

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

**Draft OPEN SESSION ACTION SUMMARY**

**Friday, May 29, 2015  
(10:00 am – 4:30 pm)**

**Saturday, May 30, 2015  
(9:00 am – 4:30 pm)**

**State Bar of California  
845 So. Figueroa Street  
Room 2C-E, 2nd Floor  
Los Angeles, CA 90017**

**Members Present:** Justice Edmon (Chair), Mr. Bleich (Co-Vice Chair)(Friday only), Mr. Cardona, Mr. Chou, Ms. Clinch, Judge Clopton, Mr. Eaton, Mr. Ham, Mr. Harris, Mr. Kehr, Mr. Kornberg; Ms. Langford, Mr. Martinez, Mr. Peters, Mr. Rothschild, Judge Stout, and Mr. Mark Tuft.

**Advisors Present:** Ms. Matthai.

**Liaisons Present:** Mr. Fortescue (California Supreme Court).

**State Bar Staff Present:** Mr. Blumenthal (Office of Chief Trial Counsel), Mr. Difuntorum (Office of Professional Competence), Mr. Grenier (State Bar Court), Ms. Lee (Office of Professional Competence), Ms. Leighton (Office of General Counsel), and Mr. Mohr (Consultant/Reporter).

**Others Present:** John Amberg, Stephen Bundy (UC Berkeley), Diane Karpman (Beverly Hills Bar Association)(by teleconference), Sarah Leddy (Innocence Project), Laurie Levenson (Professor of Law, Loyola School of Law); Stanley Lamport, David Majchrzak, Charles Murray, Lauren Noriega, Suzanne Spencer (COPRAC), Andrew Tuft (by teleconference), and Neil Wertlieb.

## **I. CHAIR'S REMARKS**

The Chair welcomed all persons present. The Chair inquired if any visitors present wished to address the Commission and Ms. Leddy and Professor Levenson each indicated an interest in speaking in support of the recommendations presented in agenda item III.A. (Report and Recommendation of the Standing Working Group to Consider Expedited Study of Certain Rules (ABA Model Rule 3.8)).

The Chair requested and Mr. Difuntorum and Mr. Mohr provided an oral report summarizing the assignment and report/recommendation process that leads to the posting of the Commission's open agenda materials. It was noted that Commission members who are not a member of a drafting team should consider providing input on agenda items to the relevant drafting team following a review of an agenda item once posted. Members were instructed to send such input only to the drafting team rather than the full Commission, and to copy Mr. Difuntorum and Mr. Mohr.

## II. CONSENT AGENDA

All items on the consent agenda were presented to the Commission, and no objection being raised thereto, the following items on the consent agenda were deemed unanimously adopted:

- a. **Approval of Action Summary - Regular Meeting on March 27, 2015** (Open Session); and
- b. **Approval of Report on Action Taken Between Regular Meetings** (Report on action taken to obtain Board Committee authorization to solicit public comment.).

## III. ACTION

- a. **Report and Recommendation of the Standing Working Group to Consider Expedited Study of Certain Rules (ABA Model Rule 3.8)**

The Chair recognized Ms. Clinch who presented the report and recommendation of the Standing Working Group to Consider Expedited Study of Certain Rules (Working Group).

The Chair recognized Ms. Leddy and Professor Levenson who spoke in favor of the recommendations of the Working Group. The Chair thanked them for their presentation and for the written input previously provided to the State Bar and the Commission.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that upon the recommendation of the Working Group, the Commission adopts the following standard for considering whether to expedite the study of a rule:

“Expedited consideration of a rule should be considered by the Commission (i) only if the early adoption of a rule is necessary to respond to ongoing harm, such as harm to clients, the public, or to confidence in the administration of justice, and (ii) only where failure to promulgate the rule would result in the continuation of serious harm.”

All members present voted yes.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that upon the recommendation of the Working Group as set forth in its report, the Commission recommends that: (1) a study group be appointed forthwith to evaluate ABA Model Rule 3.8; and (2) staff consult with the Chair to plan an appropriate timetable for the study group’s consideration.

All members present voted yes.

In accordance with the above action, on Saturday May 30, 2015, the Chair announced the appointment of the following Commission members to serve on the drafting team assigned to this matter: Mr. Cardona; Judge Clopton; Mr. Peters; Mr. Rothschild (team leader); and Mr. Tuft.

- b. **Report and Recommendation on Rule 1-100 (Rules of Professional Conduct, in General)**

The Chair recognized Mr. Martinez who presented the report and recommendation of the drafting team.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that upon consideration of the report of the Rule 1-100 drafting team, the Commission hereby adopts the proposed amendment to Rule 1-100 of the Rules of Professional Conduct of the State Bar of California in the form attached to this action summary and made a part hereto.

All members present voted yes.

In taking the above action, it was understood that the Commission will consider separate rules to address current Rule 1-100(B) (definitions used throughout the rules) and current Rule 1-100(D) (geographic scope of the rules/choice of law).

