

DATE: August 1, 2006

TO: Board Committee on Operations

FROM: Marie M. Moffat, General Counsel
Lawrence C. Yee, Chief Assistant General Counsel

SUBJECT: Board Election Rules – Authorization to Release Proposed Revisions for Public Comment

EXECUTIVE SUMMARY

This item proposes the release of proposed revisions to Article II of the Rules and Regulations of the State Bar of California, regarding Nomination and Election of Governors, for public comment. Two specific proposed rule revisions have been made. The first revises the timing and procedures by which nominating petitions may be submitted electronically. The second authorizes limited public inspection of nominating petitions.

Pursuant to the State Bar's Procedure for Adoption, Amendment or Repeal of State Bar Regulations ("Public Comment Rules"), proposed rule changes must be circulated for a 90-day public comment period. This item recommends that the Board Committee authorize circulation of the proposed rule changes for a 90-day public comment period.

I. BACKGROUND

1. Timing of Filing of Nominating Petitions

Under the relevant provisions of the Rules and Regulations of the State Bar of California regarding Nomination and Election of Governors ("Election Rules"), completed nominating petitions for attorney governors must be filed at the San Francisco office of the State Bar by 5:00 p.m. on April 1 of each year. Rules & Regs. State Bar, art. II, §3. Section 3 currently allows candidates to submit electronic copies of nominating petitions, provided that the original petitions are postmarked on April 1 and received by April 6. Following two

instances this year in which candidates' petitions were rejected for failing to comply with the timing requirements for receipt of the original petitions, staff researched electronic filing requirements in the courts and are now proposing a rule revision to more efficiently deal with electronic submissions.

2. Public Inspection of Nominating Petitions

Under the Election Rules, candidates seeking to run for office as an attorney governor on the Board of Governors of the State Bar of California must submit nominating petitions to the State Bar signed by at least 20 members who are qualified to vote for the candidate under section 6018 of the California Business and Professions Code. Rules & Regs. State Bar, art. II, §§ 3, 4. The Secretary determines the sufficiency of the nominating petition by verifying that each member signing the petition is an active member and that his or her principal office is in the State Bar District of the candidate. State Bar staff does not verify the actual signatures. Once the 20 signatures of support have been obtained, the Secretary's office may disregard all additional signatures on the nominating petitions submitted. Rules & Regs. State Bar, art. II, § 4. All petitions filed remain on file for at least five years. *Id.*

Currently, however, the Election Rules contain no provision providing for public inspection or copying of the nominating petitions. After a recent request for inspection of the nominating petitions for the 2006 Board election, members of the Board Operations Committee asked staff to draft a proposed rule that would allow limited public inspection of the nominating petitions. The California Elections Code provides a model for allowing limited public inspection of these petitions. Prior to 2004, the law was silent about the right of public inspection of nominating petitions, but apparently some local election registrars permitted the inspection of election packages following the commencement of the official canvass of votes. In 2004, the California Legislature amended the section to add new subdivision (c), which now expressly permits, but limits access to "viewing the documents only." It expressly prohibits the copying or distributing of documents "containing the signature of voters." Cal. Elections Code § 17100(c) added Stats. 2004, ch. 785 (A.B. 2790), § 12.¹ The proposed revision to the Election Rules mirrors this provision of the Elections Code.

II. PROPOSED REVISIONS

Exhibit 1, attached to this item, contains proposed revisions to sections 3 and 4 of the Election Rules, and a new proposed section 5. Deletions appear in strikeout text and additions appear in bold. If the proposed revisions are adopted following public comment, sections 6-14 of the Election Rules will be renumbered

¹ The statute apparently balanced the interest in permitting public inspection of the petitions against the privacy interests of signators. (See, Carmel-By-The-Sea v. Young (1970) 2 Cal.3d 259; Bilofsky v. Deukmejian (1981) 124 Cal.App.3d 825.)

due to the addition of a new section 5. Any references to section numbers within the rules will also be corrected.

1. Section 3

The proposed revisions to section 3 streamline the method for electronic filing of nominating petitions. As currently written, the section provides that nominating petitions may be electronically filed, but does not define what electronic filing means. All of the federal district courts in California have moved to electronic filing programs in recent years. After reviewing the rules of court governing electronic filing for these district courts, we recommend requiring that nominating petitions filed electronically be filed only in PDF format. This is the standard adopted by the federal courts and is advisable because it provides for one consistent easily read format.

The current version of section 3 requires that candidates who file an electronic version of a petition must also file the original with the State Bar within a defined time frame. The required timeframe is somewhat complicated in that it requires the original petition to be postmarked not later than April 1, and received not later than 5:00 p.m. on April 6. The current version of the rule does not contemplate situations in which the filing date for petitions could be extended because April 1 falls upon a weekend or holiday. In addition, since the Secretary only verifies that signatories to the petition are qualified to vote, but does not verify the actual signatures, it is not really necessary for the Bar to have the original petition on file. In the event that members of the public, or other candidates, want to inspect the petitions, the proposed revisions to Section 3 require that any candidate filing a nominating petition electronically must keep the original petition for four years following commencement of the term of office for which the petition is filed and if requested by the State Bar, must provide the original petition to the Bar. This provision requires candidates to hold their original petition for the same amount of time that the Secretary holds original petitions received by mail.

