

DATE: October 2, 2009
TO: Members of the Commission for the Revision of the Rules of Professional Conduct
FROM: Lauren McCurdy
SUBJECT: Agenda Materials for Your Meeting on Friday & Saturday, October 16 & 17, 2009

Enclosed, please find the agenda materials for your October video-conference meeting to be held as follows:

Friday, October 16, 2009
Saturday, October 17, 2009
(9:00 am - 5:00 pm)

State Bar Offices – San Francisco
180 Howard Street
San Francisco, CA 94105

State Bar Offices – Los Angeles
1149 South Hill Street
Los Angeles, CA 90015

E-MAIL DEADLINE: After the agenda materials are sent by staff, the recommendations of the drafting team set forth in an agenda item may be deemed approved, subject to the important note from the Chair set forth below which, among other things, sets a deadline of **12 noon on Monday, October 12, 2009** for the submission of issues by the members of the Commission.

CONSENT AGENDA ITEMS: Items Supp. G, H, K & L, and III.X, Y, CC-GG, LL, OO, RR & SS have been designated as "Consent Items." These items will be voted on without discussion unless an item is removed from consent. To remove an item from consent three (3) written objections stating the issue of concern and the proposed language to address the issue must be received by **12 noon on Tuesday, October 13, 2009**. If you oppose a rule but believe the materials relating to that rule are acceptable, give two (2) votes, one relating to your objection to the rule and the reasons therefore, and another vote relating to the adequacy of the materials for submission to RAC. (See prior examples of this in the 10-day balloting by Kurt and Jerry.)

IMPORTANT NOTE FROM THE CHAIR re NEW PROCEDURES: In an effort to not waste time on issues which are of concern to only a few members of the Commission (often only one or two), each drafting team is requested to MAKE RECOMMENDATIONS, if at all possible, as to any issues relating to the rule assigned to the team. This will avoid simply saying that the Commission must decide an issue spotted by the drafting team. In addition, in the case of a carried over matter, the drafting team is requested to MAKE RECOMMENDATIONS as to any issue raised by a member prior to the meeting at which the matter was carried over. Recommendations as to non-consent items may be deemed approved unless: (a) at least 3 members indicate on or before **12 noon on Monday, October 12, 2009** that they wish to discuss an issue and the reasons therefore; (b) the drafting team is unable to arrive at a consensus as to the issue; or (c) the Chair, in light of the objections to the recommendation, considers it appropriate to have a discussion even though 3 members have not requested a discussion.

ATTENDANCE AND ON-TIME ARRIVAL: To ensure a quorum, if you are unable to attend in-person or if you are running late, please contact staff to report your status and to facilitate potential arrangements to participate by telephone. If you cannot attend the entire meeting and want to attend by telephone you must contact the chair and explain the nature of your situation.

REMINDERS FROM THE CHAIR

1. The lead drafter is responsible for getting the assignment to staff in time for the agenda distribution. If that person cannot timely complete the assignment, he or she must get a substitute who will complete the assignment on time and advise staff and the chair of this substitution.
2. If a person has not sent comments on an agenda item by e-mail prior to the meeting, he or she may, at the Chair's discretion, only get one opportunity to comment on that agenda item. Anyone sending e-mail comments on an agenda item should send copies to all Commission members, staff and our consultant. Please note: all e-mails exchanged will be made part of the open session agenda materials; and, members who send e-mails will not be bound by the positions taken therein as the deliberative process at the meeting will not be constrained or prejudiced by the exchange of e-mails.
3. In order to ensure that there is a quorum and adequate participation, if you are unable to attend in-person, please contact staff to make arrangements to attend by video-conference from the alternate Bar site, or by telephone. As always, notify staff if you are unable to attend a meeting under any circumstances.

/Imm
enclosures
c: Robert Hawley

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

OPEN SESSION AGENDA

October 16 & 17, 2009 (by video)

VIDEO-CONFERENCE MEETING

SF–State Bar Office
Conf. Rm. 8B
180 Howard Street
San Francisco, CA 94105

LA-State Bar Office
Conf. Rm. 723
1149 South Hill Street
Los Angeles, CA 90015

[NOTE RE MEETING SITE: Members of the public who wish to attend this meeting are asked to call Audrey Hollins at 415-538-2167.]

