

[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 5.1
Responsibilities of Managerial and Supervisory Lawyers

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 believes that Proposed Rule 5.1 [Responsibilities of Managerial and Supervisory Lawyers] is overly broad and vague. PREC believes that subpart (b) could subject a supervisory attorney to discipline whenever a subordinate attorney violates the Rules of Professional Conduct or the State Bar Act. In addition, subpart (c)(2) could subject a managerial lawyer to discipline for the conduct of a lawyer under the managerial attorney’s supervision even if that conduct was in the subordinate lawyers personal, rather than professional, capacity.

Proposed Rule 5.1(a) and (c)(2) each make use of the phrase “managerial authority in a law firm.” This phrase is not defined in either of those subsections or anywhere else in this proposed rule, nor is it defined in Proposed Rule 1.0.1. Which attorneys potentially come within the scope of this phrase is subject to many interpretations, including a managing partner of a firm, a managing partner of an office of a multi-office firm, members of firm committees, attorneys managing the work of others, etc. If a lawyer is going to be held responsible under this rule, he or she should have a clear understanding that this rule applies to him or her. We recommend that the phrase “managerial authority in a law firm,” as used in this proposed rule, either be defined or replaced with another, narrower phrase, in order to make clear to which specific attorneys in a law firm this proposed rule is intended to apply.

Equally problematic is the use of the undefined phrase “intermediate managerial responsibilities” contained in Comment [3] of this proposed rule, which also fails to make clear to which specific attorneys in a law firm this propose rule is intended to apply. Moreover, if Comment [3] is intended to convey that every attorney in a law firm is charged, under the rule, with taking corrective steps if he or she knows that those with “managerial responsibility” are not fulfilling their obligations under paragraph (a) of the rule, then the use of the phrase “intermediate managerial responsibilities” would appear to be unnecessary.

PREC also believes that Comment [4] should be deleted or revised, as that Comment suggests that discipline could be imposed for violations of guidelines regarding the assignment of cases or workload distribution.

Finally, in subpart (c)(2), “whether or not a member of [sic] employee” should be revised to be “whether or not a member or employee.”

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

Very Truly Yours,