[date], 2016

Ms. Audrey Hollins
Office of Professional Competence, Planning and Development
State Bar of California
180 Howard Street
San Francisco, CA 94105-1639

Re: Proposed Rule of Professional Conduct 1.1 [3-110]
Competence

Dear Ms. Hollins:

The Professional Responsibility and Ethics Committee of the Los Angeles County Bar Association ("PREC") appreciates the opportunity to comment on the draft rules of conduct (the "Proposed Rules") proposed by the State Bar's Commission for the Revision of the Rules of Professional Conduct (the "Rules Revision Commission"). Please see our letter dated ***[date]***, 2016, describing PREC and praising the efforts of the Rules Revision Commission.

PREC notes that subpart (a) of Proposed Rule 1.1 [Competence (current Rule 3-110)] adds the term "with gross negligence" to the list of conduct in which a lawyer may not engage if his or her obligation to perform legal services with competence is to be met. PREC believes that discipline relating to a lawyer's failure to practice in a competent manner should be limited in this rule to conduct that is repeated, intentional, or reckless, as in currently Rule 3-110. PREC is concerned that including gross negligence among the conduct supporting a finding of a lack of competence creates a significant risk that a lawyer who is found to have acted with gross negligence, and therefore not competently, will also be found to have engaged in an act of moral turpitude. (*See In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 565, quoting *Farnham v. State Bar* (1988) 47 Cal.3d 439, 446 ["An attorney's habitual disregard of clients' interests constitutes moral turpitude, even if such disregard results only from gross negligence rather than dishonesty."].)

Cases dealing with lawyer competence typically do not involve the habitual disregard of client interests and therefore could not support a finding of moral turpitude. Nevertheless, if gross negligence is incorporated into the lawyer competency rule, PREC believes this will result not only in charges regarding a lawyer's competence, but also in additional, unnecessary charges of moral turpitude. Such a result is inconsistent with the definition of "competence" set forth in subpart (b) of Proposed Rule 1.1, which does not include acts of moral turpitude. Moreover, because charges are posted on the State Bar website as soon as they are filed (although there is a disclaimer that they are allegations only), those charged with competence issues could be prejudiced by allegations that they engaged in an act of moral turpitude even though the facts underlying the competency charge do not involve a habitual disregard of client interests. Furthermore, even if a competency case does demonstrate a habitual disregard of client interests, and therefore involves moral turpitude, it would be duplicative to charge an attorney with a violation of Proposed Rule 1.1, given that the lawyer could be charged with a violation of Business and Professions Code section 6106, which would support greater discipline.

Thank you again for the opportunity to comment on the Proposed Rules.

Very Truly Yours,