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June 15, 2010

Comments by
HALT—*an Organization of Americans for Legal Reform*
on
Proposed California Rules of Professional Conduct

In response to the request for public comment by the Commission on the Revision of the Rules of Professional Conduct of the State Bar of California, HALT—*An Organization of Americans for Legal Reform* hereby submits the following comments on the Proposed Rules of Professional Conduct.

Founded in 1978, HALT is a nonprofit public interest group dedicated to increasing access and accountability in the civil justice system. HALT's Lawyer Accountability Project works to make lawyers more responsive to the needs of legal consumers and to empower legal consumers to protect themselves from negligent, unscrupulous and incompetent attorneys. Through our Report Cards, appellate litigation, media campaigns, legislative work, white paper releases and grassroots lobbying, HALT has been on the forefront of fights to improve the systems in place to weed out unethical lawyers and to provide meaningful recourse to victimized legal consumers.

Although we suggest some possible improvements, four of the Proposed Rules that we discuss reflect progress in key areas of client empowerment and lawyer responsibility. On the critical issue of protecting consumers from exorbitant legal fees, however, the Commission and the California Bar continue to fail the public. Unreasonable attorney's fees are the leading cause for consumer complaints against lawyers. HALT respectfully urges the Commission to revisit this issue.

Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer. HALT strongly supports the Commission's acceptance of the ABA Model Rule in Proposed Rule 1.2. An attorney works for a client, and has an ethical responsibility to allow the client to make the important decisions in a matter. We applaud the Commission's recognition of a lawyer's ethical obligation to "abide by a client's decisions concerning the objectives of representation" and to "abide by a client's decision whether to settle a matter" (Proposed Rule 1.2(a)). In addition, HALT has long advocated limited representation as a cost-saving innovation that enhances

consumer choice. We strongly support the Commission's explicit authorization of this practice (Proposed Rule 1.2(c)).

Rule 1.4 Communication. HALT strongly supports the Commission's acceptance of the ABA Model Rule in Proposed Rule 1.4. It is a substantial improvement over current California Rule of Professional Responsibility 3-500. Without full and regular communication, the attorney-client relationship cannot function properly, and a client is not in a position to make the critical decisions during the course of a representation. Unfortunately, the proposed rule only requires a lawyer to communicate the "amounts, terms, and conditions of any *written* offer of settlement made to the client" in civil matters (Proposed Rule 1.4(c)(2), emphasis added). Whether a settlement offer is oral or written is immaterial; the client has the right to decide whether to accept it under Proposed Rule 1.2, and should be informed of all such offers. Indeed, the Commission's commentary on the proposed Rule states "[a]ny oral offers of settlement made to the client in a civil matter must also be communicated if they are significant" (Proposed Rule 1.4, Comment [7]). But a Comment is not a Rule. As currently drafted, the Proposed Rule and the Commission's commentary create unnecessary ambiguity. HALT urges the Commission to strike the word "written" from Proposed Rule 1.4(c)(2), so it is clear that a lawyer has an obligation to communicate all settlement offers to a client.

Rule 1.4.1 Disclosure of Professional Liability Insurance. HALT believes that all lawyers who offer their services to the general public should be required to carry adequate malpractice insurance. Proposed Rule 1.4.1 is an important step toward that objective, and HALT thanks the Commission for beginning to address the problem of uninsured and inadequately covered attorneys. While similar mandatory disclosure requirements have significantly reduced this problem in other States, we believe that there is a better approach. Since 1978, Oregon has required all lawyers in private practice to obtain malpractice insurance coverage through the Oregon State Bar Professional Liability Fund. The Oregon system of universal coverage has worked well. HALT urges the Commission and the Board of Governors to monitor the effectiveness of the new disclosure requirements, and to consider a universal coverage system, similar to that which has proven effective in Oregon, to address any continuing problems of uninsured attorneys.

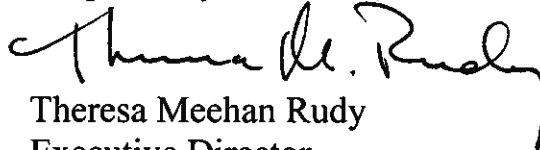
Rule 1.5 Fees For Legal Services. HALT is disappointed by the Commission's rejection of the ABA Model Rule, and its abject failure to propose any meaningful ethical standards to govern attorneys fees. By retaining the operative language in current California Rule of Professional Responsibility 4-200, Proposed Rule 1.5 would only prohibit fees that are "unconscionable or illegal." An ethical rule that prohibits

only the unenforceable and the unlawful adds nothing. For many years, HALT has raised questions about the elasticity of the ABA's requirement that attorneys only charge "reasonable" fees. But even that flawed approach offers some protection to consumers. The California approach protects only lawyers who charge unreasonable fees. HALT urges the Commission to revisit the issue of reasonable attorneys fees and, at a minimum, adopt the ABA Model Rule.

Rule 1.8.10 Sexual Relations With Client. There is an unfortunate history of abuses by attorneys who have taken sexual advantage of vulnerable clients. HALT strongly supports the clear prohibition of such lawyer misconduct by both the Commission and the ABA. Proposed Rule 1.8.10 is a substantial improvement over current California Rule of Professional Responsibility 3-120.

HALT thanks the Commission for the opportunity to offer these Comments.

Respectfully submitted,



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