

AGENDA ITEM

MAY 136
Proposed Amendment to
Section Rules, Title 3
Return from Public Comment

DATE: April 22, 2008

TO: Members of the Board of Governors
Members of the Board Committee on Member Oversight

FROM: Marie M. Moffat, General Counsel
Larry Yee, Chief Assistant General Counsel
Cynthia Abramov, Assistant General Counsel

RE: Proposed Rules of the State Bar, Title 3, Division 2, Chapter 2,
Rules 3.120 – 3.127 (Sections of the State Bar)– Return From
Public Comment

EXECUTIVE SUMMARY

This item recommends adoption of the revisions to rules governing the State Bar Sections and their incorporation into Title 3 of the new State Bar Rules as part of the continuing Rules Revision Project. The proposed changes came before the Board Committee on Member Oversight on March 7, 2008 and was approved for a forty-five day public comment period from March 13, 2008 through April 26, 2008. The public comment period has passed and the State Bar has not received any public comments regarding the proposed rule changes. At this time, it would be appropriate for the Board of Governors, upon the recommendation of the Board Committee on Member Oversight, to approve the rule changes.

BACKGROUND

Sections are voluntary organizations of State Bar members and associates that share an area of interest. Existing rules for governing State Bar Sections are in Article XIII of the Rules and Regulations of the State Bar. As part of the State

Bar's ongoing rule revision project, these rules have been rewritten and, if adopted, would be placed in Title 3 ("Programs and Services") of the new State Bar Rules.

SUMMARY OF PROPOSAL

Proposed revisions to Sections rules are primarily organizational and stylistic and do not change, except where indicated, the substantive content of the existing rules. There are currently seven Sections rules. The proposed rules will have eight. Two existing rules (3 and 5) have each been made into two separate rules (proposed rules 3.122 and 3.123 for section 3; proposed rules 3.124 and 3.125 for section 4). Section 6 of the existing rules has been omitted.

Proposed rule 3.120 ("Definition") updates and replaces section 1 of the existing rule ("Formation of Sections"). Sections rules were first created in 1930s as a "pilot" program. The proposed rule would delete this arcane reference and replace it with a definition of the term "Sections."

Proposed rule 3.121 ("Scope of Sections") replaces section 2 of the existing rule ("Purposes"). The current rule simply states that the "purposes of the Sections shall be stated in its bylaws." Since each section has bylaws enacted by their respective executive committee subject to Board approval, and the bylaws contain the purpose of a section, this rule seems redundant. The proposed rule provides a more meaningful description of the scope of all State Bar Sections as a whole.

Proposed rule 3.122 ("Section membership") replaces that part of section 3 of the existing rule ("Membership") addressing membership requirements with a clearer statement of who can join Sections.

Proposed rule 3.123 ("Section membership fees") replaces that part of section 3 of the existing rule ("Membership") regarding membership fees. The term "Sections Membership Fee" is used to distinguish it from the Bar's mandatory annual "membership fee" that is used elsewhere in the State Bar rules.

As mentioned above, section 4 of the existing rule ("The Executive Committee") has been made into two separate rules. Proposed rule 3.124 ("Executive committee") replaces that part of section 4 with respect to the number of members on an executive committee (section 4A and parts of section 4B), the appointment and term of executive committee members (section 4C), the nomination of members to the executive committee (section 4B), quorum (section 4D), and the appointment of non-voting advisors (section 4F).

Proposed rule 3.125 ("Officers of the section executive committee") replaces that part of section 4 of the existing rule with respect to the appointment of officers to

the executive committee.

Proposed rule 3.126 (“Section committees”) replaces section 5 of the existing rule (“Committees”). The last sentence in section 5 has been deleted since each section’s bylaws provide for the selection of committee members.

Proposed rule 3.127 (“Bylaws”) replaces section 7 of the existing rule (“Section Bylaws”). Subsection (A) to the proposed rule clarifies that amendments to a Section’s bylaws must be made by a two-thirds vote of the entire membership of the executive committee. The existing rule could be interpreted as requiring two-thirds vote of the entire Sections. The proposed rule is intended to eliminate this ambiguity.

Section 6 of the existing rule (“Section Meetings”) has been omitted. This section provided for when a meeting of a Section as a whole may be convened. These rules were made in the 1930s. Since this no longer occurs, this provision would be omitted in the new rules.

