

# AGENDA ITEM

## MOC III E

Proposed Rule of Court 9.8 to Require Online Registration by Attorneys – Request for Public Comment

**DATE:** April 23, 2007

**TO:** Members, Board Committee on Member Oversight

**FROM:** Larry Doyle, Chief Legislative Counsel

**SUBJECT:** Adoption of Rule of Court 9.8 to Require Online Registration by Attorneys- Request for public comment

**ATTACHMENT:** Attachment 1: California Rules of Court Proposed new Rule 9.8

### EXECUTIVE SUMMARY

In 2006, the Legislature enacted SB 56 (Dunn), Chapter 380, which requires the State Bar to adopt procedures to facilitate reporting of mandatory and voluntary information by providing members with a centralized mechanism for reporting information online at the State Bar Internet Web site. In fulfillment of this mandate, a staff working group has developed proposed Rule of Court 9.8 to establish an online registration service that enables each member to register with the State Bar and to report all information identified by the State Bar that is mandated by the State Bar Act, or by other statutes, rules and case law. The rule specifically makes no change to the public or confidential nature of information that is registered or reported through the online access provided by the State Bar.

Beginning February 1, 2008, each member would be required to use the online registration service at the State Bar's Web site to register and report information that is required of all members, and subsequently to report changes in that information. A member who does not have online access would, upon request, be permitted to provide the required information in a format prescribed by the State Bar. The State Bar would have the authority to set and collect an appropriate fee from any member who fails either to register online or obtain an exemption, and to add the fee to the member's annual membership fee for the year following the failure to register.

Board members with questions or concerns may contact Larry Doyle at (906) 442-8859 or [larry.doyle@calbar.ca.gov](mailto:larry.doyle@calbar.ca.gov), or may contact Mary Yen at (415) 538-2369 or [mary.yen@calbar.ca.gov](mailto:mary.yen@calbar.ca.gov).

### BACKGROUND

In 2006, the Legislature enacted SB 56 (Dunn), Chapter 380, which requires the State Bar to adopt procedures to facilitate reporting of mandatory and voluntary information by providing members with a centralized mechanism for reporting information online at the State Bar Internet

Web site. This agenda item proposes a new rule of court to provide for the centralized registration mechanism, and requests authorization for a 90-day public comment period.

## **DISCUSSION**

All members of the State Bar are subject to mandatory registration and reporting requirements that are specified primarily, but not exclusively, in the State Bar Act. In 2006, the Legislature enacted SB 56 (Ch. 390), which added section 6009.5 to the Business and Professions Code. That section states:

6009.5. The State Bar shall adopt procedures to facilitate reporting of mandatory and voluntary information by providing members with a centralized mechanism for reporting information online at the State Bar Internet Web site, including, but not limited to, data required to be provided pursuant to the State Bar Act, or by other statutes, rules, and case law, and demographic information. Any demographic data collected shall be used only for general purposes and shall not be identified to any individual member or his or her State Bar record.

In fulfillment of the legislative mandate, a staff working group has developed proposed Rule of Court 9.8. The purpose of the rule is to facilitate registration and reporting of mandatory information by providing members with a centralized mechanism for registration and reporting information online at the State Bar's web site. Proposed rule 9.8 would establish an online registration service that enables each member to register with the State Bar and to report all information identified by the State Bar that is mandated by the State Bar Act, or by other statutes, rules and case law.<sup>1</sup> In addition, proposed Rule of Court 9.8 would require that the member provide an e-mail address that the State Bar will use exclusively for regulatory or disciplinary purposes, and which will not be made available to the public unless the member indicates otherwise. The proposal would also require the member to report whether the member, or the member's law firm, has established and maintained one or more trust fund accounts required by Business and Professions Code section 6211 ("IOLTA trust accounts"). The proposed rule of court specifically makes no change to the public or confidential nature of information that is registered or reported through the online access provided by the State Bar.

