

AGENDA ITEM

701 MARCH 2017

DATE: February 24, 2017

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, Return from Public Comment and Request for Adoption

EXECUTIVE SUMMARY

The Board of Trustees ("Board") assigned the Commission for the Revision of the Rules of Professional Conduct ("Commission") to conduct a study of the Rules of Professional Conduct of the State Bar of California and to recommend comprehensive amendments. This agenda submits the Commission's final report and recommendation and requests Board adoption of the Commission's last set of proposed rules returning from public comment.

This item also presents a staff recommendation that the majority of the members of the Commission be decommissioned and thanked for their service, with some members also thanked but retained and reappointed for a limited time as a smaller deliberative body to assist the Board in responding to any proposed rules for which the Supreme Court might have questions or that the Court might refer back to the State Bar for further work.

Members with questions about this agenda item may contact Randall Difuntorum: (415) 538-2161 or State Bar of California, 180 Howard Street, San Francisco, CA 94105.

BACKGROUND

The Rules of Professional Conduct of the State Bar of California ("Rules") are attorney conduct standards, 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

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."

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 available includes a roster of the members of the Commission (including, advisors and liaisons) and action summaries of the Commission's meetings.

At the Board's November 17, 2016 meeting, thirty-six proposed rules were adopted and thirty-four proposed rules were authorized for an additional 45-day public comment period. The 45-day public comment period ended on January 9, 2017 and following review, the Commission made substantive amendments to one of the proposed rules, rule 1.7 ("Conflicts of Interests: Current Clients"). The Board's Committee on Regulation and Discipline authorized a 30-day public comment period on proposed Rule 1.7 with a deadline of March 6, 2017.² Prior to the Board's March 9-10, 2017 meeting, the Commission will submit a supplemental memorandum addressing any public comments received on proposed Rule 1.7

ISSUES PRESENTED

This memorandum and the provided attachments constitute the Commission's final report and recommendation for proposed new and amended rules. Accordingly, the main issue presented for the Board's action is whether to adopt the thirty-four proposed rules which are the Commission's last set of proposed rules.

An additional issue presented for the Board's consideration is a staff recommendation that the majority of the members of the Commission be decommissioned and thanked for their service, with some members also thanked but retained as a smaller deliberative body to assist the Board in responding to any proposed rules for which the Supreme Court might have questions or that the Court might refer back to the State Bar for further work.

DISCUSSION

1. The Commission's Recommendation for Comprehensive Amendments to the Rules

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

The proposed rules are the result of over thirty day-long meetings, beginning with the Commission's first meeting on March 27, 2015. These meetings included Commission meetings, public hearings and Board meetings. These meetings also involved consideration of over 500 public comments on individual proposed rules from over 135 commenters. Following this study, the Commission adopted a comprehensive set of proposed new and amended rules.

² Amendments to rules of the State Bar require publication for public comment. (Board Book, Tab 12, Title 1, Division 2, Rule 1.10.)

³ The Commission's Charter is provided as Attachment A.

The proposed rules improve the current rules in many areas of attorney conduct. Changes reflected in the proposed rules generally fall into one of the following categories: (1) changes that enhance competence or promote lawyer-client communication; (2) changes that strengthen a lawyer's responsibilities as a fiduciary, including responsibilities involving fee arrangements; (3) changes that respond to access to justice needs and public interest practice concerns; (4) changes that target specific key areas of lawyer conduct; and (5) changes that account for lawyer use of technology, in particular electronic communication. In addition, there is a category of proposed rules that recommend a reaffirmation of existing California policies notwithstanding the fact that the standards are not found in a preponderance of other jurisdictions. This category includes the recommended retention of existing California rules for which there are no direct counterparts in the ABA Model Rules. Finally, there are Model Rules that were studied but were not recommended for Board adoption by the Commission. A list providing selected examples of the proposed rules that fall into each of the foregoing categories is set forth below.

Changes That Enhance Competence or Promote Lawyer-Client Communication:

- Clarify the existing duty to supervise by having separate rules on: the responsibilities of managerial and supervisory lawyers; the duties of subordinate lawyers; and responsibilities regarding nonlawyer assistants. (See proposed Rules 5.1, 5.2 and 5.3.)
- New client communication requirements to: promptly inform a client about matters requiring client consent under the rules (proposed Rule 1.4(a)(1)); reasonably consult on means to accomplish client objectives (proposed Rule 1.4(a)(2)); advise client on relevant limitations on lawyer's conduct (proposed Rule 1.4(a)(3)); and explain matters to a client as necessary to permit a client's informed decisions about the client's representation. (See proposed Rule 1.4(b).)
- Emphasize the duty of diligence by making it a standalone duty independent of the competence rule. (See proposed Rule 1.3.)
- Consistent with relevant statutes and case law, clarify the allocation of authority between client and lawyer. (See proposed Rule 1.2, Comment [1])

Changes to Strengthen a Lawyer's Responsibilities as a Fiduciary, including Responsibilities Involving Fee Arrangements:

- New requirement that advance fees must be held in trust (including a new client consent protocol permitting a client to authorize the deposit of a flat fee paid in advance in an account other than the lawyer's client trust account). (See proposed Rule 1.15(a), (b).)
- Clarify, by conforming to existing discipline common law, the safekeeping of client funds and property to encompass responsibilities to a non-client to whom a duty is owed, including duties involving third party liens on trust funds. (See proposed Rule 1.15(a) and Comment [1].)
- Expressly prohibit contingent fee arrangements in the representation of a defendant in criminal case and in a family law matter where the fee is contingent on divorce or support or settlement amounts. (See proposed Rule 1.5(c).)

