

AGENDA ITEM

MAR 54-112
*Supplemental
material* - Proposed
Rev to SB Rules,
Title 1, Shortening
of Public Comment
Period

DATE: February 27, 2008

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

FROM: Marie M. Moffat, General Counsel
Lawrence C. Yee, Chief Assistant General Counsel
Rachel S. Grunberg, Senior Attorney

RE: *SUPPLEMENTAL MATERIAL -- SUMMARY OF PUBLIC COMMENT*
Proposed Revisions to State Bar Rules, Title 1, Division 2, Rule
1.10(A), Shortening of Public Comment Period – Return from Public
Comment

EXECUTIVE SUMMARY

At the time the written materials for this agenda item were prepared, no public comment had been received. Since posting of the agenda item, the State Bar has received three comments. The three commentators oppose the rule change, expressing concern over the ability to provide meaningful comment if the comment period is set at 45 days. These comments (attached hereto) are summarized and discussed below.

SUMMARY OF COMMENT

Copies of the full text of the three comments received are attached to this item as Exhibit A, but are summarized below for the Board's convenience. All three commentators oppose the proposal to shorten the public comment period, citing concerns that a standard 45-day period is insufficient to allow meaningful comment by constituents.

1. February 20, 2008, Mark Alexander Anderson

Mark Anderson opposes changing the current standard from 90 days to 45 days, as he believes that the current 90-day period is often not adequate to allow full public input.

2. February 25, 2008, Lyman C. Welch

Lyman Welch, an out-of-state lawyer, often does not receive notice of proposed rule changes until they are printed in the California Bar Journal. He believes shortening the comment period will prevent lawyers like him from having an opportunity to comment. He also suggests that a better way of improving the public comment process is to provide members with e-mail notification of proposed rule changes.

3. February 26, 2008, Ross G. Simmons on behalf of the Legal Ethics Committee ("LEC") of the San Diego County Bar Association

LEC meets monthly and needs time between meetings to give meaningful consideration to public comment requests. In turn, their Board of Director's also meets monthly, and needs time between its meetings to intelligently consider LEC's work prompted such public comment requests. Often LEC struggles to satisfy the current 90-day comment period, and is concerned about the ability to participate if the standard period is shortened to 45 days. LEC believes the 90-day norm is important, and deviation should only come for good cause. Notably, LEC states, "Inconvenience is the inevitable bane of public participation; the importance of the latter, however, makes tolerance of the former imperative."

DISCUSSION

1. Adequate time to comment

The current rule proposal was intended to address these concerns raised above, by permitting the Board broad flexibility to modify the 45-day comment period to as few as 30 days **or as long as 90 days**, on a per item basis. Thus, for more important or controversial items, the circulation period can be extended to up to 90 days. Such flexibility also permits the Board, on a case by case basis, to increase the public comment period, if it so desires, to take into account the printing and publication cycles of the CalBar Journal, and when appropriate, the meeting schedules of local bar associations and other interested groups that may be affected by pending State Bar proposals. For most general proposals that receive few or no comments, the 45-day period would allow the Board to complete the enactment or amendment of a rule more expeditiously.

2. E-mail notification

As noted in the rule proposal agenda item requesting release for public comment, there is a proposal by the Board of Governors for new California Rule of Court, Rule 9.8, which is currently pending before the California Supreme Court. This Rule would establish a mandatory on-line registration and reporting requirement for Bar members and create a centralized mechanism for registration and reporting information online at the State Bar's Web site. Each member would be required to create a member profile at the Web site; to use the profile to pay membership fees; to report mandatory and voluntary information as well as changes in that information; and to annually renew their profile. Staff will explore using this system to allow members to subscribe annually to receive instant electronic notification regarding board agendas and pending rule proposals.