

# **AGENDA ITEM 702 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 Release for Additional Public Comment

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## **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 substantive changes to thirty of the proposed rules in response to the comments received. This agenda item presents the Commission’s request for an additional 45-day public comment period on these revised rules. In addition, the Commission has drafted two proposed rules that were not a part of the initial 90-day public comment period and the Commission requests that these two proposed rules be included in the 45-day public comment period. In a separate agenda item, the Commission requests Board adoption of proposed rules that the Commission has not substantively revised following consideration of public comments. (See Board agenda item 701 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.

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## **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.<sup>1</sup>

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<sup>1</sup> 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, 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.”

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.<sup>2</sup>

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 American Bar Association Model Rules of Professional Conduct ("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.<sup>3</sup>

## **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 made substantive changes to some but not all of the proposed rules in response to the public input. In this agenda item, the Commission requests Board authorization for an additional 45-day public comment on the proposed rules that have been substantively changed. In addition, the Commission drafted two proposed rules that were not a part of the initial 90-day public comment period and the Commission requests that these two proposed rules be included in the 45-day public comment period. Accordingly, the issue presented here is whether to authorize the requested public comment period. Authorizing the requested public comment period would position the Commission and the Board to review the anticipated public input and timely consider the issue of whether to adopt these rules prior to the deadline for submission to the Supreme Court in 2017. In a separate agenda item, the Commission is requesting that the Board adopt the proposed rules that were not substantively revised following the initial 90-day public comment period.

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<sup>2</sup> 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.

<sup>3</sup> 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.)

## **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.

#### **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 seventy proposed new and amended rules. Sixty-eight proposed rules were submitted to the Board and issued for public comment

and subsequently two additional rules were drafted that have not yet been issued for public comment. The Commission's proposal includes both substantive and non-substantive changes to the text of the current Rules,<sup>4</sup> as well as proposals for new rules for which there are no counterparts in the current Rules.<sup>5</sup>

**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 separate 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 in this document 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 authorize the requested 45-day public comment period to obtain input on the proposed substantive changes and to seek input, for the first time, on two new proposed rules that were drafted recently by the Commission and not included in the original 90-day public comment period.

**Attachment 2** provides for each of the thirty-two rules proposed for public comment: (1) an executive summary,<sup>6</sup> (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 original public comment version of the rule, and (5) with the exception of the two rules recently drafted by the Commission, a public comment

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<sup>4</sup> 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.

<sup>5</sup> 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 a preponderance of the jurisdictions.

<sup>6</sup> 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 the changes made by the Commission in the version of the rule that is being recommended for additional public comment.

synopsis table that includes the Commission's responses to the points raised by the initial public comments and testimony received.<sup>7</sup>

**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 (Duties to Prospective Clients), the Commission agreed with the public comments urging reconsideration and adoption of this rule and the Commission 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 remaining 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. Proposed Rules 1.18 and 2.1

In addition to working on the rules that were the subject of the 90-day public comment period authorized by the Board last June, the Commission has drafted two proposed rules: rule 1.18 (re prospective clients) and rule 2.1 (lawyer as an advisor) that were not a part of the initial 90-day public comment period. As mentioned above, rule 1.18 was presented to the Board last June as a Model Rule that was considered by the Commission but not recommended for adoption. Public comment was received that persuaded the Commission to prepare a version of rule 1.18 for public comment. Similarly, Model Rule 2.1 was not yet studied by the Commission when the Commission made its request last June for the initial 90-day public comment period. The Commission has now completed a study of that Model Rule and has prepared a draft for public comment. The Commission is requesting that these two rules be included in the 45-day public comment period.

### 4. Plan for Presenting the Proposed Rules

Set forth below is a table<sup>8</sup> 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-two proposed rules that are requested for the 45-day public comment period. The majority of these proposed rules should not require an individual presentation and vote. Staff has identified seventeen proposed rules that fall into this category. It is recommended that the Board consider taking one vote to authorize public comment for these seventeen proposed rules, provided that no Board member expresses interest in selecting one or more of these rules for individual

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<sup>7</sup> 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.

<sup>8</sup> 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 seventeen proposed rules and separate votes on the other rules.

discussion and action, similar to a consent agenda procedure. In the last column in the table below, these seventeen rules are designated for “ONE VOTE.”

This would leave fifteen proposed rules for planned separate presentations and votes. In the table below each of these fifteen proposed 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 fifteen rules individually with fifteen votes, there are eight rules that are appropriate for presentation in four discrete groups with a single vote to adopt all of the rules in the respective group, provided that no Board member expresses interest in culling-out one of these eight rules for an individual vote. These four groups are identified below the table. If the foregoing procedure is used, then the public comment authorization for the thirty-two proposed rules would be considered by addressing: seventeen rules with a single “consent” vote; eight rules presented as four groups with four votes; and seven individually presented rules for seven separate votes.