- New time-sensitive requirement for obtaining client consent when a lawyer accepts compensation for legal services paid by someone other than the lawyer's client. (See proposed Rule 1.8.6.)
- New time-sensitive requirement for obtaining client consent to a fee splitting arrangement with a lawyer in a separate firm, including referral fees. (See proposed Rule 1.5.1.)
- In the context of a sale of a law practice, clarify the duty of a law practice purchaser to honor the seller's fee arrangement with the clients being transferred as a result of the sale. (See proposed Rule 1.17 Comment [2].)

Changes that Respond to Access to Justice Needs and Public Interest Practice Concerns:

- New pro bono comment in explanation of the purpose and function of the rules. (See proposed Rule 1.0, Comment [5].)
- New rule on the scope of a lawyer's representation that acknowledges the existing practice of limited scope representation. (See proposed Rule 1.2(b).)
- Expressly permit a lawyer's sharing of court awarded fees with a nonprofit organization that retained the lawyer. (See proposed Rule 5.4(a)(5) and Comment [3].)
- Add to the black letter of the advertising rules a restriction against firm names that improperly imply status as a legal services organization or a non-profit public benefit entity. (See proposed Rule 7.4(c).)
- Expressly permit the payment of costs by a lawyer when representing an indigent person, in addition to the current rule's standard of permitting the "advancing" of costs. (See proposed Rule 1.8.5(b)(4).)
- Clarify the prohibition against an ex parte communication with a represented person in those instances where a lawyer is providing a limited scope representation (see proposed Rule 4.2, Comment [4]) and in the context of contacts with a governmental official (see proposed Rule 4.2, Comment [7]).
- New rule protecting against improper lawyer contacts with an unrepresented person. (See proposed Rule 4.3)
- Clarify the propriety of a lawyer's participation in covert investigations. (See proposed Rule 8.4 Comment[5].)
- New rule on a lawyer's service as a director or officer of a legal services organization. (See proposed Rule 6.3.)
- Add citations to multijurisdictional practice Rules of Court in the rule prohibiting aiding in the unauthorized practice of law rule, including a citation to Rule of Court 9.45 permitting the practice of law by a registered legal services attorney. (See Comment to proposed Rule 5.5.)

- Reorganize and streamline the rule provisions governing advertising and solicitation to avoid a chilling effect on new forms of public outreach, including the use of modern communication technologies. (See proposed Rules 7.1 – 7.5.)
- Explain that a lawyer's representation of a client does not constitute an endorsement of the client's political, economic, social or moral views or activities. (See proposed Rule 1.2, Comment [3].)

Changes that Address Specific Key Areas of Lawyer Conduct:

- Strengthen the existing limited restrictions on a lawyer's sexual relations with a client by moving to a bright-line ban but carrying forward the exceptions for spousal and preexisting sexual relationships, and by adding an exception for domestic partners; and by requiring consideration of the burden on the client if a complaint is made by one other than the client. (See proposed Rule 1.8.10.)
- Update and expand the prohibition on discrimination by deleting the existing civil finding prerequisite and by including express harassment and retaliation prohibitions (see proposed Rule 8.4.1) and also by adding a new general prohibition against conduct prejudicial to the administration of justice (see proposed Rule 8.4(d)).
- Prohibit direct adversity conflicts in the same or a separate client matter absent each client's informed written consent, to conform to the approach used in most jurisdictions. (See proposed Rule 1.7(a).)
- Reformulate the existing requirement that a lawyer provide written disclosure to a client about certain specified personal interests and relationships of the lawyer to require the more stringent protocol of informed written consent where such interests and relationships present a significant risk that the lawyer's representation of the client will be materially limited. (See proposed Rule 1.7(b).)
- New rule addressing the imputation within a private law firm of conflicts of interest, and the use of an ethical screen in narrowly defined circumstances to avoid the imposition of such imputation. (See proposed Rule 1.10.)
- Clarify a lawyer's responsibilities when advising a client on a proposed course of conduct when state and federal law conflict. (See proposed Rule 1.2.1, Comment [6].)
- New rule addressing the representation of a client impaired by significantly diminished mental capacity. (See proposed Rule 1.14.)
- New rule on duties to prospective clients that reflects case law, including the availability of screening to avoid the imputation within a law firm of confidential information obtained from a prospective client. (See proposed Rule 1.18.)
- New rule on inadvertently transmitted writings consistent with related case law developments. (See proposed Rule 4.4.)
- Clarify and strengthen the special responsibilities of a prosecutor, including the duty to disclose exculpatory information. (See proposed Rule 3.8.)

Changes that account for lawyer use of technology, in particular electronic communication:

- New definition of a “signed” writing that includes “electronic sound” associated with a writing. (See proposed Rule 1.0.1(n).)
- Clarify the duty to provide a client with copies of significant documents to include provision by “electronic or other means.” (See proposed Rule 1.4, Comment [2].)
- Clarify a lawyer’s obligation to release to the client all client materials when terminating the representation to include materials in “electronic or other form.” (See proposed Rule 1.16(e).)
- Clarified the general advertising rule to state a lawyer may advertise through “electronic means of communication, including public media.” (See proposed Rule 7.2(a).)
- Clarify that a lawyer may compensate persons who provide marketing services including “website designers.” (See proposed Rule 7.2, Comment [3].)
- Strengthen the prohibition on solicitation by specifying that “real-time electronic contact” is prohibited in the same manner as in-person or live telephone contacts with a prospective client but also clarify that an “internet banner advertisement,” a “website,” and search engine responses “automatically generated in response to internet searches” do not constitute prohibited solicitation. (See proposed Rule 7.3, Comment [1].)
- Clarify that a lawyer’s professional designation includes logos and “URLs.” (See Comment to proposed Rule 7.5.)

