

The State Bar of California
FY 2006 Rules Revision Commission Workplan

NOTE: For a complete set of the materials for Item II.B. for the 12-10-04 RRC meeting, including the attachments to the 2004 Year-to-Date Summary, contact Audrey Hollins at (415) 538-2167.

Background

Committee Name: Commission for the Revision of the Rules of Professional Conduct
Chair: Harry B. Sondheim
State Bar Staff: Randall Difuntorum, Director, Professional Competence
Date: December 1, 2004
<p>Committee Background:</p> <p>The Commission for the Revision of the Rules of Professional Conduct is composed of 14 persons, including the chair, two co-vice-chairs, and a non-lawyer public member. The original Commission was established by the State Bar in 1985, following the American Bar Association's (ABA) issuance of the then new ABA Model Rules of Professional Conduct. The original Commission studied the ABA Model Rules and developed proposed amendments to California's rules which were adopted by the Board and then made operative by the Supreme Court in 1989 and in 1992. After its work was completed, the Commission was placed in an abeyance status by the Board. In 2001, then State Bar President Palmer Madden in consultation with the then President-elect Karen Nobumoto and the members of the 2001 Board of Governors, re-activated the Commission, replacing some original members who were unavailable to serve and adding a few members. As was the case with the original Commission, it is anticipated the work of the new Commission will be a limited multi-year project.</p>
<p>The charge of the Commission is as follows:</p> <p>The Commission for the Revision of the Rules of Professional Conduct ("Commission") is to evaluate the existing California Rules of Professional Conduct ("California Rules") in their entirety considering developments in the attorney professional responsibility field since the last comprehensive revision of the California Rules occurred in 1989 and 1992. In this regard, the Commission is to consider, along with judicial and statutory developments, the Final Report and Recommendations of the American Bar Association's ("ABA") Ethics 2000 Commission, the American Law Institute's <i>Restatement of the Law Third, The Law Governing Lawyers</i> ("Restatement"), as well as other authorities relevant to the development of professional responsibility standards. The Commission is specifically charged to also consider the work that has occurred at the local, state and national level with respect to Multi-Disciplinary Practice ("MDP"), Multi-Jurisdictional Practice ("MJP"), unauthorized practice of law ("UPL"), court facilitated <i>propria persona</i> assistance, discrete task representation and to other subjects that have a substantial impact upon the development of professional responsibility standards.</p>

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The Commission is to develop proposed amendments to the California Rules that:

1. Assure adequate protection to the public in light of developments that have occurred since the rules were last reviewed and amended in 1989 and 1992;
2. Promote confidence in the legal profession and the administration of justice;
3. Facilitate compliance with and enforcement of the rules by eliminating ambiguities and uncertainties in the rules; and
4. Eliminate and avoid unnecessary differences between California, and other states, fostering the evolution of a national standard with respect to professional responsibility issues.

Activities

Activity	Status/Time frame
<p>Meetings</p> <p>To continue the comprehensive study set forth in the Commission's charge, eight day-long meetings are planned for FY 2006. If there are projected budget savings towards the end of the year, then the Commission may hold additional meetings. All eight of these meetings will be held subject to budget savings. At these meetings, the Commission will conduct the deliberative process component of its study and will develop and revise rule amendment proposals, as well as proposals for the possible addition of new rules and the deletion of existing rules. Between meetings, the Commission's members, its staff, and its consultant will perform legal research, information gathering, and other analytical activities to support the rule study process, as well as consider assigned rule amendments.</p>	<p>The schedule of meetings has not yet been set. Ordinarily, the meetings are scheduled about 6 weeks apart with the location alternating between northern and southern California sites. It is anticipated that 3-5 individual rules will be considered at each of these meetings.</p> <p>Commission staff will provide periodic reports to the Board's Committee on Regulation, Admissions and Discipline Oversight.</p> <p>As appropriate, members of the Commission will present reports to the Board regarding the status of the Commission's workproduct.</p>

