

AGENDA ITEM 701 JUNE 2016

DATE: June 15, 2016

TO: Members, Board of Trustees

FROM: Justice Lee Edmon, Chair, Commission for the Revision of the Rules of Professional Conduct
Randall Difuntorum, Director, Professional Competence

SUBJECT: Proposed New and Amended Rules of Professional Conduct of the State Bar of California, Request for Release for Public Comment

EXECUTIVE SUMMARY

The Commission for the Revision of the Rules of Professional Conduct ("Commission") has been appointed to conduct a study of the Rules of Professional Conduct of the State Bar of California ("rules") and to recommend comprehensive amendments. The Commission requests that the Board of Trustees authorize a 90-day public comment period for sixty-eight proposed new and amended rules.

Members with questions about this agenda item may contact Randall Difuntorum at: (415) 538-2161.

BACKGROUND

The Rules of Professional Conduct of the State Bar of California are attorney conduct rules, the violation of which will subject an attorney to discipline. Pursuant to statute, rule amendment proposals may be formulated by the State Bar for submission to the Supreme Court of California for approval.¹

At the Board's November 2014 meeting, the Board authorized the State Bar President's appointment of the Commission and directed the Commission to conduct a study of the Rules of Professional Conduct with the goal of proposing comprehensive amendments for final Board action in early 2017. (See Board Open Session Agenda Item 123, November 7, 2014.) General information about the Commission is found online at the Commission's page on the State Bar website: <http://ethics.calbar.ca.gov/Committees/RulesCommission2014.aspx>. The information

¹ Business and Professions Code section 6076 provides: "With the approval of the Supreme Court, the Board of Trustees may formulate and enforce rules of professional conduct for all members of the bar of this state." Business and Professions Code section 6077, in part, provides: "The rules of professional conduct adopted by the Board, when approved by the Supreme Court, are binding upon all members of the State Bar."

available includes: a roster of the members of the Commission (including, advisors and liaisons); action summaries of the Commission's meetings; and an FAQ on public attendance at open session Commission meetings. The Commission has conducted twenty meeting days beginning with its first meeting held on March 27, 2015. The Commission last met on June 2 - 3, 2016 in Los Angeles. The next meeting of the Commission is scheduled for August 26, 2016 in San Francisco.

The Commission has completed the first stage of its project to propose comprehensive revisions. It has studied all of the current rules and, with one exception, all of the American Bar Association Model Rules of Professional Conduct ("Model Rules"). The Commission has prepared sixty-eight proposed new and amended rules that it recommends for public comment circulation.²

DISCUSSION

The 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.

² The Rules of Professional Conduct are rules of the State Bar and the procedures for considering amendments to rules of the State bar require publication for public comment. (Board Book, Tab 12, Title 1, Division 2, Rule 1.10.)

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.

Proposed New and Amended Rules

In accordance with the Charter, the Commission has drafted sixty-eight proposed new and amended rules. The Commission's proposal includes both substantive and non-substantive changes to the text of the current Rules,³ as well as proposals for new rules for which there are no counterparts in the current Rules.⁴

Attachment 1 provides the full text of all of the proposed rules with a table of contents. **Attachment 2** provides an executive summary for each of the proposed rules.⁵ This includes the executive summaries previously submitted for the March 10, 2016 meeting of the Regulation and Discipline Committee and the May 12 - 13, 2016 meeting of the Board. The executive summaries explain the revisions recommended by the Commission and highlight the main substantive and policy issues, if any, that arose during the Commission's study. As an attachment to this agenda item, the executive summaries would be available to anticipated

³ One non-substantive revision is the Commission's recommendation that the current rules be re-numbered to follow the rule numbering and organization of the ABA Model Rules. In some situations, there are variations from the ABA numbering. For example, the rule prohibiting sexual relations with a client in the Model Rules is subsumed as a paragraph of an omnibus rule, Model Rule 1.8 (Conflicts of Interest; Current Clients; Specific Rules). The Commission is recommending that the rules subsumed within Model Rule 1.8 be given separate numbers, but in a sequence that tracks the order of Model Rule 1.8. Thus, in the Model Rules, the sexual relations rule is Model Rule 1.8(j) but in the Commission's proposed rules, the recommended rule number is rule 1.8.10.

