

AGENDA ITEM

MAY 54-112
Proposed Amendment to
Governance Rules, Title 6
Return from Public Comment

DATE: April 21, 2008

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

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 6, Division 1, Chapter 1, Rules 6.1 – 6.8 (Election of Governors), Chapter 2, Rules 6.20-6.21 (General authority of the board), Chapter 3 Rules 6.30-6.31 (State Bar Districts), Chapter 4, Rules 6.40-6.42 (Responsibilities of officers); Division 2, Chapter 1, Rules 6.50 – 6.54 (Meetings of the Board of Governors); Division 4, Rule 6.91 (Offices of the State Bar of California) – Return From Public Comment

EXECUTIVE SUMMARY

This item recommends adoption of the revisions to rules regarding State Bar governance and their incorporation into Title 6 of the new State Bar Rules as part of the continuing Rules Revision Project. The proposed changes came before the Board Committee on Operations on March 6, 2008 and, on March 27, 2008 the Committee authorized that these changes be sent out for public comment. A forty-five day public comment period began March 31, 2008 and expires May 14, 2008. To date, the State Bar has not received any public comments regarding the proposed rule changes. Any comments received by the deadline will be added to and posted on the Web site and reported at the meeting of the board committee and the Board.

BACKGROUND

As part of the ongoing Rules Revision Project to revise the various sets of existing regulations and procedures of the State Bar into a new single format entitled the Rules of the State Bar (cited as “State Bar Rules”), the Board Committee on Operations on March 27, 2008, authorized release for a 45-day public comment period proposed amendments to add Title 6 to the Rules of the State. Title 6 would revise and incorporate the following existing provisions of the [Rules and Regulations of the State Bar of California](#): Articles II [Nomination and Election of Governors], IIA [Appointment and Special Election of Governors], IIB [State Bar Districts], III [Responsibilities of Officers], IV [Meetings of the Board of Governors], X [Offices of the State Bar], XI [Filing Papers with and Serving the State Bar], XII [The Seal of the State Bar], and XIV [General Provisions Re: Committees, Conferences, Associations, Sections and Officers]. In addition, the proposed amendments would revise and incorporate the separate rules entitled, [“Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California.”](#) In subsequent references, these rules are designated “Rules on board meetings, closed sessions, and records.”

Except as noted, these proposed amendments in Title 6 are stylistic—simplifying language, deleting needless words and redundancies, replacing “legalese” with plain English—and are not intended to be substantive. The three proposed substantive changes are deletion of the “common disaster” provision; reducing the voting requirement for holding a meeting outside of the state from unanimous consent to a two-thirds vote of the Board of Governors; and shortening the period of notice meetings from ten to five days. Board adoption of the proposals would entail repeal of Articles II, IIA, III, IV, X, XI, XII, and XIV.

SUMMARY OF PROPOSAL

Title 6, Div. 1, Ch. 1 Election of Governors. Current election rules are found in Articles II and IIA. The proposed rules have been organized to track the election process. There are currently 21 rules on board elections. The proposed rules will have eight.

Proposed rule 6.1 (Election matters in general) is a new rule that places responsibility and authority on the Secretary for administration and supervision of board elections, subject to control of the board. This broad rule eliminates the operational and administrative directives currently in the election rules by listing the types of activities under the Secretary’s purview. The proposed rule also addresses the use of forms and how they must be completed and filed by the dates set in the Schedule of Charges and Deadlines.

Proposed rule 6.2 (Nomination of governors) incorporates parts of Article II, section 2 (Nominating Petitions for Governors), which states requirements for the

Nominating Petition; parts of Article II, section 3 (Date of Filing Nominating Petitions), which addresses electronic filing and extension of filing petitions; and parts of Article II, section 6 (Designation of Separate Offices) which states that a candidate may run for only one office. A substantive change would be made to existing Article II, section 3, which currently permits extending the time for filing nominating petitions “no later than 7 days prior to the date fixed for mailing of ballots.” The proposed rule changes the extension time to “up to 10 working days.”

Proposed rule 6.3 (Candidate information) replaces Article II, section 9 (Candidate Statements). The existing rule contains a list of possible biographic information that can be included in a Candidate Statement. The proposed rule omits the list. The content and use of Candidate Statements is prescribed in the form’s instructions. The provision that the State Bar will disclose basic member information including a member’s disciplinary record is clarified. A candidate’s basic member information is included whether or not a candidate files a Candidate Statement.