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Activity	Status/Time frame
<p>Public Access and Outreach</p> <p>Much information related to the Commission, including a roster of members, a schedule of meetings, agendas, action summaries, and draft rules, is posted at the Commission's area on the State Bar website. All of the Commission's meetings are held in open session, although the Commission will at times during those meetings enter closed session to address administrative matters and other appropriate closed session matters. Interested persons are welcomed to attend and several groups, including the ABA Joint Committee on Lawyer Regulation, have designated liaisons who are closely monitoring the Commission's work. Communication with liaisons and interested persons will continue through the State Bar's "E-list" group e-mail distribution system.</p> <p>At the 2004 State Bar Annual Meeting, the Office of Professional Competence tested a weblog application facilitating the posting informal comments and discussion threads on the Commission's draft rule amendments. If feasible, we anticipate possible enhanced communication through a weblog or a bulletin board(s).</p> <p>In FY 2006, the Commission anticipates that a portion of the rules will be presented to the Board Committee with a request that the Board Committee authorize a formal 120 public comment period and a public hearing. Comments received will be considered by the Commission.</p>	<p>Staff anticipates maintaining public access to the Commission's material available: 1) at the State Bar's website; 2) through the State Bar's "E-list" group e-mail distribution system. If feasible, we anticipate possible enhanced communication through a Commission weblog or bulletin board(s).</p> <p>If the Commission seeks Board Committee authorization to publish proposed rule amendments for public comment staff anticipates that a public hearing will be held in FY 2006.</p> <p>It is anticipated that liaisons who have been designated by various groups (i.e., the Los Angeles County Bar Association, Bar Association of San Francisco, the Committee on Professional Responsibility and Conduct, and the California Commission on Access to Justice) may invite representatives of the Commission to address them concerning rule revision issues of mutual interest.</p> <p>It is also anticipated that the Commission will continue to invite representatives of local or specialty bars to address the Commission concerning rule revision issues of mutual interest.</p> <p>The work of the Commission will continue to include communicating with commissions and rule committees of other jurisdictions on rule revision issues, including the ABA Joint Committee on Lawyer Regulation.</p>

Performance Indicators

List major activities/products with benchmark dates for this year.

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| <p>1. The Commission plans to hold 8 day-long meetings, addressing approximately 3-5 individual rules at each of the meetings.</p> |
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2. Commission staff will provide periodic reports to the Board's Regulation, Admissions and Discipline Oversight Committee.

How Do Activities Further Completion of the Committee's Charge?

Activity	Furthers Charge by:
Meetings	carrying-out the requirement that the Commission evaluate the existing rules in their entirety, with the goal of developing comprehensive proposed amendments
Public Access and Outreach	implementing a process which, at a minimum, complies with the State Bar's open-closed meeting policies, and goes beyond minimum requirements in order to assure a thorough rule study that garners member and public confidence

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State Bar Strategic Goals and Strategies Furthered by Activities

The Commission for the Revision of the Rules of Professional Conduct particularly furthers the following goals and strategies:

Goal 1: The public is protected and served by attorneys and other legal service providers that meet the highest standards of competency and ethics.

Strategy 1.4 Competence and Ethical Standards. Ensure the highest levels of competency and ethics of all attorneys and others regulated by the State Bar.

The Commission's task of studying and drafting proposed amendments to the Rules of Professional Conduct enhances the State Bar's public protection function by fostering member compliance with updated disciplinary standards that accounts for new and recent developments in the field of professional responsibility in California and at a national level.

Strategy 1.6 Paraprofessionals and the Unauthorized Practice of Law. Address ways in which non-attorney legal services providers should be monitored or regulated to ensure non-lawyer practitioners are in compliance with relevant statutes and unscrupulous and unlawful non-lawyer practitioners do not harm consumers.

Included in the Commission's charge is the assignment to consider relevant developments in the specific area of the unauthorized practice of law.

Strategy 1.7 Multi-jurisdictional Practice. Keep California attorneys at a competitive advantage with attorneys from other jurisdictions while recognizing the changing multi-jurisdictional environment in which attorneys and their clients operate today.

Included in the Commission's charge is the assignment to consider relevant developments in the specific area of multi-jurisdictional practice.

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Goal 2: The State Bar provides a wide array of services and benefits to members that meet their professional development, business, and personal needs.

Strategy 2.2 Professional Development Services. Seek ways to improve and inform members about professional development opportunities and services, including continuing legal education (MCLE), the Ethics Hotline, Alternative Dispute Resolution, Fee Arbitration and Lawyer Assistance programs.

The public access to the Commission's meetings and work product, together with the Commission's proactive outreach activity has an educational effect by facilitating a high-level discussion of new and recent issues in professional responsibility. The Commission will seek ways to update members as to changes which are proposed and adopted by the Supreme Court.

Strategy 2.3 Communication with Members. Use technology to improve the quality and quantity of methods for receiving information from and providing information to members and member groups.

The regular posting of materials relating to the Commission's activities on the State Bar's web-site, as well as the ability of members to provide comments and proposed revisions by e-mail, notice to interested persons provided through the State Bar's "E-list" group e-mail distribution system, are uses of technology that improve communication between the Commission and the Bar's members.

