



THE STATE BAR OF CALIFORNIA

OFFICE OF PROFESSIONAL COMPETENCE
PLANNING, AND DEVELOPMENT

180 HOWARD STREET, SAN FRANCISCO, CA 94105-1639

TELEPHONE: (415) 538-2167

DATE: February 11, 2010
TO: Members of the Commission for the Revision of the Rules of Professional Conduct
FROM: Lauren McCurdy
SUBJECT: Agenda Materials for Your Two-Day Meeting on Friday & Saturday, February 26 & 27, 2010

Enclosed, please find the agenda materials for your February meeting. **This is an in-person meeting in Los Angeles**, scheduled as follows:

Friday, February 26, 2010
Saturday, February 27, 2010
(9:00 am - 5:00 pm)

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, February 22, 2010** for the submission of issues by the members of the Commission.

NOTE RE PART V. OF THE AGENDA: As discussed at the Commission's January meeting, the items in this part of the agenda will be distributed by February 10, 2010 and will be deemed approved unless there are five or more Commission member objections submitted by February 22, 2010. If there are five or more objections, the item will be added to the agenda as an action item but discussion will be limited to the post-January meeting issues.

IMPORTANT NOTE FROM THE CHAIR: 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, February 22, 2010** 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**

AGENDA

OPEN SESSION

February 26 & 27, 2010

LA-State Bar Office
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.]

DEADLINES:

Minority Statement Deadline = Sunday 2/14/10
February E-mail Comments = Monday 2/22/10

DELIVERABLES DUE TO THE BOARD FOLLOWING THE FEBRUARY MEETING:

→ At its meetings on March 4-6, 2010, the Board's RAC Committee will consider the Commission's recommendation to adopt the Batch 5 rules and to issue a comprehensive 90-day public comment distribution of the rules previously circulated in Batches 1 through 5 with the rules in Batch 6 to be added following Board action in May.

NEXT DELIVERABLE DUE TO THE BOARD:

→ At its meetings on May 13-15, 2010, RAC and the Board will consider the Commission's recommendation to adopt the Batch 6 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 5) (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 issues that were left open following discussion at the January meeting.)

*Melchior
Lamport
Peck

A. Proposed Rule 8.5 [Rule 1-100(D)]. Choice of Law (Materials enclosed.) *[pages 1 – 26]*

*Foy
Julien
Peck

B. Proposed Rule 1.14 [N/A]. Client with Diminished Capacity (Materials enclosed.) *[pages 27 – 56]*

*Foy
Peck
Tuft

C. Proposed Rule 3.8 [Rule 5-110]. Responsibilities of a Prosecutor (Materials enclosed.) *[pages 57 – 104]*

IV. MATTERS FOR ACTION – ITEMS FROM PRIOR BATCHES THAT HAVE BEEN RETURNED TO THE COMMISSION BY RAC FOR FURTHER CONSIDERATION

(Name with asterisk indicates the lead drafter. New drafters are underlined.)

*Mohr
Kehr
Melchior
Snyder

A. Rule 1.7 Conflicts of Interests: Current Clients [3-310] (Materials enclosed.) *[pages 105 – 256]*

V. **ADDITIONAL MATTERS FOR ACTION – AS DISCUSSED AT THE COMMISSION’S JANUARY MEETING, EACH OF THE FOLLOWING MATTERS WILL BE DISTRIBUTED BY FEBRUARY 10, 2010 AND WILL BE DEEMED APPROVED UNLESS THERE ARE FIVE OR MORE COMMISSION MEMBER OBJECTIONS SUBMITTED BY FEBRUARY 22, 2010. IF THERE ARE FIVE OR MORE OBJECTIONS, THE MATTER WILL BE ADDED TO THE AGENDA AS AN ACTION ITEM BUT DISCUSSION WILL BE LIMITED TO THE POST-JANUARY MEETING ISSUES.** (Name with asterisk indicates the lead drafter. New drafters are underlined.)

*Snyder
Peck
Tuft

- A. **Rule 1.2 Scope of Representation [N/A]**
(Materials enclosed.) **[pages 257 – 298]**
(Materials will be deemed approved unless there are five or more Commission member objections submitted by February 22, 2010.)

*Mohr
Julien
Lamport
Peck
Tuft

- B. **Rule 1.6 Confidentiality of Information [3-100, B&P 6068(e)]**
(Materials enclosed.) **[pages 299 – 324]**
(Materials will be deemed approved unless there are five or more Commission member objections submitted by February 22, 2010. Please note that the Chair has determined that dissents expressed regarding the overall rejection of the prior draft of this rule will not be counted as part of the five objections. However, dissenters can dissent on particular aspects, other than an overall objection to the new Rule 1.6 (essentially, RPC 3-100). If a Commission member does not object to any particular aspect of the new version of Rule 1.6, but does want to include a minority position on the action taken at the January meeting (to recommend RPC 3-100), then the deadline for that minority statement is February 14, 2010.)

*Kehr
Lamport
Melchior
Mohr

- C. **Rule 1.9 Duties to Former Clients [3-310]**
(Materials enclosed.) **[pages 325 – 364]**
(Materials will be deemed approved unless there are five or more Commission member objections submitted by February 22, 2010.)

*Tuft
Julien
Kehr
Mohr
Vapnek

- D. **Rule 1.10 Imputation of Conflicts: General Rule [N/A]**
(Materials enclosed.) **[pages 365 – 386]**
(Materials will be deemed approved unless there are five or more Commission member objections submitted by February 22, 2010.)