Proposed rule 6.4 (Ballots) combines in one rule all ballot-related rules that are in Article II, section 8 (Mailing of ballots); Article II, section 10 (Voting of ballots); and Article II, section 11 (Electronic voting).

Proposed rule 6.5 (Plurality of votes; tie votes) replaces Article II, section 14 (Plurality of Votes; Provision for Ties).

Proposed rule 6.6 (Recounts) incorporates that part of Article II, section 15 (Recounts) that addresses the recount process and recount committees.

Proposed rule 6.7 (Appointment due to a vacancy) combines in one rule what happens when there is a vacancy on the board. This proposed rule replaces Rules and Regulations of the State Bar of California Article II, section 3, which covers appointments where a vacancy occurs before a newly elected board member begins his term, and Article IIA, section 3 where a vacancy occurs with less than 18 months left in the vacating board member’s term.

Article IIA, section 5 presently provides for alternate procedures for selecting an interim board by the California Supreme Court in the event of a “common disaster,” resulting in either nine or no survivors on the Board of Governors. This provision is omitted in the new rules, leaving action to the discretion to the Court under its inherent authority.

Proposed rule 6.8 (Special election due to a vacancy) incorporates and replaces Article IIA, sections 3 and 4, which specifies what happens when a vacating board seat has more than 18 months left in the term. Like Article IIA, section 4, Rule 6.8(B) states that the rules and procedures apply to the special election held in conjunction with the next regular election.

Title 6, Div. 1, Ch. 2 General authority of the board. Rules and Regulations of the State Bar of California Article XIV, sections 1 and 2 has been superseded and replaced by proposed rules 6.20 and 6.21. The substance of the existing regulations has not been changed.

Proposed rule 6.20 (Delegations, supervision, and control) provides that all State Bar officers, agents and entities have only those powers delegated to it by the board and remain subject to the board's authority. The board reserves authority over all matters pertaining to the State Bar. This rule reiterates existing Article XIV, section 1.

Proposed rule 6.21 (Public communications) limits the public communications by State Bar officers, agents, and entities absent express authorization by the board. This rule reiterates existing Article XIV, section 2.

Title 6, Div. 1, Ch. 3 State Bar Districts. Rules and Regulations of the State Bar of California Article IIB describe the organization of State Bar Districts and provides for the re-composition of districts every ten years. The seven rules under Article IIB would be streamlined into proposed rules 6.30 and 6.31. They make no substantive changes.

Proposed rule 6.30 (Composition) replaces Article IIB, sections 5 and 6 by combining the composition of each district and the number of board members for each district.

Proposed rule 6.31 (District adjustment) incorporates Article IIB, section 3 and 4.

Title 6, Div. 1, Ch. 4 Responsibilities of officers. The duties of State Bar officers are set by statute and supplemented by Article III. The revisions streamline these rules by improving organization and style, and omitting operational matters. They make no substantive changes.

Proposed rule 6.40 (President) supersedes Article III, section 1.

Proposed rule 6.41 (Vice Presidents, Treasurer) combines Article III, sections 2 and 3.

Proposed rule 6.42 (Secretary) incorporates parts of Article III, section 4 and Article XII. Article III, section 4E, which requires the Secretary to refer matters submitted by board members to committees for study, is not a responsibility of the Secretary and is omitted. Article III, section 4F regarding the Secretary's duty to maintain a system for noticing certain meetings is omitted. This is no longer the practice.

Title 6, Division 2, Chapter 1 Meetings of the Board of Governors. Meeting rules for State Bar Board of Governors are in Rules and Regulations of the State Bar of California Article IV and the Rules on board meetings, closed sessions, and records. These rules are now combined in this Chapter and consist of five rules. The provision in Article IV, section 4 on the Annual Organization Meeting is omitted. Since the board's annual organization meeting is a regular meeting, a separate rule for the organization meeting is unnecessary. The requirements for regular meetings are in proposed rules 6.50 and 6.51. Rules and Regulations of the State Bar of California Article IV, section 8, which permits fewer than twelve governors may adjourn from day to day, is omitted. If any number can adjourn a meeting, there is no need for the rule.

