



# THE STATE BAR OF CALIFORNIA

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DATE: August 28, 2009  
TO: Members, Board Committee on Operations  
FROM: Board Election Rules Subcommittee  
SUBJECT: Amendment to Rules of the State Bar 6.1, Election of Governors - Release for Public Comment

## **EXECUTIVE SUMMARY**

Board authorization is sought to release proposed revisions to Rule 6.1 of the State Bar Rules regarding Board Elections for public comment. The proposed revisions relate to establishing a default address under the election rules for purposes of verifying eligibility for candidacy and voting in Board of Governors elections. In July, a special ad hoc committee comprised of Governors Paul Kramer, Michael Tenenbaum, and newly elected governor Patrick Kelly ("special ad hoc committee") was appointed to recommend revisions to the State Bar Rules to clarify procedures with regard to address requirements to establish eligibility to run or vote in Board of Governors elections. That subcommittee met on August 24, 2009 and now has a proposed rule revision for consideration by the Board Operations committee.

Under the relevant sections of the Business and Professions Code, in order to be eligible to run for governor or vote in Board elections, a member must be active and have their principal office for the practice of law within the State Bar district from which they are running or voting. Although members of the State Bar are required by statute and rule to maintain and update their addresses with the State Bar, the Board election rules are silent on what address the Bar will use to verify eligibility for Board election purposes. This item suggests revisions to Rule 6.1 which would make a member's official State Bar address the default for determining eligibility for candidacy and voting.

In accordance with State Bar public comment rules, staff requests that the committee release the proposed revisions for a forty-five day public comment period. The comment period would run from September 8, 2009 through October 23, 2009. If comments do not require substantive changes to the proposal, the revised rules can then be adopted by the Board.

## **BACKGROUND**

### **Address for Board Election Candidacy and Voting**

The Business and Professions code specifies eligibility criteria for both candidates and voters in Board elections. The respective statutory provisions state that to vote or run in an election in a State Bar district, a member of the State Bar must be an active member and maintain their “principal office for the practice of law” in the State Bar district in which he or she is voting or is a candidate. Cal. Bus & Prof. Code §§ 6015, 6018.

Business and Professions Code section 6002.1, subdivision (a)(1), requires members of the State Bar to maintain on the official records of the State Bar a “current office address ... or, if no office is maintained, an address to be used for State Bar purposes.” Section 6002.1 and State Bar Rule 2.3 requires a member to inform the State Bar of an address change no later than thirty days after making the change. Members have been able to use a postal or mail box office address to comply with these provisions.

Historically, the State Bar has presumed and treated the member’s official address maintained under section 6002.1 for purposes of voting or running for office in State Bar elections. Recently the issue was raised whether a candidate who maintained a mail box address met the requirement of a “principal office for the practice of law” under section 6018 for a candidate running for office in that district. That issue was resolved in favor of the candidate and the special ad hoc committee was appointed to recommend any changes to the State Bar Rules.

Currently, State Bar Rules 6.1 through 6.8, the provisions governing elections of the board, are silent regarding what address will be considered a default for determining eligibility for candidacy and voting in State Bar elections. The special ad hoc committee recommends adding language to Rule 6.1 to address this issue for candidates and that the current presumption that the member’s official address is the location of his or her principal office for the practice of law for purposes of voting in an election be maintained without change. In developing this recommendation, the special ad hoc committee considered the fact that, while the relevant statutes specify that active members with a principal office for the practice of law in the applicable district are eligible for candidacy or voting, some members provide the State Bar with a residence address or some type of postal or private mailbox as their official address of record; some may maintain more than one office or location; and some may have home offices or other “virtual” offices. Thus it can be difficult for the Bar to determine a member’s “principal office for the practice of law” for Board election purposes. The special ad hoc committee also considered whether members who are active but who may be retired or do not necessarily practice law full-time should be eligible to run and vote in Board elections and found that as long as members are active and maintain the right to practice law, the Bar should not place any restrictions on their ability to participate in Board elections.

## **RECOMMENDATION**

The special ad hoc committee proposes adding new Rule 6.1(C). The new rule would provide a presumption that a member’s official address of record with the State Bar will

be considered the “principal office for the practice of law” for determining eligibility for candidacy in Board elections. The proposed rule would also require that, for candidates for the Board whose address of record is a postal or private mailbox, the member would also be required to provide the Secretary with a street address for verification purposes. Lastly, candidates would be required to certify on the Nominating Petition that their principal office is located in the district from which he or she is running. The proposed rule is attached as Exhibit A. For voting purposes, the special ad hoc committee recommends no changes to the rules and that the current interpretation and presumptions be retained.

#### **FISCAL IMPACT**

None.

#### **BOARD BOOK IMPACT**

Tab 4.

#### **PROPOSED BOARD COMMITTEE ACTION**

It is recommended that the Committee on Board Operations authorize publication of the proposed rule for public comment. Should the Board Committee accept the recommendation of the special ad hoc committee and staff, adoption of the following resolution would be appropriate:

**RESOLVED**, that the Board Committee on Operations authorizes for publication, in the form attached, for a forty-five day comment period from September 8, 2009 through October 23, 2009 the proposed revision to Rule 6.1 regarding Board of Governors elections.

**FURTHER RESOLVED** that publication of the foregoing is not, and shall not be construed as, a recommendation of approval by the Board Committee.

Attachments:

A: Proposed revision to Rule 6.1 of the State Bar Rules