

# AGENDA ITEM

## MAY 131

Rules of Professional Conduct,  
Return from Public Comment

**DATE:** April 28, 2009

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

**FROM:** Randall Difuntorum, Director, Professional Competence

**RE:** Proposed New and Amended Rules of Professional Conduct of the State Bar of California, Batch 6 – Return From Public Comment, and a Rule Previously Submitted from Batch 5 but Not Adopted

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### EXECUTIVE SUMMARY

This agenda item requests adoption of proposed new and amended Rules of Professional Conduct of the State Bar of California developed by the Board of Governor's Special Commission for the Revision of the Rules of Professional Conduct ("the Commission"). The proposed rules presented cover the Commission's sixth public comment group of draft rules. The proposed rules were posted for a 60-day public comment period. This item also includes a proposed rule, Rule 1.10 (Imputation of Conflicts: General Rule), previously submitted to the Board but not adopted.

The Commission met on March 26 & 27, 2010 and on April 23, 2010 to review the public comments and finalize all of the rule revisions implemented in response to the public comments. This memorandum presents the Commission's proposed rules as revised and requests that the Board adopt the rules subject to the condition that the rules be added to the pending comprehensive public distribution of all of the prior rule batches.

Representatives of the Commission will attend the Board's meetings. Board members with questions about this matter may contact Randall Difuntorum at (415) 538-2161.

### *DISCUSSION*

The Board of Governors ("Board") has the statutory responsibility for formulating and adopting amendments to the Rules of Professional Conduct.<sup>1/</sup> The amendments adopted by the Board are

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<sup>1/</sup> Business and Professions Code section 6076 provides: "With the approval of the Supreme Court, the Board of Governors may formulate and enforce rules of professional conduct for all members of the bar of this State."

submitted to the Supreme Court for approval and, upon approval, become binding disciplinary standards for all members of the State Bar.<sup>2/</sup>

At its meeting on January 7, 2010, the Board’s Committee on Regulation and Admissions (“the Board Committee”) authorized a 60-day public comment distribution of the Commission’s sixth group of proposed rules. This public comment period ended on March 12, 2010. In addition, a public hearing on the proposed rules was held on March 11, 2010 at the Los Angeles State Bar office.

This agenda item requests the Board to adopt the Commission’s recommendations on the sixth group of proposed new and amended Rules of Professional Conduct as drafted by the Commission following consideration of public comments. The sixteen rules, including five ABA Model Rules that were considered but are not recommended for adoption, are listed below by proposed new rule number. Where applicable, the rule number of a comparable current California rule or rules is indicated in brackets.

<b>Rule</b>	<b>Title</b>
Rule 1.0.1	Terminology [1-100(B)]
Rule 1.4.1	Disclosure of Professional Liability Insurance [3-410]
Rule 1.8.4	Conflicts of Interests – Literary or Media Rights (Rule 1.8.4 is not recommended for adoption)
Rule 1.8.9	Conflicts of Interests –Proprietary Interest in the Subject Matter of Representation (Rule 1.8.9 is not recommended for adoption)
Rule 1.11	Special Conflicts of Interest for Former & Current Officers& Government Employees [3-310]
Rule 1.17	Purchase and Sale of a Law Practice [2-300]
Rule 1.18	Duties to Prospective Client (Rule 1.18 is not recommended for adoption)
Rule 3.9	Advocate in Nonadjudicative Proceedings
Rule 4.1	Truthfulness in Statements to Others (Rule 4.1 is not recommended for adoption)
Rule 4.4	Duties Concerning Inadvertently Transmitted Writings
Rule 6.1	Voluntary Pro Bono Publico Service
Rule 6.2	Accepting Appointments
Rule 6.5	Limited Legal Services Programs
Rule 7.6	Political Contributions to Obtain Government Legal Engagements or Appointments by Judges (Rule 7.6 is not recommended for adoption)
Rule 8.2	Judicial and Legal Officials [1-700]

This item also includes a proposed rule, Rule 1.10 (Imputation of Conflicts: General Rule), previously submitted with a Commission recommendation for adoption, but which was not adopted following discussion by the Board Committee at its March 5, 2010 meeting.

