

AGENDA ITEM

JANUARY 54-113

Conflict of Interest Code,
Proposed Revisions –
Recommendation following
Public Comment

DATE: December 20, 2007

TO: Members of the Board Committee on Operations

FROM: Marie M. Moffat, General Counsel
Lawrence C. Yee, Chief Assistant General Counsel
Mary Yen, Assistant General Counsel

RE: The State Bar of California's Conflict of Interest Code, Proposed Revisions –
Recommendation following Public Comment

EXECUTIVE SUMMARY

The Political Reform Act, Government Code sections 81000 et seq. ("Act"), requires the State Bar to adopt a Conflict of Interest Code ("Code") applicable to State Bar officers, employees or consultants who, during the course of their work for the State Bar, either make or participate in the making of decisions that may have a material effect on their financial interests ("Designated Employees"). The State Bar's Code includes a list of Designated Employee positions that are subject to the Code. The Act also requires regular revision of the Code in order to update the list of Designated Employees and to conform the Code to any changes in the Act.

In conformity with these requirements, at the November 2007 meeting the Board Committee on Operations authorized circulation of the proposed revisions to the State Bar's Code for a 30-day public comment period. No comments have been received. This item brings the proposal back to the Board following the 30-day comment period with a recommendation for adoption.

Any questions or comments may be directed to Mary Yen at (415) 538-2369 or at mary.yen@calbar.ca.gov.

I. PROPOSED REVISIONS TO THE LIST OF DESIGNATED EMPLOYEES, THE DISCLOSURE CATEGORIES, AND THE CODE

The Political Reform Act (“Act”) requires state and local government agencies, such as the State Bar, to adopt and promulgate conflict of interest codes. These agencies must also revise their codes to reflect new amendments to the mandatory standards set forth in the Act.¹

The Act requires agencies to identify situations where persons who act on the agency’s behalf must disqualify themselves from decision-making because of a financial conflict of interest. The Act requires that agencies identify designated employees who must report particular financial interests. The State Bar identifies these employees and their reporting requirement by way of a list of Designated Employee Positions that states each designated employee position and the specific disclosure categories assigned to that position. Each disclosure category is represented by a number, which is the number of that disclosure category on a list of Disclosure Categories. The list of Designated Employee Positions and the list of Disclosure Categories are part of the State Bar’s Conflict of Interest Code. Under the Act, the State Bar is required to periodically add, modify, or delete designated employee positions or disclosure categories based on changes in employee positions or responsibilities.

A. Revisions to the List of Designated Employees and Disclosure Categories

In this agenda item the recommended revisions to the Code relate to changes in the State Bar’s list of Designated Employee Positions (see **Appendix A**). The proposed revisions are made so that the list of Designated Employee Positions more accurately depicts the current organizational structure and positions within the State Bar. Defunct positions are deleted and new positions are added. New positions, such as a Senior Administrative Assistant (see Section V, Office of Admissions, **Appendix A**) and the Director Information Technology Operations (see Section IX, Office of Information Technology, **Appendix A**) are added based on a reasonable foreseeability that employees in these positions will make or participate in the making of decisions that may have a material effect on their financial interests. Modifications to certain Designated Employee’s disclosure category numbers are made because changes in the job duties trigger increased or decreased reporting requirements [(for example, see Manager Systems Development, Section IX, Office of Information Technology, **Appendix A**).]

No changes are recommended for the list of Disclosure Categories (see **Appendix B**). This list gives the disclosure category numbers that are assigned to, and can be found adjacent to, each Designated Employee position in **Appendix A**. The category numbers, which correspond to the disclosure categories contained in **Appendix B**, control the type of disclosure obligations with which each Designated Employee must comply.

B. Revisions to the State Bar’s Conflict of Interest Code

Changes to the Code were made in 2006 to simplify and conform the language to the California Code of Regulations promulgated by the Fair Political Practices Commission. There

¹ The State Bar is also subject to the conflict of interest standards mandated by Business and Professions Code sections 6035-6038. Effective January 1, 2006, Section 6036 was amended to conform to the definition of financial interest to that which is specified in Government Code Section 87103.

have been no new changes to the Political Reform Act or the FPPC regulations requiring additional amendments to the State Bar's Code at this time.

III. PUBLIC COMMENT

The Fair Political Practices Act and the State Bar's public comment rules (Rules 1.10 and 1.11 of the Rules of the State Bar) require that material changes to the Code (which includes the list of Designated Employee Positions) to be circulated for public comment.² The Board Committee on Operations was asked to authorize a 30-day comment period in order to meet a time schedule of submitting the final proposal to the Board of Governors in January for adoption, followed by distribution of the Code to employees by March 3, 2008, further followed by an April 1, 2008 mandated deadline for filing disclosure statements under the Code. (See Appendix C, State Bar's Conflict of Interest Code, Section 5(c).)

No public comments were received.

IV. FINANCIAL IMPACT

None.

V. BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

This Conflict of Interest Code should be added to the Board Book at Tab 7, "Conflicts of Interest" as a new Article 5.

VI. STATE BAR RULES IMPACT

To be determined.

VII. STRATEGIC IMPACT

None.

VIII. RESOLUTIONS

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

RESOLVED, that following publication for comment and no comment having been received, the Board Committee on Operations recommends that the Board of Governors

² Changes to revise syntax, grammar, and pronunciation or to conform or comply with statutory requirements are not subject to the public comment rules. Title 1, rule 1.10(B), Rules of the State Bar. However, for administrative ease, these changes are included together with material changes published for public comment.

adopt the proposed revisions to The State Bar of California's Conflict of Interest Code, in the form attached hereto.

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

RESOLVED, that following publication for comment and no comment having been received, and upon recommendation of the Board Committee on Operations, recommends that the Board of Governors adopt the proposed revisions to The State Bar of California's Conflict of Interest Code, in the form attached hereto.

Enclosures:

Appendix A – Designated Employee Positions

Appendix B – Disclosure Categories

Appendix C – Conflict of Interest Code