Recommendations that Affirm Current California Rules Not Found in Other Jurisdictions, Including Retention of Rules that Differ Significantly from a Model Rule Counterpart or for which there is No Model Rule Counterpart

- Retain the standard in the competence rule that prohibits intentional, reckless or repeated incompetence rather than the Model Rule standard that could impose discipline for a single act of simple negligence. (See proposed Rule 1.1.)
- Retain the existing duty of confidentiality that permits a lawyer to reveal such information only with client consent or when a disclosure is necessary to prevent a criminal act of death or substantial bodily harm -- the financial harm exceptions in the Model Rules were not adopted. (See proposed Rule 1.6.)
- Retain the policy in the existing fee split rule that permits, with client consent among other requirements, a division of fees among lawyers in separate firms even where the amount of the fee split is not commensurate with the respective responsibilities of the lawyers, as this policy facilitates the California’s longstanding practice of permitting so-called “pure referral fee.” (See proposed Rule 1.5.1.)
- Retain the standard in the fees for legal services rule that prohibits an illegal or an “unconscionable” fee rather than the Model Rule approach of affirmatively mandating that a fee be “reasonable.” (See proposed Rule 1.5.)

- New general misconduct rule, similar to Model Rule 8.4 but unlike the Model Rule, retained the following California concepts:
 - moral turpitude (see proposed Rule 8.4, Comment [4])
 - “other misconduct warranting discipline” (see proposed Rule 8.4, Comment [3])
 - Business and Professions Code § 6101 - Interim suspension procedures for criminal convictions (see proposed Rule 8.4, Comment [3])
- Retain the following California rules that do not have Model Rule counterparts and are not adopted in a preponderance of other jurisdictions:
 - Settlement offer disclosure rule (see proposed Rule 1.4.1)
 - Insurance disclosure rule (see proposed Rule 1.4.2)
 - Purchasing Property at a Foreclosure Sale (see proposed Rule 1.8.9) (in addition, this proposed rule does not adopt a more permissive policy found in California statutes)
 - Lawyer as temporary judge (see proposed Rule 2.4.1)
 - Prohibition against threatening criminal, disciplinary or administrative charges (see proposed Rule 3.10)
 - Employment of disbarred lawyers (see proposed Rule 5.3.1)
 - Compliance with conditions of discipline (see proposed Rule 8.1.1)

2. Proposed New Rule Numbering System and the Length of the Proposed Rules

Rule Numbering: The proposed rules generally adopt the organization and rule numbering of the ABA Model Rules.⁴ The current rules use a unique chapter and numbering system that is not recommended. Under the Commission’s proposed new organization and numbering, there are seventy proposed rules. The current California rules have forty-six rules and the ABA Model Rules have fifty-eight rules. In addition to a new rule numbering system, the proposed rules also substitute “lawyer” for “member” and “Comments” for rule “Discussions.” Like the rule numbering system, these stylistic changes are intended to eliminate unnecessary differences with the rules adopted in a preponderance of other jurisdictions.

Length of the Proposed Rules: The number of rules does not necessarily convey the length of the rules. In terms of word count: the proposed rules have about 37,700 words; the Model Rules have about 57,800 words; and the current California rules have 18,400 words. This word count includes rule titles and official comments or discussion sections and, in the case of the Model Rules, the text of the Preamble and Scope. To give national context to these word counts, among the states with the longest rules is Maine with about 87,400 words and among the states with the shortest rules is Montana with about 15,900 words.

⁴ In some instances where a single Model Rule consolidates multiple concepts, the Commission has recommended that the Board adopt numbering that separates the concepts and preserves individual rule status. For example in the current rules, the rule governing sexual relations with a client (rule 3-120) is a standalone rule but in the Model Rules it is a subdivision of a general rule on certain current client conflicts (Model Rule 1.8(j)). In this instance, the Commission determined that a standalone rule should be continued rather than consolidated with other concepts but to maintain a degree of consistency with the Model Rule numbering system, the rule on sexual relations with clients was adopted as rule 1.8.10.

3. Materials Provided

Attachment A provides the Commission charter that was informed by instructions provided in a September 19, 2014 letter to the State Bar from Frank A. McGuire, Court Administrator for the Supreme Court of California. This charter was adopted at the Board's November 7, 2014.

Attachment B provides the full text of all of the proposed rules with a table of contents. The presentation of the proposed rules in this document distinguishes between the rules that are the subject of the Commission's present request for Board adoption and the rules that were previously adopted by the Board at the Board's November 17, 2017 meeting. All of the proposed rules are provided to allow the Board to see the proposed rules in context as many rules are interrelated and include key cross references to other rules.

Attachment C provides for each of the proposed rules, including the rules previously adopted by the Board, an executive summary⁵ and a Commission report and recommendation. The report and recommendation for each rule includes:

- (1) a clean version of the proposed rule;
- (2) a redline comparison draft to the current California rule or Model Rule counterpart;
- (3) the final vote of the Commission on the proposed rule;
- (4) a history of the current rule counterpart, if any;
- (5) a section presenting the official written comments submitted by the State Bar's Office of the Chief Trial Counsel ("OCTC"), the State Bar Court, and the Commission's response;
- (6) a summary of any topically related California law;
- (7) a summary of state adoptions of the ABA Model Rule counterpart, if any;
- (8) a listing of any substantive changes to a current rule and the pros and cons considered by the Commission;
- (9) a listing of any non-substantive changes to a current rule;
- (10) a listing of any concepts considered but rejected by the Commission;
- (11) dissenting positions by members of the Commission, if any, and the Commission's response⁶ to the dissent; and
- (12) a public comment synopsis table of the summarizing the written comments and public hearing testimony received on a rule together with the Commission's response.

Attachment D provides a Commission report on seven Model Rules that were studied but are not being recommended by the Commission. While 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 by a vote, on either a case-by-case or inclusive basis.

⁵ For purposes of continuity, the executive summaries begin with the information that was provided to the Board in June when the initial 90-day public comment period was requested, and in November when the additional 45-day public comment period was requested. Where applicable, each summary also includes a section addressing "Post-Public Comment Revisions."