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<sup>2/</sup> Business and Professions Code section 6077, in part, provides: "The rules of professional conduct adopted by the board, when approved by the Supreme Court, are binding upon all members of the State Bar."

As is the Commission’s practice, each of the proposed rules includes a “dashboard” cover sheet that offers key indicators about a rule. For convenient reference, the table provided below summarizes some of the information found on the rule dashboards.

PROPOSED RULE	Controversy Level	ABA Comparison (Rule)	Minority Position
<i>The Following Rules Are Recommended For Adoption</i>			
Rule 1.0.1 Terminology	Moderately	Material Additions/Deletions	Yes
Rule 1.4.1 Disclosure of Professional Liability Insurance	Not Controversial	No ABA Counterpart	No
Rule 1.10 Imputation of Conflicts: General Rule (NOTE: This Batch 5 rule is submitted for reconsideration.)	Very Controversial	Material Additions/Deletions	No
Rule 1.11 Special Conflicts for Former & Current Government Officers & Employees	Very Controversial	Material Additions/Deletions	Yes
Rule 1.17 Purchase and Sale of a Law Practice	Very Controversial	Material Additions/Deletions	Yes
Rule 3.9 Advocate in Nonadjudicative Proceedings	Very Controversial	Material Additions/Deletions	Yes
Rule 4.4 Duties Concerning Inadvertently Transmitted Writings	Moderately	Material Additions/Deletions	Yes
Rule 6.1 Voluntary Pro Bono Publico Service	Very Controversial	Substantially Adopted	Yes
Rule 6.2 Accepting Appointments	Not Controversial	Substantially Adopted	Yes
Rule 6.5 Limited Legal Services Programs	Not Controversial	Substantially Adopted (mat)	No
Rule 8.2 Judicial and Legal Officials	Not Controversial	Substantially Adopted (mat)	No
<i>The Following Rules Are <b>Not</b> Recommended For Adoption</i>			
Rule 1.8.4 Conflicts of Interests – Literary or Media Rights	Not Controversial	Rejected	No
Rule 1.8.9 Proprietary Interest in the Subject Matter	Not Controversial	Rejected	No
Rule 1.18 Duties to Prospective Client	Very Controversial	Rejected	Yes (and also a separate concurring statement)
Rule 4.1 Truthfulness in Statements to Others	Moderately	Rejected	Yes
Rule 7.6 Contributions to Obtain Government Engagements	Not Controversial	Rejected	No
<b>TOTALS (11 rules recommended for adoption) (5 rules not recommended for adoption)</b>	<b>Very = 6 Moderately = 3 Not = 7</b>	<b>Subs. Adopted = 4 Subs. Rejected = 5 Material Changes = 6 No ABA Rule = 1</b>	<b>Yes = 9 No = 7</b>

Attachment One to this memorandum provides the dashboard cover sheet, introduction, Model Rule comparison table, concurrences and dissents (where applicable), clean version, public comment synopsis table, and state variations excerpt for each of the proposed rules.

Attachment Two to this memorandum provides the full text of the written public comments received and a graphic data table that provides a quick overview of the comments received.

Attachment Three to this memorandum provides a transcript of the public hearing conducted on the Batch 6 rules. (Note: No speakers testified at this hearing. One commenter did register in advance to speak, but this person did not appear at the hearing.)

Attachment Four to this memorandum provides the clean version text of the proposed rules as distributed for public comment.

To facilitate the Board's consideration of major policy issues, the Commission included information on each rule's dashboard coversheet that indicates the level of controversy that the Commission attributes to its proposal. The categories are: "not controversial" (there are 7 rules in this category); "moderately controversial" (there are 3 rules in this category); and "very controversial" (there are 6 rules in this category – please note that one of these 6 rules is proposed Rule 1.10 which was previously submitted to the Board for action at its March 2010 meeting but not adopted).

## **VERY CONTROVERSIAL RULES:**

Listed below are the six proposed rules that the Commission has designated as "very controversial." Each rule is accompanied by a brief staff description of at least one aspect of potential controversy.

