

AGENDA ITEM 701 NOV 2016

DATE: November 4, 2016

TO: Members, Board of Trustees

FROM: Justice Lee Edmon, Chair, Commission for the Revision of the Rules of Professional Conduct
Randall Difuntorum, Director, Professional Competence

SUBJECT: Proposed New and Amended Rules of Professional Conduct of the State Bar of California, Return from Public Comment and Request for Adoption

EXECUTIVE SUMMARY

The Board of Trustees (“Board”) has assigned the Commission for the Revision of the Rules of Professional Conduct (“Commission”) to conduct a study of the Rules of Professional Conduct of the State Bar of California (“rules”) and to recommend comprehensive amendments. The Commission drafted sixty-eight proposed new and amended rules that the Board authorized for a 90-day public comment period. Following consideration of the public comments received, the Commission made no substantive changes to thirty-eight of the proposed rules. This agenda item presents the Commission’s request for Board adoption of these thirty-eight proposed rules. In a separate agenda item, the Commission requests an additional 45-day public comment period on all of the other proposed rules that the Commission has revised in response to public comments received, or rules which the Commission has added after further consideration of the California Rules and American Bar Association Model Rules of Professional Conduct (“Model Rules”).¹ (See Board agenda item 702 NOV 2016.)

Members with questions about this agenda item may contact Randall Difuntorum: (415) 538-2161 or State Bar of California, 180 Howard Street, San Francisco, CA 94105.

BACKGROUND

The Rules of Professional Conduct of the State Bar of California are attorney conduct rules, the violation of which will subject an attorney to discipline. Pursuant to statute, rule amendment proposals may be formulated by the State Bar for submission to the Supreme Court of California for approval.²

¹ The Commission has considered and has included two additional rules that were not part of the 90-day public comment circulation. See note 5, below.

² Business and Professions Code section 6076 provides: “With the approval of the Supreme Court, the Board of Trustees may formulate and enforce rules of professional conduct for all members of the bar of this state.” Business and Professions Code section 6077, in part,

At the Board's November 2014 meeting, the Board authorized the State Bar President's appointment of the Commission and directed the Commission to conduct a study of the Rules of Professional Conduct with the goal of proposing comprehensive amendments for final Board action in early 2017. (See Board Open Session Agenda Item 123, November 7, 2014.) General information about the Commission is found online at the Commission's page on the State Bar website: <http://ethics.calbar.ca.gov/Committees/RulesCommission2014.aspx>. The information available includes: a roster of the members of the Commission (including, advisors and liaisons); action summaries of the Commission's meetings; and an FAQ on public attendance at open session Commission meetings. The Commission has conducted twenty-five meeting days beginning with its first meeting held on March 27, 2015.³

At its June 2 – 3, 2016 meeting, the Commission completed the first stage of its project to propose comprehensive revisions by studying all of the current rules and, with one exception, all of the Model Rules. The Commission prepared sixty-eight proposed new and amended rules that were presented to the Board at its June 23, 2016 meeting. At that meeting, the Board authorized a 90-day public comment period and a public hearing to receive comments on the proposed rules.⁴

ISSUE PRESENTED

The Commission has completed the second stage of its project by considering all of the public comments and public hearing testimony on the proposed rules. At its meeting on October 21 - 22, 2016, the Commission substantively changed some but not all of the proposed rules in response to the public input. In this agenda item, the Commission requests Board adoption of thirty-eight proposed rules that have not been revised, or have not been substantively revised. In a separate agenda item, the Commission is requesting an additional 45-day public comment period on the proposed rules that have been substantively changed in response to the public input. Accordingly, the issue presented here for the Board's action is whether to adopt the thirty-eight proposed rules recommended by the Commission. Adoption would position the State Bar to timely complete the comprehensive rule revision project as the next step would be submission of the Board adopted rules to the Supreme Court for approval.

