

[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 1.14 [3-100]  
Client with Diminished Capacity

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.

Paragraph (g) of Proposed Rule 1.14 [Client with Diminished Capacity (Current Rule 3-100)] attempts to clarify that a lawyer will not be subject to discipline for taking, or choosing not to take, protective action authorized by this Rule. However, as written this statement is far too broad and incorrect. For example, some of the provisions of this Rule are mandatory (not permissive), and the lawyer should not have the option to choose not to follow such requirements. Further, even where the provision is permissive, taking or choosing not to take action may subject the lawyer to discipline under other rules – e.g., competence.

As a result, PREC recommends changing the word “authorized” to “permitted” and making clear that the statement is limited to discipline for violation of this Proposed Rule, such that paragraph (g) would be revised to read as follows:

“(g) Discipline. Neither a lawyer who takes protective action as **authorized** **permitted** by this Rule, nor a lawyer who chooses to not take such action, is subject to discipline **pursuant to this Rule.**”

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

Very Truly Yours,