<b>PROPOSED RULE</b>	<b>Current Rule</b>	<b>Controversy Level</b> (representative issue(s))	<b>Plan for November Board of Trustees Meeting</b>
<b>1.0 Purpose and Function of the Rules of Professional Conduct</b>	1-100	Moderately (pro bono comment)	<b>Separate Presentation</b>
<b>1.2.1 Advising or Assisting the Violation of Law</b>	3-210	Moderately (medical marijuana)	<b>Separate Presentation</b>
<b>1.3 Diligence</b>	3-110(B)	Moderately (in the current rules, diligence is a part of competence)	<b>Separate Presentation</b> (in a group with rule 5.1)
<b>1.5 Fees for Legal Services</b>	4-200	Very (restriction on non-refundable fee arrangements)	<b>Separate Presentation</b> (in a group with rule 1.15)
<b>1.7 Conflict of Interests: Current Clients</b>	3-310	Very (hybrid approach with elements from the current CA rules and the Model Rules)	<b>Separate Presentation</b>
<b>1.8.1 Business Transactions with a Client and Pecuniary Interests Adverse to the Client</b>	3-300	Moderately (no requirement to advise a client to seek independent counsel if the client is already represented;	<b>Separate Presentation</b>

PROPOSED RULE	Current Rule	Controversy Level (representative issue(s))	Plan for November Board of Trustees Meeting
		applies to former client in some circumstances)	
<b>1.8.3</b> Gifts from Client	4-400	Moderately (conforms to Probate Code protocol)	ONE VOTE
<b>1.8.5</b> Payment of Personal or Business Expenses Incurred by or for a Client	4-210	Moderately (indigent client costs)	ONE VOTE
<b>1.8.7</b> Aggregate Settlements	3-310(D)	Not Controversial	ONE VOTE
<b>1.8.10</b> Sexual Relations with Client	3-120	Very (adopts ban; creates inconsistency with State Bar Act)	Separate Presentation
<b>1.9</b> Duties to Former Clients	3-310(E) (6068(e))	Moderately ("generally known" information exception; recognition in Comment of <i>Wutchumna</i> case and <i>Oasis</i> case)	ONE VOTE
<b>1.11</b> Special Conflicts of Interest for Former And Current Government Officers And Employees	n/a (but see 3-310)	Moderately (imputes conflicts for disciplinary purposes; permits unconsented screening)	Separate Presentation (in a group with rule 1.12)
<b>1.12</b> Former Judge, Arbitrator, Mediator or Other Third-Party Neutral	n/a (but see 3-310)	Moderately (imputes conflicts for disciplinary purposes; permits unconsented screening)	Separate Presentation (in a group with rule 1.11)
<b>1.13</b> Organization as Client	3-600	Moderately (no whistleblower provision for private or gov't)	ONE VOTE
<b>1.14</b> Client with Diminished Capacity	n/a (but see 3-100 and 6068(e))	Very (authorizes limited action that might conflict with client autonomy)	Separate Presentation

PROPOSED RULE	Current Rule	Controversy Level (representative issue(s))	Plan for November Board of Trustees Meeting
<b>1.15</b> Safekeeping of Funds and Property of Clients and Other Persons	4-100	Very (codifies duties to non-clients; requires advance fees to be held in trust)	Separate Presentation (in a group with rule 1.5)
<b>1.16</b> Declining Or Terminating Representation	3-700	Not Controversial	ONE VOTE
<b>1.17</b> Sale of a Law Practice	2-300	Moderately (does not address sale of area of practice)	ONE VOTE
<b>1.18</b> Duties to Prospective Clients (recently drafted by the Commission, previously rejected and not included in the initial 90-day public comment period)	n/a	Very (includes non-consensual screening)	Separate Presentation
<b>2.1</b> Advisor (recently drafted by the Commission, not included in the initial 90-day public comment period)	n/a	Moderately (no current CA rule)	ONE VOTE
<b>2.3</b> Evaluation for Use by Third Persons <b>REJECT</b>	n/a	Not Controversial	NO MOTION/VOTE NEEDED
<b>3.1</b> Meritorious Claims and Contentions	3-200	Not Controversial	ONE VOTE
<b>3.3</b> Candor Toward the Tribunal	5-200(A) – (D)	Moderately (remedial measures; narrative approach)	ONE VOTE
<b>3.5</b> Contact with Officials and Jurors	5-300 5-320	Moderately (restrictive judicial standard for gifts)	ONE VOTE
<b>3.9</b> Advocate In Non-adjudicative Proceedings	n/a	Moderately (no current CA rule)	ONE VOTE
<b>4.2</b> Communication with a Represented Person	2-100	Moderately (“party” to “person”)	ONE VOTE