DISCUSSION

1. The Commission Charter

At the Board's November 7, 2014 meeting, the Board adopted a Commission Charter that was informed by instructions provided in a September 19, 2014 letter to the State Bar from Frank A. McGuire, Court Administrator for the Supreme Court of California. The Commission charter is set forth below.

[Footnote continued...]

provides: "The rules of professional conduct adopted by the Board, when approved by the Supreme Court, are binding upon all members of the State Bar."

³ The Commission last met on October 21 – 22, 2016 in Los Angeles. The next meeting of the Commission is scheduled for January 20 – 21, 2016 in San Francisco.

⁴ The Rules of Professional Conduct are rules of the State Bar and the procedures for considering amendments to rules of the State Bar require publication for public comment. (Board Book, Tab 12, Title 1, Division 2, Rule 1.10.)

COMMISSION CHARTER

The Commission is charged with conducting a comprehensive review of the existing California Rules of Professional Conduct and preparing a new set of proposed rules and comments for approval by the Board of Trustees and submission to the Supreme Court no later than March 31, 2017. In conducting its review of the existing Rules and developing proposed amendments to the Rules, the Commission should be guided by the following principles:

1. The Commission's work should promote confidence in the legal profession and the administration of justice, and ensure adequate protection to the public.
2. The Commission should consider the historical purpose of the Rules of Professional Conduct in California, and ensure that the proposed rules set forth a clear and enforceable articulation of disciplinary standards, as opposed to purely aspirational objectives.
3. The Commission should begin with the current Rules and focus on revisions that (a) are necessary to address changes in law and (b) eliminate, when and if appropriate, unnecessary differences between California's rules and the rules used by a preponderance of the states (in some cases in reliance on the American Bar Association's Model Rules) in order to help promote a national standard with respect to professional responsibility issues whenever possible.
4. The Commission's work should facilitate compliance with and enforcement of the Rules by eliminating ambiguities and uncertainties.
5. Substantive information about the conduct governed by the rule should be included in the rule itself. Official commentary to the proposed rules should not conflict with the language of the rules, and should be used sparingly to elucidate, and not to expand upon, the rules themselves.

The proposed amendments developed by the Commission should be accompanied by a report setting forth the Commission's rationale for retaining or changing any rule and related commentary language.

2. Proposed New and Amended Rules

In accordance with the Charter, the Commission drafted seventy⁵ proposed new and amended rules. The Commission's proposal includes both substantive and non-substantive changes to

⁵ In addition to the sixty-eight rules that the Commission submitted for the Board's consideration in June 2016 and which were circulated for the 90-day public comment period, the Commission has also drafted two more rules, proposed Rule 2.1 (Advisor) and proposed Rule 1.18 (Duties to Prospective Clients). The former was not studied by the Commission in time to be included in the Commission's initial request for public comment. The latter was studied and not recommended for adoption; however, the Commission has now reconsidered its position following review of public comment in support of this rule.

the text of the current Rules,⁶ as well as proposals for new rules for which there are no counterparts in the current Rules.⁷

Attachment 1 provides the full text of all of the proposed rules with a table of contents. The presentation of the proposed rules in this document distinguishes between the rules that are the subject of the Commission's request for Board adoption and the rules for which the Commission is requesting an additional 45-day public comment. All of the proposed rules are provided to allow the Board to see the proposed rules in context as many rules are interrelated and include key cross references to other rules. As previously indicated, the issue presented in this agenda item is whether to adopt the thirty-eight proposed rules that have not been substantively changed after the 90-day public comment period.

Attachment 2 provides for each of the thirty-eight proposed rules: (1) an executive summary,⁸ (2) a clean version draft, (3) a redline comparison draft to the current California rule or Model Rule counterpart, (4) where appropriate, a redline comparison draft showing non-substantive changes to the public comment version of the rule, and (5) a public comment synopsis table that includes the Commission's responses to the points raised by the comments and testimony

⁶ One non-substantive revision is the Commission's recommendation that the current rules be re-numbered to follow the rule numbering and organization of the ABA Model Rules. In some situations, there are variations from the ABA numbering. For example, the rule prohibiting sexual relations with a client in the Model Rules is subsumed as a paragraph of an omnibus rule, Model Rule 1.8 (Conflicts of Interest; Current Clients; Specific Rules). The Commission is recommending that the rules subsumed within Model Rule 1.8 be given separate numbers, but in a sequence that tracks the order of Model Rule 1.8. Thus, in the Model Rules, the sexual relations rule is Model Rule 1.8(j) but in the Commission's proposed rules, the recommended rule number is rule 1.8.10.