Goal 4: The State Bar fulfills its mission through effective and supportive relationships with all stakeholders.

Strategy 4.2 Court/Bar Collaboration. Actively encourage and support member participation in bench-bar efforts to improve the administration of justice and access to the legal system for low and moderate income Californians.

State Bar Senior Executive staff directly coordinates the work of the Commission with Supreme Court staff.

The Access to Justice Commission has appointed a liaison who regularly attends meetings and assists the Commission in monitoring access issues.

Strategy 4.3 Public Information. Actively inform the public, members, and all key stakeholders about the effective operation and activities of the State Bar through the use of technology written materials and in-person communication, and seek input from stakeholders about the operation and activities of the Bar.

We continue to provide public access to the Commission's meetings and work product through the use of the State Bar's video conference technology and the posting of Commission meeting materials on the State Bar's website, with notice to interested persons provided through the State Bar's "E-list" group e-mail distribution system. If feasible, we anticipate possible enhanced communication through a Commission bulletin board(s).

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Goal 5: The State Bar is recognized and respected as a contributing and accountable leader in improving the administration of justice and ensuring the rule of law in our civil society.

The Commission's work contributes to enhanced member and public confidence in the organized bar by reflecting an appropriate emphasis on the importance of maintaining the best possible standards of attorney professional responsibility.

Recommended New Strategic Initiatives for Board Consideration

Name of Initiative: NA -----

Purpose (Need the Initiative Will Address): NA -----

Responsible Entity (committee/staff, etc.): NA -----

Connection to the Strategic Plan: NA -----

Desired Outcome(s): NA -----

Fiscal and Staff Implications: NA -----

Proposed Performance Measures: NA -----

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Resources (enter applicable figures)

Items	2004 Budgeted	2004 Outlook	2005 Budgeted	Proposed 2006
A. Estimated Staff time Required				
FTE:				
Director	.30	.30	.35	.35
Attorney	.05	.05	.00	.00
Sr. Admn. Spec.	.10	.10	.10	.10
Sr. Admn. Asst.	.20	.20	.20	.20
Admn. Sec.	.15	.15	.15	.15
Paralegal	.05	.05	.05	.05
TSAT	.15	.15	.15	.15
	TOTAL: 1 FTE	TOTAL: 1 FTE	TOTAL: 1 FTE	TOTAL: 1 FTE
B. Consultant	32,000	35,000	32,000	32,000
C. Travel Staff	700	700	700	700
D. Travel Volunteer	17,235	7,400	12,000	15,300
E. Travel Others (e.g., speakers at Annual Meeting MCLE presentations)	NA	NA	NA	NA
F. Meeting room rental	250	1,000	425	1,000
G. Catering	4,100	4,200	4,463	4,400
H. Telephone	1,000*	0*	600	500
I. Copier Allocation	1,200	2,000	1,897	2,000
J. Postage/Delivery Services/Outside Services (Court Reporter)/Seminars (ABA Meeting Reg. Fee)	3,425	1,200	1,581	2,000
K. Total	59,910	51,500	53,666	57,900

*Note: 2004 and 2005 reflects a continued transition to capturing expenses associated with telephone (for conference calls), currently accounted for under cost center 238, the general cost center for most Professional Competence operations.

Are activities within legislative and judicial restrictions imposed on the State Bar (Keller, Hudson, Brosterhous, etc.)?

Yes [X] No [] If no, please explain.

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Background

Committee Name: Commission for the Revision of the Rules of Professional Conduct
Chair: Harry B. Sondheim
State Bar Staff: Randall Difuntorum, Director, Professional Competence
Date: December 1, 2004
Overview of 2004 Accomplishments: <p>The Commission for the Revision of the Rules of Professional Conduct (“Commission”) is pleased to report the following highlights of its 2004 activities and accomplishments.</p> <ul style="list-style-type: none">a. Conducted eight (8) day-long meetings, including a meeting at the 2004 State Bar Annual Meeting in Monterey (with a ninth meeting, made possible through budget savings, scheduled for December 10, 2004).b. Pursuant to AB 1101, a member of the Commission served on the State Bar’s task force assigned to develop a rule of professional conduct addressing issues raised by a new exception to the statutory duty of confidentiality that permits disclosure of client information to prevent a criminal act of death or substantial bodily harm.c. Transmitted over four hundred (400) messages via the Commission’s E-List, an e-mail distribution group used by the Commission members, liaisons, and other subscribers (65 total subscribers; 29 added in 2004).d. Received informal written comments from 9 interested persons or groups.e. As part of the 2004 State Bar Annual Ethics Symposium, presented an educational program on proposed new rules under consideration by the Commission.f. In connection with the 2004 State Bar Annual Meeting, Commission staff designed and tested a weblog application facilitating the posting informal comments and discussion threads on the Commission’s draft rule amendments.g. Added a new area to the Commission’s homepage for posting open session agenda materials and updated the posting of draft rule amendments that have been tentatively approved by the Commission.