Another global revision is the substitution of the term "lawyer" for the term "member" throughout the Commission's proposed rules. Use of the term "lawyer" reflects the fact that the rules are binding on practitioners who are not members of the State Bar, such as lawyers who are appearing as counsel *pro hac vice* under Rule of Court 9.40.

Both the rule numbering of the Model Rules and the use of the term "lawyer" rather than "member" are national standards as all other United States jurisdictions except California have rules that are based upon the Model Rules.

⁴ Each of the Commission's proposals for a new rule that does not have an existing California counterpart is derived at least in part from a rule in the Model Rules that has been adopted in one or more jurisdictions.

⁵ If a member of the Commission has dissented from an action taken by the Commission, then the statement of that dissenting Commission member is provided as a part of the relevant executive summary.

commenters as a part of the public comment materials. **Attachment 3** is a Commission report on eight Model Rules that were studied but are not being recommended by the Commission. This document also would be available to anticipated commenters as a part of the public comment materials and enable a commenter to provide input on the Commission's reasoning for not recommending adoption of a particular Model Rule.

Set forth below is a table⁶ presenting staff's recommended process for the Board to take action to authorize public comment. There are sixty-eight proposed rules. The bulk of the proposed rules should not require an individual presentation and vote. Staff has identified forty-two proposed rules that fall into this category. It is recommended that the Board consider taking one vote to authorize public comment on these forty-two proposed rules, provided that no Board member expresses interest in selecting one or more of these rules for individual discussion and action, similar to a consent agenda procedure.

This would leave twenty-six proposed rules for potential individual presentations and votes. In the table below each of these twenty-six rules are marked by a grey shaded row with text highlighted in yellow. Representatives of the Commission will attend the Board meeting and will be prepared to discuss these proposed rules prior to taking a vote. However, rather than voting each of these twenty-six rules individually, groupings will be used for presenting some of these rules, provided that no Board member expresses interest in culling out a rule from a grouping for an individual discussion and vote. For example, the Commission anticipates presenting all five of the lawyer advertising rules (proposed rules 7.1 through 7.5) as a group with a single vote to authorize public comment on all of them. The designated groups appear in a list found below the table. If the grouped presentations are acceptable, then the twenty-six rules would be handled by taking thirteen total votes comprised of six grouped votes and seven individual rule votes.

PROPOSED RULE	Current Rule	Controversy Level [representative issue(s)]	Plan for June 23 Board of Trustees Meeting
1.0 Purpose and Function of the Rules of Professional Conduct	1-100	Moderately [violation as evidence of civil liability; pro bono comment]	Separate Presentation/Vote
1.0.1 Terminology	1-100(B)	Moderately [definition of "tribunal" and "screening"]	ONE VOTE

⁶ The first column lists the proposed rule considered by the Commission. The second column provides the rule number of a counterpart, if any, in the existing California rules. If there is no counterpart, then "n/a" is entered in the second column for that proposed rule. The third column is staff's attribution of a level of controversy, if any, posed by the proposed rule (namely, "Not Controversial," "Moderately," and "Very"). A brief issue statement of a representative issue also appears in the third column; however, a rule's executive summary in Attachment 2 should be consulted to fully understand the brief issue statement. The fourth column indicates the anticipated process for acting on the proposed rule in terms of a possible "one vote" on 42 proposed rules or a separate presentation by the Commission.

PROPOSED RULE	Current Rule	Controversy Level [representative issue(s)]	Plan for June 23 Board of Trustees Meeting
1.1 Competence	3-110	Moderately (see Rules 1.3 and 5.1 through 5.3)	Separate Presentation/Vote
1.2 Scope of Representation and Allocation of Authority	3-210	Moderately (implied authorization; unbundling)	ONE VOTE
1.2.1 Advising or Assisting the Violation of Law	3-210	Not Controversial	ONE VOTE
1.3 Diligence	3-110(B)	Moderately (in the current rules, diligence is a part of competence, see Rule 1.1)	Separate Presentation
1.4 Communication with Clients	3-500	Moderately (new bases for discipline, such as consult with client about means)	ONE VOTE
1.4.1 Communication of Settlement Offers	3-510	Not Controversial	ONE VOTE
1.4.2 Disclosure of Professional Liability Insurance	3-410	Not Controversial	ONE VOTE
1.5 Fees for Legal Services	4-200	Very (restriction on non-refundable fee arrangements)	Separate Presentation
1.5.1 Fee Divisions Among Lawyers	2-200	Moderately (timing of ONE; written fee split agreement required)	Separate Presentation
1.6 Confidential Information of a Client	3-100 (6068(e))	Moderately (no exception for financial harm or whistleblowing)	ONE VOTE
1.7 Conflict of Interests: Current Clients	3-310	Very (hybrid approach)	Separate Presentation

