



THE STATE BAR OF CALIFORNIA

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MEMORANDUM

DATE: October 28, 2009 **Item III.C**

TO: Board Committee on Member Involvement, Relations and Services

FROM: Starr Babcock, Senior Executive for Member Services
Dina DiLoreto, Director of Administration, Member Services

**SUBJECT: PROPOSED LIMITED LIABILITY PARTNERSHIP RULES:
REQUEST TO RELEASE FOR PUBLIC COMMENT**

Executive Summary

State Bar rules for limited liability partnerships have been revised as part of an ongoing effort to clarify the organization and language of State Bar rules. The revisions, which have been drafted by State Bar rules revision staff working closely with staff for limited liability partnerships, are not intended to substantially change current requirements, but they include modifications that reflect current practice and enhance operational efficiency. The modifications are explained below.

This memorandum requests that the committee approve circulation for public comment of the proposed new rules for a sixty day public comment period. If the Board of Governors subsequently adopts the proposed rules, they would become part of Title 3 of the Rules of the State Bar, which deals with Programs and Services.

Question

Whether the Board of Governors should circulate for public comment the proposed State Bar rules for limited liability partnerships, which if adopted would replace the current Limited Liability Partnership Rules and Regulations.

Background

In 2006 the State Bar undertook a rules revision project to integrate the organization's more than two dozen sets of rules into a comprehensive structure of seven titles and to

make the rules simpler, clearer, and more uniform. Of the seven titles, the board has adopted four.

Title 1: Global Provisions
Title 2: Member Rights and Responsibilities
Title 4: Admissions and Educational Standards
Title 7: Miscellaneous (Judicial Nominees Evaluation)

The board has adopted two titles in part.

Title 3: Programs and Services
Title 6: Governance

In the first half of 2010, staff anticipates forwarding proposals to complete Title 6 and substantially complete Title 3. Revision of Title 5, Discipline, is expected to begin in 2010.

The Limited Liability Partnership Rules were originally adopted by the Board of Governors in 1995 and have since been amended in 1997 and 2000. Copies of the current and the proposed rules are attached. To enable readers to compare current and proposed rules, the proposed rules reference current rules in italicized footnotes. Such footnotes are drafting devices that would be deleted in a board-adopted version. Footnotes in Roman type are citations or cross-references to other rules; such footnotes would be retained.

Certification essential to limit liability

Corporations Code section 16306(f) provides that there is no limitation of liability for “claims based upon acts, errors, or omissions arising out of the rendering of professional limited liability partnership services of a registered limited liability partnership providing legal services unless that partnership has a currently effective certificate of registration issued by the State Bar.” The first of the proposed rules, rule 3.170, cites this requirement to emphasize the critical importance of State Bar certification. Current rules make no reference to the statute.

Clarification of requirements

The rules revision project has streamlined rules by eliminating procedural steps that relate to internal operations; using forms to specify steps required for compliance; and using a schedule to specify fees and due dates. Proposed rule 3.176(A) offers an example of this approach. The comparable current rule sets forth the requirements for annual renewal, stating that the renewal must be made using a State Bar form, on the date set by the State Bar, with all the information requested, sent to the State Bar office responsible for regulating the limited liability partnership program, and signed and verified by an authorized partner. Proposed rule 3.176(A) is shorter because it references an annual renewal form, the instructions for which are in effect incorporated by reference,¹ and the

¹ State Bar Rule 1.24 provides, “When a rule refers to a form, the State Bar reserves the right to reject a form that is altered in language or structure or that is not completed and submitted according to instructions.”

Schedule of Charges and Deadlines. Current rule 11.0, which deals with special reports, is similar. The approximately 125 words of this rule are reduced to 30 in proposed 3.175: “A limited liability partnership must report within thirty days any change in name used for the practice of law, partner authorized to act on its behalf, address, or e-mail address.”

Effective date of certification

Both the current and proposed rules make certification of a limited liability partnership effective on the date the State Bar receives a complete application, and they give the State Bar discretion to grant a later effective date. Current rule 7.1 gives the State Bar discretion to certify as of an earlier date if an applicant “has registered as a limited liability partnership with the Secretary of State prior to the effective date of these Rules.” Proposed rule 3.172(B) eliminates the alternative for an earlier date. In current practice, the State Bar does not issue a certification for a date earlier than that on which it has received a complete application.