REPORT OF PUBLIC COMMENTS RECEIVED

No public comments on this item have been received.

EFFECTIVE DATE OF PROPOSAL

The proposed effective date of these rule changes will be the date the Board acts.

FISCAL AND PERSONNEL IMPACT

There are no known fiscal or personnel impacts that will result from this rule change.

RULE AMENDMENTS

If adopted, Article XIII of the Rules and Regulations would be superseded and replaced by Rules 3.120 – 3.127 in Chapter 2 of Division 2 of Title 3 of the new State Bar Rules.

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

If adopted, conforming changes will need to be made to Board Book, Tab 20.

PROPOSED BOARD COMMITTEE RESOLUTION

Should the Board Committee on Member Oversight agree with the proposed recommendation, adoption of the following resolution would be appropriate.

RESOLVED, following publication for comment and no comments having been received, that the Board Committee on Member Oversight recommends that the Board of Governors of the State Bar of California repeal Article XIII of the Rules and Regulations of the State Bar and adopt Rules 3.120-3.127 in the form attached.

PROPOSED BOARD RESOLUTION

Should the Board of Governors concur with the recommendation of the Board Committee on Member Oversight, adoption of the following resolution would be appropriate.

RESOLVED, following publication for comment and no comments having been received, and upon the recommendation of the Board Committee on Member Oversight, that the Board of Governors of the State Bar of California hereby repeals Article XIII of the Rules and Regulations of the State Bar and adopts Rules 3.120-3.127, in the form attached to these minutes and made a part hereof.

Exhibit 1

Title 3. Programs and Services

Division 1. Attorney members

Chapter 2. Sections of the State Bar

Rule 3.120 Definition

“Sections” are voluntary organizations of State Bar members and associates that share an area of interest.

Rule 3.121 Scope of Sections

Sections serve the profession, the public, and the legal system by helping their members maintain expertise in various fields of law and expanding their professional contacts. Specific purposes and duties of sections are described in their bylaws.

Rule 3.122 Section membership

- (A) Section membership is open to members of the State Bar or judges of courts of record.
- (B) A section’s bylaws may authorize enrollment as associate members. No more than one-fourth of all section members may be associates. An associate member has all the privileges of section membership but may not
 - (1) serve as an officer;
 - (2) serve as a member of a committee; or
 - (3) nominate, select, or serve as a member of its executive committee.

Rule 3.123 Section membership fees

Section membership requires payment to the State Bar of an annual fee. The fees are set by the Sections Executive Committee and approved by the Board of Governors to defray the cost of administering the sections.

Rule 3.124 Executive Committee

- (A) A section must have an executive committee of at least fifteen members appointed by the Board of Governors to govern the section and to assist the board as it directs. A seventeen member Executive Committee is permitted for the purpose of permitting service as an officer, in a fourth year, or as Chair, Vice Chair or Chair-elect in a fifth year, or as Chair, in a sixth year. Executive committee members must take an oath of office and are not entitled to compensation for their services.

- (B) Each year the board appoints five members of the executive committee for a three-year term. If the section is new, the board appoints five members for three years; five for two years; and five for one year. Executive committee members assume office on the last day of the State Bar's annual meeting and serve until their successors assume office. A vacant position is filled by the board for the unexpired term.
- (C) Nominations for the executive committee may be made by the executive committee or by at least fifteen members of the section upon petition.
- (D) A majority of the section executive committee constitutes a quorum for transacting business at a committee meeting or by poll.
- (E) The executive committee may appoint non-voting advisors who serve at the pleasure of the committee.

Rule 3.125 Officers of the section executive committee

- (A) The Board of Governors must appoint as chair and vice-chair of the executive committee members who have served on the committee at least a year at the time of assuming office. The committee must recommend candidates for these offices to the board.
- (B) The chair and vice-chair assume office on the last day of the State Bar's annual meeting and serve until their successors assume office. A vacant position is filled by the board for the unexpired term.

Rule 3.126 Section committees

One or more standing or ad hoc committees composed of section members may be established as provided by the bylaws of the section.

Rule 3.127 Bylaws

- (A) Each Section's bylaws must be approved by the Board of Governors. After the Board of Governors has approved the bylaws of a new section, the bylaws may be amended by a two-thirds vote of the entire membership of the executive committee.
- (B) An amendment must be filed with the Secretary at the San Francisco office of the State Bar and will not take effect until approved by the Board of Governors.