⁶ The Commission's responses to the dissents are being considered by the Commission at its March 7, 2017 meeting. If the Commission revises any responses to the dissents the revised responses will be provided to the Board prior to the March 9, 2017 Board meeting.

4. Plan for Presenting the Proposed Rules

Set forth below is a table⁷ presenting a recommended process, similar to a consent agenda procedure, for the Board to take action on the rules recommended for adoption. Because thirty-six proposed rules were previously adopted by the Board after the initial 90-day public comment period, action is only needed on the thirty-three proposed rules returning from the second round of public comment (45-day public comment period) and the one rule returning from a third round of public comment (30-day public comment period). The majority of these proposed rules should not require an individual presentation and vote. Staff has identified twenty-seven proposed rules that fall into this category. Staff recommends that the Board consider taking one vote to adopt these twenty-seven 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. In the last column in the table below, these twenty-seven proposed rules are designated for “ONE VOTE.”

This would leave seven proposed rules for planned individual presentations and votes. In the table below each of these seven rules is 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.

PROPOSED RULE	Current Rule	Controversy Level (representative issue(s))	Plan for November Board of Trustees Meeting
1.0 Purpose and Function of the Rules of Professional Conduct	1-100	Moderately (pro bono comment)	Separate Presentation
1.2.1 Advising or Assisting the Violation of Law	3-210	Moderately (medical marijuana)	Separate Presentation
1.3 Diligence	3-110(B)	Moderately (in the current rules, diligence is a part of competence)	ONE VOTE
1.5 Fees for Legal Services	4-200	Very (restriction on non-refundable fee arrangements)	ONE VOTE

⁷ 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 C 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 thirty proposed rules and grouped or separate votes on the other rules.

PROPOSED RULE	Current Rule	Controversy Level (representative issue(s))	Plan for November Board of Trustees Meeting
1.7 Conflict of Interests: Current Clients	3-310	Very (hybrid approach with elements from the current CA rules and the Model Rules)	Separate Presentation
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; applies to former client in some circumstances)	Separate Presentation
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 (indigent client costs)	ONE VOTE
1.8.7 Aggregate Settlements	3-310(D)	Not Controversial	ONE VOTE
1.8.10 Sexual Relations with Client	3-120	Very (adopts ban; creates inconsistency with State Bar Act)	Separate Presentation
1.9 Duties to Former Clients	3-310(E) (6068(e))	Moderately ("generally known" information exception; recognition in Comment of <i>Wutchumna</i> case and <i>Oasis</i> case)	ONE VOTE
1.11 Special Conflicts of Interest for Former And Current Government Officers And Employees	n/a (but see 3-310)	Moderately (imputes conflicts for disciplinary purposes; permits unconsented screening)	ONE VOTE
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)	ONE VOTE

PROPOSED RULE	Current Rule	Controversy Level (representative issue(s))	Plan for November Board of Trustees Meeting
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)	ONE VOTE
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)	ONE VOTE
1.16 Declining Or Terminating Representation	3-700	Not Controversial	ONE VOTE
1.17 Sale of a Law Practice	2-300	Moderately (does not address sale of area of practice)	ONE VOTE
1.18 Duties to Prospective Clients	n/a	Very (includes non-consensual screening)	ONE VOTE
2.1 Advisor	n/a	Moderately (no current CA rule)	ONE VOTE
2.3 Evaluation for Use by Third Persons REJECT	n/a	Not Controversial	NO MOTION/VOTE NEEDED
3.1 Meritorious Claims and Contentions	3-200	Not Controversial	ONE VOTE
3.3 Candor Toward the Tribunal	5-200(A) – (D)	Moderately (remedial measures; narrative approach)	Separate Presentation
3.5 Contact with Officials and Jurors	5-300 5-320	Moderately (restrictive judicial standard for gifts)	ONE VOTE
3.9 Advocate In Non-adjudicative Proceedings	n/a	Moderately (no current CA rule)	ONE VOTE
4.2 Communication with a Represented Person	2-100	Moderately (“party” to “person”)	ONE VOTE
4.3 Dealing with Unrepresented Person	n/a	Moderately (no current CA rule)	ONE VOTE

PROPOSED RULE	Current Rule	Controversy Level (representative issue(s))	Plan for November Board of Trustees Meeting
4.4 Duties Concerning Inadvertently Transmitted Writings	n/a	Moderately (no current CA rule but there is case law)	ONE VOTE
5.1 Responsibilities of Managerial and Supervisory Lawyers	n/a (but see 3-110 Disc. ¶1)	Moderately (comparable managerial authority)	ONE VOTE
5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Member	1-311	Not Controversial	ONE VOTE
5.6 Restrictions on a Lawyer's Right to Practice	1-500	Moderately (authorized by law exception in black letter w/ citation to <i>Howard v. Babcock</i> in a comment)	ONE VOTE
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, Comment [5])	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
6.4 Law Reform Activities REJECT	n/a	Not Controversial	NO MOTION/VOTE NEEDED
7.1 Communications Concerning a Lawyer's Services	1-400	Moderately (discontinues CA single rule approach; omits existing standards used by OCTC)	ONE VOTE
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
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)	ONE VOTE

PROPOSED RULE	Current Rule	Controversy Level (representative issue(s))	Plan for November Board of Trustees Meeting
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
TOTAL = 34 rules recommended for Board adoption 7 ABA Model Rules not recommended⁸		Very = 7 (1 rejected) Moderately = 24 (1 rejected) Not = 8 (5 rejected)	One Vote = 27 rules Separate Presentation = 7 Rejected/No Motion or Vote Needed = 7

INDIVIDUAL RULE PRESENTATIONS (7 VOTES)

