



**DATE:** February 20, 2009

**TO:** Members of the Board Committee on Regulation  
Admissions & Discipline Oversight

**FROM:** Colin Wong, Chief Administrative Officer of the State Bar Court

**SUBJECT:** Proposed Amendments to the Rules of Procedure of the State Bar of California to Amend Rule for Disqualification of Judges – Request for Authority to Release for Public Comment

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#### ISSUE

The issue presented by this agenda item is whether the Board Committee on Regulation, Admissions and Disciplinary Oversight (“RAD Committee”) should release proposed amendments to the Rules of Procedure of the State Bar of California (“Rules of Procedure”), in the form attached, for a 45-day public comment period.

The proposed amendments to the Rules of Procedure by the State Bar Court, if ultimately adopted, would modify the Rules of Procedure to make them more consistent with the California Code of Civil Procedure with respect to the procedure for disqualification of judges.

#### RECOMMENDATION

The State Bar Court recommends that the RAD Committee authorize the release of the proposed amendments to the Rules of Procedure, in the form attached as Appendix A for a 45-day public comment period.

#### BACKGROUND

The current procedure to disqualify a State Bar Court judge is governed by rule 106 of the Rules of Procedure of the State Bar. Rule 106 was essentially patterned after section 170.3 of the Code of Civil Procedure. However, rule 106 excluded the requirement of personal service on the judge sought to be disqualified which is required under section 170.3. The purpose of the proposed amendment is to adopt the same service requirement under the Rules of Procedure as that of the Code of Civil Procedure.

## DISCUSSION

Rule 106(e) of the Rules of Procedure allows any party to file a motion to disqualify a judge. Copies of the motion are required to be served on the opposing party and upon the judge alleged to be disqualified. Rule 106(e) does not specify how the motion is to be served. In contrast, Code of Civil Procedure section 170.3 provides that,

“Copies of the statement shall be served on each party or his or her attorney who has appeared and shall be personally served on the judge alleged to be disqualified, or on his or her clerk, provided that the judge is present in the courthouse or in chambers.” (Emphasis added.)

The personal service requirement is necessary because the alleged disqualified judge has only ten (10) days to respond to the motion. If the judge is out for an extended period of time, it is possible that the judge could be disqualified before he or she has had an opportunity to respond to the motion. Accordingly, it is the State Bar Court’s belief that the Code of Civil Procedure requirements provide the better method for service of a disqualification motion.

## PROPOSED RESOLUTION

If you agree that the proposed amendments to rule 106 should be released for a 45-day public comment period, your adoption, of the following resolution would be appropriate:

**RESOLVED**, that the Board Committee on Regulation, Admissions and Discipline Oversight, authorizes staff to make available for public comment for a period of 45 days, the proposed amendments to rule 106 of the Rules of Procedure of the State Bar of California, in the form attached as Appendix A; and it is

**FURTHER RESOLVED**, 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.