

## ENCLOSURE 2

### AGENDA ITEM

**DATE:** August 26, 2013

**TO:** Members, Board Committee on Operations

**FROM:** Robert A. Hawley, Deputy CEO/Deputy Executive Director

**SUBJECT:** Proposed New California Rules of Court, Rule 9.4, Oath Required on Admission to Practice Law – Request for Public Comment

**ATTACHMENTS:**

- 1) Board Agenda Item JULY 113
- 2) Proposed New Rule of Court, Rule 9.4

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#### EXECUTIVE SUMMARY

The State Bar is considering proposed new Rule of Court 9.4. This rule would append a courtesy and professionalism statement to the oath required to be taken by persons who are certified by the Supreme Court for admission to practice law. This agenda item seeks approval to circulate the proposed new rule for a 30-day public comment period. If ultimately adopted by the Board of Trustees (“Board”), a recommendation would be submitted to the Supreme Court requesting approval of the new rule.

Members of the Board who have questions about this agenda item may contact Deputy Executive Director Robert A. Hawley at [Robert.Hawley@calbar.ca.gov](mailto:Robert.Hawley@calbar.ca.gov), (415) 538-2277.

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#### BACKGROUND:

At the July 18 – 19, 2013 meeting, the Board endorsed the concept of an amendment to the attorney oath that would add aspirational professionalism commitments. A copy of the July agenda item is provided as Attachment 1 and sets forth the relevant background. Since the July meeting, the State Bar has worked with Judicial Branch staff to develop a proposal to circulate for public comment for a new Rule of Court that implements the courtesy and professionalism statement as a new sentence added to the attorney oath.

#### ISSUE:

Whether the proposed new Rule of Court, rule 9.4 should be circulated for a 30-day public comment period.

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### **SUMMARY OF PROPOSAL:**

The following language is proposed for the new courtesy and professionalism statement: “As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity.” If added to the existing language, the entire attorney oath would be the following:

I solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of an attorney and counselor at law to the best of my knowledge and ability. As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity.

(New language underlined. Existing language is codified in Business and Professions Code section 6067.)

To effectuate this change in the law, proposed new Rule of Court, rule 9.4 would provide as follows:

#### **9.4 Oath required when admitted to practice law**

In addition to the language required by Business and Professions Code section 6067, the oath to be taken by every person on admission to practice law is to conclude with the following: “As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity.”

(The proposed rule is also set forth in Attachment 2.) The courtesy and professionalism statement is intended to be an aspirational statement and not intended to define a professional conduct standard enforceable through State Bar discipline.<sup>1</sup>

### **LENGTH OF PUBLIC COMMENT PERIOD:**

State Bar Rule 1.10(A), in part, provides that proposals be circulated for a “forty-five day period, which can be shortened to a minimum of 30 days or extended to a maximum of 90 days, as designated by the board. The goal here is to have this item back for the board to consider at its October Annual Meeting. Thus, it is recommended that the public comment period here be a 30-day period that would conclude on October 4, 2013.

<sup>1</sup> The aspirational nature of this addition to the oath is intended to avoid enforcement issues involving freedom of speech and expression that exist within the jurisdiction of the 9<sup>th</sup> Circuit Court of Appeal. See e.g., *United States v. Wunsch* (9th Cir. 1996) 84 F.3d 1110; *Standing Committee on Discipline v. Yagman* (9th Cir. 1995) 55 F.3d 1430.

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### **EFFECTIVE DATE OF PROPOSAL:**

If the Board ultimately approves the proposed rule, the proposal would be submitted to the Supreme Court for action. If the Supreme Court approves the proposed rule, the rule change would become effective as prescribed by the Court's order.

### **FISCAL / PERSONNEL IMPACT:**

None.

### **RULE AMENDMENTS:**

This proposal does not adopt or amend any State Bar rule. Ultimate Board approval would effectuate a recommendation to the Supreme Court that a new Rule of Court, rule 9.4, be approved.

### **BOARD BOOK IMPACT:**

None.

### **RECOMMENDATION:**

State Bar staff requests that the Committee approve its recommendation that proposed new Rule of Court, rule 9.4, as attached as Attachment 2, be circulated for a 30-day public comment period.

### **PROPOSED BOARD COMMITTEE RESOLUTION:**

Should the Board Committee on Operations agree with the above recommendation, the following resolution would be appropriate:

**RESOLVED**, that the Board Committee on Operations authorizes staff to make available for public comment for a period concluding on October 4, 2013, the proposed new Rule of Court, rule 9.4, *Oath Required when Admitted to Practice Law* in the form attached; and it is

**FURTHER RESOLVED** that good cause exists to reduce the comment period to thirty (30) days; and it is

**FURTHER RESOLVED**, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed item.

## AGENDA ITEM

113 JULY

**DATE:** July 18, 2013

**TO:** Members, Board Committee on Operations  
Members, Board of Trustees

**FROM:** Robert A. Hawley, Deputy CEO/Deputy Executive Director

**SUBJECT:** Amendments to Oath Required on Admission to Practice Law

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### EXECUTIVE SUMMARY

This item presents in “concept” potential amendments to the oath required of all California attorneys upon admission to practice law. The California State Organization - American Board of Trial Advocates (“CAL-ABOTA”) has for the last several years been urging attorney regulatory authorities in each state to amend the attorney oath upon admission to add aspirational commitments to professionalism. Staff is currently exploring the possibility of seeking such modifications of the oath in California. Staff seeks here Board endorsement of this initiative in concept form. Any actual amendments to the oath that the State Bar initiates will come before the appropriate board committees for release for public comment and potential approval thereafter. Members of the Committee or Board who have questions about this agenda item may contact Deputy Executive Director Robert A. Hawley at [Robert.Hawley@calbar.ca.gov](mailto:Robert.Hawley@calbar.ca.gov), (415) 538-2277.