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Activities

Activity	Results/Assessment
<p>Meetings</p> <p>By the end of FY 2004, the Commission will have conducted nine (9) day-long meetings. (A copy of the Commission’s 2003 – 2004 meeting schedule is provided as Attachment 1.) Meetings were conducted at either the State Bar’s office in Los Angeles or San Francisco. To facilitate attendance by liaisons and other interested persons video-conference access to Los Angeles meetings were made available at the San Francisco office and vice-versa. In October, the Commission held a meeting at the 2004 State Bar Annual Meeting in Monterey.</p> <p>At its meetings, the Commission continued its work to carry out the Board’s charge to conduct a comprehensive study of the rules of professional conduct and to develop proposed amendments. For FY 2004, the Commission will have considered the following rules: 1-100; 1-120; 1-300; 1-310; 1-320; 1-400; 1-500; 1-600; 1-710; 2-100; 2-200; 2-300; 2-400; 3-110; 3-120; 3-200; 3-300; and proposed new rules addressing: hourly billing records; waiver of the attorney-client privilege; lawyers as third party neutrals in private ADR proceedings; mandatory advice to clients about ADR options; a definition of the term “law firm;” as well as a proposal to adopt the organizational format/rule numbering system used in the ABA Model Rules of Professional Conduct.</p>	<p>The Commission’s FY 2004 Workplan (“Workplan”) anticipated seven (7) day-long meetings. (The Workplan is provided as Attachment 2.) This goal was accomplished. Two additional meetings (one in-person and one by video conference) were made possible by budget savings in the Commission’s meeting expenses. Savings are attributed to the relatively frequent and commendable practice of Commission members electing to not seek reimbursement for expenses incurred when attending meetings.</p> <p>The Workplan anticipated that three to five individual rules would be considered at each Commission meeting. This goal was accomplished as the Commission, on average, handled more than five rules at a meeting. While more than five rules were discussed, the Commission is endeavoring to accelerate completion of tentatively approved drafts. Presently, the Commission has tentatively approved about ten draft rules. Although more drafts are nearing completion, the extent and complexity of the policy and substantive issues render it very difficult to reach a strong consensus. The Chair, in consultation with staff and the Commission consultant, is employing new meeting management techniques to narrow issues and to prompt work between meetings. Staff will continue its practice of providing status reports on the Commission’s work to the Board Committee as a regular part of the Professional Competence operational report.</p>

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Activity	Results/Assessment
<p>Public Access and Outreach</p> <p>The Commission continued to conduct nearly all of its meeting activities in open session. The Commission welcomed visitors and received presentations from various groups.</p> <p>The Commission's E-List, an e-mail distribution group used by the Commission members, liaisons, and other subscribers, transmitted over four hundred (400) messages. These messages included meeting notices and materials, as well as, information on recent developments in legal ethics, and informal comments and discussions about the Commission's draft rules. Of the 65 total subscribers, 29 were added in 2004.</p> <p>The Commission received written comment letters from nine interested persons or groups, including comments from the Committee on Professional Responsibility and Conduct, and a letter jointly submitted by Morrison and Foerster, Heller Ehrman, and Dorsey & Whitney. (A log identifying written comment letters received in 2004 is provided as Attachment 3.)</p> <p>As part of the 2004 State Bar Annual Ethics Symposium, the Commission presented an educational program focusing on new rule proposals under consideration by the Commission. The panel was entitled, "New Duties on the Horizon? A Discussion with the Commission for the Revision of the Rules of Professional Conduct" and raised the specific question of whether there should be new disciplinary rules on: (1) maintenance of accurate billing records for hourly fees; (2) advice to clients on the availability of ADR; and (3) acts constituting "moral turpitude." The Commission members serving on the panel presented the pros and cons of these potential new rules and led the audience in a lively discussion. (An excerpt from the program materials and the evaluation forms received are provided as Attachment 4.)</p>	<p>The Workplan anticipated continued interactions with liaisons, local bar associations, and other interested persons, through meetings or presentations. In 2004, the Commission benefited greatly from continued interactions with interested persons. At its meetings, the Commission received several presentations from various stakeholders, including: a presentation from representatives of ADR groups, a presentation from Certified Lawyer Referral Service groups, a presentation from advocates of limited scope representation (a.k.a., "unbundled" legal services), and a presentation from a representative of the Committee on Professional Liability Insurance. In addition to the presentations, outreach was accomplished through the Commission's educational program at the 2004 Annual Ethics Symposium, the E-List distribution group, and a presence at the 2004 State Bar Annual Meeting Expo in the form of the prototype weblog application.</p> <p>Regarding the Commission's outreach to the ABA Joint Committee on Lawyer Regulation, commentary from representatives of that group was distributed on the Commission's E-List e-mail system. Also, the Commission's consultant maintained close contact with ABA staff to obtain ABA Ethics 2000 research and background information.</p> <p>Although there was no formal public comment process during 2004, some interested persons, including the Committee on Professional Responsibility and Conduct submitted written comment letters and these letters were considered by the Commission in connection with relevant assignments and agenda items.</p>