Another global revision is the substitution of the term "lawyer" for the term "member" throughout the Commission's proposed rules. Use of the term "lawyer" reflects the fact that the rules are binding on practitioners who are not members of the State Bar, such as lawyers who are appearing as counsel *pro hac vice* under Rule of Court 9.40.

Both the rule numbering of the Model Rules and the use of the term "lawyer" rather than "member" are national standards as all other United States jurisdictions except California have rules that are based upon the Model Rules.

⁷ Each of the Commission's proposals for a new rule that does not have an existing California counterpart is derived at least in part from a rule in the Model Rules that has been adopted in one or more jurisdictions.

⁸ For purposes of continuity, the executive summaries begin with the same information that was provided to the Board in June when the initial 90-day public comment period was requested by the Commission. Added at the end of each summary is a new section addressing "Post-Public Comment Revisions." This new section summarizes any non-substantive changes made by the Commission in the version of the rule that is being recommended for Board adoption.

received.⁹ In the separate agenda item requesting an additional 45-day public comment, similar materials are provided for those rules.

Attachment 3 provides a Commission report on seven Model Rules that were studied but are not being recommended by the Commission. During the 90-day public comment period, comments were received on three of these Model Rules. For one of these three Model Rules, Model Rule 1.18 (re prospective clients) the Commission agreed with the public comments and prepared a proposed rule that is recommended for inclusion with the proposed rules for which a 45-day public comment period is requested. For the other six Model Rules, while staff does not believe that it is necessary for the Board to affirmatively vote on the Commission's recommendations to reject a Model Rule, the Board can elect to confirm those recommendations by a vote, on either a case-by-case or inclusive basis.

3. Plan for Presenting the Proposed Rules

Set forth below is a table¹⁰ presenting a recommended process, similar to a consent agenda procedure, for the Board to take action on the rules recommended for adoption. There are thirty-eight proposed rules recommended for adoption. The majority of these proposed rules should not require an individual presentation and vote. Staff has identified thirty proposed rules that fall into this category. It is recommended that the Board consider taking one vote to adopt these thirty proposed rules, provided that no Board member expresses interest in selecting one or more of these rules for individual discussion and action, similar to a consent agenda procedure. In the last column in the table below, these thirty proposed rules are designated for "ONE VOTE."

This would leave eight proposed rules for planned separate presentations and votes. In the table below each of these seven rules is marked by a grey shaded row with text highlighted in yellow. Representatives of the Commission will attend the Board meeting and will be prepared to discuss these proposed rules prior to taking a vote. However, rather than considering each of these seven rules individually with seven votes, there are five rules that are appropriate for presentation as two small groups with a vote on each of these two groups to adopt all five of the rules, provided that no Board member expresses interest in culling-out one of these five rules for an individual vote. These two small groups are identified below the table. If the foregoing procedure is used, then the adoption of the thirty-eight rules would be considered by addressing: thirty rules with a single "consent" vote; five rules presented in two small groups with two votes; and three individually presented rules for three separate votes.

⁹ If a member of the Commission has dissented from an action taken by the Commission, then the statement of that dissenting Commission member is provided as a part of the relevant executive summary.