**c. Report and Recommendation on Rule 1-110 (Disciplinary Authority of the State Bar)**

The Chair recognized Mr. Eaton who presented the report and recommendation of the drafting team.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that upon consideration of the report of the Rule 1-110 drafting team, the Commission hereby adopts the proposed amendment to Rule 1-110 of the Rules of Professional Conduct of the State Bar of California in the form attached to this action summary and made a part hereto.

All members present voted yes.

The above action superseded an earlier vote that was also unanimously adopted. The superseding action implemented non-substantive changes to the version of the proposed rule adopted by the prior vote.

**d. Report and Recommendation on Rule 1-200 (False Statement Regarding Admission to the State Bar)**

The Chair recognized Ms. Clinch who presented the report and recommendation of the drafting team.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the Rule 1-200 drafting team, the Commission hereby adopts the proposed amendment to Rule 1-200 of the Rules of Professional Conduct of the State Bar of California in the form attached to this action summary and made a part hereto.

All members present voted yes with the exception of Mr. Kehr and Mr. Tuft who voted no.

**e. Report and Recommendation on Rule 1-311 (Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Member)**

The Chair recognized Mr. Rothschild who presented the report and recommendation of the drafting team. Following the presentation, the drafting team was asked to prepare a revised draft rule in accordance with the Commission's discussion.

**f. Report and Recommendation on Rule 1-120 (Assisting, Soliciting, or Inducing Violations)**

The Chair recognized Mr. Cardona who presented the report and recommendation of the drafting team. Following the presentation, the drafting team was asked to prepare a revised draft rule in accordance with the Commission's discussion.

**g. Report and Recommendation on Rule 1-300 (Unauthorized Practice of Law)**

The Chair recognized Mr. Tuft who presented the report and recommendation of the drafting team.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the Rule 1-300 drafting team, the Commission hereby adopts the Proposed Amendment to Rule 1-300 of the Rules of Professional Conduct of the State Bar of California in the form attached to this action summary and made a part hereto.

All members present voted yes with the exception of Mr. Eaton who voted no.

Upon motion made, seconded and adopted, it was

RESOLVED, that upon consideration of the report of the Rule 1-300 drafting team, for all future drafting assignments the Commission hereby adopts the rule numbering system of the American Bar Association Model Rules of Professional Conduct as representative of the rule numbering system adopted in a preponderance of United States jurisdictions; and it is

FURTHER RESOLVED, that a drafting team is not required to rigidly adhere to this numbering system but is permitted to recommend a variation of the numbering system and provide a justification for such recommendation.

All members present voted yes with the exception of Mr. Martinez who abstained.

**h. Report and Recommendation on Rule 1-310 (Forming a Partnership With a Non-Lawyer)**

The Chair recognized Mr. Harris who presented the report and recommendation of the drafting team. Following the presentation, the drafting team was asked to prepare a revised draft rule in accordance with the Commission's discussion.

***CLOSED SESSION***

There was no closed session.\*

\*Closed under Bus. & Prof. Code § 6026.5(a) to consult with counsel concerning pending or prospective litigation.

\*Closed under Bus. & Prof. Code Sec. 6026.5(d) to consider a personnel matter.

**PROPOSED RULE 1-100 OF THE RULES OF PROFESSIONAL CONDUCT OF THE  
STATE BAR OF CALIFORNIA  
ADOPTED BY THE COMMISSION ON MAY 29, 2015**

**Rule 1-100 Purpose And Function of The Rules Of Professional Conduct**

(a) Purpose.

The following rules are intended to regulate professional conduct of lawyers through discipline. They have been adopted by the Board of Trustees of the State Bar of California and approved by the Supreme Court of California pursuant to Business and Professions Code §§ 6076 and 6077 to protect the public, the courts, and the legal profession; protect the integrity of the legal system; and promote the administration of justice and confidence in the legal profession. These Rules together with any standards adopted by the Board of Trustees pursuant to these Rules shall be binding upon all lawyers.

(b) Function.

(1) A willful violation of any of these rules is a basis for discipline.

(2) The prohibition of certain conduct in these rules is not exclusive. Lawyers are also bound by applicable law including the State Bar Act (Bus. & Prof. Code, § 6000 et seq.) and opinions of California courts.

(3) A violation of a rule does not itself give rise to a cause of action for damages caused by failure to comply with the rule. Nothing in these Rules or the Comments to the Rules is intended to enlarge or to restrict the law regarding the liability of lawyers to others.

(c) Purpose of Comments.

The comments are not a basis for imposing discipline but are intended only to provide guidance for interpreting and practicing in compliance with the Rules.

(d) These Rules may be cited and referred to as the “California Rules of Professional Conduct.”