PROPOSED RULE	Current Rule	Controversy Level [representative issue(s)]	Plan for June 23 Board of Trustees Meeting
1.8.1 Business Transactions with a Client and Pecuniary Interests Adverse to the Client	3-300	Moderately (no requirement to advise a client to seek independent counsel if the client is already represented; limited applicability of rule to fee modifications)	ONE VOTE
1.8.2 Use of Current Client's Information	(6068(e))	Not Controversial	ONE VOTE
1.8.3 Gifts from Client	4-400	Moderately (conforms to Probate Code protocol)	ONE VOTE
1.8.5 Payment of Personal or Business Expenses Incurred by or for a Client	4-210	Moderately (pro bono costs)	ONE VOTE
1.8.6 Compensation from One Other Than Client	3-310(F)	Moderately (new timing requirement for obtaining consent)	ONE VOTE
1.8.7 Aggregate Settlements	3-310(D)	Not Controversial	ONE VOTE
1.8.8 Limiting Liability to Client	3-400	Moderately (exemption if client has independent counsel)	ONE VOTE
1.8.9 Purchasing Property at a Foreclosure Sale or a Sale Subject to Judicial Review	4-300	Moderately (retains inconsistency with Probate Code)	Separate Presentation
1.8.10 Sexual Relations with Client	3-120	Very (adopts ban; creates inconsistency with State Bar Act)	Separate Presentation
1.8.11 Imputation of Prohibitions Under Rules 1.8.1 to 1.8.9 (See also Rule 1.10)	n/a	Very (imputes conflicts for disciplinary purposes)	Separate Presentation
1.9 Duties to Former Clients	3-310(E) (6068(e))	Moderately ("generally known" information exception; codification of <i>Wutchumna</i> case and <i>Oasis</i> case)	ONE VOTE

PROPOSED RULE	Current Rule	Controversy Level [representative issue(s)]	Plan for June 23 Board of Trustees Meeting
1.10 Imputation of Conflicts of Interest: General Rule	n/a (but see 3-310 Disc. ¶6)	Very (imputes conflicts for disciplinary purposes; permits unconsented screening)	Separate Presentation
1.11 Special Conflicts of Interest for Former and Current Government Officials and Employees	n/a (but see 3-310)	Moderately (imputes conflicts for disciplinary purposes; permits unconsented screening)	Separate Presentation
1.12 Former Judge, Arbitrator, Mediator or Other Third-Party Neutral	n/a (but see 3-310)	Moderately (imputes conflicts for disciplinary purposes; permits unconsented screening)	Separate Presentation
1.13 Organization as Client	3-600	Moderately (no whistleblower provision for private or gov't)	ONE VOTE
1.14 Client with Diminished Capacity	n/a (but see 3-100 and 6068(e))	Very (authorizes limited action that might conflict with client autonomy)	Separate Presentation
1.15 Safekeeping of Funds and Property of Clients and Other Persons	4-100	Very (codifies duties to non-clients; requires advance fees to be held in trust)	Separate Presentation
1.16 Declining Or Terminating Representation	3-700	Not Controversial	ONE VOTE
1.17 Sale of a Law Practice	2-300	Not Controversial	ONE VOTE
1.18 Duties to Prospective Clients REJECT	n/a	Very (different from Evidence Code; includes screening)	NO MOTION/VOTE NEEDED

