

AGENDA ITEM

NOV 54-113B
Adoption of Policy to
Delegate Authority for
Conflict Waivers to Staff

DATE: October 23, 2007

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

FROM: Marie M. Moffat, General Counsel
Lawrence C. Yee, Chief Assistant General Counsel
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SUBJECT: Adoption of Policy to Delegate Authority for Conflict Waivers to Staff

EXECUTIVE SUMMARY

Occasionally situations arise in which a lawyer retained by the Bar as outside counsel requests a conflict waiver under Rule of Professional Conduct 3-310 because there is a potential conflict of interest between the Bar and another of the lawyer's clients. Currently, the Board must sign off on these conflict waivers because there has been no delegation of authority to staff. Often, it is not practical to have the Board act on these waivers since time is typically of the essence when a lawyer is being retained. Therefore, this item recommends that the Board delegate authority for conflict waivers to the Executive Director or her designee.

DISCUSSION

On occasion, outside counsel representing the Bar will ask the Bar to waive a potential conflict with one of the firm's existing clients. Rule of Professional Conduct 3-310 requires a written waiver when there is a potential conflict between two clients. Currently, the Board has not delegated authority to staff to execute written conflict waivers. This scenario came up recently and required staff to conduct an emergency e-poll of the Board in order to execute the conflict waiver.

Since time is typically of the essence when the Bar retains outside counsel, it would be advisable for the Board to delegate authority to the Executive Director to execute written conflict waivers when necessary.

FISCAL / PERSONNEL IMPACT: None

RULE AMENDMENTS: None

BOARD BOOK/ ADMINISTRATIVE MANUAL IMPACT: Tab 18, section 5, page 4

RECOMMENDATION

Staff recommends that the Board Operations Committee recommend that the Board of Governors delegate authority to the Executive Director or his or her designee to execute conflict of interest waivers.

PROPOSED BOARD COMMITTEE RESOLUTION:

If the members of the Board Operations Committee agree with the staff recommendation, you may adopt the following:

RESOLVED, that the Board Committee on Operations hereby recommends that the Board of Governors delegates authority to the Executive Director or his or her designee to execute conflict of interest waivers.

If the members of the Board of Governors agree with the recommendation of the Board Operations Committee, you may adopt the following:

RESOLVED, that upon recommendation of the Board Committee on Operations, the Board of Governors hereby delegates authority to the Executive Director or his or her designee to execute conflict of interest waivers.