

AGENDA ITEM

MAY 10 – Board of Trustees – March 9, 2017 Open Minutes

**Board of Trustees Meeting
Thursday, March 9, 2017
Open Minutes
The State Bar of California
845 South Figueroa Street
Board Room, 2nd Floor
Los Angeles, CA 90017-2515**

The Board of Trustees of The State Bar of California convened in open session at 1:30 pm at the State Bar of California, 845 South Figueroa Street, Board Room, 2nd Floor, Los Angeles, CA, Thursday, March 9, 2017, James Fox presiding.

The following members of the Board of Trustees were present: Janet Brewer, Mark Broughton, Terrance Flanigan, Renée LaBran, Jason Lee, Joanna Mendoza, Danette Meyers, Richard Ramirez, Sean M. SeLegue, Alan Steinbrecher and Todd Stevens.

The following members of the Board of Trustees were absent: Stacie Spector & Brandon Stallings. Michael Colantuono was absent for portions of the meeting.

The following members of staff were present: Francisco Gomez, Vanessa Holton, Elizabeth Parker and Leah Wilson.

Also present were members of the Commission for the Revision of the Rules of Professional Conduct: Justice Lee Edmon, Chair; Toby Rothschild, Member, Mark Tuft, Member and Prof. Kevin Mohr, Consultant and staff Randall Difuntorum and Mimi Lee.

The roll-call vote was taken, and upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the roll-call vote will be substituted for the vote unless otherwise noted.

All members listed on the slip voted yes.

701 Proposed New and Amended Rules of Professional Conduct of the State Bar of California, Return from Public Comment and Request for Adoption

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. The 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.

**Rules of Professional Conduct Approved by the
Board of Trustees at its March 9, 2017 Meeting**

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

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

Rule 1.3 [3-110(B)] Diligence

Rule 1.5 [4-200] Fees for Legal Services

Rule 1.7 [3-310] Conflict of Interest: Current Clients

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

Rule 1.8.3 [4-400] Gifts from Client

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

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

Rule 1.8.10 [3-120] Sexual Relations with Current Client

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

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

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

Rule 1.13 [3-600] Organization as Client

Rule 1.14 Client with Diminished Capacity

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

Rule 1.16 [3-700] Declining or Terminating Representation

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

Rule 1.18 Duties To Prospective Client

Rule 2.1 Advisor

Rule 3.1 [3-200] Meritorious Claims and Contentions

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

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

Rule 3.9 Advocate in Non-adjudicative Proceedings

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

Rule 4.3 Communicating with an Unrepresented Person

Rule 4.4 Duties Concerning Inadvertently Transmitted Writings

Rule 5.1 Responsibilities of Managerial and Supervisory Lawyers

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

Rule 5.6 Restrictions on a Lawyer's Right to Practice

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

Rule 8.1 [1-200] False Statement Regarding Application for Admission to Practice Law

Rule 8.4 [1-120] Misconduct

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

701 Upon motion made, seconded and unanimously adopted, it was

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 amendments to the Rules of Professional Conduct, in the form attached: 1.0, 1.2.1, 1.3, 1.5, 1.7, 1.8.1, 1.8.3, 1.8.5, 1.8.7, 1.8.10, 1.9, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.17, 1.18, 2.1, 3.1, 3.3, 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.

701 Upon motion made, seconded and unanimously adopted, it was

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 amendments to the Rules of Professional Conduct, in the form attached: 8.4.1, 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.

All members present and recorded on the roll-call slip voted yes, except Brewer, Broughton, Colantuono, Ramirez, SeLegue, and Steinbrecher who voted no, on the above matter.

701 Upon motion made, seconded and unanimously adopted, it was

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.

All members present and recorded on the roll-call slip voted yes on the above matter.

701 Upon motion made, seconded and unanimously adopted, it was

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, to expire on March 9, 2018, and adopts a charter for the Commission in the form attached; 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:

All members present and recorded on the roll-call slip voted yes on the above matter.

**Members of the Third Commission for the
Revision of the Rules of Professional Conduct
(Expiring on March 9, 2018)**

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)

The Board adjourned its open session at 4:05 pm and went into closed session.