

AGENDA ITEM

MAY 123

Correction to Rule 2.37, Rules
of the State Bar re Voluntary
Resignations of Members

DATE: April 17, 2009

TO: Members of the Board of Governors
Members of the Board Committee on Regulation,
Admissions and Discipline Oversight

FROM: Scott J. Drexel, Chief Trial Counsel

SUBJECT: Proposed Correction to Rule 2.37 of the Rules of the State Bar of
California Regarding Voluntary Resignations of Members

EXECUTIVE SUMMARY

At its March 2009 meeting, the Board of Governors adopted rule 2.37 of the Rules of the State Bar of California to become effective on April 1, 2009. Among other things, rule 2.37 identifies those members who are not eligible to tender a voluntary resignation from the State Bar of California. Rule 2.37(A)(1)(a) provides that a member may not tender a voluntary resignation from the State Bar of California if he or she is "currently suspended from the practice of law."

However, rule 2.37(A)(1)(a) was only intended to apply to members who are currently suspended due to the imposition of discipline. Members who are administratively suspended or placed on involuntary inactive status for a variety of non-disciplinary reasons, such as the failure to pay annual membership fees, comply with Minimum Continuing Legal Education requirements or failure to pay binding fee arbitration awards have always been permitted to tender a voluntary resignation from the State Bar.

If adopted, the proposed amendment to rule 2.37(A)(1)(a) would simply clarify that a member is not eligible to tender a voluntary resignation from the State Bar of California if he or she is currently suspended from the practice of law as a result of the imposition of discipline by the California Supreme Court. Since the amendment merely clarifies the original intent of the rule and does not involve a substantive change to the rule, no further public comment is required.

DISCUSSION

At its meeting on March 6, 2009, the Board of Governors adopted rule 2.37 of the Rules of the State Bar of California regarding the voluntary resignation of State Bar members who have no disciplinary proceedings, charges or investigations pending against them. Rule 2.37 and the new voluntary resignation form adopted at the same time by the Board became effective on April 1, 2009.

As relevant here, rule 2.37(A)(1)(a), as adopted by the Board at its March 2009 meeting, provides as follows:

“(A) A member may tender a voluntary resignation from the State Bar of California if:

(1) the member is not

(a) currently suspended from the practice of law;”

As State Bar staff was in the process of implementing rule 2.37 and the use of the new voluntary resignation form, it discovered an unintended ambiguity regarding the application and interpretation of rule 2.37(A)(1)(a).

State Bar members may be suspended from the practice of law or placed on involuntarily enrolled as an inactive member for a variety of reasons, including but not limited to (1) the imposition of discipline by the California Supreme Court; (2) failure to pay annual membership fees [Bus. & Prof. Code, § 6143]; (3) failure to pay court-ordered child support [Bus. & Prof. Code, § 6143.5; Fam. Code, § 17520]; (4) failure to comply with Minimum Continuing Legal Education requirements [Bus. & Prof. Code, § 6070, subd. (a); rule 9.31(d), Calif. Rules of Ct.]; and (5) failure to pay binding attorney-client fee arbitration award [Bus. & Prof. Code, § 6203, subd. (d)].

State Bar members who have been suspended for non-disciplinary reasons have always been permitted to voluntarily resign from the State Bar. The adoption of rule 2.37 of the Rules of the State Bar of California was not intended to change this policy. Rather, rule 2.37 was adopted in response to concerns raised by the Supreme Court regarding a significant number of members who had attempted to voluntarily resign from the State Bar despite the fact that they were charged with or had been convicted of crimes or that there were criminal investigations pending against them. The purpose of rule 2.37 was to more clearly delineate the circumstances under which a member must tender a resignation with disciplinary charges pending pursuant to rule 9.21 of the California Rules of Court rather than a voluntary resignation without charges pending.

In order to avoid ambiguity and to more clearly state the original intent of rule 2.37, the proposed amendment, in the form attached hereto as Attachment A, would specify that the only persons currently suspended from the practice “*as a result of the imposition of discipline by the California Supreme Court*” would be ineligible to tender a voluntary resignation from the State Bar of California.¹

¹ Other subsections of rule 2.37 specify additional bases upon which a member is prohibited from tendering a voluntary resignation.

FISCAL AND PERSONNEL IMPACT

Adoption of the proposed amendment to rule 2.37 would not have any personnel or fiscal impact upon the State Bar.

PUBLIC COMMENT

Because the proposed amendment to rule 2.37 is only intended to clarify an ambiguity in rule 2.37 and is not intended to effect any substantive change in the rule, no period of public comment is necessary.

PROPOSED BOARD COMMITTEE RECOMMENDATION

The Office of the Chief Trial Counsel has recommended to the Board Committee on Regulation, Admissions and Discipline Oversight ("RAD Committee") that it adopt the following resolution:

RESOLVED that the Board Committee on Regulation, Admissions and Discipline Oversight hereby recommends to the Board of Governors that it adopt the proposed amendment to rule 2.37 of the Rules of the State Bar of California, in the form attached hereto as Attachment A, effective immediately.

This item is on the RAD Committee's agenda for its scheduled meeting on May 14, 2009. The Committee's recommendation will be reported to you at your meeting on Friday, May 15, 2009.

PROPOSED BOARD RECOMMENDATION:

RESOLVED, upon recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, the Board of Governors hereby adopts the proposed amendment to rule 2.37 of the Rules of the State Bar of California, in the form attached hereto as Attachment A, effective immediately.

SJD:dim
Attachment