

[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 Rules of Professional Conduct 3.2  
Delay of Litigation

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 3.2 provides as follows:

“In representing a client, a lawyer shall not use means that have no substantial purpose other than to delay or prolong the proceeding or to cause needless expense.”

Contrast this with the current American Bar Association’s Model Rule of Professional Conduct 3.2, which provides as follows:

“A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.”

We believe that the ABA Model Rule is superior to the Proposed Rule, and therefore, recommend its adoption rather than the Proposed Rule. The Proposed Rule proscribes behavior using vague language (“no substantial purpose”) that also fails to take into proper account the interests and needs of the client. For example, a court action may require delay while a concurrent agency proceeding is underway to avoid the possibility of conflicting rulings. Similarly, the prospect of potential litigation expense may help facilitate a desired settlement. Proposed Rule 3.2 also duplicates Proposed Rule 1.3 prohibiting a lawyer from “fail[ing] to act with reasonable diligence,” which Rule 1.3(b) defines, in part, as “without just cause, unduly delay[ing] a legal matter entrusted to the lawyer.” By contrast to the Proposed Rule, the current ABA Model Rule recognizes that a lawyer’s duty to expedite litigation must be both reasonable and consistent with the interests of the client.

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

Very Truly Yours,