

OPEN SESSION AGENDA ITEM

**54-114 JULY 2018
EX COMM ITEM III.E.**

DATE: July 19, 2018

TO: **Members, Board Executive Committee
Members, Board of Trustees**

FROM: Andrew Tuft, Attorney, Office of Professional Competence

SUBJECT: Committee on Professional Responsibility and Conduct: 2018-2019
Recommendations for Appointment of New Members, Officers and Advisor

EXECUTIVE SUMMARY

This memorandum presents the Committee on Professional Responsibility and Conduct's ("COPRAC" or "the Committee") recommended slate of 2018-2019 candidates for appointment. COPRAC is not subject to the "Appendix I" sub-entity reviews occurring as a result of the May 2017 Governance in the Public Interest Task Force recommendations and thus consideration of appointments is appropriate at this time. Board members with questions concerning this item may contact: COPRAC Chair Andrew Dilworth at (415) 765-6229; COPRAC Staff Counsel Andrew Tuft at (415) 538-2172; or the Program Manager of Professional Competence Randall Difuntorum at (415) 538-2161.

BACKGROUND

The Committee on Professional Responsibility and Conduct assists members of the State Bar in fulfilling their ethical responsibilities. The Committee's assistance includes: 1) drafting advisory opinions on issues of professional ethics based on questions submitted to the Committee or developed by the Committee on its own initiative; 2) studying and recommending changes to the Rules of Professional Conduct; 3) conducting special studies and providing advice to the Board of Trustees on professional responsibility issues; and, 4) sponsoring educational and outreach programs on legal ethics topics, including conducting an annual ethics symposium.

Sixteen volunteers serve on COPRAC, consisting of 15 members and one Advisor appointed by the Board of Trustees ("the Board"). The officers, consisting of a Chair, Vice-Chair and an Advisor, serve a one-year term of office. All other members of COPRAC serve a three-year term of office. Application for appointment to COPRAC is open to both lawyers and non-lawyer public members.

This memorandum presents for the Board's approval COPRAC's recommended slate of 2018-2019 candidates for appointment.

DISCUSSION

1. Introduction and Summary

To fill 4 vacancies, COPRAC considered 9 new applicants. We believe that our 3 recommended attorney choices and 1 public member choice are strong candidates who will serve COPRAC and the Board well.

Our recommendations, if accepted by the Board, will continue to provide a core of members with a strong background in legal ethics, which is critical to the Committee's ability to issue opinions, to develop educational programs, and to be responsive to the Board's request for analysis of professional responsibility initiatives.

2. Officers and Advisor

Committee procedures¹ provide that the current Vice-Chair be nominated as Chair for the upcoming Committee year and that the current Chair be nominated to serve as Advisor in the upcoming Committee year. Applying these rules, the Committee nominates Amy Bomse as its next Chair and Andrew Dilworth as Advisor.

Committee procedures further provide that all members serving in their second or third year are eligible for nomination to the Vice-Chair position and that, in the case of more than one candidate, the Vice-Chair nominee be selected by a Committee vote, with the Advisor breaking any tie. This year there were two candidates for the Vice-Chair position and the Committee selected Stephen Bundy, who is currently a third-year COPRAC member, as the Committee's Vice-Chair nominee for the upcoming Committee year.

3. Proposed New Members

The Committee Officers,² including the Chair, the Vice-Chair, and the Advisor, reviewed all 9 new member applications and selected 6 attorney applicants and 1 public member applicant for personal interviews.³ COPRAC has found the in-person interviews to be extremely important in evaluating the strength of the applicants, and their ability and willingness to perform the large amount of substantive work required of Committee members. The interviews were held on June 5, 2018 in San Francisco and June 7, 2017 in Los Angeles.

Four vacancies are to be filled as a result of the end of the terms of four members.

The Committee recognizes the policy of maintaining one or more public members serving on the Committee at all times and there are currently two public members serving with their terms expiring in 2018 and 2019, and is therefore recommending the appointment of one new public member to replace the expiring public member's term. The Committee will be recruiting new public member applicants for replacement of the 2019 departing public member in the next appointment cycle as well.

