

[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 8.1 [1-200]  
False Statement Regarding Application for Admission, Readmission, Certification  
or Registration

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.

With respect to section (c) of Proposed Rule 8.1 [False Statement Regarding Application for Admission, Readmission, Certification or Registration (current Rule 1-200)], PREC does not believe that it is appropriate to impose on a lawyer supporting or opposing another person’s application the dual burden of (1) disclosing all material facts relating to that application and (2) correcting any statement contained in that application. For example, if a lawyer is opposing an application on specific grounds (such as moral character), why should that lawyer have any obligation to correct a false statement or an omission made by the applicant that is not relevant to the opposition? To impose such a burden on a lawyer is not only unfair and inappropriate, it will likely have the result of discouraging lawyers from commenting on the qualifications of applicants. As a result, we believe that the following phrase at the end of that section be deleted: “, fail to disclose a material fact, or fail to correct a statement known to be false”.

Also, PREC is concerned that the language changes from current Rule 1-200 inadvertently expose an applicant or a lawyer supporting or opposing another person’s application to technical violations for immaterial or unintended misstatements or omissions. While the first applicable prohibitory clause in both sections (b) and (c) of this rule (i.e., “*knowingly* make a false statement of *material* fact”) is qualified by both knowledge and materiality, the second clause (i.e., “fail to disclose a material fact”) and the third clause (i.e., “fail to correct a statement known to be false”) of sections (b) and (c) are not so qualified. PREC recommends that sections (b) and (c) be qualified by both knowledge and materiality.

With respect to the second applicable prohibitory clause in both sections (b) and (c), the omission should be known to the applicant or the lawyer (as is the case with the current version of the rule). With respect to the first and third clauses, the language is clear. However, with respect to this second clause (i.e., “failure to disclose a material fact”), contrary to the current

rule (which says “*knowingly* fail to disclose a material fact”), there is no reference to knowledge. As a result, the word “knowingly” should be inserted at the beginning of this clause.

With respect to the third applicable prohibitory clause in both sections (b) and (c), the false statement should be material in order to impose a burden of correction on the applicant or the lawyer. As written, this third clause (i.e., “fail to correct a statement known to be false”) obligates an applicant or a lawyer to correct a statement known to be false without regard to whether the statement is material – even though there is no prohibition on making a false statement of fact that is not material. As a result, the word “material” should be inserted before the word “statement” in this clause.

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

Very Truly Yours,