¹⁰ The first column lists the proposed rule considered by the Commission. The second column provides the rule number of a counterpart, if any, in the existing California rules. If there is no counterpart, then "n/a" is entered in the second column for that proposed rule. The third column is staff's attribution of a level of controversy, if any, posed by the proposed rule (namely, "Not Controversial," "Moderately," and "Very"). A brief issue statement of a representative issue also appears in the third column; however, a rule's executive summary in Attachment 2 should be consulted to fully understand the brief issue statement. The fourth column indicates the anticipated process for acting on the proposed rule in terms of a possible "one vote" on thirty proposed rules and grouped or separate votes on the other rules.

PROPOSED RULE	Current Rule	Controversy Level (representative issue(s))	Plan for November Board of Trustees Meeting
1.0.1 Terminology	1-100(B)	Moderately (definition of "tribunal")	ONE VOTE
1.1 Competence	3-110	Moderately (relocates the concepts of diligence and supervision to other new rules)	Separate Presentation (grouped with Rules 5.2 and 5.3)
1.2 Scope of Representation and Allocation of Authority	3-210	Moderately (implied authorization concept; limited scope representation)	ONE VOTE
1.4 Communication with Clients	3-500	Moderately (new bases for discipline, such as consult with client about means)	ONE VOTE
1.4.1 Communication of Settlement Offers	3-510	Not Controversial	ONE VOTE
1.4.2 Disclosure of Professional Liability Insurance	3-410	Not Controversial	ONE VOTE
1.5.1 Fee Divisions Among Lawyers	2-200	Moderately (new timing requirement for client consent; fee split agreement required to be in writing)	ONE VOTE
1.6 Confidential Information of a Client	3-100 (6068(e))	Moderately (no exception for financial harm or whistleblowing)	ONE VOTE
1.8.2 Use of Current Client's Information	(6068(e))	Not Controversial	ONE VOTE
1.8.6 Compensation from One Other Than Client	3-310(F)	Moderately (new timing requirement for obtaining consent)	ONE VOTE

PROPOSED RULE	Current Rule	Controversy Level (representative issue(s))	Plan for November Board of Trustees Meeting
1.8.8 Limiting Liability to Client	3-400	Moderately (exemption if client has independent counsel)	ONE VOTE
1.8.9 Purchasing Property at a Foreclosure Sale or a Sale Subject to Judicial Review	4-300	Moderately (retains inconsistency with Probate Code)	Separate Presentation
1.8.11 Imputation of Personal Conflicts (Rules 1.8.1 to 1.8.9) (See also Rule 1.10)	n/a	Moderately (imputes certain personal conflicts for disciplinary purposes)	Separate Presentation (in a group with rule 1.10)
1.10 Imputation of Conflicts of Interest: General Rule	n/a (but see 3-310 Disc. ¶6)	Moderately (imputes conflicts for disciplinary purposes; permits unconsented screening)	Separate Presentation (in a group with rule 1.8.11)
2.4 Lawyer as Third-Party Neutral	n/a	Moderately (no current CA rule)	ONE VOTE
2.4.1 Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator	1-710	Not Controversial	ONE VOTE
3.2 Delay of Litigation	n/a	Moderately (no current CA rule)	ONE VOTE
3.4 Fairness to Opposing Party and Counsel	5-200(E) 5-220 5-310	Moderately (knowingly disobey rules of a tribunal)	ONE VOTE
3.6 Trial Publicity	5-120	Not Controversial	ONE VOTE
3.7 Lawyer as Witness	5-210	Moderately (expanded to bench trials)	ONE VOTE
3.8 Special Responsibilities of a Prosecutor (Note: This proposal is being considered separately as a proposed change to current rules 5-110 and 5-220 and is being processed on an expedited basis. This version of the rule is substantively identical to version that the Board adopted on October 1, 2016 in San Diego after consideration of input from an additional 45-day public comment period.)	5-110 5-220	Moderately (disclosure of exculpatory evidence not limited to “materiality”)	ONE VOTE