PROPOSED RULE	Current Rule	Controversy Level (representative issue(s))	Plan for November Board of Trustees Meeting
4.3 Dealing with Unrepresented Person	n/a	Moderately (no current CA rule)	ONE VOTE
4.4 Duties Concerning Inadvertently Transmitted Writings	n/a	Moderately (no current CA rule but there is case law)	ONE VOTE
5.1 Responsibilities of Managerial and Supervisory Lawyers	n/a (but see 3-110 Disc. ¶1)	Moderately (comparable managerial authority)	Separate Presentation (in a group with rule 1.3)
5.7 Responsibilities Regarding Law-related Services <b>REJECT</b>	n/a	Not Controversial	NO MOTION/VOTE NEEDED
6.1 Voluntary Pro Bono Publico Service <b>REJECT (but see rule 1.0, cmt. [5])</b>	n/a	Very (access to justice policy implications)	NO MOTION/VOTE NEEDED
6.2 Accepting Appointments <b>REJECT</b>	n/a	Not Controversial	NO MOTION/VOTE NEEDED
6.4 Law Reform Activities <b>REJECT</b>	n/a	Not Controversial	NO MOTION/VOTE NEEDED
7.1 Communications Concerning a Lawyer's Services	1-400	Moderately (discontinues CA single rule approach; omits existing standards used by OCTC)	ONE VOTE
7.6 Political Contributions to Obtain Government Legal Engagements or Appointments by Judges <b>REJECT</b>	n/a	Not Controversial (no current CA rule)	NO MOTION/VOTE NEEDED
8.1 False Statement Regarding Application for Admission, Readmission, Certification or Registration	1-200	Moderately (failure to correct a statement known to be false)	ONE VOTE
8.3 Reporting Professional Misconduct <b>REJECT</b>	n/a	Moderately (no current CA rule)	NO MOTION/VOTE NEEDED

PROPOSED RULE	Current Rule	Controversy Level (representative issue(s))	Plan for November Board of Trustees Meeting
<b>8.4 Misconduct</b>	1-120	Moderately (conduct that is prejudicial to the administration of justice; covert investigations)	<b>Separate Presentation</b> (in a group with rule 8.4.1)
<b>8.4.1 Prohibited Discrimination, Harassment and Retaliation</b>	2-400	Moderately (discontinues prerequisite for a civil finding; anti-bias provision not limited to client retention or firm management)	<b>Separate Presentation</b> (in a group with rule 8.4)
<b>TOTAL = 32 rules recommended for 45-day public comment 7 ABA Model Rules not recommended<sup>9</sup></b>		<b>Very = 7</b> (1 rejected) <b>Moderately = 24</b> (1 rejected) <b>Not = 8</b> (5 rejected)	<b>One Vote = 17 rules</b> <b>Separate presentation = 15</b> (11 votes if groups used) <b>Rejected/no motion or vote needed = 7</b>

#### GROUPED RULE PRESENTATIONS (4 VOTES)

- (1) Diligence and Supervision:
  - 1.3 (diligence)
  - 5.1 (supervision)
- (2) Fees and Client Trust Accounting:
  - 1.5 (fees)
  - 1.15 (trust accounting)
- (3) Imputation and Screening:
  - 1.11 (government imputation)
  - 1.12 (former judge imputation)
- (4) Misconduct and Discrimination
  - 8.4 (misconduct)
  - 8.4.1 (discrimination)

<sup>9</sup> The seven rejected rules are: 2.3, 5.7, 6.1, 6.2, 6.4, 7.6 and 8.3.

## **INDIVIDUAL RULE PRESENTATIONS (7 VOTES)**

- (1) 1.0 (purpose of the rules)
- (2) 1.2.1 (advising violation of the law)
- (3) 1.7 (conflicts of interests, current clients)
- (4) 1.8.1 (adverse interests/business transactions)
- (5) 1.8.10 (sexual relations with a client)
- (6) 1.14 (client with diminished capacity)
- (7) 1.18 (duties to prospective clients)

### **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.<sup>10</sup> 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. 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."

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

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<sup>10</sup> 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.

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. Attachment 2 also provides redline versions of the rules that show the changes to the original 90-day public comment versions. The full text of the public hearing transcript and the written public comments are voluminous and are available upon request from the Office of Professional Competence.<sup>11</sup>

#### Next Steps for Completion of the Rule Revision Project

If the Board agrees with the Commission's recommendation to authorize a 45-day public comment period on the proposed rules presented in this agenda item, then the public comment period would end approximately on January 9, 2017. This would give the Commission two two-day meetings (scheduled for January 20 - 21, 2017 in San Francisco and February 2 - 3, 2017 in Los Angeles) to study the public input and prepare a recommendation for Board action at the Board's March 10, 2017 meeting. Rules adopted at this March 10<sup>th</sup> meeting would be combined with the other rules adopted by the Board and prepared for submission to the Supreme Court by the deadline of March 31, 2017.<sup>12</sup>

#### **FISCAL/PERSONNEL IMPACT**

None.