E-MAIL COMMENT DEADLINE: 12 noon on Monday, October 12, 2009

DELIVERABLE DUE TO THE BOARD FOLLOWING THESE MEETINGS:

→ At its meetings on November 12 & 13, 2009, RAC/the Board will consider the Commission's recommendation to adopt the Batch 1, 2, and 3 rules.

NEXT DELIVERABLE DUE TO THE BOARD:

→ At its meetings on January 7, 2009, the Board's RAC Committee will consider the Commission's request to issue the Batch 6 rules for a 60-day public comment period. Also, RAC/the Board will consider the Commission's recommendation to adopt the Batch 4 rules.

I. APPROVAL OF OPEN SESSION ACTION SUMMARY FROM THE PRECEDING MEETING

(Draft summaries for the August and September meetings will be circulated prior to the meeting.)

II. REMARKS OF CHAIR

A. Chair's Report

(The Chair will provide an oral report on administrative, procedural, or other informational matters.)

B. Staff's Report

(Staff will report on the activities of COPRAC and the Board of Governors.)

III. MATTERS FOR ACTION – BATCH 1, 2 and 3 RULES (for Board adoption)

(Matters previously assigned for the September 12, 2009 meeting either have been completed, moved to Batch 6, or transferred to the October supplemental assignments agenda. **IMPORTANT NOTE RE CONSENT AGENDA ITEMS:** Please note that the chair has designated items Supp. G, H, K & L, and III.X, Y, CC-GG, LL, OO, RR & SS as "Consent Items." These items will be voted on without discussion unless an item is removed from consent. To remove an item from consent three (3) written objections stating the issue of concern and the proposed language to address the issue must be received by **12 noon on Tuesday, October 13, 2009**. If you oppose a rule but believe the materials relating to that rule are acceptable, give two (2) votes, one relating to your objection to the rule and the reasons therefore, and another vote relating to the adequacy of the materials for submission to RAC. (See prior examples of this in the 10-day balloting by Kurt and Jerry.)

***FOY X. CONSENT -- Rule 8.1 Application for Admission to Practice [1-200] (Post Public Comment Draft dated 7/2/07) (Materials enclosed.) [pages 1 – 14]**

***LAMPOR Y. CONSENT -- Rule 8.1.1 Compliance with Conditions of Discipline [1-110] (Post Public Comment Draft dated 7/3/07) (Materials to be circulated prior to meeting.)**

***KEHR
Peck
Tuft
Vapnek**

AA. Rule 8.3 Reporting Misconduct [1-500(B)] (Dec. 2008 Comparison Chart) (Materials enclosed.) [pages 15 – 34]

***VAPNEK/PECK
Tuft**

BB. Rule 8.4 Misconduct [1-120] (Dec. 2008 Comparison Chart) (Materials enclosed.) [pages 35 – 62]

***RUVOLO
Julien
Vapnek**

CC. CONSENT -- Rule 1.8.3 Gifts from Client [4-400] (Post Public Comment Draft #4.1 dated 6/27/08) (Materials enclosed.) [pages 63 – 82]

- *VOOGD**
Kehr
Julien DD. **CONSENT** -- Rule 1.8.5 Payment of Expenses for a Client [4-210]
(Post Public Comment Draft #7.3 dated 7/5/08)
(Materials to be circulated prior to meeting.)
- *MELCHIOR**
Julien
Voogd EE. **CONSENT** -- Rule 1.8.11 Relationship with Other Party's Lawyer [3-
320] (Post Public Comment Draft #4 dated 5/16/08)
(Materials enclosed.) [*pages 83 – 92*]
- *MELCHIOR**
Foy
Lamport FF. **CONSENT** -- Rule 1.8.12 Purchasing Property at a Foreclosure Sale
[4-300] (Post Public Comment Draft #2.2 dated 6/27/08)
(Materials enclosed.) [*pages 93 – 102*]
- *PECK**
Martinez GG. **CONSENT** -- Rule 8.4.1 Prohibited Discrimination in Law Practice [2-
400] (Post Public Comment Draft #7.1 dated 6/27/08)
(Materials enclosed.) [*pages 103 – 118*]
- *VAPNEK**
Ruvolo
Voogd HH. Rule 1.5 Fees for Legal Services [4-200] (Post Public Comment Draft
#6.1 dated 1/1/09 to be revised following the July 2009 meeting)
(Materials enclosed.) [*pages 119 – 188*]
- *KEHR**
Melchior
Mohr
Snyder II. Rule 1.7 Conflicts of Interests: Current Clients [3-310] (Post Public
Comment Draft #12.1 dated 10/21/08)
(Materials enclosed.) [*pages 189 – 264*]
- *LAMPORT** JJ. Rule 1.8.1 Business Transactions and Adverse Interests [3-300]
(Post Public Comment Draft #11 dated 11/17/08 to be revised
following the January 2009 meeting)
(Materials to be circulated prior to meeting.)