Proposed rule 6.50 (Regular and special meetings; quorum; board committees) incorporates Article IV, sections 2, 4, 5, and 7. The new rule includes a definition at 6.50(A) of "regular meetings," a term not defined in Article IV. The art. IV, sec. 5 requirement for calling special meetings would be replaced by proposed rule 6.50(B). The Article IV, section 7 requirement for a quorum would be replaced by proposed rule 6.50(C). The new rule clarifies that although the quorum may be lost with departing members, official action may still be taken so long as there is a majority of the quorum. Currently, Article IV, section 2 requires the unanimous written consent of all board members before a regular or special meeting of the board may be held outside of the state. The proposed rule at section 6.50(D) would change that requirement to a two-thirds vote of the board. Proposed rule 6.50(E)(2) replaces Rules on board meetings, closed sessions, and records Article 1, § 4(b)(6). This provision addresses the common practice of governors attending meetings of committees of which they are not members by clarifying who is entitled to vote.

Proposed rule 6.51 (Notice, late items, and emergency meetings) is based on Rules and Regulations of the State Bar of California Article IV, section 3, and similar provisions in Rules on board meetings, closed sessions, and records Article 2, §§ 1(c), 2(a), and Article 4, §§ 1 and 2. Under existing Article 2, § 2 of the State Bar's open meeting rules, notice of meetings of the board and board committees must be given 10 days before the date of the meeting. Proposed Rule 6.51(A) shortens that period to five days.

Proposed rule 6.52 (Open meetings) replaces Rules and Regulations of the State Bar of California Article IV, section 1 and the Rules on board meetings, closed sessions, and records. Proposed rule 6.52 explicitly states that meetings of the board and board committees are to be conducted openly, except as permitted by the rules or by law. Rather than list the exceptions to the open meeting rules, as is currently the case in Rules on board meetings, closed sessions, and records at Article 1, § 4.II, a broad prohibition against discussing matters under the board's authority outside of board meetings is a simpler and more forceful rule. Rules on board meetings, closed sessions, and records Article 2, § 4, regarding disorderly conduct would be superseded and replaced by proposed rule 6.52(C). Rules on

board meetings, closed sessions, and records Article 1, § 2 states that copies of the these rules should be given to each Board member and anyone else who asks. The availability of all State Bar Rules on the internet has made this requirement superfluous, and in any case staff provides hard copy of the open meeting rules to new board members. Hence, this detail is omitted in the proposed rule.

Proposed rule 6.53 (Closed sessions) addresses closed sessions and is based on Rules on board meetings, closed sessions, and records Article 3. Most of the closed-session exceptions to these rules fall under the general broad category of advice of counsel. The proposed rule incorporates the requirement in Rules on board meetings, closed sessions, and records Article 2, § 2(b) and Rules on board meetings, closed sessions, and records Article 3, § 4 which require the presiding officer at a meeting to state the legal authority and reasons for the closed session. Rules on board meetings, closed sessions, and records Article 3, § 5 regarding minutes of the closed sessions would be superseded and replaced by proposed rule 6.53(C).

Proposed rule 6.54 (Board records) replaces Rules on board meetings, closed sessions, and records Article 2, § 3 and Article 5, regarding inspection and copying of agendas and written materials that are part of open agendas. Proposed rule 6.54 clarifies that public records may be made available on the State Bar website, that any person may receive a printed copy of these records upon request and payment of reasonable fees for the cost of reproduction and mailing, and that any recording of an open meeting made under these rules will be available for inspection for up to thirty days after the date of recording.

Title 6, Division 4, Miscellaneous.

Proposed rule 6.91 (Offices of the State Bar of California) replaces Rules and Regulations of the State Bar of California Article X and Article XI, section 1. Article X requires the State Bar maintain its main office in San Francisco. Article XI requires that a petition, notice or other document required by these rules be filed at the State Bar's main office.

REPORT OF PUBLIC COMMENTS RECEIVED

No public comments on this item have been received.

