

DATE: November 30, 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, December 11 & 12, 2009

Enclosed, please find the agenda materials for your December meeting. **This is an in-person meeting in San Francisco**, scheduled as follows:

Friday, December 11, 2009
Saturday, December 12, 2009
(9:00 am - 5:00 pm)

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

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 **Monday, December 7, 2009** for the submission of issues by the members of the Commission.

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 **Monday, December 7, 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.

/lmm
enclosures
c: Robert Hawley

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

OPEN SESSION

December 11 & 12, 2009

9:15 A.M. to 5:00 P.M.

SF-State Bar Office
180 Howard Street
San Francisco, CA 94105

[NOTE: The December meeting was previously scheduled as a video-conference meeting. It is now an in-person meeting to be held at the State Bar office in San Francisco.]

[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 = Monday, December 7, 2009

DELIVERABLE DUE TO THE BOARD FOLLOWING THESE MEETINGS:

→ At its meetings on January 7, 2010, 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.

NEXT DELIVERABLE DUE TO THE BOARD:

→ At its meetings on March 4, 2010, RAC and the Board will consider the Commission's recommendation to adopt the Batch 5 rules.

- I. **APPROVAL OF OPEN SESSION ACTION SUMMARY FROM THE PRECEDING MEETING** (TBA)

- 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 – CONSIDERATION OF PROPOSED RULES DISTRIBUTED FOR PUBLIC COMMENT (BATCH 4) (Name with asterisk indicates the lead drafter. New drafters are underlined. Discussion of the rules in this section of the agenda will be limited to issues raised by the public comments or non-substantive clean-up revisions. Please note: After submission of the assignments, the Chair may designate certain Items “Consent Items.” Following distribution of the agenda materials, a rule designated as a Consent Item will be deemed approved for recommended adoption by the Board and not called for discussion, unless four Commission members object with a written statement of the asserted concerns and proposed edits to address those concerns.)

*KEHR
Melchior
Mohr

- A. Proposed Rule 1.8.6 [Rule 3-310(F)]. Third Party Payments**
(Materials enclosed.) *[pages 1 – 46]*

*KEHR
Melchior
Mohr

- B. Proposed Rule 1.8.7 [Rule 3-310(D)]. Aggregate Settlements**
(Materials enclosed.) *[pages 47 – 100]*

*PECK
Kehr
Sapiro

- C. Proposed Rule 1.15 [Rule 4-100]. Safekeeping Property: Handling Funds and Property of Clients and Other Persons**
(Materials enclosed.) *[pages 101 – 156]*

*TUFT
Peck
Ruvolo
Sapiro

- D. Proposed Rule 3.3 [Rule 5-200]. Candor Toward the Tribunal**
(Materials enclosed.) *[pages 157 – 232]*

*LAMPOR
Julien
Tuft
Vapnek

- E. Proposed Rule 3.6 [Rule 5-120]. Trial Publicity**
(Materials enclosed.) *[pages 233 – 272]*

*PECK
Julien
Lampor

- F. Proposed Rule 3.7 [Rule 5-210]. Lawyer as Witness**
(Materials enclosed.) *[pages 273 – 326]*

*VAPNEK
Martinez
Ruvolo
Sapiro

- G. **Proposed Rule 6.3 [N/A]. Membership in Legal Services Organization**
(Materials enclosed.) *[pages 327 – 364]*

*VAPNEK
Martinez
Ruvolo
Sapiro

- H. **Proposed Rule 6.4 [N/A]. Law Reform Activities Affecting Client Interests**
(Materials enclosed.) *[pages 365 – 426]*

IV. **MATTERS FOR ACTION – ITEMS FROM PRIORS BATCHES THAT HAVE BEEN MOVED TO BATCH 6 (for public comment distribution)** (Name with asterisk indicates the lead drafter, new assignments are underlined. The rules in this part of the agenda include two new assignments and the rules that were not completed at the October or November meeting. A rule designated as a 10-day ballot item will be called for discussion only if it fails the ballot.)

*LAMPOR
Tuft
Melchior

- A. **Rule 1.8(d) Conflicts of Interests – Specific Rules: Literary or Media Rights [N/A]**
(Materials to be circulated prior to meeting.)

*LAMPOR
Tuft
Melchior

- B. **Rule 1.8(i) Conflicts of Interests – Specific Rules: Proprietary Interest in the Subject Matter of Representation [N/A]**
(Materials to be circulated prior to meeting.)

*KEHR
Sapiro
Julien

- C. **Rule 1.0.1 Definition of "Law Firm" [1-100(B)(1)] (Post Public Comment Rule Draft dated 6/16/07) and a global terminology rule [MR 1.0, RPC 1-100(B)]**
(Materials enclosed.) *[pages 427 – 460]*

*MARTINEZ
Tuft

- D. **Rule 4.4 Respect for Rights of 3rd Persons [N/A]**
(Materials enclosed.) *[pages 461 – 472]*

*Sapiro
Kehr
Melchior
Mohr

- E. **Consideration of Rule 1.11 Special Conflicts of Interest for Former and Current Officers and Government Employees [Rule 3-310]**
(Materials enclosed.) **[pages 473 – 518]**

*RUVOLO
Foy
Lamport

- F. **Rule 3.9 Non-adjudicative Proceedings [N/A] (new matter assigning the preparation of a first draft rule in a MR comparison chart format)**
(This rule will be distributed for a 10-day ballot and only will be called for discussion if it fails the ballot. 10-day ballot materials enclosed.)
[pages 519 – 534]

*MARTINEZ
Julien
Kehr
Tuft
Foy

- G. **Rule 3-410 [Rule 1.4.1] Insurance Disclosure [adopted by the Sup. Ct. operative 1/1/10]**
(This rule will be distributed for a 10-day ballot and only will be called for discussion if it fails the ballot. 10-day ballot materials enclosed.)
[pages 535 – 552]

*MARTINEZ
Tuft

- H. **Rule 4.1 Truthfulness in Statements to Others**
(This rule will be distributed for a 10-day ballot and only will be called for discussion if it fails the ballot. 10-day ballot materials enclosed.)
[pages 553 – 574]

- V. **MATTERS FOR ACTION – CONSIDERATION OF BATCH 1 – 3 RULES THAT WERE NOT RECOMMENDED FOR ADOPTION BY THE BOARD COMMITTEE ON REGULATION AND ADMISSIONS** (Name with asterisk indicates the lead drafter. New drafters are underlined. The rules in this section of the agenda are assigned for the limited purpose of addressing the issues raised at the Board Committee's November 12, 2009 meeting.)

*KEHR
Melchior
Mohr
Snyder

- A. **Rule 1.7 Conflicts of Interests: Current Clients [3-310]**
(Materials enclosed.) **[pages 575 – 600]**

*LAMPOR

- B. **Rule 1.8.1 Business Transactions and Adverse Interests [3-300]**
(Materials to be circulated prior to meeting.)

*RUVOLO
Foy
Julien

- C. Rule 1.8.10 Sexual Relations With Client [3-120]**
(Materials enclosed.) *[pages 601 – 606]*

*MOHR
Kehr
Peck
Tuft
Vapnek

- D. Rule 8.3 Reporting Misconduct [1-500(B)]**
(Materials enclosed.) *[pages 607 – 626]*