*, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.” (Emphasis added)

Functional approach. The State Bar Committee that drafted Op. 1995-141 subsequently clarified that the appropriate inquiry should be “functional,” i.e., “is the lawyer performing a service that is performed as part of the practice of law and would constitute the [unauthorized] practice of law if performed by a non-lawyer?” [Cal. State Bar Formal Op. 1999-154](#), at n. 4 & accompanying text.

⁶ The question of whether a lawyer’s conduct in rendering nonlegal services is governed by the attorney conduct rules is distinct from the question of whether the lawyer may be subject to discipline in performing nonlegal services. Lawyers are subject to discipline for conduct outside the practice of law even where the conduct is not governed by the Rules of Professional Conduct. Rule 1.0, Comment [2] – “While the rules are intended to regulate professional conduct of lawyers, a violation of a rule can occur when a lawyer is not practicing law or acting in a professional capacity;” and see rule 8.4(b) and (c) and Comment [1]. The same is true with respect to certain provisions of the State Bar Act (e.g., Bus. & Prof. Code, § 6106 – acts involving moral turpitude, dishonesty, or corruption).

Categories of Non-legal Services a Lawyer Might Provide

Applying the aforementioned “functional” approach, there appear to be four categories of non-legal services recognized in the California authorities.

(1) Non-legal services provided in circumstances “Not Distinct” from the provision of legal services (ABA Model Rule 5.7(a)(1))

There is a line of cases that recognize that when a lawyer provides non-legal services that are “not distinct” from the provision of legal services, the lawyer is subject to the Rules of Professional Conduct. See, e.g., *Layton v. State Bar*, 50 Cal.3d 888, 904 (1990) (“Where an attorney occupies a dual capacity, performing for a single client or in a single matter, along with legal services, services that might otherwise be performed by laymen, the services that he renders in the dual capacity all involve the practice of law, and he must conform to the Rules of Professional Conduct in the provision of all of them.”)

These cases all appear to track the scope of Model Rule 5.7(a)(1) as involving a lawyer’s provision of non-legal services that are not distinct from the practice of law.

(2) Non-legal services related to the practice of law (ABA Model Rule 5.7(b))

Even when a lawyer is offering services that are “distinct from” the lawyer’s practice of law, the lawyer might still be subject to the Rules of Professional Conduct if a recipient or potential recipient of the non-legal services reasonably might be confused as to the nature of services that the recipient is obtaining from the lawyer. See, e.g., *Cal. State Bar Op. 1999-154* (Where a lawyer is seeking employment as an investment adviser and uses the title “Esq.” on her stationery and promotional materials, refers to her experience in estate and tax planning law and that she is a “Certified Tax Specialist,” such advertising could lead potential customers to “misperceive the nature of the services being offered,” and thus subject the lawyer to the requirements of the lawyer advertising rules.) That same ethics opinion, however, suggested that such a result could be avoided if the promotional materials included “an express disclaimer that [the lawyer] is not offering and does not intend to provide legal services or legal advice.” The drafters cautioned, however, that “no disclaimer will be effective if [the lawyer] is in fact performing legal services or offering legal advice. In addition, such a disclaimer may be ineffective where the services offered are clearly law-related and may inevitably and inextricably involve activities that are legal services.”

Situations that fall into this category appear to be analogous to the situations described in Model Rule 5.7(a)(2).

(3) Non-legal services requiring the exercise of fiduciary duties.

Aside from the provision of non-legal services “not distinct” from the provision of legal services and non-legal services that are related to the practice of law, California law also applies the Rules of Professional Conduct to a lawyer who provides non-legal professional services that are fiduciary in nature – even in the absence of a lawyer-client relationship. The State Bar summarized the law in a formal opinion:

When [a lawyer’s] relationship with a client in the course of rendering a purely non-legal service creates an expectation that she owes a duty of fidelity or she is exposed to a client’s confidential information in the course of rendering the non-legal professional service, [the lawyer] may be subject to the same duties to avoid the representation of adverse interests under rule 3-310 [now rule 1.7] with respect to that client as she would if there had been a lawyer-client relationship. (See Cal. State Bar Formal Opn. No. 1981-63; *William H. Raley Co. v. Superior Court* (1983) 149 Cal.App.3d 1042 [197 Cal.Rptr. 232]; *Allen v. Academic Games Leagues of America, Inc.* (C.D. Cal. 1993) 831 F.Supp. 785.)

