

[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 1.4.1 [3-510]
Communication of Settlement Offers

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.

Proposed Rule 1.4.1 [Communication of Settlement Offers (current Rule 3-510)] provides in section (a) that a lawyer shall communicate all plea bargains or settlement offers to the lawyer’s client. Section (b) states: “As used in this Rule, ‘client’ includes a person who possesses the authority to accept an offer of settlement or plea, or, in a class action, all the named representatives of the class.”

If the intent of the Proposed Rule is to impose a duty on the lawyer to communicate all settlement offers to the ultimate decision maker, use of the term “includes” in section (b) creates ambiguity because it implies that the lawyer can satisfy the requirement in section (a) by communicating the offer to someone at the client other than the decision maker.

Lawyers who represent entities may report to persons who do not possess the authority to accept an offer of settlement or plea. For example, outside counsel to a corporation may report to the general counsel or a litigation committee, and not to the board of directors or to an officer with settlement authority. The lawyer is usually entitled to assume that his or her contact will report up through channels within the organization, so his or her communication of a settlement offer will be received by the decision maker. We recommend that Proposed Rule 1.4.1 be revised so it is clear that the lawyer can meet his or her duty by communicating settlement offers and pleas to any duly authorized representative of the client.

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

Very Truly Yours,