

STATE BAR OF CALIFORNIA
COMMISSION FOR THE REVISION OF THE RULES OF
PROFESSIONAL CONDUCT OF THE STATE BAR OF CALIFORNIA

OPEN SESSION ACTION SUMMARY

Thursday, February 2, 2017
(10:00 am – 4:30 pm)

Friday, February 3, 2017 (9:00 am – 4:30 pm)

State Bar of California
845 So. Figueroa Street
Room 2C-G, 2nd Floor
Los Angeles, CA 90017

Members Present: Hon. Lee Edmon (Chair), Jeffrey Bleich (Co-Vice Chair), George Cardona, Danny Chou, Nanci Clinch, Hon. Karen Clopton, Joan Croker, Daniel Eaton, James Ham, Lee Harris, Tobi Inlender (Public Member), Robert Kehr, Howard Kornberg, Raul Martinez, and Hon. Dean Stout.

Members Not Present: Carol Langford, Toby Rothschild, Mark Tuft, and Dean Zipser.

Advisors Present: Richard Fybel and Heather Rosing.

Liaisons Present: Greg Fortescue (California Supreme Court).

State Bar Staff Present: Carissa Andersen (Office of General Counsel, by telephone), Randall Difuntorum (Office of Professional Competence), Mark Torres-Gil (Office of General Counsel), Gordon Grenier (State Bar Court), Mimi Lee (Office of Professional Competence), Kevin Mohr (Consultant/Reporter), and Andrew Tuft (Office of Professional Competence).

Others Present: James Blume, Jose Castaneda, Stan Lamport, and Joan Rogers.

I. CHAIR'S REPORT

A. Oral Report

The Chair reported on a thank you note received from Commission member Carol Langford who expressed great appreciation for the work of the Commission and enclosed a \$500 donation check to the State Bar Foundation in honor of the soon coming completion of the Commission's project. The Chair presented the check to Commission advisor Heather Rosing who serves as the President of the Foundation.

The Chair recognized Mr. Fortescue who conveyed the Chief Justice's thanks to the Commission for the tireless and dedicated work performed for the benefit of the people of California. In particular, the leadership of the Chair was acknowledged and commended. The Chair asked Mr. Fortescue to report to the Chief Justice the Commission's gratitude for the Court's support and especially for the effort in designating a Court liaison who has provided invaluable guidance to the Commission.

The Chair requested and staff provided a report on the plans for a March 7th meeting by video-conference. Commission members were asked to respond promptly to Lauren McCurdy's poll for a meeting time, if they have not yet done so.

The Chair mentioned the format of the draft report and recommendations and informed the members that after the meeting staff would be implementing updates that could not be included in the templates in time for posting of the meeting materials. These updates would not impact the substance of the reports. For example, the comments from OCTC would be copied from the public comment tables and placed in the reports together with the Commission response.

Because some Commission members were not present, the Chair announced the anticipated presenters for the agenda items.

II. CONSENT AGENDA

A. Regular Meeting on January 20-21, 2017 (Open Session)

The consent agenda was presented to the Commission and upon motion made, seconded and adopted, it was

RESOLVED, that the Commission approves the action summary of the Commission's January 20-21, 2017 meeting.

All members present voted yes.

III. ACTION

A. Consideration of Final Reports for Proposed Rules 1.0 - 1.3

(1) Rule 1.0 [1-100] Purpose and Function of the Rules of Professional Conduct

The Chair recognized Mr. Martinez who presented the draft report and recommendation on proposed Rule 1.0.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.0, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

If needed, Mr. Rothschild was assigned to prepare a revised response to Mr. Eaton's dissent and staff was asked to include the dissent and response with the report.

(2) Rule 1.0.1 [1-100(B)] Terminology

The Chair recognized Mr. Chou who presented the draft report and recommendation on proposed Rule 1.01.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.0.1, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

Mr. Chou was assigned to prepare a response to Mr. Kehr's dissent and staff was asked to include the dissent and response with the report.

