



# THE STATE BAR OF CALIFORNIA

SENATOR JOSEPH L. DUNN (RET.)  
*Executive Director/CEO*

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## ATTACHMENT - 1

August 11, 2014

Honorable Tani G. Cantil-Sakauye  
Chief Justice  
California Supreme Court  
350 McAllister, 5<sup>th</sup> Floor  
San Francisco, CA 94105

Dear Chief Justice:

As you know, since 2012 staff from the Supreme Court and the State Bar have worked together to develop a useful format for presentation of the proposed Rules of Professional Conduct submitted to the Supreme Court in 2011. Since 2013, bar staff have invested significant time and hard work in providing memoranda and support for the revised rules to the court. We also understand that court staff, and ultimately the court itself, have expended substantial time in reviewing the seventeen Rule analyses forwarded to the court thus far. The bar has an additional 50 rule presentations to submit to the court.

Continuing discussions among the court's representatives and bar staff over the past several years have made it apparent that under the current approach we cannot avoid a lengthy and unwieldy process going forward. Among the fundamental problems is the lack of information bar staff has at its disposal that would allow it to fully advise the court of the reasoning underlying the State Bar Board's approval of the rules, prepared by a special committee appointed more than 10 years ago, and of the rules themselves. Bar and court staff believe that the process could be expedited, the burden on the court and on court and bar staff lessened, and the ultimate product enhanced if the State Bar were to undertake a comprehensive reconsideration of the draft rules to be completed within a set time frame. Therefore, on behalf of the State Bar and with approval of our President, Luis J. Rodriguez, we request that the draft of the Rules of Professional Conduct pending at the Supreme Court be returned to the State Bar for further action. We believe that a renewed and targeted process would benefit from an early meeting of our respective staff representatives to discuss lessons learned to date and to determine how the rule revision process can best be restructured.

The State Bar is grateful to the Supreme Court for its guidance and cooperation in this important project and looks forward to working with the Court to create a new revision of the rules as needed, complete with adequate justification and information for the Board's consideration and to assist the court in its review.

Yours truly,

A handwritten signature in dark ink, appearing to read "Joseph L. Dunn".

Senator Joseph L. Dunn, Ret.  
CEO

SEP 19 2014

S206125  
No. ADMIN. 2014-8-20-2

Frank A. McGuire Clerk

IN THE SUPREME COURT OF CALIFORNIA

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ORDER GRANTING THE STATE BAR OF CALIFORNIA'S  
REQUEST TO RETURN PROPOSED AMENDMENTS AND ADDITIONS  
TO THE CALIFORNIA RULES OF PROFESSIONAL CONDUCT PREVIOUSLY  
SUBMITTED BY THE STATE BAR

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From October 2012 to July 2014, the State Bar of California filed 17 petitions before this court seeking approval of various amendments or additions to the California Rules of Professional Conduct. Each petition pertains to a single rule and remains pending before this court pursuant to the court's intention to review all the proposed rules before acting on them. On August 11, 2014, the State Bar requested that all 17 of the submitted rules be returned to the State Bar for further consideration and revision.<sup>1</sup> The State Bar's request is approved.

**CANTIL-SAKAUYE**

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*Chief Justice*

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<sup>1</sup> The State Bar filed all of these petitions under Supreme Court case number S206125. The following is a complete list of each proposed rule submitted and the filing date of each corresponding petition: (1) proposed rule 1.1 (Competence), filed October 22, 2012; (2) proposed rule 1.8.10 (Sexual Relations with Clients), filed October 22, 2012; (3) proposed rule 1.0 (Purpose and Scope of the Rules of Professional Conduct), filed August 13, 2013; (4) proposed rule 1.0.1 (Terminology), filed August 1, 2013; (5) proposed rule 1.4 (Communication), filed August 27, 2013; (6) proposed rule 1.4.1 (Disclosure of Professional Liability Insurance), filed September 5, 2013; (7) proposed rule 2.1 (Advisor), filed September 11, 2013; (8) proposed rule 6.1 (Voluntary Pro Bono Publico Service), filed September 18, 2013; (9) proposed rule 3.1 (Meritorious Claims and Contentions), filed October 3, 2013; (10) proposed rule 1.5.1 (Fee Divisions Among Lawyers), filed October 18, 2013; (11) proposed rule 8.1.1 (Compliance with Conditions of Discipline and Agreements in Lieu of Discipline), filed October 30, 2013; (12) proposed rule 6.2 (Accepting Appointments), filed November 21, 2013; (13) proposed rule 1.17 (Purchase and Sale of a Law Practice), filed November 26, 2013; (14) proposed rule 1.8.1 (Business Transactions with a Client and Acquiring Interests Adverse to the Client), filed December 27, 2013; (15) proposed rule 5.1 (Responsibilities of Partners, Managers, and Supervisory Lawyers), filed June 16, 2014; (16) proposed rule 5.2 (Responsibilities of a Subordinate Lawyer), filed July 11, 2014; (17) proposed rule 5.3 (Responsibilities Regarding Nonlawyer Assistants), filed July 25, 2014.