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Activity	Results/Assessment
<p>Public Access and Outreach <i>(continued)</i></p> <p>In connection with the 2004 State Bar Annual Meeting, the Commission's staff designed and tested a weblog application facilitating the posting of informal comments and discussion threads on the Commission's draft rule amendments. Annual Meeting attendees who visited the Professional Competence exhibit booth were invited to review the Commission's draft rules and post comments. Staff is reviewing the results of this testing.</p> <p>A new area was added to the Commission's homepage for the posting of open session agenda materials. This area permitted Commission members and interested persons to retrieve from the web, the full-text electronic versions of agenda items and attachments. Also, the Commission continued to update the posting of draft rule amendments that have been tentatively approved by the Commission.</p>	<p>The Workplan anticipated that public access to the Commission's work would be maintained through the Commission's homepage at the State Bar website. This was accomplished as the homepage materials (including a roster of members, a schedule of meetings, and agendas) were continually updated. In addition, a new area for the draft rules was implemented. This new area enhanced member and public access by making it easier for any interested person to find the clean and redline text of any tentatively approved draft rule. Without this new area, interested persons would have to cull through agendas and action summaries to identify tentatively approved draft rules.</p> <p>The Workplan indicated the possibility that the Commission may seek Board Committee authorization to publish draft rules for a formal public comment period and to hold a public hearing. That did not arise in 2004. The Commission plans to seek such authorization only when it has completed work on a major portion of the rules. In its original iteration in the 1980's, the Board Committee published the entirety of the Commission's proposed rule amendments at one time. Currently, the Commission anticipates publishing a third or one-half of the rules at a time to facilitate due consideration and study by public commentators.</p> <p>Finally, the web-posting of the Commission's open session agenda materials has saved money that would otherwise have been spent on photocopying and mailing agenda packages to interested persons.</p>

Activities

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Activity	Results/Assessment
<p>Other Board Assignments</p> <p>Pursuant to AB 1101, a member of the Commission served on the State Bar’s task force assigned to develop a rule of professional conduct addressing issues raised by a new exception to the statutory duty of confidentiality that permits disclosure of client information to prevent a criminal act of death or substantial bodily harm. (The task force roster and a press release from the Supreme Court presenting new rule 3-100 are provided as Attachment 5.)</p>	<p>This special assignment from the State Bar President resulted in a very positive collaboration with key State Bar stakeholders. The Commission’s designated seat on the task force was filled by one of the Commission’s leaders, Co-Vice-Chair Mark Tuft. In addition, the Chair of the task force was Prof. Kevin Mohr who coincidentally served, and continues to serve, as the Commission’s consultant. Both Prof. Mohr and Mark Tuft represented well the Commission and, when relevant, discussed the work of the Commission during task force meetings. The members of the task force included, among others: Beth Jay (Supreme Court staff); Gene Wong (Legislative staff); and Peter Siggins (Governor Schwarzenegger’s staff).</p>

Possible Revisions to 2005 Workplan Arising from 2004 YTD Summary

Name of Initiative: NA -----
Purpose (Need the Initiative Will Address): NA -----
Responsible Entity (committee/staff, etc.): NA -----
Connection to the Strategic Plan: NA -----
Desired Outcome(s): NA -----
Fiscal and Staff Implications: NA -----
Proposed Performance Measures: NA -----

**The State Bar of California
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FY 2004 Year-to-Date Selected Budget Synopsis

2004 Budget	\$59,910
2004 Estimated Expenditures	<u>\$51,500</u>
Savings	\$ 8,410