2. Section 4 and New Section 5

As currently written, section 4 of the Election Rules, which generally concerns the sufficiency of nominating petitions, contains one sentence mandating that the Secretary keep the filed petitions on file for at least five years. The revised rules attached as Exhibit 1 recommend deleting that one sentence from section 4 and creating a new section 5 which will deal with preservation of nominating petitions as well as public inspection of the petitions.

The proposed new section 5 provides that the Secretary must hold filed nominating petitions for 4 years following the commencement of the term of office for which the petition is filed. This requirement would ensure that the petition be held for the entire possible term of office for a governor.

The proposed new section 5 also contains a section regarding public inspection of the nominating petitions, which provides for viewing only of the petitions by the public, specifying that the petitions may not be copied or distributed. This provision on public inspection mirrors the provisions of the California Elections Code.

III. AUTHORIZATION TO RELEASE FOR PUBLIC COMMENT

The State Bar's Public Comment Rules require changes to the State Bar rules or regulations to be circulated for public comment. Section 4 of the Public Comment Rules provides a standard 90-day public comment period. In accordance with these provisions of the Public Comment Rules, it is requested that the Committee authorize release of the proposed rule changes for a 90-day public comment period.

IV. RECOMMENDATIONS/RESOLUTIONS

If you concur with the recommendations above, it is recommended that you adopt the following resolutions:

RESOLVED, that pursuant to the Public Comment Rules, sections 3 through 6, the Board Operations Committee authorizes staff to make the proposed revisions to the Article II of the Rules and Regulations of the State Bar of California, in the form attached hereto, available for a public comment period of 90 days, *and it is*

FURTHER RESOLVED, that this authorization for public comment circulation shall not be construed as a statement of approval of the proposed revisions.

EXHIBIT 1

SECTION 3. DATE OF FILING NOMINATING PETITIONS

Nominating petitions ~~shall~~ **must** be completed according to the instructions that appear on the petitions. Completed petitions ~~shall~~ **must** be filed and received at the San Francisco office of the State Bar by 5:00 p.m. on April 1 of each year. An electronic copy of a nominating petition will be accepted **in PDF format only.** ~~, provided that the original petition is received in an envelope which bears a postmark of the United States Postal Service or other delivery service showing that it was mailed, postage prepaid, not later than April 1, and received not later than 5:00 p.m. on April 6~~ Candidates **who file an electronic copy of a nominating petition must keep the original nominating petition for four years following commencement of the term of office for which the petition is filed. Upon request by the State Bar, candidates must promptly forward the original nominating petition to the San Francisco office of the State Bar.**

The secretary may extend the time for filing nominating petitions to a date no later than seven days prior to the date fixed for mailing of ballots pursuant to section 7 of this article if: 1) no valid nominating petition is filed for an office by an eligible candidate, or the only petition filed is withdrawn by the deadline in section 4 below; or 2) the only candidate who has filed a nominating petition dies, and the secretary verifies the death.

The nominee ~~shall~~ **must** sign a statement on the petition accepting the nomination. If the person who receives a plurality of the votes cast for any office becomes ineligible or unable to serve or dies prior to the commencement of ~~his or her~~ their term of office, the office ~~shall~~ **must** be vacant at the conclusion of the next annual meeting. The vacancy ~~shall~~ **must** be filled by the candidate receiving the next-highest number of votes for that office. In the event that no such candidate exists, or in the event that no nominating petition is filed for an office within the time limits prescribed by this section, the Board ~~shall~~ **must** appoint a member to fill the vacancy until the next regularly scheduled election. An election for the remaining term of that office will then be held in accordance with the rules ~~and regulations~~. (Amended September 10, 1971; December 20, 1974; May 13, 1976; March 21, 1997; July 27, 2001; January 23, 2003; _____, **2007.**)

SECTION 4. DETERMINATION OF SUFFICIENCY OF NOMINATING PETITIONS

Nominations of members of the Board of Governors ~~shall~~ **must** be by petition signed by at least 20 members of the State Bar, who are eligible to vote pursuant to section 6018 of the Business and Professions Code.

Any number of nominating petitions on behalf of a nominee may be filed, but once 20 signatures in support of a nominee have been obtained, all additional signatures may be disregarded. The secretary ~~shall~~ **must** determine when a member is nominated.

~~After a nominating petition has been filed, said petition shall remain on file for a period of at least five years. Once nominated, a candidate may withdraw from the election no~~

later than 5:00 p.m. on April 11 by providing written notice to the secretary. Thereafter, the secretary shall place the names of all eligible candidates on the ballot, provided for in section 6 of this article, except in the event of the death of a candidate. To the extent feasible, the name of the deceased candidate shall be removed from the ballot. (Amended May 13, 1976; renumbered July 27, 2001; amended January 23, 2003; _____, 2007.)

SECTION 5. RETENTION OF AND PUBLIC ACCESS TO NOMINATING PETITIONS [NEW]

After being filed, each nominating petition must be held by the secretary, or the secretary's designee, for four years following commencement of the term of office for which the petition is filed.

Public access to the nominating petitions will be limited to viewing the petitions only, at the San Francisco office of the State Bar. The public may not copy or distribute copies of the petitions. (Added _____, 2007.)