

DATE: November 24, 2004
TO: Members of the Commission for the Revision of the Rules of Professional Conduct
FROM: Lauren McCurdy
SUBJECT: Agenda for Your Video Conference Meeting on Friday, December 10, 2004

Enclosed, please find the agenda materials for your December 10, 2004 meeting.

The video conference meeting is scheduled as follows:

Friday, December 10, 2004
(9:00 a.m. – 5:00 p.m.)

SF–State Bar Office
180 Howard Street, Room 8-B
San Francisco, CA 94105

and

LA–State Bar Office
1149 So. Hill Street, Room 723
Los Angeles, CA 90015

ATTENDANCE AND ON-TIME ARRIVAL: As this meeting is a video conference meeting and no air travel is involved, the Chair expects each member to arrive at the LA or SF meeting site by the 9:00 a.m. start time. It is unfair and discouraging to members and interested persons who make an effort to arrive on-time to have to wait until late members arrive in order to begin the meeting. 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.

AGENDA ITEMS POSTPONED UNTIL AFTER THE DECEMBER MEETING

Consideration of the following agenda items, previously anticipated for the December 10th agenda, has been postponed until the February 4, 2005 meeting.

- a. Rule 3-110 (**Vapnek-lead**, Peck, Ruvolo)
- b. Consideration of a proposed new or amended rule prohibiting a request or agreement to waive the attorney-client privilege (**Melchior-lead**, Julien, Tuft)
- c. Rule 3-300 (**Lampport-lead**, Tuft, Voogd)

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.

/Imm
enclosures
cc: Marie Moffat

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

OPEN SESSION AGENDA

Friday, December 10, 2004
(9:15 am - 12:30 and 1:00 - 5:00 pm)

VIDEO-CONFERENCE MEETING

SF–State Bar Office
180 Howard Street, Room 8-B
San Francisco, CA 94105

LA–State Bar Office
1149 So. Hill Street, Room 723
Los Angeles, CA 90015

[NOTE RE MEETING SITE: For members of the public, this meeting can be accessed by video-conference from both the State Bar Office in San Francisco at 180 Howard Street, Room 8B and the State Bar Office in Los Angeles, 1149 So. Hill St., Rm. 923. Members of the public who wish to attend this meeting are asked to call Audrey Hollins at 415-538-2167.]

I. APPROVAL OF OPEN SESSION ACTION SUMMARY FROM THE AUGUST 27 & 28, 2004 & OCTOBER 8, 2004 MEETINGS

(Draft action summary for the August 27 & 28, 2004, October 8, 2004, and November 19, 2004 meetings to be circulated prior to the December 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

(Materials enclosed. Staff will report on the activities of COPRAC and the Board of Governors.) *[pages 1 – 42]*

III. **MATTERS FOR ACTION** (Name with asterisk is lead drafter, underline indicates a newly added co-drafter.)

*Lamport
Julien
Melchior
Ruvolo
Tuft

A. **Consideration of Rule 1-100. Rules of Professional Conduct, in General**

[anticipated ½ hour discussion]

(Matter continued from November 19, 2004 meeting. Discussion of draft rule 1-100(B), paragraphs 2 and 3 and related discussion section text, refer to pages 11 - 20 of the November 19, 2004 agenda materials; and to Jerry Sapiro's e-mail of November 12th (sent by Felicia Soria to the RRC e-list on 11/23/04).)

*Martinez
Sapiro
Voogd

B. **Consideration of Rule 2-100. Communication With a Represented Party**

[anticipated 1 and ¾ hour discussion]

(Matter continued from November 19, 2004 meeting. Those issues not covered at the November 19th meeting will be discussed, refer to pages 21 – 44 of the November 19, 2004 agenda materials and Harry Sondheim's October 4, 2004 e-mail and subsequent e-mails. In addition to the previously distributed materials, the codrafters plan to submit a revised draft of Rule 2-100 in follow up to the discussion of the public officer exception at the November 19th meeting. This redraft will be distributed upon submission by the codrafters prior to the December 10th meeting.)

*Tuft
Martinez
Peck

C. **Law Firm Definition** (previously considered as part of proposed new rule 1-310X and proposed amended rule 2-200)

[anticipated 1-hour discussion]

(Matter carried over from October 8, 2004 and November 19, 2004 meeting. Refer to materials distributed for the November 19, 2004 meeting, pages 45 - 54. As previously indicated, only issues raised in comments from Jerry Sapiro dated October 6, 2004 and from Kurt Melchior dated October 3, 2004 (sent by Enica Allen on October 4, 2004), and any issues raised by the codrafters in the October agenda materials, will be considered.)

*Ruvolo
Tuft
Vapnek
Mohr

- D. Counterpart to Rule 1-310X re Lawyers Influencing Lawyers**
[anticipated 1-hour discussion]
(Materials enclosed. Consideration of the draft prepared by Nace Ruvolo, dated 9/20/04, and 11/15/04 comment from Mark Tuft and 11/17/04 reply from Nace Ruvolo.) **[pages 43 – 52]**

*Tuft
Martinez
Peck

- E. Consideration of Rule 5.4. Professional Independence of a Lawyer (aka Rule 1-310X)**
[anticipated 1-hour discussion]
(Matter carried over from November 19, 2004 meeting, refer to pages 145 – 160 of the November 19th agenda materials)

*Ruvolo
Foy
Julien

- F. Consideration of Rule 3-120. Sexual Relations With Client**
[anticipated 1-hour discussion]
(Materials enclosed. Consideration of the recommendation prepared by Nace Ruvolo (dated 11/24/04 and 9/20/04) as well as the comments by OCTC (comment no. 2001-01a), COPRAC (comment no. 2004-47) and Jerry Sapiro's e-mail of August 24, 2004. **[pages 53 – 68]**)

*Tuft
Foy
George

- G. Consideration of Rule 3-210. Advising the Violation of Law**
[anticipated 1-hour discussion]
(Materials enclosed. Materials from Mark Tuft dated 11/15/04 and distributed on e-list on 11/18/04.) **[pages 69 – 74]**

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

CLOSED SESSION AGENDA*

Friday, December 10, 2004
(9:00 a.m - 9:15 a.m.)

VIDEO-CONFERENCE MEETING

SF–State Bar Office
180 Howard Street, Room 8-B
San Francisco, CA 94105

LA–State Bar Office
1149 So. Hill Street, Room 723
Los Angeles, CA 90015

I. APPROVAL OF CLOSED SESSION SUMMARY FROM THE AUGUST 27 & 28, 2004 AND OCTOBER 8, 2004 MEETINGS

(Draft action summaries to be circulated prior to December meeting.)

II. ADVICE OF COUNSEL ON OPEN SESSION AGENDA ITEMS

III. ACTION ITEMS.

A. Emergency action items, if any.

* Closed pursuant to Article 3, Section 2, Subdivision (b), Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors.