

DATE: April 13, 2007

TO: Members, Board Committee on Operations

FROM: Starr Babcock, Senior Executive, Member Services
Peggy Van Horn, Senior Executive, Finance

SUBJECT: State Bar Rule Revision Project: new Title 1; Title 2 amendments; 3) Titles 2 and 3 newly rewritten MCLE rules; Title 3 newly rewritten rules for the emeritus attorney program – Request to Release for Public Comment

EXECUTIVE SUMMARY

Board authorization is sought to release for public comment the following proposed rules that continue the State Bar rule revision project begun in 2006: 1) new Title 1 prefatory or global rules, which explain what the rules are, the public comment process, and interpretation of the rules; 2) amendments to the new Title 2 rules on member rights and responsibilities that the board adopted in August 2006; 3) Titles 2 and 3 newly rewritten MCLE rules for members and providers; and 4) Title 3 newly rewritten rules for the emeritus attorney program. Because the MCLE rules previously were circulated for ninety days and the attached version incorporates very few changes; because the changes to the emeritus and member rules are minor; and because the global rules are not likely to be controversial, staff proposes an abbreviated comment period of seventy rather than the usual ninety days. The comment period would run from April 25, 2007 through July 3, 2007. The shorter period will allow the board to consider adoption of the rules at its July 2007 meeting.

BACKGROUND

The objective of the State Bar rule revision project is to integrate the bar's more than two dozen sets of rules into one comprehensive structure and to make the rules simpler, clearer, and more uniform. Revising all State Bar rules requires the collaboration of many subject matter experts and is being undertaken in stages.

The global rules, which comprise the new Title 1, are being presented to the board for the first time. In August 2006 the Board of Governors adopted revised rules on membership rights and responsibilities that comprise Title 2. The amendments proposed here to Title 2 are primarily minor improvements that reflect a year's experience with the new rules. The attached MCLE rules for members and providers incorporate the relatively few suggestions for clarification that were submitted during the comment period for those rules. That period began in October 2006 and closed at the end of February 2007. The changes to the emeritus attorney rules are organizational and stylistic, with the exception noted below.

TITLE 1 GLOBAL RULES

The revised Rules of the State Bar have been organized into seven titles: Title 1 contains global rules, Title 2 rules on member rights and responsibilities, Title 3 rules on programs and services, Title 4 rules on admissions and educational standards, Title 5 rules on discipline, Title 6 rules on governance, and Title 7 miscellaneous rules. In addition to the seven titles, the Rules of the State Bar include the California Rules of Professional Conduct, and eventually they will include tables that correlate old and new rules by number and other such appendixes.

The rules proposed for Title 1 provide the structural framework for all the rules. These prefatory rules explain the scope of the Rules of the State Bar, describe the public comment procedure, and set forth general rules of interpretation. Some Title 1 rules can fairly be characterized as housekeeping conventions. For instance, this title includes rules on usage; defines commonly used terms, such as the State Bar Act; explains how to compute dates referenced in rules; and sets out rules of construction. When possible, these proposals conform to the new Rules of Court adopted by the Judicial Council in January 2007. For instance, the State Bar rules would express obligation using “must” rather than “shall,” and each tense (past, present, and future) would be construed to include the others.

TITLE 2 AMENDMENTS

In light of one year’s experience with the newly rewritten membership rules that the board adopted in August 2006 as Title 2, staff proposes adding three new rules, repealing a provision in accordance with its sunset provision, and making relatively minor changes to clarify several others. In the attached Title 2 proposals, the reason for each proposed change is stated in a footnote in italic type. These italicized footnotes are informational only and will be deleted from any version adopted by the board. Footnotes in Roman are for citations or cross-references and will be retained.

The three new rules deal with address history, *Keller* deductions, and the conflicting rates of annual membership fees.