***LAMPOR**

Foy
Melchior
Mohr
Voogd

- KK. **Rule 1.13 Organization as Client [3-600] (Post Public Comment Draft #10 dated 11/7/08)**
(Materials enclosed.) **[pages 265 – 302]**

***KEHR**

Foy
Melchior

- LL. **CONSENT -- Rule 1.16 Terminating Representation [3-700] (Post Public Comment Draft #6.1 dated 9/29/08)**
(Materials enclosed.) **[pages 303 – 332]**

***SAPIRO/KEHR**

Melchior
Martinez

- MM. **Rule 1.17 Purchase & Sale of a Geographic Area or Substantive Field of a Law Practice [2-300] (Post Public Comment Merged Rule Draft #1.1 dated 1/6/09 to be revised following the July 2009 meeting)**
(Materials enclosed.) **[pages 333 – 372]**

***PECK**

Martinez
Voogd

- NN. **Rule 3.4 Fairness to Opposing Party/Counsel [5-200(E)][5-220][5-310] (Post Public Comment Draft #5.1 dated 10/15/08 to be revised following the October 2008 meeting)**
(Materials enclosed.) **[pages 373 – 390]**

***SNYDER**

Vapnek
Peck
Ruvolo

- OO. **CONSENT -- Rule 3.5 Impartiality of the Tribunal [5-300, 5-320] (Post Public Comment Draft #4 dated 9/28/08)**
(Materials to be circulated prior to meeting.)

***SAPIRO**

Snyder
Melchior

- PP. **Rule 3.10 Threatening Charges [5-100] (Post Public Comment Draft to be revised following the August 2008 meeting)**
(Materials enclosed.) **[pages 391 – 408]**

***MARTINEZ**

Tuft
Voogd

- QQ. **Rule 4.2 Communication with a Represented Person [2-100] (Post Public Comment Draft #17.4 dated 1/5/09)**
(Materials enclosed.) **[pages 409 – 450]**

***TUFT
Martinez
Voogd**

- RR. CONSENT -- Rule 4.3 Dealing with Unrepresented Person [n/a] (Post Public Comment Draft #5.1 dated 10/15/08; awaiting further discussion at the same time as MR 4.4 and the Commission's proposed Rule 4.2(e))
(Materials enclosed.) [pages 451 – 464]**

***MOHR
Tuft
Martinez
Peck**

- SS. CONSENT -- Rule 5.4 Professional Independence [1-310][1-320][1-600] (Post Public Comment Draft #13.2 dated 1/8/09 to be revised following the January 2009 meeting)
(Materials enclosed.) [pages 465 – 490]**

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

SUPPLEMENTAL

OPEN SESSION AGENDA

October 16 & 17, 2009 (by video)
(9:15 am - 5:00 pm)

VIDEO-CONFERENCE MEETING

SF–State Bar Office
Conf. Rm. 8B
180 Howard Street
San Francisco, CA 94105

LA-State Bar Office
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[NOTE RE MEETING SITE: Members of the public who wish to attend this meeting are asked to call Audrey Hollins at 415-538-2167.]

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In addition to the agenda items previously assigned for this meeting, the Commission will consider the following. Please note that some items are anticipated to be addressed through a 10-day ballot. Items that pass on ballot will not be called for discussion. **IMPORTANT NOTE RE CONSENT AGENDA ITEMS:** Please note that the chair has designated items Supp. G, H, K & L, and III.X, Y, CC-GG, LL, OO, RR & SS as “Consent Items.” These items will be voted on without discussion unless an item is removed from consent. To remove an item from consent three (3) written objections stating the issue of concern and the proposed language to address the issue must be received by **12 noon on Tuesday, October 13, 2009**. If you oppose a rule but believe the materials relating to that rule are acceptable, give two (2) votes, one relating to your objection to the rule and the reasons therefore, and another vote relating to the adequacy of the materials for submission to RAC. (See prior examples of this in the 10-day balloting by Kurt and Jerry.)

