



THE STATE BAR OF CALIFORNIA

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DATE: April 30, 2010 Item III.A

TO: Board Committee on Planning, Program Development and Budget

FROM: Lawrence C. Yee, Acting General Counsel
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SUBJECT: Board of Governors Conflict of Interest Code, Proposed Amendment,
Request for Public Comment

EXECUTIVE SUMMARY

This item recommends that the Board Committee on Planning, Program Development and Budget release proposed amendments to the Conflict of Interest Code for the Board of Governors of the State Bar of California ("CICBOG") for a 45 day public comment period. Currently, the CICBOG requires Board members to disclose and report personal investments and sources of income on their Annual Statement of Economic Interests if during the preceding year the Board made a decision that materially impacts their financial interests. This level of disclosure, termed "transactional disclosure" was deemed appropriate because of the Board's role as only a policy making body that did not participate in day-to-day financial decisions of the agency they govern. The recent policy change requiring Board approval of specified contracts exceeding \$75,000 (MARCH 143) now requires the CICBOG to be amended to comply with financial disclosure requirements under the California Political Reform Act for persons in any state or local agency in positions that involve negotiating, making recommendations, or approving any contracts or purchases.

ANALYSIS

Members of the Board of Governors are required to disqualify themselves from and disclose conflicts of interest both under Business and Professions Code section 6035 et seq. and the Political Reform Act (commencing at Government Code § 81000). Business and Professions Code section 6036 requires Board members to disqualify themselves from making or participating in decisions that may be affected by their financial or personal interests and to immediately disclose the interest. In addition, the Political Reform Act imposes a separate disclosure and reporting requirement. Under existing section 4 of the CICBOG, board members must file an annual statement of economic interest and disclose "an investment, interest in real property, and income ... if during a reporting period the Board of Governors has made a decision

that materially affects the investment, interest in real property, or income.”¹ This is a limited form of financial disclosure, termed “transactional disclosure” that is identical with the disclosure requirements for members of the Judicial Council and the Commission on Judicial Performance.

The State Bar, the Judicial Council, and the Commission on Judicial Performance each adopted conflict of interest codes after the Political Reform Act was amended in 1985 to require conflict reporting by these judicial branch agencies. (Stats. 1984, ch. 727, effective July 1, 1985.) The rationale for adopting this more limited “transactional disclosure” requirement, which was approved by the Fair Political Practices Commission, was that the Board of Governors, like members of the Judicial Council and Commission on Judicial Performance, made high level policy decisions and delegated day to day financial decisions to staff. Most other officials subject to the Political Reform Act must report personal investments, interests in real property, and income on disclosure forms. Senior staff members who exercise the delegated authority regarding financial decisions are required to disclose all financial interests.

The Board recently adopted a policy change to require all contracts in excess of \$75,000 involving consulting services, capital equipment, or technology purchases to be approved by the Board of Governors.² Prior to adoption of this policy, the Board made financial appropriations in setting the State Bar’s budget (Bus. & Prof. Code § 6028, subd. (a)), but delegated to staff day-to-day decisions on contracts and expenditures. Since pursuant to this new policy the Board will be making financial decisions regarding specific vendors, the Board’s conflict of interest code must be amended to require more detailed reporting by Board members. Under the Political Reform Act, a conflict code must be amended when a change in an official’s duties necessitates changed disclosure requirements. Amendments must be submitted to the code reviewing body within 90 days after the changed circumstances have become apparent. Cal. Gov. Code § 87306. For the Board of Governors, amendments to the CICBOG must be submitted to and approved by the Chief Justice or his or her designee as the “code reviewing body” for the Board. (Gov. Code, § 82011, subd. (e).) In reviewing the proposed change, the code reviewing body must consider and disapprove a code if it “[f]ails to provide reasonable assurance that all foreseeable potential conflict of interest situations will be disclosed or prevented.”

The Fair Political Practices Commission has developed Model Disclosure Categories to assist agencies in drafting or amending their conflict-of-interest codes. One model category would require Board members to fully disclose all investments, interests in real property and income. This level of disclosure is similar to the Category 1 disclosure level for all State Bar senior

¹ The Political Reform Act requires that the conflict of interest code include a requirement those persons in an agency in positions that influence or make decisions on contracts and other expenditures by the agency to file an annual statement of economic interest “disclosing reportable investments, business positions, interest in real property and income held or received at any time during the previous calendar year.” (Gov. Code, § 87302, subd. (a).)

² The amended policy now states in pertinent part: “No contracts for 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. Board Book tab 17, art. 3, § 2.

executives under the conflict code for designated employees of the State Bar. The other applicable model category is for persons of an agency with contracting authority. The proposed amendment to the CICBOG incorporates the language of the model disclosure category for persons with contracting authority. It is proposed that Section 3 of the Conflict of Interest Code for the Board of Governors of the State Bar of California be amended as follows:

Section 3. Reportable Financial Interests

~~A member shall disclose an investment, interest in real property, and income as required by Government Code Sections 87206 and 87207 if during a reporting period the Board of Governors has made a decision that materially affects the investment, interest in real property, or income.~~ Members must disclose all investments, business positions and income, including gifts, loans and travel payments, from sources that provide consulting services, capital equipment, or, as defined in Business and Professions Code section 6008.6, information technology of the types utilized by the State Bar. Disclosures required by this code are in addition to disclosures required by Business and Professions Code section 6036.

Additional formatting and style changes to the CICBOG are also proposed. All of the proposed amendments to the CICBOG are attached as Exhibit A.

RECOMMENDATIONS

Staff recommends that the Board Operations Committee release the proposed amendments to the Conflict of Interest Code for the Board of Governors of the State Bar of California for a 45 day public comment period.

FISCAL IMPACT

None.

RULES IMPACT

Conflict of Interest Code for the Board of Governors of the State Bar of California

BOARD BOOK IMPACT

Tab 7, Article 4.

PROPOSED RESOLUTION

Should the Board Committee agree with staff's recommendation, adoption of the following resolution would be appropriate:

RESOLVED, that, the Board Committee on Operations authorizes for publication, in the form attached as Exhibit A, proposed amendments to the Conflict of Interest Code for the Board

of Governors of the State Bar of California for a forty-five day comment period from May 17 to July 1, 2010, the; and it is

FURTHER RESOLVED, that publication of the foregoing is not, and shall not be construed as, a recommendation of approval by the Board Committee.

Attachments:

A: Proposed Amendments to Conflict of Interest Code for the Board of Governors of the State Bar of California