Each of the following proposed rules include at least one significant policy issue or an important change in the duties of lawyers that merits the Board's close scrutiny.⁹

- (1) **Rule 1.0** (Purpose and Function of the Rules of Professional Conduct)
- (2) **Rule 1.2.1** (Advising or Assisting the Violation of Law)
- (3) **Rule 1.7** (Conflicts of Interest: Current Clients)
- (4) **Rule 1.8.1** (Business Transactions with a Client and Pecuniary Interests Adverse to the Client)
- (5) **Rule 1.8.10** (Sexual Relations with Client)
- (6) **Rule 3.3** (Candor Toward the Tribunal)
- (7) **Rule 8.4.1** (Prohibited Discrimination, Harassment and Retaliation)

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

⁹ When the Board last considered the proposed rules at its November 17, 2016 meeting, among the proposed rules that were individually presented were the following: 1.5 (re fees for legal services); 1.14 (re representation of a client with a diminished capacity); and 1.15 (re client trust accounting). Although the Commission is not planning to again present these rules, these rules still warrant the Board's close scrutiny. Proposed Rule 1.5 includes new duties on the charging of a fee designated as "non-refundable" (see paragraphs (d) and (e)). Proposed Rule 1.14 includes provisions permitting advance client consent to disclose confidential information to protect a client with diminished capacity from financial harm. Proposed Rule 1.15 includes a new duty requiring a lawyer to deposit a fee paid in advance into a client trust account and not disburse the fee until the lawyer has completed the services required to earn the fee.

Rule 1.0 (Purpose and Function of the Rules of Professional Conduct):

The Commission is not recommending adoption of a disciplinary rule requiring a lawyer to provide pro bono legal services. (See Attachment D for a report on the Commission's decision to not recommend adoption of any version of Model Rule 6.1). However, the Commission believes that including a comment to proposed Rule 1.0 would provide helpful recognition, in the rules themselves, that a lawyer has a special responsibility for responding to the needs for access to justice by providing pro bono services. Proposed Rule 1.0, Comment [5] provides, in part, that: "every lawyer should aspire to render at least fifty hours of pro bono publico legal services per year. . . . Also, lawyers may fulfill this pro bono responsibility by providing financial support to organizations providing free legal services." Whether to include this comment is a policy decision.

Rule 1.2.1 (Advising or Assisting the Violation of Law):

Proposed Rule 1.2.1 carries forward the substance of current rule 3-210 that prohibits a lawyer from advising the violation of any law, rule or ruling of a tribunal. The proposed rule adds clarifying language derived from ABA Model Rule 1.2(d) which provides that a lawyer may explain the legal consequences of a client's proposed course of conduct without violating the rule. This additional language should facilitate a lawyer's ability to dissuade a client from pursuing an unlawful course of conduct. Comment [5] clarifies that a lawyer may counsel a client in the client's compliance with a state law that conflicts with federal law. The Commission considered but did not include an explicit medical marijuana example in Comment [5] because: (1) the relevant laws and enforcement policies are subject to change; and (2) there are two existing ethics opinions that provide fuller guidance on the specific subject of advising clients concerning medical marijuana.¹⁰

Rule 1.7 (Conflicts of Interest: Current Clients):

Current rule 3-310 governs conflicts of interest among current clients. In part, this rule can be described as a "checklist" approach to identifying conflicts because it describes discrete situations that might arise in a representation that trigger a duty to provide written disclosure to a client or obtain a client's informed written consent in order to continue the representation. These situations include, for example, a representation where a lawyer has a relationship with a party or witness in the case or a situation where a lawyer has a financial interest in the subject matter of the representation.

The proposed new rule would replace the current "checklist" approach with generalized standards that follow the ABA Model Rule approach to current client conflicts. Under this new approach, the inquiry for assessing whether a conflict is present is to ask: (1) whether there is direct adversity to a current client; and (2) whether there is a significant risk that a lawyer's representation of a current client will be materially limited by the lawyer's responsibilities to or relationships with another client, a former client or a third person, or by the lawyer's own interests. The adoption of a new approach to conflicts of interests and the possible effect of those new rules on civil and disciplinary litigation of conflicts cases is a policy consideration.

¹⁰ See Bar Association of San Francisco Ethics Opinion 2015-1 and Los Angeles County Bar Association Opinion No. 527 (August 12, 2015).

Rule 1.8.1 (Business Transactions with a Client and Pecuniary Interests Adverse to the Client):

One issue considered by the Commission was whether to clarify the rule's applicability to a modification of a lawyer-client fee agreement. The Commission is recommending a statement in the comments that the rule "does not apply to the provisions of an agreement between a lawyer and client relating to the lawyer's hiring or compensation unless the agreement confers on the lawyer an ownership, possessory, security, or other pecuniary interest adverse to the client." This language carries forward the substance of current rule 3-300, Discussion ¶. 1 ("Rule 3-300 is not intended to apply to the agreement by which the member is retained by the client, unless the agreement confers on the member an ownership, possessory, security, or other pecuniary interest adverse to the client.") The Commission viewed this clarification as preferable to the alternative of an amendment stating, as an absolute proposition, that the rule applies to any and all modifications of a fee arrangement that arise during the lawyer-client relationship. The Office of the Chief Trial Counsel would support that absolute standard based on the rationale any self-dealing after the initiation of lawyer-client relationship is a transaction that implicates the trust and confidence reposed by the client in their lawyer, and thus would prompt the application of the rule.

The Commission, however, was concerned that if the rule were to indiscriminately apply to all fee agreement modifications, it would require compliance with the rule in situations that are not necessarily adverse to the interests of a client. Examples include common circumstances where a lawyer: (i) agrees to represent a current client in a new matter; (ii) agrees to a change in the billing rate to reduce a client's fee obligations; and (iii) agrees to expand the scope of an existing flat/fixed fee representation with no concomitant agreement for a fee increase. The Commission also observed that discipline already is available when a lawyer utilizes the lawyer-client relationship to manipulate a client (see *In the Matter of Shalant* (2006) 4 Cal. State Bar Ct. Rptr. 829) and for a situation where a fee arrangement is unconscionable (see proposed Rule 1.5).)

