



THE STATE BAR OF CALIFORNIA

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TO: **Members of the Board Committee on Operations**

FROM: Lawrence C. Yee, Chief Assistant General Counsel
Victor Rowley, Rules Rewrite Consultant
Cynthia Abramov, Assistant General Counsel

RE: Request for Public Comment - Proposed Revisions to Rules
Governing Open Meetings, Closed Sessions and Records of
Regulatory and Special Committees

EXECUTIVE SUMMARY

In this item, the Board Committee on Operations would approve the release for public comment proposed amendments (Attachment A) that would add new rules concerning meetings of regulatory and special committees of the State Bar to the Rules of the State Bar (also referred to as "State Bar Rules") under Title 6 (Governance). The public comment period would be for 45 days. The matter will then be reported and presented to the committee for action at the May 2009 meeting.

BACKGROUND

The objective of the State Bar rule revision project has been to integrate the State Bar's more than two dozen sets of rules into one comprehensive structure under the new Rules of the State Bar and to make the rules simpler, clearer, and more uniform. Under one section designated Title 6 (Governance); the State Bar Rules include those provisions governing board elections, open and closed meetings, and other governance-related matters.

State Bar Rules 6.50-6.54, which the board previously approved in 2008, address open and closed sessions for meetings of the Board and Board committees (“Board meeting rules”).

The Office of General Counsel has now drafted revisions to the existing rules governing meetings for bar committees appointed by the Board to carry out various statutory, regulatory or other functions of the State Bar. The current rules are presently set forth in the “Rules Governing Open Meetings, Closed Sessions and Records of Regulatory and Special Committees” (“committee meeting rules”) (Attachment B).

DISCUSSION

Under the proposed revision, the Board meeting rules, as adopted in May 2008, would also apply to State Bar committee meetings except as provided in these proposed rules. By eliminating similar and overlapping provisions, the ten existing committee meeting rules have been reduced to four.

- 1) Proposed rule 6.60 (In general) states that the rules applicable to meetings of the Board of Governors will apply to meetings of Board-appointed committees that act on its behalf. An appendix will be added to the Rules listing the State Bar committees, councils, commissions, and boards to be governed by the meeting rules.

The application of the Board meeting rules to State Bar committees would result in a substantive change to the notice requirement. State Bar committees would be required to change their notice from 72 hours under committee meeting rules, to no less than five days. Staff has indicated no serious hardship with changing the notice period.

- 2) Consistent with the open meeting policy of Rule 6.52(A) for Board and Board committee meetings, proposed rule 6.61 (Open meeting policy) declares that meetings of Board-appointed bodies are open to the public unless closed pursuant to rule or law.
- 3) Proposed rule 6.62 (Closed sessions) supplements the three Board exceptions to the open meeting policy identified in existing Rule 6.53 with seven additional exceptions. The purpose of this proposed rule is to broadly incorporate the exceptions identified in the current rule (section 2, subsections (d)-(m) of the committee meeting rules). To assist the Committee, the following lists each of the exceptions in Section 2 and references where it has been placed in the proposed rules.
 - a) There are apparently two subsections (a) in Section 2 of the existing committee meeting rules. The first subsection (a) states that, for a variety of reasons, seating for members of the public may be limited. The seating

limitation provision has been placed in proposed rule 6.61. The portion of the existing rule that explains reasons why seating may be limited has been omitted.

- b) The other subsection (a), together with subsection (b), of the existing committee meeting rules address teleconferencing. The use of teleconferences is already provided for in existing rule 6.52(B) and is therefore not included in these rules.
- c) Subsection (c) of Section 2 of the existing committee meeting rules authorizes the chair of the committee to permit or decline members of the public to address the committee. This is an operational matter and would be more appropriate in a guidebook or administrative manual. Similarly, the public has no right to address the Board under the Board's meeting rule except at the discretion of the President or Chair, and including this language in the bar committee rules may create an ambiguity in the interpretation of the Board meeting rules. Therefore, this rule has been omitted.
- d) Subsection (d) of Section 2 of the existing committee meeting rules states that those committees which are governed by specific rules adopted by the Board should hold closed sessions as provided for in those rules. This exception has been placed in proposed Rule 6.62(A)(1).
- e) Subsection (e) of Section 2 of the existing committee meeting rules provides that meetings be closed where matters being considered fall within the attorney client privilege, involve a trade secret, are otherwise privileged from disclosure, or involve information protected by the constitutional guarantee of privacy. Existing Rule 6.53 already covers some of these exceptions. Proposed rule 6.62(A) would cover the others.
- f) Subsection (f) of Section 2 of the existing committee meeting rules states that matters subject to closed session at Board and Board committee meetings are also closed at State Bar committee meetings. Since proposed rule 6.60 provides that the Board open meeting rules apply to State Bar committees, this provision is not included in these rules.
- g) Subsection (g) of Section 2 of the existing committee meeting rules states that a committee meeting may be held in closed session if the chair determines that an open session would pose a threat to the security of the meeting. Existing Rule 6.52(c) provides for the removal of disruptive individuals if order cannot be restored at a meeting. Also, Roberts' Rules of Order, which generally govern State Bar meetings, also provides authority for protection from "annoyance of nonmembers." These two provisions should provide adequate authority for holding a meeting in closed session when the safety of those participating in a meeting is