(3) Rule 1.1 [3-110] Competence

The Chair recognized Mr. Kehr who presented the draft report and recommendation on proposed Rule 1.1.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.1, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(4) Rule 1.2 [3-210] Scope of Representation and Allocation of Authority

The Chair recognized Judge Stout who presented the draft report and recommendation on proposed Rule 1.2.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.2, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(5) Rule 1.2.1 [3-210] Advising or Assisting the Violation of Law

The Chair recognized Judge Stout who presented the draft report and recommendation on proposed Rule 1.2.1.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.2.1, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(6) Rule 1.3 [3-110(B)] Diligence

The Chair recognized Mr. Cardona who presented the draft report and recommendation on proposed Rule 1.3.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.3, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

Mr. Tuft was assigned to prepare a response to Mr. Kehr's dissent and staff was asked to include the dissent and response with the report.

B. Consideration of Final Reports for Proposed Rules 1.4 - 1.4.2

(1) Rule 1.4 [3-500] Communication with Clients

The Chair recognized Mr. Harris who presented the draft report and recommendation on proposed Rule 1.4.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.4, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(2) Rule 1.4.1 [3-510] Communication of Settlement Offers

The Chair recognized Mr. Kornberg who presented the draft report and recommendation on proposed Rule 1.4.1.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.4.1, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

Mr. Tuft was assigned to prepare a response to Mr. Kehr's dissent and staff was asked to include the dissent and response with the report.

(3) Rule 1.4.2 [3-410] Disclosure of Professional Liability Insurance

The Chair recognized Ms. Clinch who presented the draft report and recommendation on proposed Rule 1.4.2.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.4.2, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

C. [Consideration of Final Reports for Proposed Rules 1.5, 1.5.1, 1.15, and 1.16](#)

(1) Rule 1.5 [4-200] Fees for Legal Services

The Chair recognized Mr. Martinez who presented the draft report and recommendation on proposed Rule 1.5.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.5, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(2) Rule 1.5.1 [2-200] Fee Divisions Among Lawyers

The Chair recognized Mr. Ham who presented the draft report and recommendation on proposed Rule 1.5.1.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.5.1, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(3) Rule 1.15 [4-100] Safekeeping Funds and Property of Clients and Other Persons

The Chair recognized Mr. Ham who presented the draft report and recommendation on proposed Rule 1.15.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.15, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(4) Rule 1.16 [3-700] Declining or Terminating Representation

The Chair recognized Mr. Kornberg who presented the draft report and recommendation on proposed Rule 1.16.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.16, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

D. [Consideration of Final Reports for Proposed Rules 1.6 and 1.14](#)

(1) Rule 1.6 [3-100] Confidential Information of a Client

The Chair recognized Mr. Harris who presented the draft report and recommendation on proposed Rule 1.6.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.6, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes with exception of Mr. Kehr who abstained.

(2) Rule 1.14 Client with Diminished Capacity

The Chair recognized Judge Stout who presented the draft report and recommendation on proposed Rule 1.14.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.14, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

E. [Consideration of Final Reports for Proposed Rules 1.8.1 - 1.8.11](#)

(1) Rule 1.8.1 [3-300] Business Transactions with a Client and Pecuniary Interests Adverse to the Client

The Chair recognized Mr. Kehr who presented the draft report and recommendation on proposed Rule 1.8.1.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.8.1, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

Mr. Eaton was assigned to prepare a response to Mr. Kehr's dissent and staff was asked to include the dissent and response with the report.

(2) Rule 1.8.2 Use of Current Client's Information

The Chair recognized Mr. Harris who presented the draft report and recommendation on proposed Rule 1.8.2.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.8.2, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(3) Rule 1.8.3 [4-400] Gifts from Client

The Chair recognized Mr. Ham who presented the draft report and recommendation on proposed Rule 1.8.3.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.8.3, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(4) Rule 1.8.5 [4-210] Payment of Personal or Business Expenses Incurred by or for a Client

The Chair recognized Ms. Inlander who presented the draft report and recommendation on proposed Rule 1.8.5.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule

1.8.5, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

Mr. Rothschild was assigned to prepare a response to Mr. Kehr's dissent and staff was asked to include the dissent and response with the report.