- Rule 2.4 is a new rule on confidential treatment of address history that is consistent with State Bar practice. Such a provision was formerly in Article I.
- Rule 2.17 adds to Title 2 the provisions for *Keller* deductions that are currently included in Article 1A.
- Rule 2.36 is a new rule that states that the active rate prevails when there is a conflict in the rate at which a member accrues annual membership fees.

The sunset provision is included in Rule 2.16 (F). It permits waiver of unpaid annual membership fees and penalties accrued by retired judges and sunsets December 31, 2007. The proposal would effect the sunset provision.

All other changes are, as indicated, relatively minor, with the following two exceptions.

- Rule 2.2 Rule 2.2 is a selective rather than an exhaustive list of member record items that are public record. This list includes member date and place of birth. Although these items are public information and are disclosed upon request, staff proposes eliminating them from the list so as not to facilitate identity theft.

- Rule 2.35, which deals with suspension for disciplinary violations, would be clarified and shortened by the proposed revision.

TITLES 2 AND 3 MCLE RULES

Revised MCLE rules for members (Title 2) and providers (Title 3) were circulated for public comment in October 2006. The comment period ended February 26, 2007. Thirteen comments were received, most of which requested rewording for clarification. For instance, five of the comments requested that proposed rule 3.502 be changed to indicate that approved providers need not pay a separate fee for each educational activity they offer. The attached draft incorporates such suggestions.

A few substantive suggestions were not accepted. For instance, one commenter said that MCLE credit should be granted for reading cases; one said that MCLE credit should be granted for preparation for the bar examination of a foreign jurisdiction; and another said that the State Bar should fund MCLE from member fees and offer it free. Because these suggestions had the support of a single individual and some had been extensively vetted in the past, they were not accepted. Consequently, the attached version of the MCLE rules varies little from that circulated for public comment. Staff recommends, however, circulation of the revised proposals before the board takes any action on them in July.

TITLE 3 EMERITUS ATTORNEY PROGRAM RULES

Former Article I dealt primarily with membership and was superseded by new rules on member rights and responsibilities that the board adopted in August 2006. Article I also included rules for the emeritus attorney program. These rules are still in effect, which means that only the emeritus rules in old Article I are still viable. To allow old Article I to be totally superseded, staff recommends that the board circulate for public comment the attached revised emeritus attorney rules. If eventually adopted, the rules would be placed in Title 3, which deals with programs and services.

The revisions attempt to improve organization and style rather than make substantive changes, with one exception. Current emeritus rules require that an applicant be admitted for ten years prior to applying for the program and that three of the eight immediately preceding years have been spent as a practicing lawyer or judge. Current rules also require an applicant to have a clean disciplinary record for fifteen years prior to applying for the program. The proposed rules use ten, rather than fifteen, as the number of years an applicant must have had a clean record. Staff has been unable to discover any policy reason for the fifteen-year term, and rules reducing the fifteen years to ten would align the qualifying time periods and simplify the calculations.

The board may in the future decide to address the pro bono objectives of the emeritus program in new fashion. Even so, staff recommends revision of the current rules until such time so that Article I can be completely repealed. No opposition to the revisions is anticipated.

FISCAL IMPACT

No fiscal impact is anticipated.

BOARD BOOK IMPACT

There is no board book impact.

PROPOSED BOARD COMMITTEE ACTION

Should the Board Committee accept the recommendation of staff, adoption of the following resolution would be appropriate:

RESOLVED, that the Board Committee on Operations authorizes for publication, in the form attached, for a seventy-day comment period from April 25, 2007 to July 3, 2007 the proposed Title 1 global rules; the proposed amendments to Title 2; the proposed Titles 2 and 3 MCLE rules as revised following a period of public comment; and the proposed revisions to the emeritus attorney program rules that, if adopted, would be located in new Title 3.

FURTHER RESOLVED that publication of the foregoing is not, and shall not be construed as, a recommendation of approval by the Board Committee.

Attachments: Title 1 Proposed April 2007
Title 2 Proposed April 2007
Title 3 Proposed April 2007