¹ Enclosure 1 provides an excerpt from COPRAC's Guidelines for Committee Operation and an excerpt from State Bar Board Book Tab 19, Art. 2. These standards comprise the "committee procedures."

² The Officers consisted of the following COPRAC members: Andrew Dilworth (Chair), Amy Bomse (Vice-Chair), and Suzanne Burke Spencer (Advisor).

³ One of the attorney applicants had to withdraw his application a few days before his interview because he was expected to be in trial on the day of the interview.

The criteria used to consider the attorney applicants during the personal interviews included (in no particular order): 1) prior experience in the legal ethics field; 2) time and energy to undertake the significant responsibilities of committee membership; 3) writing skills; 4) verbal skills; 5) factors lending diversity to the Committee, including diversity based on race, sex, color, national origin, disability and sexual orientation, as well as location, field of practice, and years in practice; and 6) prior volunteer experience, particularly involvement in legal and other professional groups.

Following the applicant interviews, the Officers ranked the 9 applicants. The full Committee considered the Officers' recommendations at their June 8, 2018 meeting and, following discussion, approved the recommendations for transmission to the Board Executive Committee and Board. All four applicants recommended for appointment were considered outstanding candidates for COPRAC. Collectively, they would offer the following attributes to the Committee: 1) practice in areas emphasizing the law governing lawyers (i.e., legal ethics and legal malpractice); 2) experience in both prosecuting and defending civil cases relating to attorney conduct; 3) experience presenting continuing education programs in legal ethics; 4) experience serving on State Bar, local bar and other committees; 5) experience in the development and consideration of the recently adopted new rules of professional conduct; and 6) experience as a former state bar prosecutor.

4. Alternate Members

In the event that the Board Executive Committee or the Board do not concur in one or more of the Committee's recommended applicants for appointment, or should a vacancy occur on the Committee during the upcoming committee year, the Committee has designated the top alternate by ranking her #5. In the event that the Board considers appointing an alternate choice, a COPRAC⁴ representative will be available to the Board Executive Committee to offer additional input if requested.

FISCAL/PERSONNEL IMPACT

Staffing and expenses associated with the operation of COPRAC are provided for in the Office of Professional Competence budget.

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

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

⁴ COPRAC also ranked four other alternates, this information can be made available upon request.

RECOMMENDATION

It is recommended that the Board Executive Committee and the Board of Trustees approve the following resolution:

RESOLVED, that the Board Executive Committee and the Board of Trustees approve the appointment of the following new members, officers and advisor to serve on the Committee on Professional Responsibility and Conduct (COPRAC) beginning in the 2018-2019 committee year:

Officers

Andrew Dilworth, Advisor (2019)
Amy Bomse, Chair (2019)
Stephen Bundy, Vice-Chair (2019)

Member Appointments (in order of preference)

- 1) David Carr (2021)
- 2) Amber Lee (2021)
- 3) Tobi Inlender (public member) (2021)
- 4) Adam Koss (2021)

Alternate Member Appointments (in order of preference)

- 5) Jennifer Saunders

ATTACHMENT(S) LIST

- A. Committee Appointment Procedures
- B. Worksheet Presenting COPRAC's Recommendation

ATTACHMENT A

Excerpt from Committee on Professional Responsibility and Conduct Guidelines for Committee Operation (Adopted by COPRAC on July 29, 2004.)

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III. MEMBERSHIP AND OFFICERS

B. Officers

1. The Committee selects a nominee for Vice-Chair from members of the Committee serving their second or third year. Persons interested shall express their interest in the first meeting held after April 1 of each year. The Vice-Chair shall be nominated by secret mail ballot following the meeting. Staff shall tabulate the ballots. All Committee members except for the Advisor shall be eligible to vote. If there is a tie in the number of votes received, the Staff shall obtain the Advisor's vote to break the tie. The Advisor's vote will remain secret. The Board considers whether to accept Committee's nominee for Vice-Chair.
2. The Committee believes that continuity of leadership serves a valuable purpose. To that end, it is the practice of the Committee that the Vice-Chair shall be nominated to serve as Chair in the Committee year following service as Vice-Chair and shall be nominated to serve as Advisor in the Committee year following service as Chair.

