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RECEIVED

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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 send 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 2004 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.

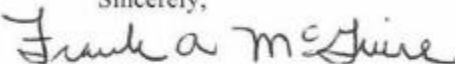
The second Commission should be directed to complete its work and submit all proposed rules for final consideration by the court no later than March 31, 2017. In developing the charge for the second Commission, the drafters should be guided by the four policy considerations provided in the first Commission's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

¹ Its Charter stated "[t]he Commission is to develop proposed amendments...that:

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

current CRPC and focus on revisions that are necessary to address developments in the law, and that eliminate, where possible, any unnecessary difference 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 CRPS'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

"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

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.