Specifically, under proposed Rule of Court 9.8, beginning February 1, 2008, each member would be required to use the online registration service at the State Bar's Web site to register and report information that is required of all members, and subsequently to report changes in that information. An attorney who becomes a member after February 1, 2008, would be required to create a profile and register within 90 days after admission. When a member registers online, the member would be required to provide an e-mail address to the State Bar. The member's e-mail address would be used exclusively for disciplinary or regulatory purposes, unless the member indicates that the email address may be made available to the public. When the member's e-mail address changes, the member must report the change within 30 days. The member would also be required to report whether the member, or the member's law firm, has established and maintained one or more IOLTA trust accounts. The member must report any changes to that information on or before February 1<sup>st</sup> of each year. A member who does not have online access would, upon request, be permitted to provide the required information in a format prescribed by the State Bar. The State Bar would have the authority to set and collect an appropriate fee from any member who fails either to register online or obtain an exemption, and

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<sup>1</sup> The scope of the proposal and this agenda item is confined to creation of the centralized mechanism for reporting information online. The demographic information required by BPC section 6009.5 is not addressed in this proposal.

to add the fee to the member's annual membership fee for the year following the failure to register.

Even though Business and Professions Code section 6009.5 gives legislative authorization for the State Bar to provide members with a centralized mechanism for reporting mandatory and voluntary information online, it is appropriate to propose a new rule of court on the same subject for adoption by the California Supreme Court. The California Supreme Court has inherent and primary constitutional authority over attorney admissions and the practice of law in this state. (*In re Attorney Discipline* (1998) 19 Cal.4<sup>th</sup> 582; 79 Cal. Rptr.2d 836.) While the Legislature may enact specific provisions of law relating to the practice of law, through the Court's inherent powers to issue rules for the practice of law in California, the Court may require more.

Legislative regulations regarding the qualifications of attorneys are, at best, but minimum standards unless the courts themselves are satisfied that such qualifications as are prescribed by legislative enactment are sufficient ... *In other words, the courts in the exercise of their inherent power may demand more than the legislature has required ...* [W]hen the matter at issue involves minimum standards for engaging in the practice of law, *it is this court and not the Legislature which is the final policy maker.*

(*In re Attorney Discipline, supra*, 19 Cal.4<sup>th</sup> at p. 602.)

Proposed new Rule 9.8 would go beyond the minimum standards provided in Business and Professions Code section 6009.5 by requiring members to provide an e-mail address to the State Bar and to report whether they have IOLTA trust accounts.

Furthermore, membership information is maintained by the State Bar in accordance with Rule of Court 9.6, which states:

Rule 9.6 The State Bar must maintain, as part of the official membership records of the State Bar, the Roll of Attorneys of all persons admitted to practice in this state. Such records must include the information specified in Business and Professions Code sections 6002.1 and 6064 and other information as directed by the Supreme Court.

*In re Attorney Discipline* discussed Rule 9.6 (formerly numbered Rule 950.5) when it considered whether it is appropriate to fund the State Bar's Membership Records function from a special assessment to reopen the Bar's discipline system in 1998.<sup>2</sup>

[T]his court maintained the roll until the adoption of California Rules of Court, rule 950.5 in 1996. Although the court formerly maintained the physical roll of attorneys, keeping the roll up-to-date, taking changes of address, entering information on the status of attorneys, and the like, were functions performed by the State Bar personnel even before 1996.

(*In re Attorney Discipline, supra*, 19 Cal.4<sup>th</sup> at p. 619, fn. 23.)

The *In re Attorney Discipline* Court authorized funding for the membership records functions as the Court determined that accurate records are integral to a meaningful licensing and disciplinary system, and that the fees requested for the membership records services were an appropriate disciplinary expenditure.

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<sup>2</sup> The special assessment became former Rule of Court 963.

Finally, It may be noted that the working group's study included review of online registration statutes or rules of other states. Texas and New Mexico are two states with this type of statute or rule. While informative, the working group determined that neither Texas's statute nor New Mexico's rule of court are particularly applicable in California. The working group tailored the proposed rule to fit our needs in California.

#### **FISCAL AND PERSONNEL IMPACT**

Projected costs can be covered within the existing budgetary framework. There is no additional anticipated personnel impact.

#### **BOARD BOOK/ADMINISTRATIVE MANUAL UPDATE**

There is no known impact on the Board Book.

#### **PROPOSED BOARD COMMITTEE RECOMMENDATION**

Should the Committee on Member Oversight agree with the propose recommendation, the following resolution would be in order:

**RESOLVED** that the Board Committee on Member Oversight hereby authorizes staff to make available for a 90-day public comment period proposed Rules of Court, Rule 9.8, 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.