

[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 4.4
Duties Concerning Inadvertently Transmitted Writings

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 4.4 provides as follows (emphasis added):

“A lawyer who receives a writing *relating to the representation of the lawyer’s client* and knows or reasonably should know that the writing is privileged or subject to the work product doctrine, where it is reasonably apparent that the writing was inadvertently sent or produced, shall promptly notify the sender.”

While the language of Proposed Rule 4.4 tracks with the language of the corresponding ABA Model Rule, the pronoun references contained therein are confusing. The emphasized language above could be read to suggest that the lawyer is receiving a writing that is subject to privilege with his or her own client.

Further, PREC believes that the substance of the rule should apply to a lawyer receiving an inadvertently transmitted writing whether or not the lawyer is engaged in a representation that relates to the writing. As a result, the emphasized language above not only is confusing, it is also inaccurate and too limited.

We propose that the emphasized language be deleted and the rule be revised to read as follows:

“A lawyer who receives a writing ~~relating to the representation of the lawyer’s client~~ and knows or reasonably should know that the writing is privileged or subject to the work product doctrine, where it is reasonably apparent that the writing was inadvertently sent or produced, shall promptly notify the sender.”

In addition, in order to further clarify the application of this rule, we suggest adding a comment to clarify that Rule 4.4 only applies to inadvertent transmissions and does not apply to

transmissions from the lawyer's own client. Please consider adding something to the following effect to the Comment:

“This Rule only applies to writings that are transmitted inadvertently, and does not apply where the sender is the lawyer's client.”

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

Very Truly Yours,