The situations in this category do not appear to be fit neatly into either the Model Rule 5.7(a)(1) or (a)(2) category and appear to be the kind of services that the First Rules Revision Commission concluded required “nuanced guidance.”

(4) Non-legal services completely unrelated to the practice of law.

There is a final category of non-legal services that a lawyer might provide that bear no relation to the practice of law, for example, a lawyer-owned restaurant, antiques store, body shop, dry cleaner or other business that provides goods or services that are completely unrelated to the practice of law. Even in situations where the customers of such establishments knew that a lawyer was an owner or even if the lawyer actively participated in its operation, it would not be reasonable for the customer to expect or misperceive the kinds of goods or services being provided as being related to the practice of law. As already noted, lawyers could still be subject to discipline under the Rules of Professional Conduct even when not acting as a lawyer or in a professional capacity.⁷

Other California Law Besides Case Law and Ethics Opinions

In addition to the foregoing authorities discussed above, there are Business and Professions Code sections that regulate the activities of a lawyer who also provides nonlegal ancillary

⁷ In addition to violations of the cited provisions of Cal. Rule 8.4, lawyers are also subject to discipline for violations of the State Bar Act, including [Bus. & Prof. Code § 6106](#), which provides “[t]he commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension.”

business services to a client. See, e.g., [Bus. & Prof. Code § 6009](#) (attorney lobbyists), [Bus. & Prof. Code § 6009.3](#) (attorney tax preparers), [Bus. & Prof. Code § 6077.5](#) (attorney debt collector), [Bus. & Prof. Code § 6106.7](#) (attorney sports agent), and [Bus. & Prof. Code § 6175.3](#) (attorney selling “financial products”).

The California Rules Revision Commission and Proposed Rule 5.7

The State Bar of California’s Special Commission for the Review of the Rules of Professional Conduct (“Rules Revision Commission” or “RRC”) considered the adoption of a rule patterned on Model Rule 5.7. As part of its comprehensive study, the RRC reviewed MR 5.7 but determined that a California version should not be recommended for adoption. In its report on “Rules and Concepts that were Considered but are Not Recommended for Adoption,” the RRC stated:

Among the reasons for the Commission’s decision not to recommend the adoption of Model Rule 5.7 are the following.

1. Appropriate guidance is amply provided by other California authorities, including case law and ethics opinions. There appears to be no reason to supplement that authority.
2. Proposed rule 1.0, Comment [2], provides information that, along with the existing California law described in footnote #1, provides sufficient guidance to attorneys that they are subject to discipline for conduct in providing law-related services. Comment [2] states: “While the rules are intended to regulate professional conduct of lawyers, a violation of a rule can occur when a lawyer is not practicing law or acting in a professional capacity.”
3. The Commission is not aware of any problems regarding the inability to discipline lawyers due to the absence of Model Rule 5.7 in California.
4. Although most jurisdictions have adopted Model Rule 5.7, it appears that the rule is not commonly used for disciplinary purposes and the Commission’s Charter mandates a focus on the historical purpose of the rules as enforceable disciplinary standards.

ATILS studied MR 5.7 and the Rule Revision Commission’s consideration of that rule and determined that there should be further consideration of the adoption of a California version of MR 5.7. To that end, ATILS drafted a proposed rule 5.7 for consideration during a public comment period following release of its [Interim Report in July 2019](#) (see Attachment L at pp. 197 – 207.). Further, in its final report ATILS recommended that the Board seek further public comment on this draft rule.

Summary

Although California has not adopted a version of Model Rule 5.7, there is extensive California authority addressing the concerns of the rule. The aforementioned California authority, however, is not necessarily common knowledge to lawyers or the public, nor does it appear to be definitive.

The next section of this memorandum discusses whether a rule of professional conduct or an ethics opinion might be more effective in apprising lawyers or the public of the existing law.

C. WHAT ARE THE POSSIBLE OPTIONS FOR CHANGE, AND WHAT ARE THE RECOGNIZED ADVANTAGES AND DISADVANTAGES?

ATILS circulated a version of ABA Model Rule 5.7 for public comment as part of its July 2019 Interim Report. That version received 98 written public comments, 89 in opposition, five in support, and four with no stated position. The ATILS Final Report identified two major public comment themes. These themes, along with the Task Force's responses to each, are outlined below.

1. **Comment:** The need for this new Rule of Professional Conduct is unclear because the provision of law related services, including dual profession services, in the context of an attorney-client representation is already addressed in California case law and ethics opinions, and these authorities appear to offer better client protection than the terms of Model Rule 5.7.