(5) Rule 1.8.6 [3-310(F)] Compensation from One Other Than Client

The Chair recognized Mr. Martinez who presented the draft report and recommendation on proposed Rule 1.8.6.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.8.6, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(6) Rule 1.8.7 [3-310(D)] Aggregate Settlements

The Chair recognized Mr. Martinez who presented the draft report and recommendation on proposed Rule 1.8.7.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.8.7, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(7) Rule 1.8.8 [3-400] Limiting Liability to Client

The Chair recognized Mr. Harris who presented the draft report and recommendation on proposed Rule 1.8.8.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.8.8, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(8) Rule 1.8.9 [4-300] Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review

The Chair recognized Mr. Martinez who presented the draft report and recommendation on proposed Rule 1.8.9.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.8.9, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(9) Rule 1.8.10 [3-120] Sexual Relations with Client

The Chair recognized Ms. Ham who presented the draft report and recommendation on proposed Rule 1.8.10.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.8.10, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

Mr. Eaton was assigned to prepare a response to Mr. Ham's dissent and staff was asked to include the dissent and response with the report.

(10) Rule 1.8.11 Imputation of Prohibitions Under Rules 1.8.1 to 1.8.9

The Chair recognized Ms. Martinez who presented the draft report and recommendation on proposed Rule 1.8.11.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.8.11, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

F. [Consideration of Final Reports for Proposed Rules 1.7, 1.9 - 1.12, and 1.18](#)

(1) Rule 1.7 [3-310] Conflict of Interests: Current Clients

The Chair recognized Ms. Martinez who presented a tentative draft report and recommendation on proposed Rule 1.7. The Chair confirmed that final action on a draft report would be deferred until the Commission's March 7, 2017 meeting.

Mr. Cardona was assigned to prepare a response to Mr. Kehr's and Martinez's dissents and staff was asked to include the dissents and responses with the report.

(2) Rule 1.9 [3-310(E)] Duties to Former Clients

The Chair recognized Mr. Cardona who presented the draft report and recommendation on proposed Rule 1.9.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.9, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(3) Rule 1.10 Imputation of Conflicts of Interest: General Rule

The Chair recognized Mr. Martinez who presented the draft report and recommendation on proposed Rule 1.10.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.10, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(4) Rule 1.11 Special Conflicts of Interest for Former and Current Government Officials and Employees

The Chair recognized Mr. Cardona who presented the draft report and recommendation on proposed Rule 1.11.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.11, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(5) Rule 1.12 Former Judge, Arbitrator, Mediator or Other Third-Party Neutral

The Chair recognized Mr. Martinez who presented the draft report and recommendation on proposed Rule 1.12.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.12, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(6) Rule 1.18 Duties To Prospective Client

The Chair recognized Judge Stout who presented the draft report and recommendation on proposed Rule 1.18.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.18, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

Mr. Tuft was assigned to prepare a response to Mr. Kehr's dissent and staff was asked to include the dissent and response with the report.

G. [Consideration of Final Reports for Proposed Rules 1.13 and 1.17](#)

(1) Rule 1.13 [3-600] Organization as Client

The Chair recognized Mr. Chou who presented the draft report and recommendation on proposed Rule 1.13.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.13, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(2) Rule 1.17 [2-300] Sale of a Law Practice

The Chair recognized Mr. Kehr who presented the draft report and recommendation on proposed Rule 1.17.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 1.17, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

H. Consideration of Final Reports for Proposed Rules 2.1, 2.4, and 2.4.1

(1) Rule 2.1 Advisor

The Chair recognized Mr. Eaton who presented the draft report and recommendation on proposed Rule 2.1.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 2.1, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(2) Rule 2.4 Lawyer as Third-Party Neutral

The Chair recognized Judge Clopton who presented the draft report and recommendation on proposed Rule 2.4.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 2.4, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(3) Rule 2.4.1 [1-710] Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator

The Chair recognized Judge Clopton who presented the draft report and recommendation on proposed Rule 2.4.1.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 2.4.1, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

I. Consideration of Final Reports for Proposed Rules 3.1 - 3.10

(1) Rule 3.1 [3-200] Meritorious Claims and Contentions

The Chair recognized Mr. Martinez who presented the draft report and recommendation on proposed Rule 3.1.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 3.1, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(2) Rule 3.2 Delay of Litigation

The Chair recognized Mr. Ham who presented the draft report and recommendation on proposed Rule 3.2.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(3) Rule 3.3 [5-200(A)-(D)] Candor Toward the Tribunal

The Chair recognized Mr. Chou who presented the draft report and recommendation on proposed Rule 3.3.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 3.3, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

Mr. Martinez was assigned to prepare a response to Mr. Tuft's, Mr. Chou's, Mr. Cardona's and Judge Stout's dissents and staff was asked to include the dissents and responses with the report.