### **Rule 1.10 Imputation of Conflicts: General Rule**

*Issue:* Rule 1.10 was presented to RAC at its March meeting. That version of the proposed rule included provisions for imputation of conflicts of interests and screening to rebut imputation in some limited circumstances. Rule 1.10 is being presented again for possible reconsideration by the Board Committee. The Commission's current proposal is for a revised rule that includes the concept of imputation of conflicts but does not include any provision for screening. The issue is whether to adopt a rule that "codifies" California's established case law on imputation but leaves open the unsettled and evolving issue of screening for further development by the courts. (For a more detailed discussion, refer to the Introduction and ABA Model Rule Comparison Chart for proposed Rule 1.10 found in Attachment 1.)

*Commission's current position:* Reconsider this matter and adopt the Commission's revised rule. Inclusion of the Commission's revised version of Rule 1.10 in the comprehensive regulatory scheme of California's anticipated new rules is preferable to not having any rule at all that generally addresses the concept of imputation. The Commission recognizes that the ABA approach is to include the concept of imputation in a Rule of Professional Conduct but also to include a provision permitting an ethical screen to rebut the imputation. Although the Commission remains closely divided on the issue of screening, the Commission is unanimous in its support for including some version of Rule 1.10 that addresses the important concept of imputation of conflicts. If the Board Committee and the Board agree with the Commission's recommendation, then proposed Rule 1.10 will be circulated with the Batch 6 rules and be subject to a 30-day public comment period that will end on June 15, 2010.

*Additional Background/Summary of Prior Board Consideration:* Model Rule 1.10 addresses two concepts: (i) the imputation of a lawyer's conflict to other members in the lawyer's firm on the ground that lawyers in a firm regularly share confidential information of their clients; and (ii) the availability of screening to rebut that presumption of shared confidences. In the initial public comment draft, the Commission recommended adoption of a rule that closely tracked the Model Rule, but without an ethical screen provision. After initial public comment distribution, the Commission recommended adoption of a modified version of Model Rule 1.10 that would have permitted, in limited circumstances, the screening of a lawyer who moves from one private firm to another.<sup>3/</sup> However, a minority of the Commission took the position that no rule which provides that

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<sup>3/</sup> Only lawyers who had not "substantially participated" in the prior representation would be eligible for screening under the modified rule the Commission proposed.

an ethical wall could effectively rebut the presumption of shared confidences in the context of a lawyer moving from one private firm to another should be adopted.

At its March 5, 2010 meeting, the Board Committee considered the Commission's recommendation (including the view of the Commission minority) and the Board Committee determined not to recommend that the Board adopt any part of the proposed rule, including that part of the rule which addressed the concept of imputation of one lawyer's prohibition to other members in the firm. As to the screening provision, the Board Committee observed that the concept of ethical walls, in the context of lateral attorney movement from one private law firm to another, was an unsettled issue in California. As to the provisions concerning imputation, the Board Committee concluded that the concept of imputation is well-settled in California case law and that a Rule of Professional Conduct was not necessary. After the Board Committee's action on Rule 1.10, the Commission met on April 23 & 24, 2010 and discussed a possible option of seeking reconsideration of a different version of Rule 1.10 that would address imputation but would not include a provision for screening. At this meeting, the Commission voted unanimously in favor of seeking the Board Committee's reconsideration of a revised rule. In part, this unanimous position was based on the rationale that having a California rule in this area of professional responsibility, albeit one which does not give guidance on screening, is preferable to the consequence of having no rule at all.

Subsequently, the California Court of Appeal, Second Appellate District, published *Kirk v. First American Title Ins. Co.*, --- Cal.Rptr.3d ----, 2010 WL 1346403 (2d Dist. 4/6/10) ("*Kirk*").<sup>4/</sup> In this civil disqualification case, the court concluded that screening may be available to rebut an imputed conflict of interest in certain limited situations. In analyzing the issues of imputation and screening, the court considered California precedents and also the ABA Model Rules, including Model Rule 1.10. Significantly, the court also noted the Board Committee's action, at its March meeting, and the court stated its agreement with the Board Committee's observation that screening was an unsettled issue in California case law. Professional Competence staff believes that the *Kirk* case is a new development that would support a Board Committee decision to reconsider a proposed Rule 1.10. Specifically, staff believes the *Kirk* case could influence the views of some public commenters and that seeking public comment at this time would be helpful to the Board in making a policy decision on the issues raised by Rule 1.10.

