



October 5, 2017

Hon. Xavier Becerra  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Ashley Johansson  
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code 9005, we have reviewed the proposed statutory initiative regarding rules of professional conduct for attorneys (A.G. File No. 17-0016, Amendment No. 1).

### **Background**

***State Bar of California.*** The State Bar of California, governed by a 19-member board of trustees, is established in the California Constitution as a semi-autonomous entity within the judicial branch. The California Constitution requires attorneys to be members of the State Bar to practice law in the state. As of September 2017, the State Bar reported having 263,165 members—of which 189,703 (or 72 percent) are active members able to practice law.

The State Bar's primary functions include admitting individuals to practice law in California (such as by administering the State Bar exam) and regulating the professional conduct of attorneys—such as by adopting rules of professional conduct and maintaining a discipline system. Such activities are generally supported by various fees, including annual State Bar membership dues authorized by the Legislature or the California Supreme Court, as well as proceeds from legal settlements. In 2016, the State Bar reported total expenses of \$148 million and total revenues of \$194 million.

***Rules of Professional Conduct for California Attorneys.*** California—similar to other states—has professional and ethical requirements for attorneys practicing law in the state. For example, attorneys are required to keep certain information provided by clients confidential. These requirements are outlined in the California Rules of Professional Conduct, state law, and in rules approved by the California Supreme Court.

California's Rules of Professional Conduct must be approved by the California Supreme Court in order for them to be binding upon all attorneys. The Supreme Court considers proposed rule changes that are either (1) adopted by the State Bar Board of Trustees or (2) approved by a majority of active members of the State Bar. Requiring a vote of members of the State Bar for such changes is more costly than when rule changes are forwarded directly to the Supreme Court by the State Bar Board of Trustees.

***American Bar Association (ABA) Model Rules of Professional Conduct.*** The ABA, a national voluntary professional organization for attorneys, has promulgated a series of ethical and professional responsibility guidelines known as the Model Rules of Professional Conduct. For example, the rules provide guidance on when attorneys can decline to represent an individual. While most states have adopted rules similar to these ABA rules, California has not. While California's Rules of Professional Conduct include some provisions that are similar to the ABA rules, some provisions differ from the ABA rules. For example, the California rules contain more detailed requirements related to keeping certain information provided by clients confidential and do not include specific rules related to responsibilities towards clients with diminished capacity to make decisions. The California Supreme Court is currently considering whether to approve a State Bar Board of Trustees proposal that would more closely align the California Rules of Professional Conduct to the ABA Model Rules of Professional Conduct.

### **Proposal**

This measure requires that the ABA Model Rules of Professional Conduct be the rules for all California State Bar members, if approved by the California Supreme Court. It also states that the State Bar Board of Trustees is authorized to formulate and to enforce variations to the ABA rules in accordance with state law.

### **Fiscal Effects**

Under current law, the California Supreme Court is authorized to consider and adopt proposed changes to the California Rules of Professional Conduct, including adoption of the ABA Model Rules of Professional Conduct. For example, as discussed earlier, the Supreme Court is currently considering adopting rules that are similar to the ABA rules. Since the measure does not require that the Supreme Court adopt the ABA rules, the measure's provisions related to the adoption of ABA rules would likely not have any fiscal effect.

Based on the way that the measure is written, it appears that the State Bar Board of Trustees would no longer be able to submit rules directly to the Supreme Court for consideration. This is because the measure replaces a provision in existing state law that allows for this process. This could both change the number and cost of future rule changes. The net effect of these factors is unknown. However, any increase in cost would likely be minor and offset by fees currently paid by members of the State Bar.

***Summary of Fiscal Effects.*** We estimate that this measure would have the following fiscal effect:

- Minor effect on state costs related to the consideration and adoption of attorney conduct rules. Any increase in costs would likely be offset by fees currently paid by State Bar members.

Sincerely,

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Mac Taylor  
Legislative Analyst

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Michael Cohen  
Director of Finance