

OPEN SESSION AGENDA ITEM

704 FEBRUARY 2018

DATE: February 8, 2018

TO: Members, Board of Trustees

FROM: Randall Difuntorum, Program Manager, Office of Professional Competence

SUBJECT: Commission for the Revision of the Rules of Professional Conduct:
Extension of Term of Appointment

EXECUTIVE SUMMARY

The State Bar of California's Commission for the Revision of the Rules of Professional Conduct (Commission) is scheduled to sunset on March 9, 2017. This agenda item requests an extension of the term of the Commission until June 30, 2018.

BACKGROUND

At the Board's March 9, 2017, meeting, the Board discharged most of the members of the Commission but retained and reappointed a smaller group to assist the Board with any questions from the Supreme Court concerning the proposed new and amended rules adopted by the Board. The Board's resolution provided that the appointments, and the Commission itself, terminate on March 9, 2018.

DISCUSSION

The Board's proposed new and amended rules remain pending with the Supreme Court. It is possible that Supreme Court action, including questions about the proposed rules, may be transmitted to the State Bar after March 9, 2017. Accordingly, a short extension to June 30, 2018, of the Commission and the terms of the officers and members presently serving is requested. (A Commission roster is provided as Attachment A. A proposed revised Charter for the Commission is provided as Attachment B.)

FISCAL/PERSONNEL IMPACT

The Commission would only meet and incur expenses if there were questions from the Supreme Court concerning the proposed rules necessitating such a meeting. The Office of Professional Competence 2018 budget would be able to absorb the expense of any meetings of the Commission before June 30, should such meetings occur.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

None.

STRATEGIC PLAN GOALS & OBJECTIVES 2017-2022

Goal: 2. Ensure a timely, fair, and appropriately resourced admissions, discipline, and regulatory system for the more than 250,000 lawyers licensed in California.

Objective: None.

RECOMMENDATION

The Office of Professional Competence recommends that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approve the extension of the Commission for the Revision of the Rules of Professional Conduct and the terms of its officers and members until June 30, 2018, or when terminated by the Board, whichever is earliest; and it is

FURTHER RESOLVED, that the charter of the Commission is revised to implement this extension.

ATTACHMENT(S) LIST

- A.** Roster of the Members of the Commission for the Revision of the Rules of Professional Conduct
- B.** Revised Charter for the Commission for the Revision of the Rules of Professional Conduct

ATTACHMENT A

PUBLIC ROSTER

STATE BAR OF CALIFORNIA COMMISSION FOR THE REVISION OF THE RULES OF PROFESSIONAL CONDUCT (2017)

LEADERSHIP

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ATTACHMENT B

PROPOSED REVISED CHARTER FOR THE EXTENDED COMMISSION

Following the State Bar's anticipated submission of a request that the Supreme Court of California approve comprehensive amendments to the Rules of Professional Conduct of the State Bar of California, the Commission is charged with reviewing any substantive questions, or requests for further action, thereafter received from the Court concerning the proposed rules and providing recommendations for a State Bar response. If the response involves drafting rule revisions, the Commission should be guided by following the principles:

1. The Commission's revisions should respond to the questions or issues posed by the referral from the Supreme Court.
2. The Commission's revisions should promote confidence in the legal profession and the administration of justice, and ensure adequate protection to the public.
3. The Commission should consider the historical purpose of the Rules of Professional Conduct in California, and ensure that the proposed rules set forth a clear and enforceable articulation of disciplinary standards, as opposed to purely aspirational objectives.
4. The Commission's revisions should eliminate or minimize, when and if appropriate, unnecessary differences between California's rules and the rules used by a preponderance of the states (in some cases in reliance on the American Bar Association's Model Rules) in order to help promote a national standard with respect to professional responsibility issues whenever possible.
5. The Commission's revisions should facilitate compliance with and enforcement of the Rules by eliminating ambiguities and uncertainties.
6. Substantive information about the conduct governed by the rule should be included in the rule itself. Official commentary to the proposed rules should not conflict with the language of the rules, and should be used sparingly to elucidate, and not to expand upon, the rules themselves.

Proposed amendments developed by the Commission should be accompanied by a report setting forth the Commission's rationale for retaining or changing any rule and related commentary language.

The terms of the officers, members and advisors appointed to the Commission shall end on ~~March 9, 2018~~ June 30, 2018 or when terminated by the Board, whichever is earliest.