PROPOSED RULE	Current Rule	Controversy Level [representative issue(s)]	Plan for June 23 Board of Trustees Meeting
2.1 Advisor	n/a	Moderately	NOT BEING PRESENTED AT THE JUNE 23 rd BOARD MEETING ⁷
2.3 Evaluation for Use by Third Persons REJECT	n/a	Not Controversial	NO MOTION/VOTE NEEDED
2.4 Lawyer as Third-Party Neutral	n/a	Moderately (no current CA rule)	ONE VOTE
2.4.1 Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator	1-710	Not Controversial	ONE VOTE
3.1 Meritorious Claims and Contentions	3-200	Not Controversial	ONE VOTE
3.2 Delay of Litigation	n/a	Moderately (no current CA rule)	ONE VOTE
3.3 Candor Toward the Tribunal	5-200(A) – (D)	Moderately (remedial measures; narrative approach)	ONE VOTE
3.4 Fairness to Opposing Party and Counsel	5-200(E) 5-220 5-310	Moderately (knowingly disobey rules of a tribunal)	ONE VOTE
3.5 Contact with Judges, Officials, Employees, and Jurors	5-300 5-320	Moderately (restrictive judicial standard for gifts)	ONE VOTE
3.6 Trial Publicity	5-120	Not Controversial	ONE VOTE
3.7 Lawyer as Witness	5-210	Moderately (expanded to bench trials)	ONE VOTE
3.8 Special Responsibilities of a Prosecutor (Note: This proposal is being considered separately as a proposed change to current rules 5-110 and 5-220 and is being processed on an expedited basis. However, a version of this rule is needed that will fit with the Commission's comprehensive recommendation to adopt a Model Rule numbering system. This version of the rule is substantively identical to version that the Board authorized for a 45-day public comment period ending on July 1, 2016.)	5-110 5-220	Very (Model Rule 3.8(d),(g) and (h))	ONE VOTE

⁷ Model Rule 2.1 is pending consideration and action by the Commission at its August 26, 2016 meeting. Accordingly, it is not being presented for Board action at this time.

PROPOSED RULE	Current Rule	Controversy Level [representative issue(s)]	Plan for June 23 Board of Trustees Meeting
3.9 Advocate In Non-adjudicative Proceedings	n/a	Moderately (no current CA rule)	ONE VOTE
3.10 Threatening Criminal, Administrative, or Disciplinary Charges	5-100	Moderately (release-dismissal comment; explanation of a "threat" comment)	ONE VOTE
4.1 Truthfulness in Statements to Others	n/a	Moderately (no current CA rule)	ONE VOTE
4.2 Communication with a Represented Person	2-100	Very ("party" to "person")	Separate Presentation
4.3 Communicating with an Unrepresented Person	n/a	Moderately (no current CA rule)	Separate Presentation
4.4 Respect for Rights of Third Persons	n/a	Moderately (no current CA rule)	ONE VOTE
5.1 Responsibilities of Managerial and Supervisory Lawyers	n/a (but see 3-110 Disc. ¶1)	Moderately (comparable managerial authority)	Separate Presentation
5.2 Responsibilities of a Subordinate Lawyer	n/a	Moderately (exculpatory provision)	Separate Presentation
5.3 Responsibilities Regarding Nonlawyer Assistants	n/a (but see 3-110 Disc. ¶1)	Moderately (comparable managerial authority)	Separate Presentation
5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Member	1-311	Not Controversial	ONE VOTE
5.4 Financial and Similar Arrangements with Nonlawyers	1-310 1-320 1-600	Not Controversial	ONE VOTE
5.5 Unauthorized Practice of Law; Multijurisdictional Practice	1-300	Moderately (resident office or systematic or continuous presence standard)	ONE VOTE
5.6 Restrictions on a Lawyer's Right to Practice	1-500	Moderately (authorized by law in black letter w/ citation to Babcock in a comment)	ONE VOTE