Rule 1.8.10 (Sexual Relations with Client):

Current rule 3-120 permits a lawyer to engage in sexual relations with a client provided that sexual relations are not: (i) a condition of a client's representation; (ii) obtained by coercion, intimidation or undue influence; or (iii) a cause for the lawyer to perform legal services incompetently. (See Bus. and Prof. Code Section 6106.9 for similar statutory prohibitions on sexual relations.) In contrast, most other jurisdictions have adopted a version of Model Rule 1.8(j), which imposes a bright-line standard that generally prohibits all sexual relations between a lawyer and client unless the sexual relationship was consensual and existed at the time the lawyer-client relationship commenced.

The Commission is proposing Rule 1.8.10 to replace current rule 3-120. The proposed rule eliminates California's current approach and substantially adopts the bright line prohibition approach of Model Rule 1.8(j), but carries forward the exceptions in current rule 3-120 for spousal and preexisting sexual relationships and requires consideration of the burden on the client if a complaint is made by one other than the client. The Commission recognizes that this represents a significant departure from California's current rule and may implicate important privacy concerns. Adoption of a rule that might be subject to Constitutional challenge is a key consideration for the Board.

Rule 3.3 (Candor Toward the Tribunal):

The Commission is proposing Rule 3.3 to replace current rule 5-200. Comment [1] provides that the rule governs the conduct of a lawyer in proceedings of a tribunal, which is defined in proposed Rule 1.0.1(m) to include an administrative body acting in an adjudicative capacity. The Commission received public comment from stakeholders engaged in land-use practice and other practices before administrative bodies. These comments argued that the application of proposed Rule 3.3 to proceedings before an administrative body would be problematic because it is not always evident when an administrative body is acting in an adjudicative as opposed to a non-adjudicative capacity, such as a legislative capacity.

The Commission, however, believes that its proposed definition of tribunal, which is substantially narrower than the corresponding Model Rule definition, as well as the rule that has been adopted in 44 jurisdictions, will not result in the problems envisioned by the aforementioned commenters.

In addition to the asserted problems associated with the definition of tribunal, several Commission members have dissented from proposed Rule 3.3(c), which sets forth the duration of the duties imposed by the rule. The dissenters' positions, and the Commission's response, are included in Attachment C.

Rule 8.4.1 (Prohibited Discrimination, Harassment and Retaliation):

The Commission is proposing Rule 8.4.1 to replace current rule 2-400. The main issue considered by the Commission in studying the current rule was whether to broaden the rule's application by eliminating the requirement that there be a final civil determination of wrongful discrimination before a disciplinary investigation can commence or discipline can be imposed (see current rule 2-400(C)¹¹). The Commission is recommending the elimination of that requirement. A majority of the Commission believes the current requirement renders the rule difficult to enforce. However, the Commission also recognizes that eliminating the requirement would give the Office of Chief Trial Counsel original jurisdiction to investigate and prosecute under the current procedures of the disciplinary system any claim of discrimination that comes within the scope of the proposed rule. The requirement's elimination might also result in the State Bar Court becoming the forum of first resort for a victim of discriminatory conduct committed by a lawyer.

In response to public comment received during the 90-day period, the Commission revised the proposed rule to impose a self-reporting obligation on a lawyer who receives notice of disciplinary charges for violating the rule. This would require the lawyer to provide a copy of the notice of disciplinary charges to the California Department of Fair Employment and Housing and

¹¹ Current rule 2-400(C) provides:

"No disciplinary investigation or proceeding may be initiated by the State Bar against a member under this rule unless and until a tribunal of competent jurisdiction, other than a disciplinary tribunal, shall have first adjudicated a complaint of alleged discrimination and found that unlawful conduct occurred. Upon such adjudication, the tribunal finding or verdict shall then be admissible evidence of the occurrence or non-occurrence of the alleged discrimination in any disciplinary proceeding initiated under this rule. In order for discipline to be imposed under this rule, however, the finding of unlawfulness must be upheld and final after appeal, the time for filing an appeal must have expired, or the appeal must have been dismissed."

the United States Department of Justice, Coordination and Review Section or to the California Department of Fair Employment and Housing and the United State Equal Employment Opportunity Commission. The purpose of this provision is to provide to the relevant government agencies an opportunity to become involved in the matter so that they may implement and advance the broad legislative policies with which they have been charged. The Commission also is recommending a comment, proposed Comment [6], to clarify that proposed Rule 8.4.1 does not affect the State Bar's discretion in abating a disciplinary investigation or proceeding should parallel administrative or judicial proceedings arise for the same lawyer misconduct allegations. Both the expansion of the current rule and the inclusion of a new self-reporting duty¹² are policy considerations for the Board.

5. Report on the Second Round of Public Comment (45-day period)

The 45-day public comment period ended on January 9, 2017. One hundred and eight comments on discrete rule topics were received from 27 organizations and individuals. Public commenters were encouraged to use an online form for submitting comments. The online form included the following fields for indicating a commenter's position on a proposed rule: (1) agree with this proposed rule; (2) disagree with this proposed rule; (3) agree only if modified; and (4) state no preference. About twenty-seven percent (27%) indicated agreement with proposals and about eighteen percent (18 %) indicated disagreement. About fifty-two percent (52%) indicated agreement only if a proposal was modified. About four percent (4%) marked the box on the online form for "state no preference." In addition to the written public comment received, visitors often were present at Commission meetings and provided informal public input.¹³

Among the organizations that submitted a written comment were: Alternate Public Defender – Los Angeles County; American Immigration Lawyers; Association of California Water Agencies; Bar Association of San Francisco Legal Ethics Committee; California Advocates for Nursing Home Reform; California Special Districts Association; League of California Cities; Los Angeles County Bar Association; Public Defender of Los Angeles; State Bar Committee on Professional Responsibility and Conduct ("COPRAC"); State Bar Office of the Chief Trial Counsel; and the United States Department of Justice. In addition, an informal group of law professors who teach legal ethics at California law schools submitted a letter with multiple signatories.

