

AGENDA ITEM

MAY 111

Rules Revision Project
Title 6, Closed Sessions
Regulatory and Special
Committees

DATE: April 24, 2009

TO: **Members of the Board of Governors**
Members of the Board Committee on Operations

FROM: Lawrence C. Yee, Acting General Counsel
Cynthia Abramov, Assistant General Counsel

RE: State Bar Rules Revision Project, New Title 6, Division 2, Chapter 2,
Open Meetings, Closed Sessions and Records of Regulatory and
Special Committee, Return from Public Comment

EXECUTIVE SUMMARY

This item recommends adoption of the revisions to rules governing open meetings, closed sessions, and records of regulatory and special committees and their incorporation into Title 6 of the Rules of the State Bar. The proposed changes came before the Board Committee on Operations March 8, 2009, and were approved for a 45 day public comment period. The public comment period has passed and the State Bar has not received any public comments regarding the proposed rule changes. At this time, it would be appropriate for the Board of Governors, upon the recommendation of the Board Committee on Operations, to approve the rule changes.

BACKGROUND

The existing rules governing meetings for committees appointed by the Board to carry out various statutory, regulatory or other functions of the State Bar are presently set forth in the "Rules Governing Open Meetings, Closed Sessions and Records of Regulatory and Special Committees" ("committee meeting rules").

These rules have been rewritten¹ and, if adopted, would be placed in Title 6 (Governance) of the State Bar Rules.

SUMMARY OF PROPOSAL

Under the proposed revision, State Bar Rules 6.50-6.54 governing Board meeting rules would also apply to State Bar committee meetings except as provided in these proposed rules. By eliminating similar and overlapping provisions, the ten existing committee meeting rules have been reduced to four.

- 1) Proposed rule 6.60 (In general) states that the rules applicable to meetings of the Board of Governors will apply to meetings of Board-appointed committees that act on its behalf. Appendix C, listing the State Bar committees, councils, commissions, and boards to be governed by the committee meeting rules, will be added to the State Bar Rules. The proposed rules replace Section 1 of the existing rules which will be omitted.

The application of the Board meeting rules to State Bar committees would result in a substantive change to the notice requirement. State Bar committees would be required to change their notice from 72 hours under committee meeting rules to no less than five days.

- 2) Consistent with the open meeting policy of State Bar Rule 6.52(A) for Board and Board committee meetings, proposed rule 6.61 (Open meeting policy) declares that meetings of Board-appointed bodies are open to the public unless closed pursuant to rule or law. The proposed rule also includes the seating limitation provision that was in Section 2 of the existing rules.
- 3) Proposed rule 6.62 (Closed sessions) supplements the three Board exceptions to the open meeting policy identified in State Bar Rule 6.53 with seven additional exceptions. The purpose of this proposed rule is to broadly incorporate the exceptions identified in the current rule (section 2, subsections (d)-(m) of the committee meeting rules) as follows:
 - a) Subsection (d) of Section 2 of the committee meeting rules states that those committees which are governed by specific rules adopted by the Board should hold closed sessions as provided for in those rules. This exception has been placed in proposed Rule 6.62(A)(1).
 - b) Subsection (e) of Section 2 of the committee meeting rules provides that meetings be closed where matters being considered fall within the attorney client privilege, involve a trade secret, are otherwise privileged from

¹ The rules will apply to such committees as, for example, The Committee of Bar Examiners, the Committee on Group Insurance, and the Legal Services Trust Fund Commission. A complete list of the affected committees will be placed in Appendix C to the Rules.

disclosure, or involve information protected by the constitutional guarantee of privacy. State Bar Rule 6.53 already covers some of these under the broad exception in Rule 6.53(A)(1) for all “matters privileged under the law.” Proposed rule 6.62(A) enumerates some matters that are specific to the regulatory charge or duties of State Bar committees and that may be discussed in closed session.