- threatened. Therefore, this provision would be omitted from the proposed rules.
- h) Subsection (h) of Section 2 of the existing committee meeting rules allows for a closed meeting when discussing matters of internal management relating to the committee. This provision has been placed in proposed rule 6.62(A)(7)
 - i) Subsection (i) of Section 2 of the existing committee meeting rules allows for a closed session to discuss, deliberate or act upon opinions or reports in specific cases within the scope of a committee's charter. This provision has been placed in proposed rule 6.62(A)(4).
 - j) Subsection (j) of Section 2 of the existing committee meeting rules provides for the presence of State Bar staff during closed sessions. This provision has been placed in proposed rule 6.62(B).
 - k) Subsection (k) of Section 2 of the existing committee meeting rules provides that certain types of situations specific to the Board of Legal Specialization may be held in closed session. An application for certification or recertification, the suspension or revocation of a specialist's certificate, or any petitions or special requests from an applicant can be held in closed under proposed rule 6.62(A)(4). For matters involving the development, preparation, approval, grading, review or administration of an exam, this provision has been placed in proposed rule 6.62(A)(6).
 - l) Subsection (l) of Section 2 of the existing committee meeting rules provides a similar set of matters that may be discussed in closed session for the Committee of Bar Examiners. These matters are also provided for in proposed rule 6.62(A)(4) and (6).
 - m) Subsection (m) of Section 2 of the existing committee meeting rules lists a variety of matters that come before the Committee on Group Insurance Program and the Committee on Professional Liability Insurance Program that may be held in closed session. All of these exceptions has been placed in proposed rule 6.62 and existing Rule 6.53(A)(1).
- 4) Proposed rule 6.60 states that, unless these rules provide otherwise, the rules applicable to Board meetings will apply to committee meeting rules. Thus, the provisions in existing rule 6.51 regarding notice, late items, and emergency meetings will also apply to committee meetings. For this reason, Sections 3, 4, 5 and 6 of the existing committee meeting rules have been omitted.
- 5) There are, however, certain types of records not protected under the Board meeting rules that have been protected from disclosure under Section 7 of the

current committee meeting rules. The categories identified in Section 7 have been placed in proposed rule 6.63.

- 6) Section 8 of the current committee meeting rules, which requires a reference to the authority under which a document is withheld from disclosure, has been incorporated into proposed rule 6.63.
- 7) Section 9 of the existing committee meeting rules, which address the right to copy State Bar public records, has been eliminated because its subject matter is covered by existing rule 6.54.

LENGTH OF PUBLIC COMMENT PERIOD & REASON

Members are being asked to approve release of these proposed amendments for a 45-day public comment period under Rule 1.10(A) of the Rules of the State Bar, as amended May 7, 2008.

EFFECTIVE DATE OF PROPOSAL

May 15, 2009, if there are no material modifications after public comment.

FISCAL AND PERSONNEL IMPACT

None

RULE AMENDMENTS

If these proposed rules are adopted, they would replace the “Rules Governing Open Meetings, Closed Sessions and Records of Regulatory and Special Committees.”

BOARD BOOK ADMINISTRATION MANUAL IMPACT

Tab 11 would be revised.

PROPOSED BOARD COMMITTEE RESOLUTION

Should the Board Committee on Operations agree with the proposed recommendation, adoption of the following resolution would be appropriate.

RESOLVED, that the Board Committee on Operations hereby authorizes staff to make available for public comment for a period of 45 days, the proposed revisions to Title 6, to add Rule 6.60 – 6.63, Rules of the State Bar of California, in the form attached; 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.