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Federal Trade Commission
Office of the Secretary, Room H-113 (Annex Y)
600 Pennsylvania Avenue NW
Washington, DC 20580

**Re: Notice of Proposed Rulemaking on Parts 2 and 4 of the FTC's Rules of Practice
(16 CFR Parts 2 and 4) (Project No. P112103)**

To Whom It May Concern:

Thank you for the opportunity to comment on the proposed rule revisions to Parts 2 and 4 of the Federal Trade Commissions' Rules of Practice published on January 23, 2012 in the Federal Register. As specified in the notice, the proposed rule modifications relate solely to agency practice and as such are exempt from notice-and-comment requirement of the Administrative Procedure Act under 5 U.S.C. §553(b)(3)(A). Thus, I appreciate the decision of the Federal Trade Commission (FTC) to receive comments on these proposed rule revisions so affected parties have the opportunity to provide input.

I am currently a law student so I write to you from the perspective of an individual who will soon be entering the legal profession. This particular proposed rule is of interest to me as it addresses the consequences of unprofessional actions and behaviors of attorneys practicing before the FTC. The sections of the proposed rule I am specifically interested in deal with the procedures the agency shall use in evaluating allegations of misconduct, the scope of attorney misconduct and possible repercussions of the same, and the consequences the identified misconduct may have on the individual managing the attorney engaged in the misconduct.

The focus of my comment today is on specific parts of the proposed changes to Rule 4.1(e) that serves to clarify the agency's internal procedures for evaluating allegations of misconduct by attorneys practicing before the Commission. Overall I prefer the proposed rule amendments to the existing rule. However, there are a couple points that were not

clear to me and may warrant some additional attention before the rule is finalized. The specific sections of the proposed rule that triggered questions for me are listed below followed by my comments about the same.

Rule 4.1(e) – “Reprimand, suspension, or disbarment of attorneys”

The proposed rule amendment more succinctly clarifies the scope of attorney misconduct and the possible repercussions that already exist under the current rule. Overall I agree with the expansion of this rule as it more clearly specifies the type of attorney misconduct the Commission seeks to address as well as possible ramifications of the misconduct. The most impressive aspect of the proposed rule is the addition of a clear procedure that the Commission will use to investigate allegations and assess attorney misconduct. The framework for the procedure is entirely new; the current rule has no mention of what procedure that the agency will follow in these situations. By specifying the procedure the agency will use to investigate alleged misconduct, an attorney is clearly on notice of what he/she can expect in response to an allegation of misconduct when practicing before the Commission.

Rule 4.1(e)(1)(iii) – “[Attorney] has engaged in obstructionist, contemptuous, or unprofessional conduct during the course of any Commission proceeding or investigation”

I am confused by this section of the proposed rule as the terms “obstructionist”, “contemptuous” and “unprofessional conduct” are not defined in the analysis of the proposed rule revisions which results in a lack of clarity regarding the standard the FTC intends to hold attorneys to. Blacks Law defines *obstructionist* as “[One who is in the] act of impeding or hindering something; interference”, *contemptuous* as “Conduct that defies the authority or dignity of a court or legislature”, and *unprofessional conduct* as “behavior that is immoral, unethical, or dishonorable, esp. when judged by the standards of the actor’s profession”. Do these definitions represent the intent of the FTC? If the terms are not defined by the FTC any one of them could result in interpretations by an attorney facing allegations of misconduct that are not consistent with the interpretations by the FTC. If the agencies intent is that the attorney is to adhere to the standards of ethical conduct expected from practicing attorneys perhaps Rule 4.1(e)(1)(ii) which requires an attorney to “conform to standards of ethical conduct required of practitioners at the bar of any court of which her or she is a member” has covered the requirement of the agency and Rule 4.1(e)(1)(iii) (heading above) is redundant. If the agency envisions a particular standard by using the terms “obstructionist, contemptuous and unprofessional conduct perhaps” that standard should be more clearly spelled out.

Rule 4.1(e)(6) - “Notwithstanding the administrative disciplinary proceedings...if the Commission determines that an attorney has engaged in professional misconduct of the type described in (e)(1) of this subsection, the Commission may issue a public reprimand without resort to the procedures specified in paragraph (e)(5)”

I question whether the benefit of the Commission publically reprimanding an attorney who is suspected of professional misconduct outweighs the danger that the attorney in question will be found to have not acted in a way that warrants punishment. If there is a formal procedure put in place by the agency to investigate misconduct, the attorney accused of an allegation of misconduct should have the benefit of the formal investigation to determine whether or not the allegation is correct prior to agency punishment of the alleged misconduct. If the FTC is permitted to publicly reprimand an attorney “without resort to the procedures specified”, what then is the attorney entitled to should it be determined that the attorneys actions did not warrant the reprimand following the formal investigation?

Federal Register Notice; Section-by-Section Analysis of Proposed Rule Revision to Rule 4.1(e) - “[T]he revised Rule provides that a supervising attorney may be responsible for another attorney’s violation of these standards of conduct if he or she orders or ratifies the other attorney’s misconduct, or has managerial authority over the attorney.”

The analysis of the proposed amendment to Rule 4.1(e) contains the sentence above, however I did not find any language to indicate this in the rule itself. If it is the intent of the agency that an attorney who has managerial authority over an attorney who is charged with professional misconduct can be held responsible if he or she orders or ratifies the actions the proposed rule should clearly address this change. I do not find it stated in the rule itself. Perhaps this is my oversight, but if not it should be clearly stated in the language of the rule itself.

Thank you for your consideration of the comments above relating to the proposed rule revisions to Parts 2 and 4 of the Federal Trade Commissions’ Rules of Practice. As I stated initially, overall I am in favor of the proposed modifications to the rules. I hope the agency will consider my concerns with regard to the rule language dealing with the evaluation of allegations of misconduct, the scope of attorney misconduct and possible repercussions of the same, and the consequences the identified misconduct may have on the individual managing the attorney engaged in the misconduct.

I do appreciate that this forum for communication to the agency is available to the public as well as the opportunity to be heard by the FTC. Thank you again for inviting parties to submit comments on these proposed rules.

Best regards,

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