

AGENDA ITEM

JANUARY 54-111
**Conflict of Interest Code for
Designated Employees, Return
From Public Comment**

DATE: December 17, 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
Mary Yen, Assistant General Counsel

RE: Conflict of Interest Code for Designated Employees, Return From
Public Comment

EXECUTIVE SUMMARY

This item requests approval of 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 amendments would include updating of 13 designated employee positions that have been added or eliminated or where duties have changed; 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.

The public comment period expires on December 22, 2008. To date no comments have been received. Any comments are submitted before the deadline will be shared with the Board.

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

I. 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.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 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 that 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; 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**).]

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

One change is recommended for the list of Disclosure Categories (see **Appendix B**). This list details the types of financial interests that Designated Employees must disclose. The proposed change 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

The Code restricts Designated Employees from receiving gifts in excess of a specified amount and requires disqualification from decisions 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 each odd-numbered year to reflect changes in the Consumer Price Index. On October 16, 2008, the FPPC adjusted 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. 30-DAY 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) be circulated for public comment. (fn 3) A 30-day public comment period authorized by the Board Committee on Operations expires on December 22, 2008. To date, no comments have been received. Any comments submitted before the deadline will be shared with the Board.

III. FINANCIAL IMPACT

None.

IV. BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

None.

V. STATE BAR RULES IMPACT

None.

VI. PROPOSED RESOLUTIONS

Should the Board Committee on Operations agree with the recommended amendments to the Code, adoption of the following resolution would be appropriate:

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

³ 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.

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

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 having been received, and upon recommendation of the Board Committee on Operations, that the Board of Governors of the State Bar of California hereby approves 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