

AGENDA ITEM

MARCH 115

DATE: February 15, 2007

TO: Members of the Board Committee on Operations

FROM: Marie M. Moffat, General Counsel
Lawrence C. Yee, Chief Assistant General Counsel
Richard J. Zanassi, Chief Assistant General Counsel

SUBJECT: Election Procedures – 2007 Board President Election

EXECUTIVE SUMMARY

The Board may suspend its rule providing that the election of the next State Bar President be held no later than 90 days before the Annual Meeting so that the 2007 election may be held at a special meeting immediately preceding the regular meeting of the Board on July 20, 2007. The Board rule providing that modifications of the procedures for election of the President occur before January 31st of each year applies to amendments or the repeal of any rule, but not its suspension.

PROPOSED RESOLUTION

If the Board Committee on Operations wishes to recommend suspension of the 90-day rule, it is recommended that it adopt the following resolution:

RESOLVED, that the Board Committee on Operations recommends that the Board of Governors suspend the provision of Article 1, section 3(a) that requires that the election of the next State Bar President occur no later than 90 days before the next Annual Meeting and that the election take place at the Board's July 2007 meeting.

If the Board of Governors agrees with the recommendation of the Board Committee on Operations, it would be appropriate to adopt the following resolution:

RESOLVED, upon recommendation of the Board Committee on Operations, that the Board of Governors of the State Bar of California hereby suspends the provision of Article 1, section 3(a) that requires that the election of the President occur no later than 90 days before the next Annual Meeting and that the election take place at the Board's July 2007 meeting.

DISCUSSION:

Business and Profession Code section 6021 states in pertinent part: "Within the period of 270 days next preceding the annual meeting, the board, at a meeting called for that purpose, shall elect the president...." Procedures for the election of the President of the State Bar of California are governed by procedures adopted by the Board of Governors. Under these procedures, the election of the President must take place at a special meeting held on the same day and place as a regularly scheduled meeting of the Board. The election must take place no earlier than 270 days prescribed by statute and—by an internal procedural rule of the Board—no later than 90 days prior to the next scheduled Annual Meeting. At issue is whether the election may be held this year at a special meeting immediately preceding the July Board meeting, which is less than 90 days before the 2007 Annual Meeting, held this year from September 27th through September 30th.

ISSUES

(1) May the Board of Governors suspend the rule providing that the Board's election of the next State Bar president occur no later than 90 days before the next Annual Meeting¹ so that this year's election will take place in July, rather than in May?

(2) Does the rule that modification to the election procedures must occur only between the end of the Annual Meeting and January 31² prohibit the suspension of the 90-day rule?

¹ Board Book tab 5, art. 1, §3(a) states in pertinent parts: "Each year, the President must call a special meeting of the Board to elect his or her successor for the next term. The special meeting must be held on the same day and place as a regularly scheduled meeting of the Board. The election shall be no earlier than 270 days and no later than 90 days preceding the next scheduled Annual Meeting."

² Board Book tab 5, art. 1, § 3(l) states: "Any modifications of these procedures for the election of officers shall occur only between the end of the Annual Meeting and the following January 31st in order to insure fairness in any subsequent election.}"

ANALYSIS

(1) ***The Board may suspend the 90-day rule.*** The procedures for election of the State Bar president³ are internal parliamentary procedural rules of the Board. See *People's Advocates, Inc. v. Superior Court*, 181 Cal.App.3d 316, 324, 325 (1986) (rules or resolutions which affect the selection of the officers of the Legislature are internal rules and an integral part of the parliamentary common law). As internal rules, the Board may amend or repeal them without public comment. (Board Book tab 12, § 3.) As a rule of parliamentary procedure, it may be suspended without notice. (See Robert's Rules of Order Newly Revised (10th ed. 2000) (cited herein as, "RONR") § 2, p. 12.) Under Robert's Rules, when an assembly wishes to do something during a meeting that it cannot do without violating one or more of its procedural rules, it can suspend the rule interfering with its proposed action. (RONR § 25, pp. 252, 254-55.) Moreover, the 90-day rule is neither prescribed by statute nor a parliamentary rule that protects basic rights of members of the Board to attend meetings, make motions, and vote and—therefore—does not fall within the small class of rules that cannot be suspended. (RONR § 25, 255.)

(2) ***The January 31 rule does not preclude suspension of the 90-day rule.*** The January 31 rule applies to amendments, but not to a suspension that temporarily waives one of the procedural rules. The January 31 rule uses the term "modification." Black's Law Dictionary (8th ed. 2004) defines *modification* as a "change to something; an alteration" and *suspension* as the "act of temporarily delaying, interrupting, or terminating something." As noted above, a suspension under Robert's Rules temporarily waives a procedural rule that blocks a proposed action; it is not amendment, rescission or repeal that changes the rule previously adopted by the Board.⁴ (RONR § 35, pp. 293-94.)

³ Board Book tab 5, art. 1, § 3

⁴ Even if the January 31 rule was intended to restrict the suspension of one of the other procedures, the Board could suspend or repeal the January 31 rule.