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Excerpt from State Bar Board Book Tab 19, Art. 2, "The Standing Committee on Professional Responsibility and Conduct" (Adopted by COPRAC on July 29, 2004, approved by the Board of Governors on December 4, 2004.)

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Section 2 *Members and Advisors*

- (a) The membership of the committee shall consist of fifteen (15) members (including a chair and vice-chair) and an advisor. Members shall be appointed by the board for a three (3) year term of office. The chair, vice-chair and advisor shall be appointed or reappointed by the Board of Governors for a one (1) year term of office. The advisor shall be selected from former officers of the committee.
- (b) Each Committee year, the Committee shall select a Nominations Subcommittee. The Subcommittee shall consist of the Chair and Vice-Chair and three other members of the Committee selected by Chair.
 - (1) Any materials submitted by applicants shall be made available for review by Committee members at the offices of the State Bar in Los Angeles and San Francisco at the same time the materials are distributed to the Nominations Subcommittee. Staff shall advise the entire Committee when such materials are available for review. In addition, one set of applicant materials shall be presented to the Committee's membership for review at the first Committee meeting each year which follows the materials' distribution to the Nominations Subcommittee and also at any meeting where nominations are to be discussed.
 - (2) Following any interviews the Subcommittee may conduct, the Subcommittee will rank the applicants in order of preference and shall submit those applicant rankings to the Committee for its consideration at a regularly scheduled meeting or as otherwise directed by the Committee. After considering the Subcommittee's recommendations, the Committee shall rank the applicants in order of preference and submit those rankings to the Board Committee.
 - (3) In evaluating potential members, the Committee uses the following criteria, though no one factor is dispositive: (1) prior experience in the legal ethics field; (2) time and energy to undertake the significant responsibilities of Committee membership; (3) written and oral communication skills; (4) factors lending diversity to the Committee, including diversity based on race, sex, color, national origin and sexual orientation, as well as location and field of practice, years in practice (including status as a California Young Lawyer), and size of firm (if applicable); and (5) prior volunteer experience, particularly involvement in legal and other professional groups. For public members, the Committee values the ability to contribute a client perspective to the committee's deliberations.

(Source: Board of Governors' Resolutions, July 1979, July 1988, March 1992, October 1994, September 1999, December 2004.)

ATTACHMENT B

Proposed: 2018-2019 Committee Committee on Professional Responsibility and Conduct

(Appointed/ Reappointed by the Board of Trustees, July 20, 2018)

Terms of the officers and new members begin at the close of the 2018 State Bar Annual Meeting (September 13-14, 2018). The officer terms are one year and expire at the close of the 2019 State Bar Annual Meeting (September 19-20, 2019). *Member terms expire at the close of the State Bar Annual Meeting in the year indicated below.*

| POSITION | MEMBER | CITY | DISTRICT | MEMBER'S TERM EXPIRES |
|-----------------------------|-------------------------------|---------------|-----------------|----------------------------------|
| REAPPOINT/CHAIR | Amy L. Bomse | San Francisco | 1 | 2019 |
| REAPPOINT/VICE CHAIR | Stephen M. Bundy | Berkeley | 1 | 2019 |
| REAPPOINT/ADVISOR | Andrew I. Dilworth | San Francisco | 1 | 2019 |
| APPOINT NEW MEMBERS | David C. Carr | San Diego | 4 | 2021 |
| | Tobi Inlender (PM)* | Sherman Oaks | 2 | 2021 |
| | Adam M. Koss | San Francisco | 1 | 2021 |
| | Si Eun Amber Lee | San Francisco | 1 | 2021 |
| CONTINUING MEMBERS | Eric R. Deitz | San Diego | 4 | 2019 |
| | Matthew A. Hodel | Irvine | 4 | 2019 |
| | Dena M. Roche | San Francisco | 1 | 2019 |
| | Richard C. Solomon | Santa Barbara | 2 | 2019 |
| | Steven M. Sparta (PM)* | San Diego | 4 | 2019 |
| | Kendra L. Basner | San Francisco | 1 | 2020 |
| | Justin J. Fields | San Francisco | 1 | 2020 |
| | Teresa J. Schmid | Los Angeles | 2 | 2020 |
| | Marshall C. Whitney | Fresno | 5 | 2020 |

***Public Member**