Supreme Court of California
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September 19, 2014

Senator Joseph L. Dunn (Ret.)
Executive Director and Chief Executive Officer
State Bar of California
180 Howard Street
San Francisco, California 94105

Dear Senator Dunn:

I have been asked to respond to your August 11, 2014, letter sent on behalf of the State Bar of California requesting that the Supreme Court return the 17 proposed amendments or additions to the California Rules of Professional Conduct previously filed with the court. You stated that the bar wishes to engage in a comprehensive reconsideration of all of the proposed rules drafted by the Commission for the Revision of the Rules of Professional Conduct (first Commission) from 2001 to 2009 and approved by the State Bar Board of Trustees in 2010. The court has granted the State Bar's request and has issued an order returning the proposed rules for further consideration. The court anticipates that no further rule petitions will be filed until additional action has been taken by the bar.

The court also internally approved a set of recommendations from court staff intended to guide the State Bar in its task of revising the California Rules of Professional Conduct (CRPC). Specifically, the court requests that the State Bar establish a second Commission for Revision of the Rules of Professional Conduct (second Commission). Members of the second Commission should be appointed no later than November 26, 2014. The court asks that bar staff consult with court staff to establish the size and composition of the second Commission, and to discuss some of the issues that have arisen in the review process to help focus the second Commission's work. The court would like to review recommendations and a proposed charge for the second Commission at an upcoming administrative conference. To assist in the ongoing work of the second Commission, the court will appoint a non-voting member from court staff familiar with the review to date to sit on the second Commission, in order to consult with the court, as necessary.

The second Commission should be directed to complete its work and submit all proposed rules for final consideration by the court no later than March 31, 2017. In developing the charge for the second Commission, the drafters should be guided by the four policy considerations provided in the first Commission's Charter.[1] The court strongly urges that the second

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[1] Its Charter stated "[t]he Commission is to develop proposed amendments . . . that:

Commission begin with the current CRPC and focus on revisions that are necessary to address developments in the law, and that eliminate, where possible, any unnecessary differences between California's rules and those used by a preponderance of the states. The second Commission should also be guided in its task by the principle that the CRPC's historical purpose is to regulate the professional conduct of members of the bar, and that as such, the proposed rules should remain a set of minimum disciplinary standards. While the second Commission may be guided by and refer to the American Bar Association's Model Rules of Professional Conduct when appropriate, it should avoid incorporating the purely aspirational or ethical considerations that are present in the Model Rules and Comments. Comments to the proposed rules should be used sparingly and only to elucidate and not to expand upon the rules themselves. California's Code of Judicial Ethics provides one model for the use of commentary in the adoption of a set of rules.

Finally, the court wishes to express its deep appreciation and gratitude to the State Bar Board of Trustees, staff, and members of the first Commission for the years of hard work they dedicated to this difficult project. The second Commission is expected to build upon the strong foundation they have laid.

Sincerely,

Frank A McGuire

FRANK A. McGUIRE
Court Administrator
and Clerk of the Supreme Court

cc: Beth Jay
Emily Graham
Greg Fortescue

"1) Facilitate compliance with and enforcement of the rules by eliminating ambiguities and uncertainties in the rules;

"2) Assure adequate protection to the public in light of developments [that] have occurred since the rules were last reviewed and amended in 1989 and 1992;

"3) Promote confidence in the legal profession and the administration of justice; and

"4) Eliminate and avoid unnecessary difference between California and other states, fostering the evolution of a national standard with respect to professional responsibility issues." (See Petition Request that the Supreme Court of California Approve New and Revised Rules of Professional Conduct to Replace the Existing Rules Of Professional Conduct (Oct. 2012) ["2012 Req."], pp. 3-4.)