#### **RULE AMENDMENTS**

This agenda item requests Board authorization for a 45-day public comment period on proposed new and amended Rules of Professional Conduct. Board action to adopt these rules would occur only after the public comment process. In addition, Rule of Professional Conduct amendments adopted by the Board do not become binding and operative unless and until they are approved by the Supreme Court of California.

#### **BOARD BOOK IMPACT**

None.

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<sup>11</sup> Contact Lauren McCurdy by email: [lauren.mccurdy@calbar.ca.gov](mailto:lauren.mccurdy@calbar.ca.gov); by telephone: (415) 538-2107; or by mail: State Bar of California, 180 Howard Street, San Francisco, CA 94105.

<sup>12</sup> No amended rule would become operative unless and until the proposed rule is approved by the Supreme Court of California.

## **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 authorizing public comment on 17 proposed rules.***

**RESOLVED**, that the Board of Trustees authorizes staff to make available for public comment for a period of 45-days, the following proposed new or amended Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached: rules 1.8.3, 1.8.5, 1.8.7, 1.9, 1.13, 1.16, 1.17, 2.1, 3.1, 3.3, 3.5, 3.9, 4.2, 4.3, 4.4, 7.1 and 8.1; and it is

**FURTHER RESOLVED**, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

### ***II. Resolutions authorizing public comment on 4 groups of proposed rules.***

#### **Proposed Rules 1.3 and 5.1 (re diligence and supervision)**

**RESOLVED**, that the Board of Trustees authorizes staff to make available for public comment for a period of 45-days, the following proposed new or amended Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached: rules 1.3 and 5.1; and it is

**FURTHER RESOLVED**, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

#### **Proposed Rules 1.5 and 1.15 (re fees and client trust accounting)**

**RESOLVED**, that the Board of Trustees authorizes staff to make available for public comment for a period of 45-days, the following proposed new or amended Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached: rules 1.5 and 1.15; and it is

**FURTHER RESOLVED**, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

**Proposed Rules 1.11 and 1.12 (re imputation and screening)**

**RESOLVED**, that the Board of Trustees authorizes staff to make available for public comment for a period of 45-days, the following proposed new or amended Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached: rules 1.11 and 1.12; and it is

**FURTHER RESOLVED**, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

**Proposed Rules 8.4 and 8.4.1 (re misconduct and discrimination)**

**RESOLVED**, that the Board of Trustees authorizes staff to make available for public comment for a period of 45-days, the following proposed new or amended Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached: rules 8.4 and 8.4.1; and it is

**FURTHER RESOLVED**, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

***III. Resolutions authorizing public comment on the remaining 7 individual proposed rules.***

**Proposed Rule 1.0 (re the purpose of the rules)**

**RESOLVED**, that the Board of Trustees authorizes staff to make available for public comment for a period of 45-days, proposed amended Rule 1.0 of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached; and it is

**FURTHER RESOLVED**, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

**Proposed Rule 1.2.1 (re advising violation of law)**

**RESOLVED**, that the Board of Trustees authorizes staff to make available for public comment for a period of 45-days, proposed amended Rule 1.2.1 of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached; and it is

**FURTHER RESOLVED**, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

**Proposed Rule 1.7 (re conflicts of interests, current clients)**

**RESOLVED**, that the Board of Trustees authorizes staff to make available for public comment for a period of 45-days, proposed amended Rule 1.7 of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached; and it is

**FURTHER RESOLVED**, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

**Proposed Rule 1.8.1 (re adverse interests and business transactions)**

**RESOLVED**, that the Board of Trustees authorizes staff to make available for public comment for a period of 45-days, proposed amended Rule 1.8.1 of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached; and it is

**FURTHER RESOLVED**, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

**Proposed Rule 1.8.10 (re sexual relations with clients)**

**RESOLVED**, that the Board of Trustees authorizes staff to make available for public comment for a period of 45-days, proposed amended Rule 1.8.10 of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached; and it is

**FURTHER RESOLVED**, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

**Proposed Rule 1.14 (re representing a client with diminished capacity)**

**RESOLVED**, that the Board of Trustees authorizes staff to make available for public comment for a period of 45-days, proposed amended Rule 1.14 of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached; and it is

**FURTHER RESOLVED**, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

**Proposed Rule 1.18 (re duties to prospective clients)**

**RESOLVED**, that the Board of Trustees authorizes staff to make available for public comment for a period of 45-days, proposed new Rule 1.18 of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached; and it is

**FURTHER RESOLVED**, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

**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.