EFFECTIVE DATE OF PROPOSAL

The proposed rule changes will be effective on 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,

Articles II and IIA of the State Bar Rules and Regulations would be superseded and replaced by Rules 6.1 - 6.8 in Chapter 1, Division 1 of Title 6 of the new State Bar Rules;

Article IIB of the State Bar Rules and Regulations would be superseded and replaced by Rules 6.30 – 6.31 in Chapter 3, Division 1 of Title 6 of the new State Bar Rules;

Article III of the State Bar Rules and Regulations would be superseded and replaced by Rules 6.40 – 6.42 in Chapter 4, Division 1 of Title 6 of the new State Bar Rules;

Article IV of the State Bar Rules and Regulations would be superseded and replaced by Rules 6.50 – 6.54 in Chapter 1, Division 2 of Title 6 of the new State Bar Rules;

Articles X and XI of the State Bar Rules and Regulations would be superseded and replaced by Rule 6.91 in Division 4 of Title 6 of the new State Bar Rules;

Article XII of the State Bar Rules and Regulations would be superseded and replaced by Rule 6.42 in Chapter 4, Division 1 of Title 6 of the new State Bar Rules;

Article XIV of the State Bar Rules and Regulations would be superseded and replaced by Rules 6.20 – 6.21 in Chapter 2, Division 1 of Title 6 of the new State Bar Rules; and

The Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors would be superseded and replaced by Rules 6.50 – 6.54 in Chapter 1, Division 2 of Title 6 of the new State Bar Rules.

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

If adopted, conforming changes will need to be made to Board Book, Tabs 4, 5, 10 and 11.

PROPOSED BOARD COMMITTEE RESOLUTION

After the close of public comment and consideration of any comments received by the deadline, should the Board Committee on Operations agree with the proposed recommendation, adoption of the following resolutions would be appropriate.

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

- a. Repeal Articles II and IIA of the State Bar Rules and Regulations and adopt Rules 6.1 – 6.8 in Chapter 1, Division 1 of Title 6 of the State Bar Rules;
- b. Repeal Article IIB of the State Bar Rules and Regulations and adopt Rules 6.30 – 6.31 in Chapter 3, Division 1 of Title 6 of the State Bar Rules;
- c. Repeal Article III of the State Bar Rules and Regulations and adopt Rules 6.40 – 6.42 in Chapter 4, Division 1 of Title 6 of the State Bar Rules;
- d. Repeal Article IV of the State Bar Rules and Regulations and adopt Rules 6.50 – 6.54 in Chapter 1, Division 2 of Title 6 of the State Bar Rules;
- e. Repeal Articles X and XI of the State Bar Rules and Regulations and adopt Rule 6.91 in Division 4 of Title 6 of the State Bar Rules;
- f. Repeal Article XII of the State Bar Rules and Regulations and adopt Rule 6.42 in Chapter 4, Division 1 of Title 6 of the State Bar Rules;
- g. Repeal Article XIV of the State Bar Rules and Regulations and adopt Rules 6.20 – 6.21 in Chapter 2, Division 1 of Title 6 of the State Bar Rules; and
- h. Repeal the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors and adopt Rules 6.50 – 6.54 in Chapter 1, Division 2 of Title 6 of the State Bar Rules.

PROPOSED BOARD RESOLUTION

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

RESOLVED, following publication for comment and no comments (assuming none are received by the deadline) having been received, and upon the recommendation of the Board Committee on Operations, that the Board of Governors of the State Bar of California hereby

1. Repeals Articles II and IIA of the State Bar Rules and Regulations and adopts Rules 6.1-6.8 in Chapter 1, Division 1 of Title 6 of the State Bar Rules;
2. Repeals Article IIB of the State Bar Rules and Regulations and adopts Rules 6.30 – 6.31 in Chapter 3, Division 1 of Title 6 of the State Bar Rules;
3. Repeals Article III of the State Bar Rules and Regulations and adopts Rules 6.40 – 6.42 in Chapter 4, Division 1 of Title 6 of the State Bar Rules;
4. Repeals Article IV of the State Bar Rules and Regulations and adopts Rules 6.50 – 6.54 in Chapter 1, Division 2 of Title 6 of the State Bar Rules;
5. Repeals Articles X and XI of the State Bar Rules and Regulations and adopts Rule 6.91 in Division 4 of Title 6 of the State Bar Rules;
6. Repeals Article XII of the State Bar Rules and Regulations and adopt Rule 6.42 in Chapter 4, Division 1 of Title 6 of the State Bar Rules;
7. Repeals Article XIV of the State Bar Rules and Regulations and adopts Rules 6.20 – 6.21 in Chapter 2, Division 1 of Title 6 of the State Bar Rules; and
8. Repeals the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors and adopts Rules 6.50 – 6.54 in Chapter 1, Division 2 of Title 6 of the State Bar Rules

in the form attached to these minutes and made a part hereof.