NOTE RE 10-DAY BALLOT ITEMS: Although the 10-day ballot materials are enclosed, with the exception of Rule 1.8.10 (Supp-D.), which has a comment deadline of October 5th, no additional consideration of these matters need be given as there were not sufficient votes to bring them back for discussion. Rule 2.4 (Supp-E.) will be called for a vote only, with no further discussion.

*TUFT
Julien
Lampert
Melchior
Ruvolo

Supp-A. Rule 1.0 Purpose and Scope of the Rules [1-100] (Post Public Comment Rule Draft #7 dated 6/18/07)
(Materials enclosed.) *[pages 1 – 20]*

*VAPNEK
Peck
Ruvolo

Supp-B. Rule 1.1 Competence [3-110] (Dec. 2008 Comparison Chart - Post Public Comment Rule Draft #7 dated 6/18/07)
(10-day ballot materials enclosed.) *[pages 21 – 48]*

*RUVOLO
Julien

Supp-C. Rule 1.4 Communication [3-500, 3-510] (Comparison Chart Draft #2 – Post Public Comment Rule Draft #7 dated 8/5/09)
(10-day ballot materials enclosed.) **[pages 49 – 82]**

*RUVOLO
Foy
Julien

Supp-D. Rule 1.8.10 Sexual Relations With Client [3-120] (Dec. 2008 Comparison Chart – Post Public Comment Rule Draft #6 dated 6/17/07)
(10-day ballot materials enclosed.) **[pages 83 – 106]**

*RUVOLO
Melchior
Mohr

Supp-E. Rule 2.4 Lawyer as Third-Party Neutral [N/A] (Post Public Comment Rule Draft #6.1 dated 6/16/07)
(10-day ballot materials enclosed. This will be called for a vote only, with no discussion.) **[pages 107 – 134]**

*RUVOLO
Melchior
Mohr

Supp-F. Rule 2.4.1 Lawyer as Temporary Judge [1-710] (Post Public Comment Rule Draft #5 dated 6/23/07)
(10-day ballot materials enclosed.) **[pages 135 – 154]**

*VOOGD
Tuft
Ruvolo

CONSENT -- Supp-G. Rule 3.1 Meritorious Claims and Contentions [3-200] (April 2009 Comparison Chart - Post Public Comment Rule Draft #4 dated 6/26/07)
(Materials enclosed.) **[pages 155 – 166]**

*VOOGD

CONSENT -- Supp-H. Rule 3.2 Expediting Litigation [N/A] (Dec. 2008 Comparison Chart; a rule is not recommended for adoption)
(Materials enclosed.) **[pages 167 –170]**

*TUFT
Martinez
Peck

Supp-I. Rule 5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers [N/A] (June 2009 Comparison Chart - Post Public Comment Rule Draft #9 dated 6/1/09)
(10-day ballot materials enclosed.) **[pages 171 – 208]**

*TUFT
Martinez
Peck

Supp-J. Rule 5.2 Responsibilities of a Subordinate Lawyer [N/A] (Post Public Comment Rule Draft #5.2 dated 6/16/07)
(10-day ballot materials enclosed.) **[pages 209 – 230]**

*MOHR
Tuft
Martinez
Peck

CONSENT -- Supp-K. Rule 5.3 Responsibilities Regarding Nonlawyer Assistants [N/A] (Post Public Comment Rule Draft #9.1 dated 6/16/07)
(Materials enclosed.) *[pages 231 – 244]*

*VOOGD
Lampert

CONSENT -- Supp-L. Rule 5.3.1 Employment of Disbarred Member [1-311] (Dec. 2008 Comparison Chart – Post Public Comment Rule Draft #4 dated 6/26/07)
(Materials enclosed.) *[pages 245 – 258]*

*PECK
Martinez
Tuft

Supp-M. Rule 5.5 Unauthorized Practice of Law; MJP [1-300] (Dec. 2008 Comparison Chart – Post Public Comment Rule Draft #8 dated 6/27/09)
(10-day ballot materials enclosed.) *[pages 259 – 294]*

THE FOLLOWING RULE HAS BEEN MOVED TO BATCH 6

*Sapiro
Kehr
Melchior
Mohr

Supp-N. Consideration of Rule 1.11 Special Conflicts of Interest for Former and Current Officers and Government Employees [RPC 3-310]

Assignment: (1) a chart comparing proposed Rule 1.11 to MR 1.11; and (2) a “dashboard” cover sheet.

Due date: **12 noon on Wednesday, 10/28/09** (must be completed at the end of the Commission’s December meeting)