### **Rule 1.11 Special Conflicts for Former & Current Government Officers & Employees**

*Issues:* Whether to adopt a variation of Model Rule 1.11 that addresses conflicts of interest that may arise when a lawyer moves to or from government service, or moves between two different government agencies. The Commission's proposed rule is a variation of Model Rule 1.11 because it tracks the Model Rule in some respects but differs in other respects, primarily because it includes standards reflected in current California case law. Three points should be considered in assessing the Commission's proposed rule. First, like the Model Rule counterpart and current California case law, the Commission's proposed rule provides for imputation of conflicts, and screening to rebut that imputation, when a lawyer moves *from* government service to private practice. However, regarding conflicts arising from a lawyer's move *to* a government agency (whether from private practice or from another government agency), the Model Rule does not provide for imputation of conflicts

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<sup>4/</sup> The full text of the case is available at: <http://www.courtinfo.ca.gov/opinions/documents/B218956.PDF> or <http://www.metnews.com/sos.cgi?0410%2FB218956>

(rendering a screening provision unnecessary). This is a substantive difference from established California case law, which provides for imputation and correspondingly also provides for screening. The Commission considered the policy rationale in California case law and developed a proposed rule consistent with that law. Second, the Commission's proposed rule uses the Model Rule's "knowingly" standard as applied to imputation of conflicts. As a disciplinary rule, the Commission takes the position that an actual knowledge standard of "knowingly," which is the standard used in nearly every jurisdiction (all of which have adopted some version of Model Rule 1.11), is the appropriate standard. Third, the Commission's proposed rule replaces the Model Rule's standard of "consent, confirmed in writing" with California's heightened standard, "informed written consent," because the latter provides more client protection.

*Commission's current position:* Adopt the Commission's proposed variation of Model Rule 1.11 that generally provides for imputation and screening to rebut imputation, and which also uses the standard of "informed written consent," and the actual knowledge standard of "knowingly."

*Minority:* There are several minority positions on this rule. One minority of the Commission objects to paragraph(e) to the extent that screening is permitted to rebut the presumption of shared confidences between a former private lawyer now in the employ of the government and other lawyers in the prohibited lawyer's office or agency. This minority takes the position that paragraph (e) will undermine the ability of lawyers to promote client candor, an attribute that is essential to the effective functioning of the attorney-client relationship. A second minority believes the Rule is unnecessary because the subject of the rule is already covered by statutory or regulatory limitations on the lateral movement of government lawyers into or out of government. A third minority objects to the recommended adoption of the Model Rule's "knowingly" standard as applied to imputation in paragraphs (b) and (e). This minority takes the position that it will immunize lawyers who fail to conduct an adequate conflicts check.

### **Rule 1.17 Purchase and Sale of a Law Practice**

*Issue:* Whether the policy permitting a sale of a law practice should be expanded, along the lines of the ABA approach, so that a lawyer is permitted to sell not just an entire law practice but also discrete portions, specifically a geographic area (e.g., all cases in enumerated counties in a particular area of California) or a substantive field of practice (e.g., all estate planning cases).

*Commission's current position:* Adopt the Commission's proposed rule that follows the ABA approach of permitting the sale of a part of a law practice. Some Commission members regard this proposed rule amendment as a parity issue for solo and small practices. Presently, large law firms can accomplish a partial sale of a law practice through law firm splits and acquisitions. Solo practitioners do not have the same ability. The ABA policy corrects this inequity by expanding the rule on law practice sales to permit the sale of a part of a law practice. This is an important reform for solo practitioners who are transitioning towards retirement and want to retain only a component of their current practice activities. Client interests are protected by the restrictions imposed on partial sales. Moreover, in reaching its decision to recommend adoption of a Rule permitting the sale of a substantive field or geographic area of practice, the Commission considered a June 2008 memo from the Executive Director of the Bar to the Board of Governors concerning the appointment of a Career Transition Planning Task Force, which observed that a

rule permitting the sale of part of a practice “would offer greater options for a lawyer to make a smooth transition to retirement.”