PROPOSED RULE	Current Rule	Controversy Level [representative issue(s)]	Plan for June 23 Board of Trustees Meeting
5.7 Responsibilities Regarding Law-related Services REJECT	n/a	Not Controversial	NO MOTION/VOTE NEEDED
6.1 Voluntary Pro Bono Publico Service REJECT (but see rule 1.0)	n/a	Very (access to justice policy implications)	NO MOTION/VOTE NEEDED
6.2 Accepting Appointments REJECT	n/a	Not Controversial	NO MOTION/VOTE NEEDED
6.3 Membership in Legal Services Organizations	n/a	Not Controversial	ONE VOTE
6.4 Law Reform Activities REJECT	n/a	Not Controversial	NO MOTION/VOTE NEEDED
6.5 Limited Legal Services Programs	1-650	Not Controversial	ONE VOTE
7.1 Communications Concerning a Lawyer's Services	1-400	Very (discontinues CA single rule approach; omits existing standards used by OCTC)	Separate Presentation
7.2 Advertising	1-400	Very (discontinues CA approach; permits reciprocal referrals; omits retention requirement)	Separate Presentation
7.3 Solicitation of Clients	1-400	Very (discontinues CA approach; real-time electronic contact)	Separate Presentation
7.4 Communication of Fields of Practice and Specialization	1-400	Moderately (discontinues CA approach; permits description "specializing in")	Separate Presentation
7.5 Firm Names and Letterheads	1-400	Moderately (discontinues CA approach; omits "of counsel" description)	Separate Presentation
7.6 Political Contributions to Obtain Government Legal Engagements or Appointments by Judges REJECT	n/a	Not Controversial (no current CA rule)	NO MOTION/VOTE NEEDED
8.1 False Statement Regarding Application for Admission, Readmission, Certification or Registration	1-200	Moderately (failure to correct a statement known to be false)	ONE VOTE

PROPOSED RULE	Current Rule	Controversy Level [representative issue(s)]	Plan for June 23 Board of Trustees Meeting
8.1.1 Compliance with Conditions of Discipline and Agreements in Lieu of Discipline	1-110	Not Controversial	ONE VOTE
8.2 Judicial Officials	1-700	Not Controversial	ONE VOTE
8.3 Reporting Professional Misconduct REJECT	n/a	Moderately (no current CA rule)	NO MOTION/VOTE NEEDED
8.4 Misconduct	1-120	Moderately (conduct that is prejudicial to the administration of justice; covert investigations)	Separate Presentation
8.4.1 Prohibited Discrimination, Harassment and Retaliation	2-400	Moderately (discontinues prerequisite for a civil finding; anti-bias provision not limited to client retention or firm management)	Separate Presentation
8.5 Disciplinary Authority; Choice of Law	1-100(D)	Moderately (discontinues CA approach; predominant effect test)	ONE VOTE
TOTAL = 68 rules recommended for adoption 8 ABA Model Rules not recommended⁸		Very = 14 (2 rejected) Moderately = 42 (1 rejected) Not = 20 (5 rejected)	One Vote = 42 rules Separate presentation = 26 (13 votes if groups used) Rejected/no motion or vote needed = 8

GROUPED RULE PRESENTATIONS (6 VOTES)

- (1) ex parte communication: 4.2 and 4.3
- (2) competence/supervision/diligence: 1.1, 1.3, 5.1, 5.2, and 5.3
- (3) advertising/solicitation: 7.1 – 7.5
- (4) fees/CTA: 1.5, 1.5.1, 1.15
- (5) general imputation/screening: 1.8.11 and 1.10
- (6) special screening for government/judicial: 1.11 and 1.12

⁸ The eight rejected rules are: 1.18, 2.3, 5.7, 6.1, 6.2, 6.4, 7.6 and 8.3.

INDIVIDUAL RULE PRESENTATIONS (7 VOTES)

- (1) 1.0 (purpose of rules)
- (2) 1.7 (current client conflicts)
- (3) 1.8.9 (foreclosure sale)
- (4) 1.8.10 (sex with client)
- (5) 1.14 (impaired client)
- (6) 8.4 (misconduct)
- (7) 8.4.1 (discrimination)

In addition to the sixty-eight proposed rules recommended for public comment circulation, there are eight Model Rules which do not have a California counterpart and that the Commission is not recommending for adoption (a.k.a., rejected Model Rules). Although staff does not believe that it is necessary for the Board to affirmatively vote on the Commission's recommendations to reject a Model Rule, the Board can elect to confirm those recommendations, on either a case-by-case or inclusive basis. These eight rules are discussed in Attachment 3.