(4) Rule 3.4 [5-200(E), 5-220, 5,310] Fairness to Opposing Party and Counsel

The Chair recognized Ms. Croaker who presented the draft report and recommendation on proposed Rule 3.4.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 3.4, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(5) Rule 3.5 [5-300, 5-320] Contact with Judges, Officials, Employees, and Jurors

The Chair recognized Judge Stout who presented the draft report and recommendation on proposed Rule 3.5.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 3.5, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes with the exception of Mr. Kehr who voted no.

(6) Rule 3.6 [5-120] Trial Publicity

The Chair recognized Judge Clopton who presented the draft report and recommendation on proposed Rule 3.6.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 3.6, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(7) Rule 3.7 [5-210] Lawyer as Witness

The Chair recognized Mr. Cardona who presented the draft report and recommendation on proposed Rule 3.7.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 3.7, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(8) Rule 3.8 [5-110] Special Responsibilities of a Prosecutor

The Chair recognized Ms. Croker who presented the draft report and recommendation on proposed Rule 3.8.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 3.8, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

Mr. Mohr noted that responses to dissents from Mr. Cardona and Mr. Eaton were included in the proposed amended Rule 5-110 materials and will be carried forward for the Rule 3.8 materials.

(9) Rule 3.9 Advocate in Non-adjudicative Proceedings

The Chair recognized Mr. Kehr who presented the draft report and recommendation on proposed Rule 3.9.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 3.9, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(10) Rule 3.10 [5-100] Threatening Criminal, Administrative, or Disciplinary Charges

The Chair recognized Mr. Kehr who presented the draft report and recommendation on proposed Rule 3.10.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 3.10, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

J. [Consideration of Final Reports for Proposed Rules 4.1 - 4.4](#)

(1) Rule 4.1 Truthfulness in Statements to Others

The Chair recognized Mr. Cardona who presented the draft report and recommendation on proposed Rule 4.1.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 4.1, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(2) Rule 4.2 [2-100] Communication with a Represented Person

The Chair recognized Mr. Chou who presented the draft report and recommendation on proposed Rule 4.2.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 4.2, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(3) Rule 4.3 Communicating with an Unrepresented Person

The Chair recognized Mr. Cardona who presented the draft report and recommendation on proposed Rule 4.3.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 4.3, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(4) Rule 4.4 Duties Concerning Inadvertently Transmitted Writings

The Chair recognized Mr. Martinez who presented the draft report and recommendation on proposed Rule 4.4.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 4.4, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

K. [Consideration of Final Reports for Proposed Rules 5.1 - 5.6](#)

(1) Rule 5.1 Responsibilities of Managerial and Supervisory Lawyers

The Chair recognized Mr. Kehr who presented the draft report and recommendation on proposed Rule 5.1.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 5.1, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(2) Rule 5.2 Responsibilities of a Subordinate Lawyer

The Chair recognized Mr. Kehr who presented the draft report and recommendation on proposed Rule 5.2.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 5.2, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(3) Rule 5.3 Responsibilities Regarding Nonlawyer Assistants

The Chair recognized Mr. Kehr who presented the draft report and recommendation on proposed Rule 5.3.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 5.3, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(4) Rule 5.3.1 [1-311] Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyer

The Chair recognized Mr. Ham who presented the draft report and recommendation on proposed Rule 5.3.1.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 5.3.1 with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

Mr. Rothschild and Mr. Ham were assigned to prepare a response to Mr. Eaton's dissent and staff was asked to include the dissent and response with the report.

(5) Rule 5.4 [1-320, 1-310, 1-600] Financial and Similar Arrangements with Nonlawyers

The Chair recognized Mr. Harris who presented the draft report and recommendation on proposed Rule 5.4.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 5.4, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(6) Rule 5.5 [1-300] Unauthorized Practice of Law; Multijurisdictional Practice of Law

The Chair recognized Mr. Bleich who presented the draft report and recommendation on proposed Rule 5.5.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 5.5, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes with the exception of Mr. Kehr who abstained.