*Minority:* A minority of the Commission objects to the proposed expansion of the rule to allow sales of a part of a law practice. This minority observes that the longstanding rule on this issue has been limited to the sale of an entire law practice due to a public protection interest in preventing the commercialization of law practice sales. Moreover, the minority notes that delimiting the scope of a substantive practice area or a geographic area is not necessarily intuitive and remains undefined in the proposed rule. In addition, the rule is subject to abuse because there are unanswered questions as to whether a lawyer should be able to build-up a practice area, sell it, and then start all over again with the goal of a subsequent sale. Having been adopted with little experience in other jurisdictions or debate during the ABA Ethics 2000 process, the ABA policy is both new and untested. At best, the new policy warrants a wait and see approach to afford better information for considering this critical rule change.

### **Rule 3.9 Advocate in Nonadjudicative Proceedings**

*Issue:* Whether to adopt a new rule that regulates a lawyer’s conduct as a client advocate in a nonadjudicative proceeding, such as a proceeding before a legislative body or an administrative agency. As proposed, it would require a lawyer to disclose that the lawyer’s appearance is in a representative capacity. There is no counterpart to this rule in the existing California rules and the rule proposed by the Commission is the New York variation of Model Rule 3.9.

*Commission’s current position:* Adopt the Commission’s proposed variation of Model Rule 3.9 which is derived verbatim from New York Rule 3.9. Unlike Model Rule 3.9, the Commission’s proposed rule does not incorporate by reference requirements that a lawyer comply with certain rule provisions that are applicable to lawyer conduct occurring before a tribunal (i.e., Rules 3.3 (re candor to a tribunal), 3.4 (re fairness to opposing party and counsel), and 3.5 (re impartiality and decorum of a tribunal)). Further, in light of the Commission’s recommendation that Model Rule 4.1(a) not be adopted, the proposed Rule no longer includes the cross-reference to that Rule that appeared in the public comment version of Rule 3.9. See discussion of Minority position, below. The Commission believes this departure from the Model Rule approach is necessary because the provisions referenced in the Model Rule include concepts that are meaningful in representations before adjudicative tribunals, such as the concept of “evidence,” but these same concepts are confusing, or outright incorrect, for setting clear standards in a nonadjudicative proceeding. The Commission concluded that there are material differences between the functioning of law courts and of legislative and administrative bodies that reflect on a lawyer’s role in representing clients in these different settings. Moreover, First Amendment protections apply in dealing with legislative and administrative bodies, involved in such things as writing statutes and administrative regulations and granting and denying governmental licenses and permits, but do not similarly apply to court proceedings. For these reasons, the Commission recommends that proposed Rule 3.9 be more limited in scope than the corresponding Model Rule. In reaching this conclusion, the Commission determined that the New York version of Rule 3.9 provided appropriate language for a more limited rule.

*Minority:* A minority of the Commission believes that this Rule must be considered in light of the Commission’s concomitant decision to recommend that Model Rule 4.1(a) not be adopted. The minority objects to the proposed rule primarily because the narrow scope of the proposal omits the

imposition of the basic duty of honesty that is contained in Model Rule 4.1(a). The minority notes that although the New York version of the rule does not refer to Rule 4.1, New York did adopt Model Rule 4.1(a) (the prohibition on making any false statement of material fact or law to others) and, unlike the Commission's approach, in New York, New York's Rule 4.1(a) rule would cover the circumstances omitted in New York's version of Model Rule 3.9.

### **Rule 6.1 Voluntary Pro Bono Publico Service**

*Issue:* Whether to adopt the ABA approach of including a rule stating that lawyers have a professional responsibility to render pro bono services and that specifies fifty hours of service as the contribution to which a lawyer should aspire. California has no comparable rule. However, there is a Board of Governor resolution encouraging at least fifty hours of pro bono and a State Bar Act section stating that every lawyer is expected to satisfy an "individual pro bono ethical commitment" (see Business & Professions Code section 6073). Model Rule 6.1 is similar to these provisions and, like the Commission's proposed rule, the Model Rule includes a comment expressly stating that a lawyer's pro bono responsibility is not intended to be enforced through the lawyer disciplinary system.

