

Help the State Bar revise the Rules of Professional Conduct

By Justice Lee Edmon

The State Bar of California recently appointed a commission to conduct a comprehensive study of the Rules of Professional Conduct and to recommend amendments.

But we need your help.

The State Bar's Commission for the Revision of the Rules of Professional Conduct invites interested persons to provide proposals for changes to the California Rules of Professional Conduct that should be studied by the commission. Written comments must be submitted by June 16.

The rules are the State Bar's attorney disciplinary standards, the violation of which will subject an attorney to State Bar sanctions such as reproof, suspension or disbarment. By statute (Bus. & Prof. Code § 6076), the State Bar is authorized to formulate professional conduct rules that are submitted to the California Supreme Court for approval.

The commission's charter from the State Bar defines the scope:

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.

To assist in its study, the commission is soliciting written comments from the public, consumers of legal services, members of the bar, the judiciary and any other interested persons or groups, including local bar associations. The commission hopes to receive comments from consumers of legal services, as well as a broad and diverse cross-section of the legal profession, including, by way of example and without limitation, criminal defense lawyers and prosecutors, trusts and estates lawyers, respondents' counsel, transactional lawyers, public interest lawyers and commercial litigators.

The commission invites input as to what amendments to the Rules of Professional Conduct warrant consideration and study. Although the commission's charter indicates that the focus of the commission's work is on the existing rules, the commission also welcomes comments suggesting additional items for study during the revision process, including proposed new rules and rule deletions. The commission also welcomes comments identifying and discussing existing rules, if any, that should not be altered.

This request for your initial input is in addition to the public comment opportunity that will be provided once the commission has drafted a comprehensive proposal for rule amendments. The goal of this preliminary public comment process is to afford interested persons or groups an early opportunity to be heard on this important project.

Submit your comments on an online form: <http://bit.ly/2dRRCInitialPC>.

Written comments can also be sent to: Audrey Hollins, Professional Competence Unit, State Bar of California, 180 Howard St., San Francisco, California, 94105-1639; audrey.hollins@calbar.ca.gov.

In addition, the commission's memo formally seeking written comment is posted at the State Bar's website, www.calbar.ca.gov under the "Public Comment" link. The full text of the [current Rules of Professional Conduct](#) is also online under the "Ethics" link.

For more information about the commission, contact the bar's Director of Professional Competence Randall Difuntorum at 415-538-2161.

The Honorable Lee Edmon, presiding justice of Division Three for the 2nd District Court of Appeal, is chair of the Commission for the Revision of the Rules of Professional Conduct.

MEMBER/PUBLIC COMMENT
The State Bar of California
180 Howard Street, San Francisco, CA 94105-1639
<http://www.calbar.ca.gov>

PLEASE NOTE: Publication for public comment is not, and shall not, be construed as a recommendation or approval by the Board of Trustees of the materials published.

SUBJECT: Comprehensive Study of the Rules of Professional Conduct of the State Bar of California.

BACKGROUND: The State Bar's Commission for the Revision of the Rules of Professional Conduct (Commission) is assigned to conduct a study of the current Rules of Professional Conduct and propose comprehensive amendments for consideration by the State Bar Board of Trustees. Pursuant to Business and Professions Code section 6076, the State Bar is authorized to formulate professional conduct rules that may be submitted to the California Supreme Court for approval. If approved by the California Supreme Court, the rules become binding upon all members of the State Bar and a violation of a rule subjects a member to discipline (Business and Professions Code section 6077).

DISCUSSION/PROPOSAL: The Commission for the Revision of the Rules of Professional Conduct invites interested persons to provide, by written comment, proposals for changes to the California Rules of Professional Conduct that should be studied by the Commission. The complete text of the current rules is posted [here](#).

The State Bar's deadline for completing the rule revision project is no later than March 31, 2017. The State Bar has adopted the following charter for guiding the Commission:

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.

At its April 24, 2015 meeting, the Board of Trustees Regulation and Discipline Committee authorized a 45-day public comment period to seek general input on possible amendments to the Rules of Professional Conduct that ought to be considered by the Commission.

ANY KNOWN FISCAL/PERSONNEL IMPACT: None

SOURCE: State Bar Commission for the Revision of the Rules of Professional Conduct

DEADLINE: 5 p.m., June 16, 2015

DIRECT COMMENTS TO: Audrey Hollins
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or, submit comment online at: <http://bit.ly/2dRRCInitialPC>