

AGENDA ITEM

113 JULY

DATE: June 13, 2012

TO: Members, Board Committee on Operations
Members, Board of Trustees

FROM: Cathy Torney, Committee Coordinator

SUBJECT: Rules of Professional Conduct, Proposed New and Amended,
Further Direction to Staff on the Comments to the Rules,
Report of Action Taken June 13, 2012, on Behalf of the Board
Between Meetings

EXECUTIVE SUMMARY

This is a report of action taken on June 13, 2012, by the Board Committee on Operations on behalf of the Board of Trustees between regular meetings of the board. The Committee directed staff to transmit to the Supreme Court for its approval (1) the new and amended Rules of Professional Conduct previously adopted by the Board and (2) a range of options with regard to the commentary to the new and amended rules.

DISCUSSION

The agenda item presented a request by staff for authorization and guidance in the presentation of the proposed new and amended Rules of Professional Conduct for filing with the Supreme Court in a format that would better assist the Court in its review. At the meeting, the Board Committee considered the attached written item and a revised resolution. After discussion, a motion was made and seconded and the Board Committee voted to adopt, as revised, the following resolution:

RESOLVED that the Operations Committee, acting on behalf of the Board of Trustees between meetings, directs staff to transmit the previously adopted new and amended Rules of Professional Conduct of the State Bar of California to the Supreme Court with a request that they be approved by the Court but that Staff is also authorized to present to the Court a range of options with regard to the comments portion of the proposed rules, including (1) adoption of the rules and the comments, (2) adoption of the rules only, without the comments, (3) adoption of the rules only, leaving it to the Bar to publish the comments for guidance in the form of users' notes, or (4) a suggestion that the Court, on a rule-by-rule basis, follow any of the preceding three approaches that is most suitable and appropriate to the rule in question; and it is

FURTHER RESOLVED that by adopting this Resolution, it is the intention of the Operations Committee, acting on behalf of the Board of Trustees between meetings, to facilitate the process by which the new and amended Rules of Professional Conduct of the State Bar of California are presented for adoption to the Supreme Court and to provide Staff maximum flexibility in that process so that the burden on the Court is minimized and the rules may be adopted at the earliest opportunity; and it is

AND FURTHER RESOLVED that by adopting this Resolution, it is not the intention of the Operations Committee to disavow, reject or withdraw the Board of Trustees' prior adoption of the comments portion of the rules in 2010, but rather, as Staff finds it appropriate, to allow Staff to present the rules for adoption to the Supreme Court in a manner that focuses on the rules themselves rather than on the comments about the rules, thereby minimizing any potential confusion over whether adoption of the rules by the Court necessarily requires the Court to adopt and give its imprimatur to the comments.

All members, except George Davis and Gwen Moore, were present, and all members present, except Clark Gehlbach, voted yes. Mr. Gehlbach voted no.

A copy of the agenda item and revised resolution is attached.