- c) Subsection (f) of Section 2 of the committee meeting rules states that matters subject to closed session at Board and Board committee meetings are also closed at State Bar committee meetings. Since proposed rule 6.60 already provides that the Board open meeting rules apply to State Bar committees, this provision has been omitted.
- d) Subsection (g) of Section 2 of the committee meeting rules states that a committee meeting may be held in closed session if the chair determines that an open session would pose a threat to the security of the meeting. State Bar Rule 6.52(c) provides for the removal of disruptive individuals if order cannot be restored at a meeting. Also, Roberts’ Rules of Order, which generally govern State Bar meetings, also provides authority for protection from “annoyance of nonmembers.” These two provisions should provide adequate authority for holding a meeting in closed session when the safety of those participating in a meeting is threatened. Therefore, this provision has been omitted.
- e) Subsection (h) of Section 2 of the committee meeting rules allows for a closed meeting when discussing matters of internal management relating to the committee. This provision has been placed in proposed rule 6.62(A)(7)
- f) Subsection (i) of Section 2 of the committee meeting rules allows for a closed session to discuss, deliberate, or act upon opinions or reports in specific cases within the scope of a committee’s charter. This provision has been placed in proposed rule 6.62(A)(4).
- g) Subsection (j) of Section 2 of the committee meeting rules provides for the presence of State Bar staff during closed sessions. This provision has been placed in proposed rule 6.62(B).
- h) Subsection (k) of Section 2 of the committee meeting rules provides that certain types of situations specific to the Board of Legal Specialization may be held in closed session. An application for certification or recertification, the suspension or revocation of a specialist’s certificate, or any petitions or special requests from an applicant can be held in closed under proposed rule 6.62(A)(4). For matters involving the development, preparation, approval, grading, review or administration of an exam, this provision has been placed in proposed rule 6.62(A)(6).

- i) Subsection (l) of Section 2 of the committee meeting rules provides a similar set of matters that may be discussed in closed session for the Committee of Bar Examiners. These matters are also provided for in proposed rule 6.62(A)(4) and (6).
 - j) Subsection (m) of Section 2 of the committee meeting rules lists a variety of matters that come before the Committee on Group Insurance Program and the Committee on Professional Liability Insurance Program that may be held in closed session. All of these exceptions would be covered in proposed rule 6.62 and State Bar Rule 6.53(A)(1).
- 4) Subsections (a) and (b) of the committee meeting rules that address teleconferencing have been omitted. The use of teleconferences is already provided for in State Bar rule 6.52(B).
 - 5) Subsection (c) of Section 2 of the committee meeting rules authorizes the chair of the committee to permit or decline members of the public to address the committee. Including this language in the bar committee rules may create an ambiguity in the interpretation of the Board meeting rules. Therefore, this rule has been omitted.
 - 6) Proposed rule 6.60 states that, unless these rules provide otherwise, the rules applicable to Board meetings will apply to committee meeting rules. Thus, the provisions in State Bar Rule 6.51 regarding notice, late items, and emergency meetings will also apply to committee meetings. For this reason, Sections 3, 4, 5 and 6 of the committee meeting rules have been omitted.
 - 7) Proposed rule 6.63 replaces Section 7 of the committee meeting rules regarding certain types of records that are not protected under the Board meeting rules.
 - 8) Proposed rule 6.63 also replaces Section 8 of the committee meeting rules, requiring a reference to the authority under which a document is withheld from disclosure.
 - 9) Section 9 of the committee meeting rules, which address the right to copy State Bar public records, has been omitted because its subject matter is covered by State Bar Rule 6.54.

PUBLIC COMMENT

At the Board's March 8, 2009 meeting, a 45-day public comment period was authorized. The 45-day period expired April 23, 2009. No comments were received.²

EFFECTIVE DATE OF PROPOSAL

May 15, 2009.

FISCAL AND PERSONNEL IMPACT

There are no known fiscal or personnel impacts.

RULE AMENDMENTS

If adopted, "Rules Governing Open Meetings, Closed Sessions and Records of Regulatory and Special Committees" would be superseded and replaced by Rules 6.60 – 6.63 in Title 6, Division 2, Chapter 2 of the State Bar Rules.

BOARD BOOK ADMINISTRATION MANUAL IMPACT

Tab 11 (Rules Governing Open Meetings, Closed Sessions and Records of Regulatory and Special Committees) would be revised.

PROPOSED RESOLUTION

Board Committee on Operations:

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

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 repeal the "Rules Governing Open Meetings, Closed Sessions and Records of Regulatory and Special Committees" and adopt Rules 6.60 – 6.63 in the form attached.

² Prior to release for public comment, rules were reviewed and approved by staff and by members of committees.

Board of Governors:

Should the Board of Governors concur with the recommendation of the Board Committee on Operations to adopt Rules 6.60 – 6.63, the following resolution would be appropriate.

RESOLVED, following publication for comment and no comments having been received, and upon the recommendation of the Board Committee on Operations, that the Board of Governors of the State Bar of California hereby repeals the “Rules Governing Open Meetings, Closed Sessions and Records of Regulatory and Special Committees” and adopts Rules 6.60 – 6.63 in the form attached to these minutes and made a part hereof, effective May 15, 2009.