

AGENDA ITEM

705 JANUARY 2015

DATE: January 24, 2015

TO: Members, Board of Trustees

FROM: Robert A. Hawley, Deputy and Acting Executive Director

SUBJECT: Amendment to Establishment and Appointments to Second Commission for the Revision of the Rules of Professional Conduct

EXECUTIVE SUMMARY

At the Board's November 2014 meeting, the Board took action consistent with Item 123 (November 7 2014) on the Establishment and Appointments to Second Commission for the Revision of the Rules of Professional Conduct [Attachment 1]. At the State Bar's request, the Supreme Court returned to the Bar for further consideration and revision proposed amendments and additions to the California Rules of Professional Conduct drafted by the First Commission for the Revision of the Rules of Professional Conduct and submitted to the Court in 2012. With its order, the Clerk of the Court included recommendations to assist the Bar in its task of revising the Rules of Professional Conduct, including a request that the Bar establish a second Commission and appoint its members. This action was taken at the November meeting. This item amends that action to increase the Commission membership from 12 to no more than 15.

BACKGROUND

The Commission for the Revision of the Rules of Professional Conduct conducted a thorough study of the California Rules of Professional Conduct ("CRPC") and in 2010 submitted to the State Bar's Board of Trustees for approval a comprehensive set of amendments and additions to the Rules and Comments. State Bar and Supreme Court staff worked together since submission to develop a useful format for presentation of the proposed CRPC amendments to the Court. This has included significant investments of Bar staff time in providing memoranda and support for the revised rules and comments and substantial investment of Court and Court staff time in reviewing the proposed new and amended provisions. After reviewing some of the proposed amended rules and comments, the Supreme Court returned the proposed CRPC to the Bar to create a new revision of the rules through a new and refocused process. Both the Bar and the Court agreed that the rule revision process could be improved and the ultimate product could be enhanced if the State Bar were to undertake a renewed consideration of amendments and revisions to the CRPC within a set time frame.

With the return of the proposed CRPC, the Supreme Court communicated a set of recommendations to guide the Bar in its task of revising the CRPC. The Court requested that the Bar consult with Court staff regarding the recommended size and composition of the second Commission, and indicated that the Court plans to appoint a non-voting member from Court staff to assist the Commission. The Court also recommended parameters for a new charter for the second Commission. Finally, the Court stated that the second Commission should complete its work and submit the revised CRPC to the Court for final consideration no later than March 31, 2017.

DISCUSSION

The Board in November adopted the charter for the second Commission and authorized the President to appoint a Commission of no more than 12 members. The action sought here allows appointments of up to 15 members. No other changes to prior Board action is sought.

Appointment authority to special committees and commissions of the State Bar lies with the Board of Trustees. The State Bar Act gives the Board of Trustees authority to “appoint such committees ... as it deems necessary or proper” to carry out its work. (Cal. Bus. & Prof. Code § 6029.) All State Bar officers, agents, committees, commissions, and other entities have only the powers, duties, and authority delegated by the Board and are subject to its supervision and control. (Cal. Bus. & Prof. Code § 6024; State Bar Rule 6.20.) For committees of the Board other than the standing committees, the Board in May 2010 delegated authority to the President to appoint any ad hoc committee, special committee, task force or other working group of the board, subject to approval by the Board. (Board Agenda Item and Minutes, 144 May 15 2010; Board Book tab 9, art. 1 sec. 3(b).) The policy specifies that such ad hoc committees, task forces, or working groups have a short term, not to exceed one board year (i.e., the period between creation and the next annual meeting of the State Bar). The second Commission is not subject to this Board policy since it is not a committee of the Board and will have a term that exceeds one Board year.

The Board generally makes appointments to State Bar committees and commissions, subject to criteria established under board resolutions. (See Board Book tab 15, arts. 1-4.) The Board’s appointments are based on a review of appointment applications that are vetted through the Nomination and Appointments Committee. (See Board Book tab 15, art. 1, §§ 7-8.) Since by necessity the appointments to the second Commission will require an expedited process, the Board suspended and waived its general procedure and delegated authority to the President to appoint members of the second Commission, subject to parameters set forth by the Board.

ISSUE

Should the Board amend the size of the second Commission to no more than 15 members?

RECOMMENDATION

Yes. It is recommended that the Board adopt the resolution proposed.

FISCAL / PERSONNEL IMPACT:

None.

RULE AMENDMENTS:

N/A

BOARD BOOK IMPACT:

N/A

PROPOSED BOARD OF TRUSTEES RESOLUTION:

The following resolution is in order:

RESOLVED, that the Board reaffirms the action of the Board taken November 2014 on Agenda Item 123 [Attachment 1]; and it is

FURTHER RESOLVED, that the delegation to the President to appoint the members of the second Commission is amended so as not to exceed 15 members, exclusive of advisors, chairs, vice chairs, consultants, liaisons, and staff.