**Comment:**

[1] The Rules of Professional Conduct are intended to establish the standards for lawyers for purposes of discipline. See *Ames v. State Bar* (1973) 8 Cal.3d 910, 917 [106 Cal.Rptr. 489]. Therefore, failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. Because the Rules are not designed to be a basis for civil liability, a violation of a rule does not itself give rise to a cause of action for enforcement of a rule or for damages caused by failure to comply with the rule. *Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1097 [41 Cal.Rptr.2d 768]. Nevertheless, a lawyer's violation of a rule may be evidence of breach of a lawyer's fiduciary or other substantive legal duty in a non-disciplinary context. *Id.*; *Mirabito v. Liccardo* (1992) 4 Cal.App.4th 41, 44 [5 Cal.Rptr.2d 571]. A violation of a rule may have other non-disciplinary consequences. See e.g., *Fletcher v. Davis* (2004) 33 Cal.4th 61, 71-72 [14 Cal.Rptr.3d 58] (enforcement of attorney's lien); *Chambers v. Kay* (2002) 29 Cal.4th 142, 161 [126 Cal.Rptr.2d 536] (enforcement of fee sharing agreement).

[2] While the rules are intended to regulate professional conduct of lawyers\*, a violation of a rule can occur when a lawyer\* is not practicing law or acting in a professional capacity.

[3] A willful violation of a rule does not require that the lawyer

intend to violate the rule. *Phillips v. State Bar* (1989) 49 Cal.3d 944, 952 [264 Cal.Rptr. 346]; and see Business and Professions Code § 6077.

[4] In addition to the sources of guidance identified in paragraph (b)(2), opinions of ethics committees in California, although not binding, should be consulted for guidance on proper professional conduct. Ethics opinions and rules and standards promulgated by other jurisdictions and bar associations may also be considered.

**PROPOSED RULE 1-110 OF THE RULES OF PROFESSIONAL CONDUCT OF THE  
STATE BAR OF CALIFORNIA  
ADOPTED BY THE COMMISSION ON MAY 29, 2015**

**Rule 1-110 Compliance with Conditions of Discipline and Agreements in Lieu of Discipline**

A lawyer shall comply with the terms and conditions attached to any agreement in lieu of discipline, any public or private reproof, or other discipline administered by the State Bar pursuant to Business and Professions Code §§ 6077 and 6078 and rule 9.19, California Rules of Court.

**Comment**

Other provisions also require a lawyer to comply with agreements in lieu of discipline and conditions of discipline. See e.g., Business and Professions Code § 6068, subdivisions (k) and (l).

**PROPOSED RULE 1-200 OF THE RULES OF PROFESSIONAL CONDUCT OF THE  
STATE BAR OF CALIFORNIA  
ADOPTED BY THE COMMISSION ON MAY 30, 2015**

**Rule 1-200 False Statement Regarding Application for Admission, Readmission, Certification or Registration**

(a) This Rule applies to applications for admission, readmission, certification or registration submitted to the State Bar or a court, including applications for: admission to practice law under Business and Professions Code §§ 6060 and 6062; readmission or reinstatement to practice law pursuant to Rule of Court 9.10(f); certification as a legal specialist under Rule of Court 9.35; and appearance and practice under Rules of Court 9.40 through 9.46.

(b) An applicant for admission, readmission, certification or registration shall not knowingly make a false statement of material fact, fail to disclose a material fact, or fail to correct a statement known to be false.

(c) A lawyer supporting or opposing another person's application for admission, readmission, certification or registration, shall not, as part of the application process, knowingly make a false statement of material fact, fail to disclose a material fact, or fail to correct a statement known to be false.

(d) This Rule does not apply to a lawyer in representing an applicant in proceedings relating to admission, readmission, certification or registration.

**Comment:**

[1] A person who makes a false statement in connection with that person's own application can be subject to discipline under this Rule or to later cancellation of that person's admission or other authorization.

[2] In representing an applicant for admission, readmission, certification or registration, a lawyer is subject to other applicable rules and the State Bar Act.

**PROPOSED RULE 1-300 OF THE RULES OF PROFESSIONAL CONDUCT OF THE  
STATE BAR OF CALIFORNIA  
ADOPTED BY THE COMMISSION ON MAY 30, 2015**

**Rule 1-300 Unauthorized Practice of Law; Multijurisdictional Practice of Law**

- (a) A lawyer admitted to practice law in California shall not:
- (1) practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.
  - (2) knowingly assist a person or entity in the unauthorized practice of law.
- (b) A lawyer who is not admitted to practice law in California shall not:
- (1) except as authorized by these Rules or other law, establish or maintain a resident office or other systematic or continuous presence in California for the practice of law; or
  - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in California.

**Comment**

Paragraph (b)(1) prohibits lawyers from practicing law in California unless otherwise entitled to practice law in this state by court rule or other law. See, e.g., California Business and Professions Code, §§ 6125 et seq. See also California Rules of Court 9.40 [counsel pro hac vice], 9.41 [appearances by military counsel], 9.42 [certified law students], 9.43 [out-of-state attorney arbitration counsel program], 9.44 [registered foreign legal consultant]; 9.45 [registered legal services attorneys], 9.46 [registered in-house counsel], 9.47 [attorneys practicing temporarily in California as part of litigation], and 9.48 [non-litigating attorneys temporarily in California to provide legal services].