

AGENDA ITEM

NOVEMBER 112 - I

Contract Authorization – Addendum to
Rules Revision Commission Consultant
Agreement

DATE: October 22, 2010

TO: Members, Board of Governors
Members, Board Operations Committee

FROM: Robert A. Hawley, Deputy Executive Director
Randall Difuntorum, Director, Professional Competence

RE: Contract Authorization – Addendum to Rules Revision Commission Consultant
Agreement

EXECUTIVE SUMMARY

Under Board Policy, Tab 17 [Control Policies & Procedures], Article 3 [Contracts], Section 2 [Authority], contracts in excess of \$75,000 involving consulting services, capital equipment, or technology purchases must be authorized by the Board of Governors. Authority is sought here to proceed with an addendum to the Rules Revision Commission consultant agreement. The Addendum increases the contract by less than \$25,000, but the total compensation under the agreement for all of the consultant services rendered to the Rules Revision commission exceeds a total of \$75,000.

Board members with questions about this matter may contact Randall Difuntorum at (415) 538-2161.

BACKGROUND & GOVERNING AUTHORITIES

Tab 17 [Control Policies & Procedures], Article 3 [Contracts], Section 2 [Authority] of the Board's Policy Book states as follows:

“No contracts or consulting services, capital equipment, or technology purchases exceeding \$75,000 may be entered into, by or on behalf of the State Bar unless authorized by the Board of Governors. Any future amendments to a contract originally below the \$75,000 threshold that will result in bringing the total contract amount to this level will also require Board approval.”

Exempted are those contracts associated with the normal operations of the Bar including but not limited to site agreements, Admissions consultants, IOLTA and Equal Access grant distributions, and other routine contracted services exceeding \$75,000.

“Also exempted are cases of emergency where purchases necessary for the immediate preservation of the public health, welfare or safety, or protection of State Bar employees or property provided the details justifying an emergency contract and other supporting documentation be reported to the Board at its next scheduled meeting.”

In accordance with the foregoing, this memorandum requests Board authorization to proceed with an addendum to the State Bar’s Rules Revision Commission consultant agreement.

DISCUSSION

To assist the State Bar in carrying out its project to study and adopt comprehensive proposed amendments to the Rules of Professional Conduct of the State Bar of California, a consultant was retained to perform the following tasks:

To serve as a “Reporter” for the Commission for the Revision of the Rules of Professional Conduct (Commission), and specifically to:

- (1) Attend all meetings of the Commission, including any public hearings, educational programs, and State Bar Board of Governors/Board Committee meetings, as directed by the Chair of the Commission;
- (2) Prepare and maintain detailed records and activities of the Commission, in connection with Commission meetings and, in addition, as directed by the Chair of the Commission;
- (3) Perform legal research projects and prepare legal memoranda, including but not limited to, researching, summarizing and analyzing the following: (i) attorney professional responsibility standards in California and throughout the United States; (ii) the report and recommendation of the American Bar Association’s Commission on Evaluation of the Rules of Professional Conduct (a.k.a. “Ethics 2000”); (iii) the *Restatement of the Law Third, The Law Governing Lawyers*, as adopted and promulgated by the American Law Institute; and (iv) studies, reports and recommendations of the Judicial Council or the State Bar concerning multi-disciplinary practice, multi-jurisdictional practice, unauthorized practice of law, court facilitated *propria persona* assistance; discrete task representation and any other subjects that have a substantial impact upon the development of attorney professional responsibility standards;
- (4) Prepare and present research, reports and other materials utilizing Microsoft Power Point (or similar computer based presentation applications) and through electronic and hard copy charts and diagrams; and
- (5) Assist, as needed, the staff of the State Bar’s Professional Competence Unit in the support and administration of the Commission.

The 2010 consultant agreement provides for compensation at \$150 an hour with a cap of \$126,000.00 for the calendar year term of the agreement. This agreement was approved under the category of a sole source provider based on the years of service the contractor had provided to the Rules Commission and

the expedited time table for completion of the revision project initiated by then State Bar president Howard Miller. The contractor is Professor Kevin E. Mohr.¹

This past Board year, the State Bar accelerated its project to revise the Rules of Professional Conduct with additional Commission meeting days scheduled, many as two-day meetings. In addition, Board Committee and full Board meetings to act upon the Commission's proposed rules were strategically planned. In part, this was accomplished through the creation of a new Board Committee (RAC) that was assigned to focus on the Bar's rule revision project. This resulted in the originally projected contract amount becoming insufficient to fully complete the project. This additional amount is necessary for the final stages of the work needed to finish the Commission's project and the Board's consideration of that work product.

CONCLUSION AND RECOMMENDATION

As a result of this intensified meeting activity and the related meeting preparation and post-meeting work, the contract limit in the current year's consultant agreement was reached earlier than anticipated and an addendum is requested to finish-off the remaining work in 2010. The bulk of the remaining work is assistance to staff with the preparation of the Board's adopted rules for submission to the Supreme Court for approval. Staff's specific request is for an addendum that would increase the 2010 contract limit by \$24,000 to become a new cap of \$150,000. All other terms of the agreement would remain the same, including the provisions for discretionary termination of the agreement by the State Bar with ten days notice to the contractor.

FISCAL AND PERSONNEL IMPACT

The fiscal impact is set forth in the above discussion. To be precise, a \$24,000 additional expenditure is requested for contractor compensation. It is anticipated that year-end savings in the Office of Professional Competence are likely to be adequate to absorb this expenditure.

IMPACT ON THE BOARD BOOK/ADMINISTRATIVE MANUAL

None.

¹ Among Professor Mohr's credentials are the following: faculty member at Western State University College of Law, where he teaches Professional Responsibility (both the California rules and the ABA Model Rules as revised by the ABA's Ethics 2000 Commission); past chair and advisor to the State Bar's Committee on Professional Responsibility and Conduct (COPRAC); past chair of COPRAC's Assembly Bill No. 363 subcommittee (re: legislative proposals to amend the Rules of Professional Conduct to address whistle-blowing by attorneys representing governmental clients); and past chair of the State Bar's Assembly Bill No. 1101 Task Force (re: a legislative mandate to adopt a new Rule of Professional Conduct on permissive disclosure of confidential information to prevent death or substantial bodily harm).

RULE AMENDMENTS

None.

PROPOSED BOARD COMMITTEE RESOLUTION

If the Board Operations Committee agrees with the above recommendation, adoption of the following resolution would be in order.

RESOLVED, that the Board Operations Committee recommends that the Board of Governors authorize staff to proceed with the addendum to the Rules Revision Commission Consultant agreement identified in the item before the committee this date, within the parameters set forth.

PROPOSED BOARD RESOLUTION

Should the Board of Governors agree with the recommendation of the Board Committee, adoption of the following resolution would be in order.

RESOLVED, that upon the recommendation of the Board Operations Committee, the Board of Governors authorizes staff to proceed with the addendum to the Rules Revision Commission Consultant agreement identified in the item before the committee this date, within the parameters set forth.