FRANK A. MCGUIRE  
COURT ADMINISTRATOR AND  
CLERK OF THE SUPREME COURT

## Supreme Court of California

350 McALLISTER STREET  
SAN FRANCISCO, CA 94102-4797

RECEIVED

SEP 23 2014

Executive Office  
The State Bar of California

(415) 865-7015  
frank.mcguire@jud.ca.gov

September 19, 2014

Senator Joseph L. Dunn (Ret.)  
Executive Director and Chief Executive Officer  
State Bar of California  
180 Howard Street  
San Francisco, California 94105

Dear Senator Dunn:

I have been asked to respond to your August 11, 2014, letter sent on behalf of the State Bar of California requesting that the Supreme Court return the 17 proposed amendments or additions to the California Rules of Professional Conduct previously filed with the court. You stated that the bar wishes to engage in a comprehensive reconsideration of all of the proposed rules drafted by the Commission for the Revision of the Rules of Professional Conduct (first Commission) from 2001 to 2009 and approved by the State Bar Board of Trustees in 2010. The court has granted the State Bar's request and has issued an order returning the proposed rules for further consideration. The court anticipates that no further rule petitions will be filed until additional action has been taken by the bar.

The court also internally approved a set of recommendations from court staff intended to guide the State Bar in its task of revising the California Rules of Professional Conduct (CRPC). Specifically, the court requests that the State Bar establish a second Commission for Revision of the Rules of Professional Conduct (second Commission). Members of the second Commission should be appointed no later than November 26, 2014. The court asks that bar staff consult with court staff to establish the size and composition of the second Commission, and to discuss some of the issues that have arisen in the review process to help focus the second Commission's work. The court would like to review recommendations and a proposed charge for the second Commission at an upcoming administrative conference. To assist in the ongoing work of the second Commission, the court will appoint a non-voting member from court staff familiar with the review to date to sit on the second Commission, in order to consult with the court, as necessary.

The second Commission should be directed to complete its work and submit all proposed rules for final consideration by the court no later than March 31, 2017. In developing the charge for the second Commission, the drafters should be guided by the four policy considerations provided in the first Commission's Charter.<sup>1</sup> The court strongly urges that the second

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Its Charter stated "[t]he Commission is to develop proposed amendments . . . that:

September 19, 2014

Commission begin with the current CRPC and focus on revisions that are necessary to address developments in the law, and that eliminate, where possible, any unnecessary differences between California's rules and those used by a preponderance of the states. The second Commission should also be guided in its task by the principle that the CRPC's historical purpose is to regulate the professional conduct of members of the bar, and that as such, the proposed rules should remain a set of minimum disciplinary standards. While the second Commission may be guided by and refer to the American Bar Association's Model Rules of Professional Conduct when appropriate, it should avoid incorporating the purely aspirational or ethical considerations that are present in the Model Rules and Comments. Comments to the proposed rules should be used sparingly and only to elucidate and not to expand upon the rules themselves. California's Code of Judicial Ethics provides one model for the use of commentary in the adoption of a set of rules.

Finally, the court wishes to express its deep appreciation and gratitude to the State Bar Board of Trustees, staff, and members of the first Commission for the years of hard work they dedicated to this difficult project. The second Commission is expected to build upon the strong foundation they have laid.

Sincerely,



FRANK A. MCGUIRE  
Court Administrator  
and Clerk of the Supreme Court

cc: Beth Jay  
Emily Graham  
Greg Fortescue

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"1) Facilitate compliance with and enforcement of the rules by eliminating ambiguities and uncertainties in the rules;

"2) Assure adequate protection to the public in light of developments [that] have occurred since the rules were last reviewed and amended in 1989 and 1992;

"3) Promote confidence in the legal profession and the administration of justice; and

"4) Eliminate and avoid unnecessary difference between California and other states, fostering the evolution of a national standard with respect to professional responsibility issues." (See Petition Request that the Supreme Court of California Approve New and Revised Rules of Professional Conduct to Replace the Existing Rules Of Professional Conduct (Oct. 2012) ["2012 Req."], pp. 3-4.)