*Commission's current position:* Adopt the Commission's proposed rule that follows both the ABA approach of including a pro bono "rule" as a part of the Rules of Professional Conduct and a definition of "pro bono services" that is broader than that found in the Board Resolution, even though disciplinary enforcement is not intended by the rule.

*Minority:* A minority of the Commission objects to the inclusion of this subject as a Rule of Professional Conduct. This minority agrees with some of the public commenters who take the position that the goals of the rule are commendable but that an aspirational rule concerning pro bono has no place in rules of discipline. In addition, as discussed in greater detail in the Introduction to the proposed Rule, several organizations involved in the provision of pro bono services in California, including the State Bar Standing Committee on the Delivery of Legal Services, would prefer a definition of "pro bono services" that is narrower than the Model Rule's definition be adopted.

### **Rule 1.18 Duties to Prospective Client (This rule is not recommended for adoption.)**

*Issue:* Whether to adopt the Commission's recommendation not to adopt any California counterpart to Model Rule 1.18. Model Rule 1.18 addresses a lawyer's duties to prospective clients who may or may not retain the lawyer following an initial consultation. Model Rule 1.18 includes a duty to protect the information confided to the lawyer during the consultation and a prohibition against the lawyer's subsequent representation of a client whose interests are materially adverse to the person who previously consulted with the lawyer as a prospective client.

*Commission's current position:* Do not adopt a California counterpart to Model Rule 1.18 because existing California law is adequate in governing a lawyer's duties to a prospective client. Model Rule 1.18 is a new Rule that the ABA approved in 2002 to address the concern that important events occur in the period during which a lawyer and prospective client are considering whether to form a lawyer-client relationship. Although there is no existing counterpart in the California rules,

the duty to protect confidential information of a prospective client, even if no attorney-client relationship results, is found in California Evidence Code section 951, which does not require the formation of a lawyer-client relationship but instead defines “client” as a person who “consults” with a lawyer in the lawyer’s capacity as a lawyer “for the purpose of securing legal service or advice.” Section 951 is discussed at length in California State Bar Formal Opinion Number 2003-161, available at [http://www.calbar.ca.gov/calbar/pdfs/ethics/OPN\\_2003\\_161.pdf](http://www.calbar.ca.gov/calbar/pdfs/ethics/OPN_2003_161.pdf) [last visited 4/9/10]. The Commission determined that the complexities involved in determining whether a lawyer-client relationship was formed, or whether an ethical screen should be permitted to enable a law firm to rebut the presumption of shared confidences when a firm lawyer was exposed to confidential information during a consultation, is better left to the sound discretion of the courts. Members of the Commission voted against adoption of Rule 1.18 for divergent reasons. Several members requested that their specific reasons for that vote be stated. Accordingly, included with the Rule 1.18 materials (see Attachment 1) is a separately written concurring statement from members of the Commission who believe that an expanded explanation is appropriate in support of the recommendation to not adopt any version of Rule 1.18.

*Minority:* There are two separate dissenting positions on this rule. Both groups oppose the recommendation that no rule be adopted, in part, because the groups agree that Model Rule 1.18 is an important rule that addresses the duties of a lawyer to persons seeking legal services when no lawyer-client relationship ensues. Prospective clients are like clients in that they may disclose confidential information that a lawyer is obligated to protect. At the same time, prospective clients do not have all of the protections afforded clients because the lawyer’s interactions with a prospective client are often limited in time and substance. Therefore, according to both minority groups, Rule 1.18 provides important guidance for lawyers and protection for prospective clients. The dissenting groups, however, disagree in an important respect. One dissenting group supports adoption of a rule substantially similar to the Model Rule 1.18, including the Model Rule’s provision for screening to rebut an imputed conflict in limited circumstances. (See Dissent A in the Rule 1.18 materials found in Attachment 1.) The other dissenting group agrees with the importance of having a counterpart to Model Rule 1.18 but believes that there should be no provision for screening in the Rule. (See Dissent B in the Rule 1.18 materials found in Attachment 1.)

*Proposed Rule Drafts.* Please note that accompanying each respective dissenting statement is a proposed draft rule that may be considered for adoption by the Board Committee, if there is an agreement with one of the positions advocated by a minority.