A public comment synopsis table for each of the thirty-four proposed rules that were the subject of the second round of public comment is provided in Attachment C and includes the Commission's response to issues raised by commenters. The full text of the written public comments is voluminous and is available upon request to the Office of Professional Competence.¹⁴

¹² In addition, the Commission discussed the possibility that the new self-reporting duty might be challenged under the compelled speech doctrine.

¹³ Attachment E provides a list of visitors who attended open session meetings of the Commission throughout the course of the Commission's study.

¹⁴ Request these materials from Lauren McCurdy by email: lauren.mccurdy@calbar.ca.gov; by telephone: (415) 538-2107; or by mail: State Bar of California, 180 Howard Street, San Francisco, CA 94105.

Following consideration of the public comments received, the Commission made non-substantive changes to the following rules: 1.2.1; 1.8.1; 1.9; 1.15; 4.4; and 8.1. These revisions include grammatical, stylistic, or streamlining edits that did not materially alter the proposed rule. Where applicable, a redline/strikeout version of a proposed rule is included in Attachment C to show the non-substantive revisions. Only proposed Rule 1.7 was substantively revised by the Commission in response to the second round of public comments and that rule is discussed below.

6. Report on the Third Round of Public Comment (30-day period)

The 30-day public comment period on proposed Rule 1.7 will end on March 6, 2017. The Commission will consider the public comments received at its videoconference meeting scheduled for March 7, 2017. After that meeting, a supplemental memorandum reporting the Commission's recommendation for rule 1.7 will be promptly appended to the online posting of this agenda.

7. Discharge of the Commission – Staff Recommendation to Release Most Members but Retain and Reappoint Others

Staff recommends that all of the members of the Commission¹⁵ be thanked for their invaluable service to the Board and the legal profession. This project has involved over two years of highly substantive work and careful balancing of competing public protection interests. Each member has performed admirably and contributed greatly to the Commission's final product. Similarly, special appreciation is recommended for the work of the appointed advisors¹⁶ and the participation of the liaisons¹⁷ who provided significant guidance and assistance to the Commission members.

However, because the Supreme Court may pose questions about a proposed rule or return a rule to the State Bar for additional consideration, staff also recommends that a smaller group of the Commission participants be retained and reappointed for an additional period of time for the limited purpose of assisting the State Bar in any follow-up work on the proposed rules.¹⁸ This group would be less than half the size of the current Commission and would only need to meet

¹⁵ The nineteen members of the Commission are: Justice Lee Edmon (Chair); Jeffrey Bleich (Co-Vice-Chair); Dean Zipser (Co-Vice-Chair); George Cardona; Danny Chou; Nanci Clinch; Judge Karen Clopton; Joan Croker; Daniel Eaton; James Ham; Lee Harris; Tobi Inlender; Robert Kehr; Howard Kornberg; Carol Langford; Raul Martinez; Toby Rothschild; Judge Dean Stout; and Mark Tuft.

¹⁶ The four appointed advisors are: Wendy Chang; Justice Richard Fybel; Edith Matthai; and Heather Rosing.

¹⁷ The primary liaisons are Greg Fortescue (Supreme Court staff) and Jason Lee (Board of Trustees). Additional staff liaisons include: Alan Blumenthal (Office of the Chief Trial Counsel); Gordon Grenier (State Bar Court); and Carissa Andresen (Office of General Counsel).

¹⁸ Although not applicable to the current Commission that was given an atypical assignment of a multi-year project and appointment, Board policy provides that a special committee ordinarily ceases to exist upon the completion of its assignment and its membership dissolved at the next State Bar Annual Meeting following appointment. (See Board Book tab 9, art. 1, §3(b).)

and take action if the Supreme Court poses questions or requests additional State Bar work in connection with the proposed rules. If the Supreme Court has no questions about the proposed rules and does not refer any proposals back, then the extended Commission would never need to meet. Attachment F presents staff's recommended roster of reappointments. These members have been contacted by staff to confirm their respective willingness to continue to serve if invited to do so. In addition, staff has prepared a recommended Charter (see Attachment G) to articulate the precise role of the extended Commission and to state the term of the appointment (i.e., not to exceed 12 months).

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.)¹⁹ Appropriate resolutions are provided below for the Board to take the recommended action.

FISCAL/PERSONNEL IMPACT

Reappointment of a smaller group of Commission members to be available in anticipation of possible follow-up work on the proposed rules will incur the usual expenses related to administering a volunteer group if meetings actually occur. Given the proposed smaller size of the group, any travel and other meeting expenses should be absorbed by the funds budgeted for the Office of Professional Competence.

RULE AMENDMENTS

This agenda item requests Board adoption of proposed new and amended Rules of Professional Conduct. However, the adopted rules do not become binding and operative unless and until they are 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:

¹⁹ By action taken in November 2014, the Board delegated to the State Bar President the authority to appoint the Commission. At that time, delegation was needed to facilitate an expedited appointment process, in part, involving the vetting of candidates with Supreme Court staff. Delegation to facilitate candidate vetting is not necessary in this instance because all of the recommended appointees are current members of, or participants in, the rule revision project and were previously evaluated and found fit to serve.

