

AGENDA ITEM

III D. NOVEMBER 2015

DATE: November 4, 2015

TO: Members, Board Executive Committee

FROM: Leah Wilson, Chief Operating Officer

SUBJECT: State Bar of California's Conflict of Interest Code for Designated Employees, Proposed Revisions to List of Designated Employees – Request for Public Comment

EXECUTIVE SUMMARY

This requests the Board Executive Committee to authorize a 30 day public comment period on annual amendments to the State Bar's Conflict of Interest Code ("Code") for Designated Employees. The Political Reform Act, Government Code § 81000 et seq. ("PRA"), requires the State Bar, as a public agency, to adopt a Conflict of Interest Code (Code) for officers, employees and consultants, who, during the course of their work for the State Bar, make or participate in making decisions that may have a material impact on the interests defined in the code (Designated Employees). The State Bar's Code includes a list of Designated Employee positions (Appendix A of the Code) that are subject to the Code and a list of Disclosure Categories (Appendix B of the Code) in which Designated Employees must disclose interests in compliance with the Code. Government Code § 87306 requires periodic revisions of the Code to assure that the list of Designated Employees and Disclosure Categories are accurate and to conform the Code to changes that may have occurred in the PRA or regulations of the California Fair Political Practices Commission ("FPPC").

In conformity with these requirements, the State Bar annually reviews its Conflict of Interest Code and circulates any amendments for public comment in advance of its application for the upcoming year. In 2013, the State Bar engaged in a material review of the Conflict of Interest Code, making substantive changes to the required Disclosure Categories and Designated Employees. The Disclosure Categories were updated to reflect changes in the State Bar's operational functions since the Code was originally adopted. The Designated Employees were also expanded to require more reporting and disclosure than had historically been the case. This will be the third year operating under these Code revisions.

Last year, the State Bar amended its Conflict of Interest Code to conform to Regulation 18730 of the Fair Political Practices Commission (FPPC). Regulation 18730 replaces the customized code that had been used by the State Bar historically and provides an "evergreen" code that is updated routinely by the FPPC.

This year, the list of Designated Employees (Appendix A) has been reviewed and updated to reflect current circumstances. This item requests authorization to release the updated list for a 30 day public comment period. This will allow the item to return to the Board's January 2016 meeting for approval, followed by implementation beginning in February 2016. The 2016 compliance period begins in March and April.

BACKGROUND

The Political Reform Act requires state and local government agencies, such as the State Bar, to adopt and promulgate conflict of interest codes. The State Bar is also subject to the Conflict of Interest standards mandated by Business and Professions Code § 6035-6038. These sections conform to the definitions specified in Government Code § 87103.

Historically, the State Bar has reviewed its Conflict of Interest Code annually to update the code and list of Designated Employees subject to the reporting requirements under the Disclosure Categories. In 2013, the State Bar made material and substantive changes to the reporting categories, expanding the reporting requirements to a number of employees who previously had not been required to report under the Act.

The PRA requires agencies to identify areas where persons who act on the agency's behalf must disqualify themselves from making decisions because of a financial conflict of interest. The PRA requires that agencies designate employees who must report particular financial interests because they make or participate in making decisions that are likely to have an impact on those financial interests. The State Bar identifies these employees and their reporting requirements on the list of Designated Employee positions (Appendix A). The disclosure categories, defined in the Code, indicate the subject matter areas in which the Designated Employees are authorized to make decisions and may be influenced by financial interests requiring disclosure under the Code.

DISCUSSION

Last year, the State Bar adopted in place of its customized code Regulation 18730 of the FPPC. Previously, the State Bar had a customized code that was routinely reviewed and updated to track the provisions of this regulation, which provides an "evergreen" automatically updated code. Regulation 18730 is routinely updated by the FPPC, and its adoption ensures that the State Bar's Code is in compliance with recent changes adopted by the FPPC. The State Bar's Code will be updated with the current version of Regulation 18730 before it is distributed to employees in connection with next year's filing deadlines. This year, staff has reviewed and updated the list of Designated Employees who are subject to reporting requirements under the State Bar's Code. This item presents the updated list of Designated Employees (Appendix A) for release for public comment.

FISCAL/PERSONNEL IMPACT

None.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

None.

RECOMMENDATION

It is recommended that the Board Executive Committee authorize public comment on the updated Appendix A to the State Bar's Conflict of Interest Code, as set forth above.

BOARD COMMITTEE RESOLUTION

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

RESOLVED, that the Board Executive Committee authorizes staff to make available for a 30 day public comment period, the updated list of Designated Employees, Appendix A to the State Bar of California's Conflict of Interest Code for Designated Employees in the form attached here; and it is

FURTHER RESOLVED, that this authorization for release for public comment is not, and shall not be construed as an endorsement of the proposed item.

ATTACHMENT(S) LIST

- A. State Bar Conflict of Interest Code
- B. Appendix A of the Code, Designated Employee Positions
- C. Appendix B of the Code, Disclosure Categories