PROPOSED RULE	Current Rule	Controversy Level (representative issue(s))	Plan for November Board of Trustees Meeting
3.10 Threatening Criminal, Administrative, or Disciplinary Charges	5-100	Moderately (release-dismissal comment; explanation of a “threat” comment)	Separate Presentation
4.1 Truthfulness in Statements to Others	n/a	Moderately (no current CA rule)	ONE VOTE
5.2 Responsibilities of a Subordinate Lawyer	n/a	Moderately (exculpatory provision)	Separate Presentation (grouped with Rules 5.2 and 5.3)
5.3 Responsibilities Regarding Nonlawyer Assistants	n/a (but see 3-110 Disc. ¶1)	Moderately (comparable managerial authority)	Separate Presentation (grouped with Rules 5.2 and 5.3)
5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Member	1-311	Not Controversial	ONE VOTE
5.4 Financial and Similar Arrangements with Nonlawyers	1-310 1-320 1-600	Not Controversial	ONE VOTE
5.5 Unauthorized Practice of Law; Multijurisdictional Practice	1-300	Moderately (resident office or systematic or continuous presence standard)	Separate Presentation
5.6 Restrictions on a Lawyer's Right to Practice	1-500	Moderately (authorized by law in black letter w/ citation to Babcock in a comment)	ONE VOTE
6.3 Membership in Legal Services Organizations	n/a	Not Controversial	ONE VOTE
6.5 Limited Legal Services Programs	1-650	Not Controversial	ONE VOTE

PROPOSED RULE	Current Rule	Controversy Level (representative issue(s))	Plan for November Board of Trustees Meeting
7.2 Advertising	1-400	Moderately (discontinues CA approach; permits reciprocal referrals; omits retention requirement)	ONE VOTE
7.3 Solicitation of Clients	1-400	Moderately (discontinues CA approach; real-time electronic contact)	ONE VOTE
7.4 Communications of Fields of Practice and Specialization	1-400	Moderately (discontinues CA approach; permits description "specializing in")	ONE VOTE
7.5 Firm Names and Letterheads	1-400	Moderately (discontinues CA approach; omits "of counsel" description)	ONE VOTE
8.1.1 Compliance with Conditions of Discipline and Agreements in Lieu of Discipline	1-110	Not Controversial	ONE VOTE
8.2 Judicial Officials	1-700	Not Controversial	ONE VOTE
8.5 Disciplinary Authority; Choice of Law	1-100(D)	Moderately (discontinues CA approach; predominant effect test)	ONE VOTE
TOTAL = 38 recommended for adoption		Very = 0 Moderately = 27 Not = 11	One Vote ("consent") = 30 rules Separate presentations/votes = 3 (individual) + 1 (group of 2) + 1 (group of 3)

GROUPED RULE PRESENTATIONS (2 VOTES)

- (1) Competence/supervision group of three rules:
 - 1.1 (competence)
 - 5.2 (supervision of lawyers)
 - 5.3 (supervision of non-lawyer assistants)

- (2) Imputation group of two rules:
 - 1.8.11 (imputation of selected prohibitions)
 - 1.10 (general imputation rule)

INDIVIDUAL RULE PRESENTATIONS (3 VOTES)

- (1) 1.8.9 (foreclosure sale)
- (2) 3.10 (threatening criminal, administrative or disciplinary charges)
- (3) 5.5 (unauthorized practice of law)

4. Report on Public Hearing Testimony and Written Public Comments

A public hearing was held on July 26, 2016 at the State Bar's Los Angeles office with teleconference access for telephonic speakers and a video-conference link to the San Francisco office for speakers who were able to attend at the San Francisco office location.¹¹ Each of these access options was used by at least one speaker. There were ten speakers who provided twenty-one individual comments on discrete rule topics as most speakers addressed more than one proposed rule. The speakers included representatives from the United States Department of Justice and the Public Defender's Office of Los Angeles County.

The 90-day public comment period ended on September 27, 2016. Approximately 520 individual comments were received on discrete rule topics from 135 public comment submissions.¹² Public commenters were encouraged to use an online form for submitting comments. The online form included the following fields for indicating a commenter's position on a proposed rule: (1) agree with this proposed rule; (2) disagree with this proposed rule; (3) agree only if modified; and (4) state no preference. About thirty percent (30.5%) indicated agreement with proposals and about 25% (25.5%) indicated disagreement. About forty percent (40.3%) indicated agreement only if a proposal was modified. About three percent (3.5%) marked the box on the online form for "state no preference."

