



# THE STATE BAR OF CALIFORNIA

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**DATE:** October 22, 2008

**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  
– Request for 30-Day Public Comment

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## EXECUTIVE SUMMARY

This item requests the Board Committee on Operations to authorize publication for a 30-day public comment period proposed amendments to the State Bar's Conflict of Interest Code for Designated Employees. 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"). Government Code section 87306 requires the Bar to periodically revise its Code in order to update the list of Designated Employees, as well as the categories of financial interest that these designated employees must disclose, and to conform the Code to any changes under the Act or regulations of the California Fair Political Practices Commission.

The proposed amendments includes changes to 13 designated employee positions that have been added, changed, or eliminated; expanding the definition of the types of financial interest to include communication supplies and services that must be disclosed and reported; and increasing the gift limits applicable to designated employees to conform with changes in state regulations. After public comment, the amendments will be presented to the Committee and Board for further action.

Any questions or comments may be directed to Mary Yen at (415) 538-2369 or at [mary.yen@calbar.ca.gov](mailto: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. The Act also requires agencies to revise their codes to reflect new amendments to the Act or the implementing regulations promulgated by the Fair Political Practice Commission, and to update their lists of employees who are subject to the conflict of interest code.<sup>1</sup>

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 because they make or participate in the making of decisions that are likely to have an impact on those interests. The State Bar’s Conflict of Interest Code (“Code”) identifies these employees and their corresponding reporting requirement on a list of Designated Employee Positions that identifies each designated employee position and references the specific disclosure categories assigned to that position. The disclosure categories are set forth on a separate list which details by subject area the specific types of financial interests that must be disclosed. If one or more of these disclosure categories are listed for a designated employee position, that employee must disclose the corresponding financial interests. The list of Designated Employee Positions appears as **Appendix A** and the list of Disclosure Categories appears as **Appendix B** to the 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**

Most of the proposed revisions relate to changes in the State Bar’s list of Designated Employee Positions (see **Appendix A**) and to the corresponding disclosure category numbers assigned to each designated employee position. These 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, and the assigned disclosure categories properly correspond to the types of decisions made by a particular employee position. The proposed edits to **Appendix A** delete defunct or eliminated positions and add new positions. New positions (Senior Administrative Specialist JNE and Admissions; Attorney III; Director of Operations; and Senior Administrative Assistants and Supervisors) 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. Deleted positions (Chief Legislative Counsel; Director of Governmental Affairs; Director JNE & Appointments; Senior Compliance Coordinator; Manager, Insurance Programs;

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<sup>1</sup> 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.

Supervisor Membership Records; Investment Advisor; and Director Information Technology Operations) reflect either an elimination or change in that position. Lastly, the disclosure category numbers assigned to certain Designated Employees' disclosure category numbers are modified because changes in the job duties trigger increased or decreased reporting requirements [(for example, see Manager Planning and Administration, Section I, Office of the Executive Director, **Appendix A**.)]

One change is recommended to the list of Disclosure Categories (see **Appendix B**). This list details the specific types of financial interests that Designated Employees must disclose. The proposed addition to **Appendix B** appears in Category 10 and expands this area to include vendors of *audio or other electronic communication* supplies, services, or equipment are added to the types of business entities covered in that category.

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

Effective January 1, 2006, revisions to Section 9 of the Code (see **Appendix C**) were made in order to conform the Code to the Political Reform Act and a revision to Business and Professions Code section 6036. Section 6036 requires Board members and designated employees to disqualify themselves from making or participating in the making of decisions that are likely to have a material impact on specified financial interests. The term financial interest is defined in Government Code section 87103 of the Political Reform Act. Thereafter, other sections of the Code were revised and cleaned up in order to streamline the provisions and conform the language to the California Code of Regulations promulgated by the Fair Political Practices Commission.

The Code restricts Designated Employees from receiving gifts in excess of a specified amount and requires disqualification from decisions that that would have a material impact on the donor of a gift. Government Code section 89503(e) provides that the FPPC shall revise the gift limit on each odd-numbered year to reflect changes in the Consumer Price Index. On September 8, 2008, the FPPC gave notice that it intends to adjust the gift limitation from \$390 per year to \$420 per year effective January 1, 2009. (fn 2) Accordingly, it is proposed that the gift limitation in Sections 8.1 and 9 of the State Bar's Code be amended to \$420 to reflect this change.

## II. FINANCIAL IMPACT

None.

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2 The formula used to calculate the adjusted gift limit is at 2 Cal. Code Regs. Section 18940.2.

**III. BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT**

None.

**IV. STATE BAR RULES IMPACT**

None.

**V. RECOMMENDATION TO PUBLISH PROPOSED REVISIONS FOR A 30-DAY PUBLIC COMMENT PERIOD**

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) be circulated for public comment. (fn 3) Distribution of the Code to employees must occur by March 2, 2009. The deadline for filing disclosure statements under the Code is April 1, 2009. (See Appendix C, State Bar's Conflict of Interest Code, Section 5(c).)

In order to comply with these timelines, staff requests that the Board shorten the public comment period to 30 days. (Title 1, rule 1.10(A) of the Rules of the State Bar.) This will ensure sufficient time for affected employees and members of the public to comment, and for staff to consider the comments received and prepare an agenda item for the action at the Board Committee on Operations and the Board of Governors meeting held in January 2009.

**VI. RECOMMENDATION/RESOLUTIONS**

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

RESOLVED, that the Board Committee on Operations authorizes staff to make available, for a 30-day public comment period, the proposed revisions to The State Bar of California's Conflict of Interest Code, in the form attached hereto; and it is

FURTHER RESOLVED that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed item.

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<sup>3</sup> Public comment is not required to correct clerical errors; clarify grammar; improve organization; conform to specific changes in a law; update references or citations; or make similar editorial changes. 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.

Enclosures:

*Appendix A – Designated Employee Positions*

*Appendix B – Disclosure Categories*

*Appendix C – Conflict of Interest Code*