I. Resolution adopting 27 proposed rules.

RESOLVED, following notice and publication for comment and upon the recommendation of the Commission for the Revision of the Rules of Professional Conduct, that the Board of Trustees adopt the following proposed new and amended Rules of Professional Conduct, in the form attached: 1.3, 1.5, 1.8.3, 1.8.5, 1.8.7, 1.9, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.17, 1.18, 2.1, 3.1, 3.5, 3.9, 4.2, 4.3, 4.4, 5.1, 5.3.1, 5.6, 7.1, 8.1, and 8.4, and it is

FURTHER RESOLVED, that staff is directed to submit the proposed rules as a part of the comprehensive proposed amendments to the Supreme Court of California with a request that the proposed rules be approved.

II. Resolutions adopting 7 separately presented proposed rules.

Proposed Rule 1.0

RESOLVED, following notice and publication for comment and upon the recommendation of the Commission for the Revision of the Rules of Professional Conduct, that the Board of Trustees adopt proposed Rule 1.0 of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that staff is directed to submit the proposed rule as a part of the comprehensive proposed amendments to the Supreme Court of California with a request that the proposed rule be approved.

Proposed Rule 1.2.1

RESOLVED, following notice and publication for comment and upon the recommendation of the Commission for the Revision of the Rules of Professional Conduct, that the Board of Trustees adopt proposed Rule 1.2.1 of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that staff is directed to submit the proposed rule as a part of the comprehensive proposed amendments to the Supreme Court of California with a request that the proposed rule be approved.

Proposed Rule 1.7

RESOLVED, following notice and publication for comment and upon the recommendation of the Commission for the Revision of the Rules of Professional Conduct, that the Board of Trustees adopt proposed Rule 1.7 of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that staff is directed to submit the proposed rule as a part of the comprehensive proposed amendments to the Supreme Court of California with a request that the proposed rule be approved.

Proposed Rule 1.8.1

RESOLVED, following notice and publication for comment and upon the recommendation of the Commission for the Revision of the Rules of Professional Conduct, that the Board of Trustees adopt proposed Rule 1.8.1 of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that staff is directed to submit the proposed rule as a part of the comprehensive proposed amendments to the Supreme Court of California with a request that the proposed rule be approved.

Proposed Rule 1.8.10

RESOLVED, following notice and publication for comment and upon the recommendation of the Commission for the Revision of the Rules of Professional Conduct, that the Board of Trustees adopt proposed Rule 1.8.10 of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that staff is directed to submit the proposed rule as a part of the comprehensive proposed amendments to the Supreme Court of California with a request that the proposed rule be approved.

Proposed Rule 3.3

RESOLVED, following notice and publication for comment and upon the recommendation of the Commission for the Revision of the Rules of Professional Conduct, that the Board of Trustees adopt proposed Rule 3.3 of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that staff is directed to submit the proposed rule as a part of the comprehensive proposed amendments to the Supreme Court of California with a request that the proposed rule be approved.

Proposed Rule 8.4.1

RESOLVED, following notice and publication for comment and upon the recommendation of the Commission for the Revision of the Rules of Professional Conduct, that the Board of Trustees adopt proposed Rule 8.4.1 of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that staff is directed to submit the proposed rule as a part of the comprehensive proposed amendments to the Supreme Court of California with a request that the proposed rule be approved.

III. Resolutions Accepting the Commission's Report and Recommendation, Thanking the Commission and Reappointing Some Members.

Resolution Accepting the Commission's Report and Recommendation, and Thanking Members for their Service:

RESOLVED, that upon the recommendation of the Commission for the Revision of Rules of Professional Conduct, that the Board of Trustees accepts the report and recommendation of the Commission and thanks and commends its officers, members, advisors and liaisons for their invaluable service to the State Bar and the legal profession; and it is

FURTHER RESOLVED, that with the completion of the Commission's submission of a comprehensive recommendation for new and amended Rules of Professional Conduct, that the following members and advisors are released from further service: Jeffrey Bleich; Dean Zipser; Nanci Clinch; Judge Karen Clopton; Joan Croker; James Ham; Lee Harris; Robert Kehr; Howard Kornberg; Carol Langford; Raul Martinez; Judge Dean Stout; Wendy Chang; Justice Richard Fybel; and Edith Matthai.

Resolution Establishing and Appointing an Extended Commission:

RESOLVED, that upon the recommendation of staff, the Board of Trustees hereby establishes a third Commission for the Revision of the Rules of Professional Conduct and adopts a charter for the Commission in the form attached hereto as Attachment G; and it is

FURTHER RESOLVED, that the Board of Trustees appoint the following persons as officers, members or advisors as specified below and for a term expiring on the date shown opposite his or her name, or until further order of the Board, whichever occurs earlier:

Officers

Justice Lee Edmon, Chair (March 9, 2018)
Toby Rothschild, Vice-Chair (March 9, 2018)

Members

George Cardona (March 9, 2018)
Danny Chou (March 9, 2018)
Daniel Eaton (March 9, 2018)
Tobi Inlender (March 9, 2018)
Kevin Mohr (March 9, 2018)
Mark Tuft (March 9, 2018)

Advisor

Heather Rosing (March 9, 2018)

ATTACHMENT(S) LIST

Attachment A: Commission Charter.

Attachment B: Full Text of the Proposed Rules with a Table of Contents.

Attachment C: Executive Summaries, Rule Drafts (clean, redline), and Public Comment Synopsis Tables of Comment Letters and Public Hearing Testimony Received for Each of the Proposed Rules.

Attachment C-1 includes content for proposed Rules 1.0 – 1.18

Attachment C-2 includes content for proposed Rules 2.1 – 8.5

Attachment D: Report on Model Rules that are Not being Recommended by the Commission

Attachment E: List of Visitors to Open Session Meetings of the Commission

Attachment F: Worksheet Presenting Staff's Recommendation for Board Appointments

Attachment G: Proposed Charter for the Extended Commission