

AGENDA ITEM

JULY 112

State Bar Rule Revision Project
Title 1, Title 2, and Title 3

DATE: June 28, 2007

TO: Members, Board Committee on Operations
Members, Board of Governors

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 Adopt

EXECUTIVE SUMMARY

The Board Committee on Operations approved the release for public comment on April 25, 2007, of 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 June and 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. The comment period closes July 3, 2007. As of June 28, 2007, no comments were submitted. Comments submitted after this date will be distributed at your July meeting.

This memorandum suggests making a few editorial changes to clarify the proposals and one substantive change relating to expungement of member records. The substantive change is required to conform to new Rule of Court 9.6. Under existing public comment policy and the proposed rules on public comment in Title 1, these changes do not require republishing the proposed rules for public comment.

Staff recommends that the Committee accept the proposed rules and forward them to the Board at its July 2007 meeting for adoption effective immediately, with the exception of the MCLE rules in Division 4. The MCLE rules would be adopted effective January 1, 2008, to allow adequate time for implementation.

BACKGROUND

The objective of the State Bar rule revision project is to integrate the State 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 Title 1, are new. In August 2006 the Board of Governors adopted revised rules on membership rights and responsibilities that comprise Title 2. The Title 2 amendments proposed here 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 that began in October 2006 and closed at the end of February 2007. The changes to the emeritus attorney rules are organizational and stylistic.

TITLE 1 GLOBAL RULES

Normally, the Board of Governors adopts the rules that apply to the State Bar. In a few instances, the legal authority to adopt rules is delegated to a different body. For instance, by statute,¹ the Executive Committee of the State Bar Court has the authority to adopt Rules of Practice of the State Bar Court. The following revision of Rule 1.1 would accommodate such exceptions.

~~These rules have been adopted by the Board of Governors of the State Bar of California and are entitled the Rules of the State Bar of California.~~

These rules are entitled the Rules of the State Bar of California and have been adopted by the Board of Governors of the State Bar of California, unless otherwise indicated.

The only other clarifications proposed for Title 1 concern Division 2, Public Comment.

The title of Rule 1.10 would be changed from Public Comment to Public Comment Procedure to differentiate the rule from the division title, which was also Public Comment in the circulated version.

Rule 1.10(A) would be changed to more clearly specify which proposals are subject to the public comment procedure.

1.10(A) Proposals for the Rules of the State Bar of California rules are circulated for public comment before a rule is adopted, amended, or repealed adoption, amendment, or repeal by the Board of Governors.

Rule 1.10(B) as circulated for public comment stated that public comment is not required for rule changes required by law. As a matter of course, however, such rule changes are circulated to allow for comment on whether a rule adequately complies with a legal requirement. Nevertheless, at times a rule must immediately accommodate

¹ Business & Professions Code §§ 6086.5 and 6086.65(c).

a specific legal mandate, such as the change required by Rule of Court 9.6. Rule 1.10(B) has been revised to better express these distinctions.

1.10(B) Public comment is not required

- ~~(1) to make changes required by law;~~
- (1) to correct clerical errors; clarify grammar; improve organization; conform to specific changes in a law; or update references or citations; or make similar editorial changes;
- (2) to modify a proposal that has been circulated for public comment when the board deems the modification non-substantive or reasonably implicit in the proposal; or
- (3) to add or modify an appendix to these rules.

TITLE 2 AMENDMENTS

A few editorial changes are recommended so that usage is consistent. For instance in numbers from one to ninety-nine are normally spelled out, and “See” is not used in citing the authority for a rule. These changes are marked.

Editorial changes are also recommended for rule 2.30(A) as follows: “The Secretary may, in any case in which to do otherwise would work an injustice, and subject to any directions ~~which may be given by~~ of the board, permit retroactive enrollment of inactive members.” The revision eliminates unnecessary words.

Footnotes 18 and 26 are drafters’ comments that should have appeared in italics; they are italicized in the attached version of Title 2. A citation that had been in brackets in the text of 2.17(A) has been moved to a footnote.

In rule 2.35, “to not accrue” has been corrected to “do not accrue.”

