

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

OPEN SESSION ACTION SUMMARY

Tuesday, October 24, 2017
(10:30 am – 4:30 pm)

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

Members Present: Lee Edmon (Chair), George Cardona, Danny Chou, Daniel Eaton, Tobi Inlender (Public Member), Kevin Mohr, Toby Rothschild, and Mark Tuft.

State Bar Staff Present: Allen Blumenthal (Office of Chief Trial Counsel) (by teleconference), Randall Difuntorum (Office of Professional Competence), Gordon Grenier (State Bar Court), Andrew Tuft (Office of Professional Competence), Mimi Lee (Office of Professional Competence), Lauren McCurdy (Office of Professional Competence, by teleconference), and Carissa Andresen (Office of General Counsel, by teleconference) (SF).

Others Present: James Blume, Greg Fortescue (Supreme Court staff) (by teleconference), Heather Rosing (Advisor).

I. CHAIR'S REMARKS

A. Oral Report

The Chair asked Mr. Difuntorum to report on a request for a proposed new rule pending with the Committee on Professional Responsibility and Conduct (COPRAC). Staff reported that the request was submitted to COPRAC by San Francisco District Attorney, George Gascon, and that the subject of the proposed rule concerned a new prohibition on an attorney's disclosure of a person's immigration status in open court or in information that would become a public record. Staff explained that it was anticipated that COPRAC would be asking the Board of Trustees Committee on Regulation and Discipline to consider seeking input from the Commission on this proposed new rule.

The Chair announced that the next Commission meeting would be tentatively set for January 23, 2018 with the location to be determined.

II. CONSENT AGENDA

A. Regular Meeting on July 5, 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 July 5, 2017 meeting.

All members present voted yes.

III. ACTION

A. Reconsideration of Proposed Rule 5-110(E) – Post-Public Comment

The Chair recognized staff who provided a brief summary of the public comment received on the proposed rule 5-110(E) alternatives. The alternatives addressed the conditions that must be present before a lawyer, including a prosecutor, may issue a subpoena to another attorney to present evidence about that attorney's current or former client. Following discussion, the Commission determined not to recommend any of the alternatives.

Upon motion made, seconded and adopted, it was

RESOLVED, that the Commission does not recommend adoption of any of the public comment alternatives for a rule addressing the conditions that must be present before a lawyer issues a subpoena to another attorney to present evidence about a current or former client.

All members present voted yes.

The Commission also approved a public comment response table.

Upon motion made, seconded and adopted, it was

RESOLVED, that the Commission approves the rule 5-110(E) public comment response table.

All members present voted yes.

In follow-up to the above action, the Commission considered the related issue of conforming changes to proposed rule 3.8 that was submitted to the Supreme Court on March 30, 2017. The Commission authorized staff to implement any necessary conforming changes to rule 3.8 that results from the non-adoption of any version of rule 5-110(E) and also from the Court's approval of changes to rule 5-110(D) that were effectuated on an expedited basis. It was understood that the Board has not yet acted on the Rules Revision Commission's recommendation on rule 5-110(E).

Upon motion made, seconded and adopted, it was

RESOLVED, that the Commission authorizes staff to implement and present to the Board of Trustees a revised version of proposed rule 3.8 that conforms to the changes to current rule 5-110 adopted by the Supreme Court and any changes necessary to conform to the Board's non-adoption of any version of a rule addressing the conditions that must be present before a prosecutor may issue a subpoena to a lawyer to present evidence about that lawyer's current or former client, if that is the action taken by the Board.

All members present voted yes with the exception of Ms. Inlander who abstained.

B. Reconsideration of Additional Proposed Rules, if any

No other proposed rules were considered.

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.