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### BACKGROUND

Business and Professions Code section 6067 currently embodies the oath taken upon admission. It provides, in pertinent part, that: “[e]very person on his admission shall take an oath to support the Constitution of the United States and the Constitution of the State of California, faithfully to discharge the duties of an attorney at law to the best of his knowledge and ability.” Taking this oath is a requirement for all persons certified by the Supreme Court to practice law.

The California State Organization - American Board of Trial Advocates (“CAL-ABOTA”) has for the last couple of years been urging attorney regulatory authorities in each state to amend their attorney oaths to add professionalism commitments. The letter the State Bar received from CAL-ABOTA in this regard will be distributed at the meeting when this agenda item is addressed.

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### ATTACHMENT 1

#### ISSUE

Whether the concept of seeking amendments to the attorney oath in California to include professionalism commitments is endorsed by the Board Committee and Board of Trustees.

#### CONCLUSION

State Bar staff recommends that the Committee and the Board endorse this initiative in concept.

#### DISCUSSION

Currently, the State Bar promotes attorney professionalism and civility primarily through education and the State Bar's online collection of resources designated as the [Civility Toolkit](#). The Civility Toolkit includes *California Attorney Guidelines of Civility and Professionalism*. As summarized in the Civility Toolkit, at the request of Shelly Sloan, then President-Elect of the Board of Governors of the State Bar, the Board appointed the Attorney Civility Task Force in August 2006 to study and recommend aspirational civility guidelines for adoption by the Board. After extensively vetting draft guidelines throughout the state, in May 2007 the task force reported to the Board Committee on Member Oversight ("MOC") with a request for public comment on a proposed new set of voluntary guidelines called the *California Attorney Guidelines of Civility and Professionalism* ("Guidelines"). MOC authorized publication of the proposal for a 30-day public comment period. After reviewing the public comments, the task force further revised the Guidelines. In July 2007, the Board adopted the Guidelines as best practices of civility in the practice of law in California. Since the Board's adoption of the Guidelines in 2007, ongoing interest throughout the state has resulted in adoption and implementation of the Guidelines at local levels. Among the local jurisdictions that have adopted the Guidelines are the following: Los Angeles County Superior Court; Orange County Superior Court; Riverside County Superior Court; Sacramento County Superior Court; and Santa Clara County Superior Court.

Amendments to the attorney oath of the nature proposed are consistent with the State Bar's past and ongoing efforts to enhance lawyer professionalism and civility. In particular, it would emphasize the goal of professionalism and civility to all persons entering the profession at the time of admission, and also when being reinstated.

Like the Guidelines adopted by the Board in 2007, the oath of professionalism and civility is an aspirational statement. The aspirational nature of this concept would leave intact the disciplinary function of the existing attorney oath. Business and Professions Code section 6103, in part, provides that any "violation of the oath" taken by an attorney "constitutes causes for disbarment or suspension." However, California Supreme Court precedent limits the circumstances when this section may be used for disciplinary charges. See *Read v. State Bar* (1991) 53 Cal.3d 394 [279 Cal.Rptr. 818]. As an aspirational statement, the professionalism commitments to be added to the oath are not intended to define a professional conduct standard enforceable through State Bar discipline.

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### ATTACHMENT 1

#### **FISCAL / PERSONNEL IMPACT:**

None

#### **RULE AMENDMENTS:**

None

#### **BOARD BOOK IMPACT:**

None

#### **RECOMMENDATION**

State Bar staff recommends that the Committee and the Board endorse this initiative in concept.

#### **PROPOSED BOARD COMMITTEE RESOLUTION:**

Should the Board Committee on Operations agree with the above recommendation, the following resolution would be appropriate:

**RESOLVED**, that the Board Committee on Operations recommends that the Board endorses in concept the initiative to amend the attorney oath in California to include aspirational professionalism commitments.

#### **PROPOSED BOARD OF TRUSTEES RESOLUTION:**

Should the Board concur with the Board Committee on Operations's recommendation, the following resolutions would be in order:

**RESOLVED**, that upon the recommendation of the Board Committee on Operations, the Board hereby endorses in concept the initiative to amend the attorney oath in California to include aspirational professionalism commitments.

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ATTACHMENT 2

**PROPOSED NEW CALIFORNIA RULE OF COURT 9.4**

(Legislative style with proposed additions underlined and deletions in strike out, for public comment, August 30, 2013)

[Insert Text Begin]

- 1 **9.4 Oath required when admitted to practice law**
- 2 In addition to the language required by Business and Professions Code section
- 3 6067, the oath to be taken by every person on admission to practice law is to
- 4 conclude with the following: “As an officer of the court, I will strive to conduct
- 5 myself at all times with dignity, courtesy and integrity.” [Inserted Text End]