It must be emphasized that all of the proposed rules warrant due consideration and that the above summary of the “very controversial” rules is not intended to minimize the importance of considering any and all of the substantive changes to the rules. Representatives of the Commission and staff will be present at the Board meetings to address questions about any of the proposed rules. In addition, as has been the Board Committee’s practice, it is anticipated that the above very controversial rules will be called for discussion by the Board Committee Chair and that any of the other rules may also be discussed if requested by a Board member. To facilitate time management, Board members should identify any such rules at the start of the discussion of this agenda item.

### ***EFFECTIVE DATE OF PROPOSAL***

Amendments to the Rules of Professional Conduct become operative only after they have been adopted by the Board and approved by the Supreme Court. The instant proposal accounts for only a portion of the Commission's ongoing comprehensive study. It is anticipated that the Commission's final comprehensive report and recommendation will be presented to the Board for adoption in July 2010, at the earliest, and if adopted thereafter to the Supreme Court for approval.

In submitting the rule amendments to the Supreme Court, it is further anticipated the State Bar would request that the Supreme Court set an operative date for the amended rules that would afford a six month lead time to allow the State Bar to publicize the new rules.

### ***FISCAL AND PERSONNEL IMPACT***

The fiscal and personnel impact that will result from authorizing the requested public comment distribution and public hearing is anticipated to be absorbed by the presently budgeted funds and the staff of the Office of Professional Competence.

### ***IMPACT ON THE BOARD BOOK/ADMINISTRATIVE MANUAL***

Authorization of public comment and a public hearing on the Commission's proposed rules will not have an impact on the Board Book.

### ***RULE AMENDMENTS***

No rule amendments are effectuated by the Board Committee's action to authorize public comment. Only after consideration of public comments received, and following anticipated adoption by the Board and approval by the Supreme Court, would this matter result in amendments to the Rules of Professional Conduct of the State Bar of California.

### ***PROPOSED BOARD COMMITTEE RESOLUTION***

Should the Board Committee on Regulation and Admissions agree with the recommendation that the proposed new and amended Rules of Professional Conduct be adopted by the Board (subject to consideration of possible revisions following a comprehensive public comment distribution of the entire proposed rules), and transmitted for approval to the Supreme Court, approval of the following resolution would be appropriate:

**RESOLVED**, following publication for comment and consideration of comments received, that the Board Committee on Regulation and Admissions Oversight recommends that the Board of Governors of the State Bar of California hereby adopts the proposed new and amended Rules of Professional Conduct of the State Bar of California, in the form attached to these minutes and made a part hereof, and hereby

directs that said rules be transmitted by staff to the Supreme Court with a request that it be approved by the Court; and it is

**FURTHER RESOLVED**, that the Board's adoption of the proposed rules is subject to consideration of possible revisions following a comprehensive public comment distribution of the entire body of proposed rules; and it is

**FURTHER RESOLVED**, that the Board directs staff to add these rules to the pending comprehensive public comment distribution of the entire body of the proposed rules in a timely manner that affords the public a minimum of 30-days before the comprehensive public comment deadline of June 15, 2010, and that staff revise the existing public comment notice to indicate that these rules have been added.

### ***PROPOSED BOARD RESOLUTION***

Should the Board of Governors concur with the recommendation of the Board Committee on Regulation and Admissions, adoption of the following resolution would be appropriate:

**RESOLVED**, following publication for comment and consideration of comments received, that the Board of Governors of the State Bar of California hereby adopts the proposed new and amended Rules of Professional Conduct of the State Bar of California, in the form attached to these minutes and made a part hereof, and hereby directs that said rules be transmitted by staff to the Supreme Court with a request that it be approved by the Court; and it is

**FURTHER RESOLVED**, that the Board's adoption of the proposed rules is subject to consideration of possible revisions following a comprehensive public comment distribution of the entire body of proposed rules; and it is

**FURTHER RESOLVED**, that the Board directs staff to add these rules to the pending comprehensive public comment distribution of the entire body of the proposed rules in a timely manner that affords the public a minimum of 30-days before the comprehensive public comment deadline of June 15, 2010, and that staff revise the existing public comment notice to indicate that these rules have been added.