Next Steps for Completion of the Rule Revision Project

If the Board agrees, the proposed rules would be released for a 90-day public comment period ending approximately on September 26, 2016. During this period, the Commission would also hold a public hearing to receive oral testimony on the proposed rules.

The written comment and the transcript of any public hearing testimony would be considered by the Commission at its meetings scheduled in August and October of 2016. As warranted, the Commission would modify the proposed rules in response to the public comment.

The Commission would submit the rules to the Board for consideration and action at the Board's meetings on November 17 - 18, 2016. The anticipated request for action at that time would be to adopt the proposed rules that are unchanged and to authorize a 45-day additional public comment for any rules that are materially changed. This 45-day public comment period would end approximately on January 9, 2017 and allow about two months for the Commission to finalize these remaining rules for Board action at the March 10, 2017 Board meeting. The deadline for submission of the proposed rules to the Supreme Court is March 31, 2017.⁹

FISCAL/PERSONNEL IMPACT

None.

RULE AMENDMENTS

None. This agenda item only requests public comment authorization. A Board decision to adopt a rule amendment would be the subject of a separate agenda item.

⁹ No amended rule would become operative unless and until the proposed rule is approved by the Supreme Court of California.

BOARD BOOK IMPACT

None.

BOARD RESOLUTIONS

Should the Board of Trustees concur with the recommendation of the Commission for the Revision of the Rules of Professional Conduct, the following resolutions would be appropriate:

I. Resolution authorizing public comment on 42 proposed rules.

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, the following proposed new or amended Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached: rules 1.0.1, 1.2, 1.2.1, 1.4, 1.4.1, 1.4.2, 1.6, 1.8.1, 1.8.2, 1.8.3, 1.8.5, 1.8.6, 1.8.7, 1.8.8, 1.9, 1.13, 1.16, 1.17, 2.4, 2.4.1, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 4.1, 4.4, 5.3.1, 5.4, 5.5, 5.6, 6.3, 6.5, 8.1, 8.1.1, 8.2, and 8.5; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

II. Resolutions authorizing public comment on the following 6 groups of proposed rules.

Proposed Rules 4.2 and 4.3 (re ex parte communication)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, the following proposed new or amended Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached: rules 4.2 and 4.3; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

Proposed Rules 1.1, 1.3, 5.1, 5.2, and 5.3 (re competence/supervision/diligence)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, the following proposed new or amended Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached: rules 1.1, 1.3, 5.1, 5.2, and 5.3; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

Proposed Rules 7.1 – 7.5 (re advertising/solicitation)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, the following proposed new or amended Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached: rules 7.1, 7.2, 7.3, 7.4, and 7.5; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

Proposed Rules 1.5, 1.5.1, 1.15 (re fees/client trust accounting)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, the following proposed new or amended Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached: rules 1.5, 1.5.1, and 1.15; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

Proposed Rules 1.8.11 and 1.10 (re general imputation/screening)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, the following proposed new or amended Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached: rules 1.8.11 and 1.10; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

Proposed Rules 1.11 and 1.12 (re special screening for government and judicial personnel)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, the following proposed new or amended Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached: rules 1.11 and 1.12; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

III. Resolutions authorizing public comment on the remaining 7 individual proposed rules.

Proposed Rule 1.0 (purpose of rules)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, proposed rule 1.0 of the Rules of

Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

Proposed Rule 1.7 (current client conflicts)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, proposed rule 1.7 of the Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

Proposed Rule 1.8.9 (foreclosure sale)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, proposed rule 1.8.9 of the Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

Proposed Rule 1.8.10 (sex with client)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, proposed rule 1.8.10 of the Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

Proposed Rule 1.14 (impaired client)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, proposed rule 1.14 of the Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

Proposed Rule 8.4 (misconduct)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, proposed rule 8.4 of the Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

Proposed Rule 8.4.1 (discrimination)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, proposed rule 8.4.1 of the Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

ATTACHMENT(S) LIST

Attachment 1: Full text of all of the proposed rules with a table of contents.

Attachment 2: Executive summaries for each of the proposed rules.

Attachment 3: Report on Model Rules that are not being recommended by the Commission.