Task Force Response: Case law and ethics opinions are not as accessible as the rules. As discussed above, a new rule offers the appeal of greater clarity in a lawyer's duties and could facilitate innovative delivery of law related services.

2. Adding this new rule would encourage the provision of law related services and give law firms options to lower costs or provide added value.

Task Force Response: The Task Force agrees and has prepared a proposed rule that is recommended for public comment distribution by the Board.

Following receipt of the public comment, members of ATILS revised the interim proposed rule in response to specific public comments and also to better reflect the nuances of current California law, discussed in the previous section. ATILS resubmitted the revised rule as part of the Final Report with a request that the Board of Trustees authorize its circulation for further public comment.

ATILS repeated its position that, given the absence of a dedicated rule on the topic of nonlegal services, lawyers might be unsure of their duties in such situations and reluctant to explore

innovative delivery systems for nonlegal services as well as combined nonlegal and legal services. An advantage in adopting a rule therefore is that the rule could provide greater clarity about an attorney's duties and alleviate the obstacle of the uncertainty in the provision of nonlegal services. Another advantage ATILS identified is that California's rules would promote national uniformity by aligning with those other jurisdictions that have adopted a version of MR 5.7.⁸

In the Final Report, ATILS explains how the proposed rule relates to case law standards and this impact on existing law (either affirming or changing it) might be regarded as an advantage or disadvantage depending on a person's perspective on this area of lawyer regulation. An excerpt from the report is provided below.

Proposed rule 5.7 is intended to provide clarity regarding the obligations attorneys owe when providing nonlegal services. Proposed rule 5.7, however, is not intended to change California law on the application of the Rules of Professional Conduct to a lawyer's provision these services, with one possible exception. The exception is that some interpret the case law as standing for the proposition that a lawyer cannot disclaim an attorney-client relationship. While that is generally true and is supported in cases such as *In the Matter of Gordon* (Rev. Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610 (2018 WL 5801495), lawyers should be permitted as a matter of public policy to engage in business with nonlawyers in the provision of innovative and cost-efficient services to consumers outside the traditional attorney-client relationship where the services themselves are not governed by the Rules of Professional Conduct. As provided in the proposed rule, lawyers would still continue to be held to a higher standard under the Rules of Professional Conduct and State Bar Act depending on the nature of the services being provided. Moreover, the rule also recognizes there may be ethical consequences to the lawyer in performing nonlegal services. These issues are appropriately addressed in comments to the proposed rule.

Rule 5.7 is not intended to exclude a lawyer's conduct from the application of the Rules or the State Bar Act in circumstances that are not distinct from the lawyer or law firm's provision of legal services to clients. (Paragraph (a)(1)). Thus, a lawyer would still be subject to the rules and the State Bar Act where a lawyer or the lawyer's firm renders legal and nonlegal services to the same client or in the same matter, even if the nonlegal services might otherwise be performed by nonlawyers. *Layton v. State Bar* (1990) 50 Cal.3d 889, 904: "Where an attorney occupies a dual capacity, performing, for a single client or in a single matter, along with legal services, services that might otherwise be performed by laymen, the services that he renders in the dual capacity all involve the

⁸ As noted, 34 jurisdictions have adopted a version of Model Rule 5.7 that is either identical or substantially similar. See notes 1-2 and accompanying text, above.

practice of law, and he must conform to the Rules of Professional Conduct in the provision of all of them.”

. . . .

Lawyers may encounter conflicts of interest and other ethical consequences as a result of providing nonlegal services in a law firm or in an organization that is owned and operated with nonlawyers. Rule 5.7 is not intended to immunize lawyers from these consequences. A comment to this effect is included in the rule (see proposed rule 5.7, Comment [6]).

D. WHAT STEPS SHOULD WE TAKE (REQUEST PRESENTATIONS, CONDUCT INTERVIEWS, REVIEW STUDIES, ETC.) TO REACH A FULLY INFORMED RECOMMENDATION?

We believe that the second version of rule 5.7 that ATILS generated following public comment in response to the Interim Report version accurately reflects current California law as discussed in Section B of this memo. The rule might be improved by some tweaks, e.g., inclusion of citations to the current case law discussed in section B3, above, and perhaps some additional clarifying comments, but the general structure and approach of the rule draft is sound. Our tentative recommendation at present is to submit a rule 5.7 with this Working Group’s Interim Report for further public comment, which might inform further drafting tweaks. Barring a previously unrevealed material defect in the proposed rule, we believe that eventually it can be submitted for adoption by the Board and approval by the Supreme Court.