¹¹ The Commission considered public comments and public hearing testimony at its meetings on August 26, 2016, September 30, 2016, and October 21 – 22, 2016. Commission votes and action in response to public comments was taken only at the Commission's October 21 - 22, 2016 meeting.

¹² Attachment 4 provides a full-text copy of a public comment letter from the Association of Deputy District Attorneys concerning proposed rule 3.8. Although this letter was timely received, it was inadvertently omitted from the comments provided to the members of the Commission. Staff circulated this comment letter to the Commission after its meeting on October 21 – 22, 2016 and requested that the members review the comment and consider whether they believe the points raised by the commenter warranted reconsideration by the Commission at a special set meeting. The members were asked to reply individually to staff. No member of the Commission requested a special meeting and it was observed that the concerns raised in the Association of Deputy District Attorneys letter were issues that were considered by the Commission in connection with comment letters received from the California Police Chiefs' Association and the California State Sheriffs' Association. In Attachment 2, the California Police Chiefs' Association and the California State Sheriffs' Association letters are summarized in the public comment synopsis table for proposed rule 3.8 and include the Commission's response.

Among the organizations that submitted a written comment or provided testimony are the following: American Immigration Lawyers Association of Northern California; Association of Corporate Counsel; Bar Association of San Francisco Legal Ethics Committee; Black Women Lawyers Association of Los Angeles, Inc.; California Attorneys for Criminal Justice; League of California Cities; Los Angeles County Bar Association; Loyola Law School Project for the Innocent; Orange County Bar Association; San Diego County Bar Association; State Bar Commission on Access to Justice; State Bar Committee on Professional Responsibility and Conduct (“COPRAC”); State Bar Committee on the Delivery of Legal Services; State Bar Office of the Chief Trial Counsel; and the United States Department of Justice. In addition, an informal group of law professors who teach legal ethics and a group of large Bay Area law firms concerned about advanced waivers of conflicts of interest each submitted letters with multiple signatories.

Detailed public comment synopsis tables are found in Attachment 2 and include the Commission’s response to issues raised by commenters. The full text of the public hearing transcript and the written public comments are voluminous and are available upon request to the Office of Professional Competence.¹³

None of the rules recommended for adoption were substantively revised in response to the public comments and public hearing testimony. Non-substantive changes to the original public comment version may include grammatical, stylistic, or streamlining edits that do not materially alter the proposed rule. Where applicable, a redline/strikeout version of a proposed rule is included in Attachment 2 to show the non-substantive revisions.

Next Steps for Completion of the Rule Revision Project

If the Board agrees with the Commission’s recommendation to adopt the proposed rules presented in this agenda item, then the work to revise these rules would be considered completed. These adopted rules would await the further work on the remaining rules that are the subject of a separate agenda item requesting authorization for an additional 45-day public comment period that would end approximately on January 9, 2017. This schedule would allow about two months for the Commission to meet and finalize these remaining rules for anticipated Board action at the March 10, 2017 Board meeting. Once all of the rules have been adopted by the Board, then staff will prepare the court petitions to meet the submission deadline of March 31, 2017.¹⁴

FISCAL/PERSONNEL IMPACT

None.

¹³ Request these materials from Lauren McCurdy by email: lauren.mccurdy@calbar.ca.gov; by telephone: (415) 538-2107; or by mail: State Bar of California, 180 Howard Street, San Francisco, CA 94105.

¹⁴ No amended rule would become operative unless and until the proposed rule is approved by the Supreme Court of California.

RULE AMENDMENTS

This agenda item requests Board adoption of proposed new and amended Rules of Professional Conduct. However, the adopted rules do not become binding and operative unless and until they are approved by the Supreme Court of California.

