

# AGENDA ITEM

**MAY 124**

Rules of Procedure of the State Bar – Proposed Amendments to Rule for Disqualification of Judges

**DATE:** April 30, 2009

**TO:** Members of the Board of Governors  
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 Rule for Disqualification of Judges – Request for Adoption After Public Comment

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## **EXECUTIVE SUMMARY**

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. The proposed amendments were released for a 45-day public comment period on March 5, 2009. No comments were received during the comment period which ended on April 19, 2009.

## **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.

The proposed amendments were released for a 45-day public comment period on March 5, 2009. No comments were received during the comment period which ended on April 19, 2009.

## **FISCAL AND PERSONNEL IMPACT:**

None

## **BOARD BOOK / ADMINISTRATIVE MANUAL IMPACT:**

None

## **RULE AMENDMENTS IMPACT:**

If approved, this item would amend rule 106 of the Rules of Procedure of the State Bar of California.

## **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 BOARD COMMITTEE RECOMMENDATION:**

**RESOLVED**, that the Board Committee on Regulation, Admissions and Discipline Oversight, recommends that the Board of Governors adopt the proposed amendments to rule 106 of the Rules of Procedure of the State Bar of California, in the form attached hereto as Appendix A, to become effective on July 1, 2009.

## **PROPOSED BOARD RECOMMENDATION:**

**RESOLVED**, following public comment period and consideration of comments received, and upon recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, the Board of Governors of the State Bar hereby adopts the proposed amendments to rule 106 of the Rules of Procedure of the State Bar of California, in the form attached hereto as Appendix A, to become effective on July 1, 2009.