

DATE: August 13, 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, August 28 & 29, 2009

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

Friday, August 28, 2009
Saturday, August 29, 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

The materials for agenda item III.J. -- MR 2.1 are enclosed separately.

➔ **MAIL BALLOT MATERIALS ENCLOSED:** The following two 10-day ballots are also enclosed (blue paper), with a response deadline of **Monday, August 24, 2009**:

1. Proposed Rule 1.4 [3-500] – agenda item IV.A.
2. Proposed Rule 5.6 [1-500] – agenda item IV.B.

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, August 24, 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 may be deemed approved unless: (a) at least 6 members indicate on or before **12 noon on Monday, August 24, 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 6 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

Friday, August 28, 2009
(9:15 am - 5:00 pm)

Saturday, August 29, 2009
(9:00 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
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.]

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I. **APPROVAL OF OPEN SESSION ACTION SUMMARY FROM THE JULY 24 & 25, 2009 MEETINGS**

(Draft action summary to be circulated prior to 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 - CONSIDERATION OF PROPOSED RULES NOT YET CIRCULATED FOR PUBLIC COMMENT** (Name with asterisk indicates the lead drafter. New drafters, if any, are underlined.)

*Voogd
Julien
Kehr
Sapiro

- A. **Consideration of Terminology Rule (MR 1.0) [RPC 1-100(B)]**
[anticipated 1½ -hour discussion or until completed]
(Materials enclosed.) **[pages 1 – 168]**

*Kehr
Lamport
Melchior
Mohr
Vapnek

- B. **Consideration of Rule 1.9 (MR 1.9) Duties to Former Clients [RPC 3-310(E)]**
[anticipated 1½ -hour discussion or until completed]
(Materials enclosed.) **[pages 169 – 178]**

*Sapiro
Kehr
Melchior
Mohr

- C. **Consideration of Rule 1.11 Special Conflicts of Interest for Former and Current Officers and Government Employees [RPC 3-310]**
[anticipated 1-hour discussion or until completed]
(Materials enclosed.) **[pages 179 – 202]**

*Mohr
Julien
Peck
Tuft

- D. **Consideration of Rule 1.6 [RPC 3-100; MR 1.6] Confidentiality of Information**
[anticipated 2-hour discussion or until completed]
(Materials enclosed.) **[pages 203 – 246]**

*Melchior
Lamport
Peck

- E. Consideration of MR 8.5 [RPC 1-100(D)] Disciplinary Authority; Choice of Law**
[anticipated 1-hour discussion or until completed]
(Materials enclosed.) **[pages 247 – 266]**

*Tuft
Julien
Kehr
Mohr
Vapnek

- F. Consideration of Rule 1.10 Imputation of Conflicts: General Rule [RPC 3-310]**
[anticipated 1½-hour discussion or until completed]
(Materials enclosed.) **[pages 267 – 304]**

*Tuft
Kehr
Melchior
Mohr
Snyder

- G. Consideration of Rule 1.8.13 (MR 1.8(k)) Imputation of Personal Conflicts [RPC 3-310, Discussion Paragraph 6]**
[anticipated 1-hour discussion or until completed]
(Materials enclosed.) **[pages 305 – 316]**

*Kehr
Sapiro

- H. Consideration of ABA MR 5.7 Responsibilities Regarding Law-Related Services (No RPC counterpart)**
[anticipated 1½ -hour discussion or until completed]
(Materials enclosed.) **[pages 317 – 340]**

*Snyder
Peck
Tuft

- I. Consideration of MR 1.2 [No RPC counterpart] Scope of Representation and Allocation of Authority Between Lawyer and Client**
[anticipated 1-hour discussion or until completed]
(Materials enclosed.) **[pages 341 – 368]**

*Lamport
Vapnek
Voogd

- J. Consideration of MR 2.1 [No RPC counterpart] Advisor**
[anticipated 1-hour discussion or until completed]
(Materials separately enclosed in this mailing.)

*Vapnek
Lamport
Martinez
Voogd

K. Consideration of Rule 2.3 [No RPC counterpart] Evaluation for Use by Third Persons

[anticipated 1-hour discussion or until completed]

(Previously distributed materials enclosed.) **[pages 369 – 384]**

*Vapnek
Martinez
Ruvolo
Sapiro

L. Consideration of Rule 6.5 (Nonprofit and Court-Annexed Limited Legal Services Programs)

[anticipated 1-hour discussion or until completed]

(Materials enclosed.) **[pages 385 – 399]**

IV. MATTERS FOR ACTION – RULES CIRCULATED FOR 10-DAY BALLOT (Name with asterisk indicates the lead drafter. New drafters are underlined. It is anticipated that the mail ballots listed in this section of the agenda will be distributed prior to the August meeting.)

*Ruvolo
Julien

A. Rule 1.4 (MR 1.4) Communication [3-500, 3-510]

(Ballot materials separately enclosed in this mailing. This matter will be called for discussion only if the draft rule is not approved on 10-day ballot. If called for discussion, the only open issues will be those raised in response to the ballot.)

*Foy
Sapiro
Kehr

B. Rule 5.6 (MR 5.6) Restrictions on Right to Practice [1-500]

[anticipated 1 hour discussion or until completed]

(Ballot materials separately enclosed in this mailing. This matter will be called for discussion only if the draft rule is not approved on 10-day ballot. If called for discussion, the only open issues will be those raised in response to the ballot.)