(7) Rule 5.6 [1-500] Restrictions on a Lawyer's Right to Practice

The Chair recognized Mr. Bleich who presented the draft report and recommendation on proposed Rule 5.6.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 5.6, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

L. Consideration of Final Reports for Proposed Rules 6.3 and 6.5

(1) Rule 6.3 Membership in Legal Services Organizations

The Chair recognized Mr. Martinez who presented the draft report and recommendation on proposed Rule 6.3.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 6.3, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(2) Rule 6.5 [1-650] Limited Legal Services Programs

The Chair recognized Mr. Martinez who presented the draft report and recommendation on proposed Rule 6.5.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

M. [Consideration of Final Reports for Proposed Rules 7.1 - 7.5](#)

(1) Rule 7.1 [1-400] Communications Concerning a Lawyer's Services

(2) Rule 7.2 [1-400, 1-320(B), (C), & (A)(4), 2-200(B)] Advertising

(3) Rule 7.3 [1-400] Solicitation of Clients

(4) Rule 7.4 [1-400(D)(6)] Communication of Fields of Practice and Specialization

(5) Rule 7.5 [1-400] Firm Names and Trade Names

The Chair recognized Mr. Kornberg who presented the draft report and recommendation on proposed Rules 7.1 through 7.5.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on proposed Rules 7.1 through 7.5, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

N. [Consideration of Final Reports for Proposed Rules 8.1 - 8.5](#)

(1) Rule 8.1 [1-200] False Statement Regarding Application for Admission, Readmission, Certification or Registration

The Chair recognized Ms. Clinch who presented the draft report and recommendation on proposed Rule 8.1.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 8.1, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

Mr. Mohr noted Mr. Kehr's prior dissent and inquired if Mr. Kehr maintained that position given the subsequent changes to the proposed rule. Mr. Kehr stated that he was withdrawing his dissent.

(2) Rule 8.1.1 [1-110] Compliance with Conditions of Discipline and Agreements in Lieu of Discipline

The Chair recognized Mr. Eaton who presented the draft report and recommendation on proposed Rule 8.1.1.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 8.1.1, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(3) Rule 8.2 [1-700] Judicial Officials

The Chair recognized Judge Stout who presented the draft report and recommendation on proposed Rule 8.2.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 8.2, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(4) Rule 8.4 [1-120] Misconduct

The Chair recognized Mr. Cardona who presented the draft report and recommendation on proposed Rule 8.4.1.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 8.4, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

(5) Rule 8.4.1 [2-400] Prohibited Discrimination, Harassment and Retaliation

The Chair recognized Mr. Cardona who presented the draft report and recommendation on proposed Rule 8.4.1.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 8.4.1, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

Mr. Cardona was assigned to prepare a response to Mr. Kehr's dissent and staff was asked to include the dissent and response with the report.

(6) Rule 8.5 [1-100(D)] Disciplinary Authority; Choice of Law

The Chair recognized Mr. Eaton who presented the draft report and recommendation on proposed Rule 8.5.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the drafting team, the Commission hereby approves the proposed report and recommendation on Rule 8.5, with authorization for staff to implement any necessary non-substantive changes.

All members present voted yes.

O. Consideration of Final Report for Model Rules Rejected by Commission

Model Rule 2.3	Evaluation for Use by Third Parties
Model Rule 5.7	Responsibilities Regarding Law Related Services
Model Rule 6.1	Voluntary Pro Bono Publico Service
Model Rule 6.2	Accepting Appointments
Model Rule 6.4	Law Reform Activities
Model Rule 7.6	Political Contributions to Obtain Government Engagements or Appointments by Judges
Model Rule 8.3	Reporting Professional Misconduct

The Chair confirmed that no member wished to reconsider the Commission's position on these rules. Staff was asked to review the report, make any necessary updates and place the report on the agenda for the Commission's next meeting.

CLOSED SESSION

*None**

*Closed under Bus. & Prof. Code § 6026.5(a) to consult with counsel concerning pending or prospective litigation.

*Closed under Bus. & Prof. Code Sec. 6026.5(d) to consider a personnel matter.