



THE STATE BAR OF CALIFORNIA

OFFICE OF PROFESSIONAL COMPETENCE,
PLANNING, AND DEVELOPMENT

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DATE: May 12, 2009

TO: Members of the Board of Governors
Members of the Board Committee on Regulation, Admissions and Discipline

FROM: Randall Difuntorum, Director, Professional Competence

RE: Proposed New Rule 1-650, Rules of Professional Conduct of the State Bar of California – Consideration of Public Comments by the State Bar’s Special Commission for the Revision of the Rules of Professional Conduct

EXECUTIVE SUMMARY

As indicated in open agenda item MAY 126, this memorandum reports on the Rules Revision Commission’s review of the public comment received on proposed new Rule of Professional Conduct (“RPC”) 1-650.

At its meeting on May 8 & 9, 2009, the Rules Revision Commission considered the public comment received and the amendments to RPC 1-650 developed by staff in response to the public comments. Following discussion, the Rules Revision Commission voted unanimously to recommend the adoption of RPC 1-650. Board members with questions about this matter may contact Randall Difuntorum at (415) 538-2161.

BACKGROUND

Board agenda item MAY 126 presents staff’s recommendation that proposed RPC 1-650 be adopted as revised in response to public comment. In that agenda item, dated April 24, 2009, it was explained that the Rules Revision Commission would be considering the public comment on proposed RPC 1-650 at its May 8 & 9, 2009 meeting. This memorandum provides a report on the action taken by the Commission at its May 8 & 9, 2009 meeting.

REPORT & RECOMMENDATION

As part of its May meeting open session agenda materials, staff provided the Rules Revision Commission with the full text of the written comments received on proposed RPC 1-650. The

Commission also received a copy of Board agenda item MAY 126 presenting staff's recommendation that proposed RPC 1-650 be adopted as revised in response to public comment. Discussion of RPC 1-650 was specially set for 12:30 pm on May 9, 2009. Among the visitors present at the time of the special set discussion was Toby Rothschild, the Access to Justice Commission's liaison to the Rules Revision Commission.

Commission Chair, Harry Sondheim, welcomed Governor Howard Miller who appeared and provided a summary of the Board's consideration of proposed RPC 1-650. After the summary, the Commission discussed the issues raised in the written comments, including recommendations for revisions. It was noted that the written comments expressed great support for the adoption of the proposed rule and that there were no comments opposing adoption of the rule. It was also noted that if RPC 1-650 is adopted by the Board and approved by the Supreme Court, then consistent with the ongoing Commission project to recommend comprehensive amendments to the entire rules, the Commission would study RPC 1-650 and ABA Model Rule 6.5 and would consider possible further modifications.¹

Following the discussion, a motion was made and seconded to recommend adoption of the rule as revised by staff and set forth in Board agenda item MAY 126. The motion passed unanimously. By virtue of this action, the Commission joins staff in recommending that the Board adopt proposed RPC 1-650 as revised in response to the public comment.

No change to staff's proposed Board Committee and Board resolution is needed given the Commission's recommendation. Board members should refer to page 8 of agenda item MAY 126 for the proposed resolutions.

¹ For example, the Commission likely will recommend: (1) renumbering the rule and substituting new cross-references to other rules to fit the Commission's anticipated recommendation to adopt the ABA Model Rule's numbering system; and (2) substituting the term "lawyer" for "member" which is a style convention used by the ABA Model Rules and under consideration by the Commission.