The only substantive change to the Title 2 proposals circulated for comment is required by new Rule of Court 9.6, which became effective June 1, 2007. A copy is attached. Rule 9.6 permits annual expungement of suspensions for nonpayment of membership fees under the conditions set forth in the rule. The expungement possibility would be accommodated in the Rules of the State Bar at 2.33(E): Annually the State Bar may recommend that the Supreme Court expunge a suspension for nonpayment of membership fees if the suspension meets the criteria adopted by the court. The addition is underscored in the attached. Please note that any italicized footnotes in the attached Title 2 proposals are drafters’ explanations that will be deleted from the adopted version.

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. The

draft submitted to the Board Committee on Operations on April 13, 2007 (attached) identified the relatively few changes that were made in response to comments. The Committee approved release of this draft for public comment on April 25, 2007. As of June 28, 2007, no comments have been received and no changes are recommended here to the proposals that were circulated.

TITLE 3 EMERITUS ATTORNEY PROGRAM RULES

The rules on the emeritus attorney program are now in Article I of the Rules and Regulations of the State Bar. The balance of Article I rules, on member rights and responsibilities, were repealed and superseded by the Title 2 rules adopted by the Board in August 2006. The emeritus rules are the only part of Article I still effective. With the adoption of the proposed emeritus rules, old Article I would be repealed in its entirety. The changes to the rules proposed for Title 3, Programs and Services, are organizational and stylistic rather than substantive and have received no comments as of June 28, 2007.

The Standing Committee on the Delivery of Legal Services is working with staff on a proposal to replace the emeritus attorney program with a Pro Bono program that would be open to more than just retired members. Staff expects to forward proposed rules for a Pro Bono program to the Committee on Member Oversight later this year.

FISCAL IMPACT

No fiscal impact is anticipated.

BOARD BOOK IMPACT

Board Book topics affected by new rules must be updated and references to repealed rules deleted.

RULE AMENDMENTS

The Title 2 rules adopted by the Board in August 2006 would be amended as indicated in the attached document, Title 2 Proposed July 2007. The Title 1 and Title 3 rules replace rather than amend existing rules.

PROPOSED RESOLUTIONS

Should the Board Committee on Operations concur with recommendation of staff to forward the attached proposals for Titles 1, 2, and 3 of the Rules of the State Bar to the Board of Governors and recommend their adoption, it would be appropriate to adopt the following resolution:

RESOLVED, that following public comment, the Board Committee on Operations recommends that the Board of Governors adopt the rules proposed for Titles 1,

2, and 3 of the Rules of the State Bar in the form attached (minus any drafters' explanations in italicized footnotes), effective immediately, except for the Titles 2 and 3 rules on Minimum Continuing Legal Education, which would be effective January 1, 2008, and it is

FURTHER RESOLVED that the Committee recommends that the Board repeal the rules of Article 1 of the Rules and Regulations of the State Bar; and it is

FURTHER RESOLVED that the Committee recommends that the Board repeal all previously adopted rules and regulations on Minimum Continuing Legal Education effective immediately January 1, 2008.

Should the Board concur with the recommendation of the Board Committee on Operations, it would be appropriate to adopt the following resolution:

RESOLVED, that following public comment and upon the recommendation of the Board Committee on Operations, the Board of Governors hereby adopts the rules proposed for Titles 1, 2, and 3 of the Rules of the State Bar in the form attached (minus any drafters' explanations in italicized footnotes) effective immediately, except for the Titles 2 and 3 rules on Minimum Continuing Legal Education, which would be effective January 1, 2008; and it is

FURTHER RESOLVED that the Board hereby repeals the rules of Article 1 of the Rules and Regulations of the State Bar; and it is

FURTHER RESOLVED that the Board hereby repeals all previously adopted rules and regulations on Minimum Continuing Legal Education effective immediately January 1, 2008.

Attachments: April 13, 2007 memorandum to Board Committee on Operations
California Rules of Court, Rule 9.6, Roll of Attorneys Admitted to Practice
Title 1 Proposed July 2007
Title 2 Proposed July 2007
Title 3 Proposed July 2007