BOARD BOOK IMPACT

None.

BOARD RESOLUTIONS

Should the Board of Trustees concur with the recommendation of the Commission for the Revision of the Rules of Professional Conduct, the following resolutions would be appropriate:

I. Resolution adopting 30 proposed rules.

RESOLVED, following notice and publication for comment and upon the recommendation of the Commission for the Revision of the Rules of Professional Conduct, that the Board of Trustees adopt the following proposed new or amended Rules of Professional Conduct, in the form attached: rules 1.0.1,1.2, 1.4, 1.4.1, 1.4.2, 1.5.1, 1.6, 1.8.2, 1.8.6, 1.8.8, 2.4, 2.4.1, 3.2, 3.4, 3.6, 3.7, 3.8, 4.1, 5.3.1, 5.4, 5.6, 6.3, 6.5, 7.2, 7.3, 7.4, 7.5, 8.1.1, 8.2 and 8.5; and it is

FURTHER RESOLVED, that staff is directed to submit the proposed rules as a part of the comprehensive proposed amendments to the Supreme Court of California with a request that the proposed rules be approved.

II. Resolution adopting a group of 3 proposed rules.

Proposed Rules 1.1, 5.2 and 5.3 (re competence/supervision)

RESOLVED, following notice and publication for comment and upon the recommendation of the Commission for the Revision of the Rules of Professional Conduct, that the Board of Trustees adopt the following proposed new or amended Rules of Professional Conduct, in the form attached: rules 1.1, 5.2 and 5.3; and it is

FURTHER RESOLVED, that staff is directed to submit the proposed rules as a part of the comprehensive proposed amendments to the Supreme Court of California with a request that the proposed rules be approved.

II. Resolution adopting a group of 2 proposed rules.

Proposed Rules 1.8.11 and 1.10 (re imputation)

RESOLVED, following notice and publication for comment and upon the recommendation of the Commission for the Revision of the Rules of Professional Conduct, that the Board of Trustees adopt the following proposed new or amended Rules of Professional Conduct, in the form attached: rules 1.8.11 and 1.10, and it is

FURTHER RESOLVED, that staff is directed to submit the proposed rules as a part of the comprehensive proposed amendments to the Supreme Court of California with a request that the proposed rules be approved.

III. Resolutions adopting the remaining 3 individual proposed rules.

Proposed Rule 1.8.9 (re purchase of property at a foreclosure sale)

RESOLVED, following notice and publication for comment and upon the recommendation of the Commission for the Revision of the Rules of Professional Conduct, that the Board of Trustees adopt proposed amended Rule 1.8.9 of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that staff is directed to submit the proposed rule as a part of the comprehensive proposed amendments to the Supreme Court of California with a request that the proposed rules be approved.

Proposed Rule 3.10 (re threatening criminal, administrative or disciplinary charges)

RESOLVED, following notice and publication for comment and upon the recommendation of the Commission for the Revision of the Rules of Professional Conduct, that the Board of Trustees adopt proposed amended Rule 3.10 of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that staff is directed to submit the proposed rule as a part of the comprehensive proposed amendments to the Supreme Court of California with a request that the proposed rules be approved.

Proposed Rule 5.5 (re unauthorized practice of law)

RESOLVED, following notice and publication for comment and upon the recommendation of the Commission for the Revision of the Rules of Professional Conduct, that the Board of Trustees adopt proposed amended Rule 5.5 of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that staff is directed to submit the proposed rule as a part of the comprehensive proposed amendments to the Supreme Court of California with a request that the proposed rules be approved.

ATTACHMENT(S) LIST

Attachment 1: Full text of the proposed rules with a table of contents.

Attachment 2: Executive summaries, rule drafts (clean, redline), and public comment synopsis tables of comment letters and public hearing testimony received for each of the proposed rules.

Attachment 3: Report on Model Rules that are not being recommended by the Commission.

Attachment 4: Public comment letter timely received but distributed late to the Commission.