Incomplete or abandoned applications

Current rule 6.0 provides that if an applicant fails to supply additional information sixty days after being requested to do so, the application is deemed abandoned. The rule also requires that the State Bar issue a written notice if it intends to reject an application. If an application is rejected, the current rule permits appeal of the denial to a board committee. Proposed rule 3.173 would streamline the current rule by treating incomplete and rejected applications alike. Upon notice from the bar, an applicant would have sixty days to cure a defective application, and failure to cure would cancel the application. Proposed 3.173, which covers the topic in about fifty-six words as opposed to about 220 in current rule 6.0, conforms to administrative practice and eliminates a review function the board has never exercised.

Annual report

Current rule 10.0 provides that “failure to timely file a completed Annual Renewal shall result in termination of the limited liability partnership.” The rule does not specify when termination takes place, nor does it provide an opportunity to remedy a late filing. Proposed rule 3.176(B) spells out the consequences of late filing more specifically and does provides an opportunity to cure: “A limited liability partnership that fails to submit a complete Annual Renewal and fee is suspended and loses its status as a limited liability partnership. It may be reinstated upon submission within one year of the renewal, fee, and any penalty. If the suspension lasts more than one year, the certification of the limited liability partnership is involuntarily terminated.”

Involuntary termination

Current rule 8.1.3 provides that certification be terminated upon notice from the Secretary of State or the Franchise Tax Board that either agency has suspended certification of the partnership. Proposed rule 3.179(C) addresses noncompliance with rules or law in

broader terms: “The State Bar may terminate the certification of a limited liability partnership for failure to comply with these rules or applicable law.” A limited liability partnership suspended by the Secretary of State would be still be suspended for noncompliance, as certification by the Secretary of State is a prerequisite of State Bar certification, but the current reference to the Franchise Tax Board in effect is deleted because that agency has no certification function.

Duties

Current rule 3.0, which deals with eligibility for certification, is actually a mix of certification prerequisites and duties of certified limited liability partnerships. The proposed rules separate these topics into a rule on eligibility, 3.171, and another on duties, 3.174. The change aligns the limited liability partnership rules with the organization of topics used for law corporations and other State Bar programs.

Rule 3.174(C) conforms to Business & Professions Code sections 6132 and 6133 regarding the removal of names (from firm names) and the supervision of disciplined attorneys.

E-mail address required

If the board adopts the proposed rules, the application for certification will be revised to require an e-mail address. To ensure that a limited liability partnership maintains a current e-mail address, proposed rule 3.175 requires a special report when the e-mail address changes.

Public information

Current rule 12.0 provides that information regarding the status of an applicant or a certified limited liability partnership is not confidential and that any partnership agreement provided to the State Bar is confidential. Proposed rule 3.180 states this idea in positive terms: “State Bar records regarding a certified limited liability partnership are public information, absent any legal prohibition to the contrary.” Although the current rule refers to partnership agreements filed with the State Bar, the bar has not requested or accepted copies of partnership agreements. Deleting the reference to partnership agreements conforms to practice.

Length of public comment period

The sixty day comment period would run from November 16, 2009 through January 15, 2010. If comments do not require substantive changes necessitating another comment period, the board will be asked to adopt the proposals at its May 2010 meeting for an effective of July 1, 2010.

Effective date of proposal

If the board adopts new rules for limited liability partnerships at its May 2010 meeting, staff proposes an effective date of July 1, 2010.

Fiscal impact

Adoption of the proposed rules would require no new resources.

Board Book impact

None.

Proposed Board Committee action

Staff recommends that the board Committee on Member Involvement, Relations and Services authorize the circulation of the proposed limited liability partnerships rules for a sixty day public comment period. If the committee agrees, adoption of the following resolution would be appropriate.

RESOLVED, that the board Committee on Member Involvement, Relations and Services authorizes for publication, in the form attached, for a sixty day comment period from November 16, 2009 through February 15, 2010 the proposed rules for limited liability partnerships that would replace the current Limited Liability Partnership Rules and Regulations.

FURTHER RESOLVED, that this authorization to release for public comment is not, and is not to be construed as, an approval of the proposed rules.

Attachments

A: Proposed Limited Liability Partnership Rules

B: Current Limited Liability Partnership Rules and Regulations