

OPEN SESSION AGENDA ITEM

709 DEC 2017

DATE: November 22, 2017
TO: Members, Board of Trustees
FROM: Steve Mazer, Chief Administrative Officer
SUBJECT: State Bar of California's Conflict of Interest Code for Designated Employees, Proposed Revisions – Request for Public Comment

EXECUTIVE SUMMARY

This item requests that the Board of Trustees authorize a 45 day public comment period on amendments to the State Bar's Conflict of Interest Code for Designated Employees.

BACKGROUND

The Political Reform Act, Government Code § 81000 et seq. (PRA), requires that the State Bar, like other state and local government agencies, adopt a Conflict of Interest Code (Code) for officers, employees and consultants, who, during the course of their work for the agency, make or participate in making decisions that may have a material impact on the interests defined in the Code.

The Code includes a list of Designated Employee positions that are subject to the Code (Appendix A of the Code, Designated Employees); these Designated Employees must report particular personal financial interests, because they make or participate in making decisions that are likely to have an impact on those financial interests. The Code also includes a list of categories in which Designated Employees must disclose interests in compliance with the Code (Appendix B of the Code, Disclosure Categories); these categories define the subject matter areas in which the Designated Employees are authorized to make decisions which could potentially be influenced by their own financial interests.

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).

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.

The FPPC regulations and the State Bar's public comment rules (Rules of the State Bar 1.10 and 1.11) require that changes to the Conflict of Interest Code be circulated for public comment when material changes are made to the Code.

DISCUSSION

The State Bar annually reviews its Code and circulates it for public comment in advance of its application for the upcoming year. Last year the State Bar made material and non-material

revisions to the Code. First, it made a material change to the substance of the Code by updating the list of Designated Employees. Second, it made a non-material change to the Code by adopting FPPC Regulation 18730 in place of its customized code. The benefit of adopting the Regulation over a customized code is that the Regulation updates automatically with FPPC changes, not requiring the State Bar to track those changes independently and separately incorporate them into a customized code.

This year, the State Bar proposes to amend the Code to update the list of Designated Employees to reflect current circumstances. This includes the addition of new positions subject to the Code (Chief Programs Officer, Chief Court Counsel/Administrator, Chief Administrative Officer, Chief of Mission Advancement & Accountability, and Supervising Attorney) and revised titles for some executive and confidential positions consistent with the Bar's newly adopted classification system. It also includes the updated version of FPPC Regulation 18730.

The 45-day public comment period will begin on December 4, 2017 and expire on January 18, 2018. This will allow the amended Code to come before the Board of Trustees for approval at its January 2018 meeting. Implementation of the amendments and distribution of the Code to employees would take place no later than March 1, 2018, with a filing deadline of April 1, 2018.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK IMPACT

None

STRATEGIC PLAN GOALS & OBJECTIVES 2017-2022

Goal: 1. Successfully transition to the “new State Bar”— an agency focused on public protection, regulating the legal profession, and promoting access to justice.

Objective: c. Implement and pursue governance, composition, and operations reforms needed to ensure that the Board's structure and processes optimally align with the State Bar's public protection mission.

RECOMMENDATION

Staff recommends that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees authorizes staff to make available for a 45 day public comment period, the proposed revisions 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. Current Conflict of Interest Code and Current Regulation 18730
- B. Proposed Conflict of Interest Code and Updated Regulation 18730

C. Appendix A of the Code, Designated Employee Positions

D. Appendix B of the Code, Disclosure Categories