

AGENDA ITEM

Nov 111

Amendment to Rule 6.1

Return from Public Comment

DATE: October 26, 2009

TO: Members, Board of Governors
Members, Board Committee on Operations

FROM: Board Election Rules Subcommittee

SUBJECT: Amendment to Rules of the State Bar 6.1, Election of Governors - Return from Public Comment

EXECUTIVE SUMMARY

This item asks the Board to adopt proposed revisions to Rule 6.1 of the State Bar Rules regarding Board Elections. 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 created a proposed rule revision for consideration by the Board Operations committee. The proposed revisions were circulated for a forty-five day comment period, which closed on October 23, 2009. No comments were received during the comment period.

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.

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.

PUBLIC COMMENT

The proposed amendment to Rule 6.1 was distributed for a forty-five day public comment period. The comment period has now closed. No comments were received.

RECOMMENDATION

The special ad hoc committee recommends that the Board of Governors adopt 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 RESOLUTIONS

Board Committee on Operations:

Should the Board Committee agree with the 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 adopt the amendments to Rule 6.1 of the State Bar Rules in the form attached.

Board of Governors:

Should the Board of Governors concur with the recommendation of the Board Committee on Operations, adoption of 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 adopt the amendments to Rule 6.1 of the State Bar Rules in the form attached to these minutes and made a part hereof, effective November 14, 2009.

Attachments:

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