

# AGENDA ITEM

**JULY 158**

**AOC Survey Regarding  
Factors in Judicial  
Retention - Request to  
Allow Survey of Members**

**DATE:** July 1, 2010

**TO:** Members, Board of Governors,  
Members, Member Involvement Relations and Services

**FROM:** Dina DiLoreto, Director of Administration, Member Services

**SUBJECT:** Request from Administrative Office of the Courts to Allow Survey of  
State Bar Members

## **Executive Summary**

State Bar Rule 6.21 (Public communications) requires Board authorization for a State Bar sub-entity or other entity to poll members on any matter on which the State Bar is empowered to act. The State Bar is empowered to aid in all matters pertaining to improving the administration of justice. (Bus. & Prof. Code §6031(a).)

In December 2009, the Judicial Council submitted a report to the Legislature on the historical disparities in judicial benefits. The Judicial Council's report was required under Senate Bill X2 11, which was enacted in 2009. In the report, the Judicial Council voluntarily committed to submitting a supplemental report that provides further information about the monetary and non-monetary factors that affect judicial recruitment and retention and, if appropriate, make recommendations for attracting and retaining the most qualified judicial candidates.

The Administrative Office of the Courts (AOC), as staff to the Judicial Council, requests State Bar assistance with an online survey of members regarding factors that affect judicial recruitment and retention. The survey result is expected to provide information to help the AOC analyze and better understand what factors attract qualified attorneys to become judges. The AOC requests State Bar assistance with conducting the survey through access to the membership list and public e-mail address of members.

Board members with any questions may contact Starr Babcock at (415) 538-2070 or [starr.babcock@calbar.ca.gov](mailto:starr.babcock@calbar.ca.gov), or Dina DiLoreto at (415) 538-2121 or [dina.diloreto@calbar.ca.gov](mailto:dina.diloreto@calbar.ca.gov).

## DISCUSSION

From time to time, the AOC, as staff to the Judicial Council, has requested State Bar assistance with conducting a survey of Bar members. For example, in a September 2004 agenda item, the AOC asked for State Bar assistance with a survey the AOC was conducting designed to assess the attitudes and opinions of Californians about state courts and the judicial system in general. Under the former State Bar rule regarding public communications (former Rules and Regulations of the State Bar, Article XIV section 2, now State Bar Rule 6.21), the Board authorized the State Bar to assist the AOC with its survey of a sampling of the membership.

In December 2009, the Judicial Council submitted a report to the Legislature on the historical disparities in judicial benefits. The Judicial Council's report was required under Senate Bill X2 11, which was enacted in 2009. (Recommendations in the legislative report are summarized in Attachment C.) In the report, the Judicial Council voluntarily committed to submitting a supplemental report providing further information about the monetary and non-monetary factors that affect judicial recruitment and retention and, if appropriate, make recommendations for better attracting and retaining the most qualified judicial candidates.

On June 22, 2010, the AOC sent a letter to the State Bar requesting assistance with an online survey the AOC would like to conduct regarding the factors that affect judicial recruitment and retention. (Attachment A) The AOC believes the survey results will provide additional information to assist the AOC with analyzing what attracts qualified attorneys to become judges. The proposed survey is an additional avenue of research to provide information for further legislative review. Individual responses will be confidential. The survey is estimated to take approximately 10-15 minutes for each surveyed attorney to complete.

The AOC requests access to the membership list so that the AOC can randomly select, with assistance from the National Center of State Courts, a pool of 8,000 - 10,000 active members to complete an online survey tool. The AOC asks for access to the public email address of members, or if necessary, asks the State Bar to assist with sending an email to the public email address of selected attorneys asking them to complete the online survey tool. The AOC would develop the email to describe the purpose for the survey and include a link to the online survey tool. Given an estimated 8,000-10,000 surveys to be set out, the AOC believes it is important to distribute the survey information electronically. The AOC's request for the membership list includes affiliate bar associations of each member, however, that information is not maintained on the membership list.

State Bar Rule 6.21(public communications) states:

Unless expressly authorized by the board or the Rules of the State Bar, a State Bar officer, agent, committee, commission, or other entity must not

...

(C) circularize, poll, or put to the vote of all or a substantial number of members of the State Bar any matter on which the State Bar has acted or is empowered to act.

Business and Professions Code §6031(a) authorizes the State Bar to aid in all matters pertaining to improvement of the administration of justice. By allowing the AOC to access members' public e-mail addresses, the Bar would be assisting the Judicial Council and AOC with a survey intended to improve the administration of justice.

Furthermore, California Rule of Court 9.6 provides: "The State Bar must maintain, as part of the official membership records of the State Bar, the Roll of Attorneys of all persons admitted to practice law in this state. Such records must include ... other information as directed by the Supreme Court."

Under Rule of Court 9.7, effective February 1, 2010, to maintain the roll of attorneys and to facilitate communications by the State Bar with members, each member must report a current e-mail address not to be disclosed on the Bar's web site or otherwise to the public without the member's consent. Under Rule 9.7, members also have an option of providing a public e-mail address. The AOC's request is for assistance with access to the optional, publicly available e-mail address of members.

#### **PERSONNEL/FISCAL IMPACT**

None.

#### **BOARD BOOK IMPACT**

None.

#### **RULE AMENDMENT IMPACT**

None.

#### **RECOMMENDED RESOLUTIONS**

If the Board Committee on Member Involvement Relations and Services is in favor of the request from the AOC, the following resolution is suggested:

**RESOLVED**, that pursuant to State Bar Rule 6.21 (Public Communications) the Board Committee on Member Involvement Relations and Services recommends that the Board of Governors authorize the State Bar to assist the Administrative Office of the Courts with an online survey regarding the monetary and non-monetary factors that affect judicial recruitment and retention by providing access to the membership list and the public e-mail address of members of the State Bar.

If the Board concurs with the recommendation of the Board Committee on Member Involvement Relations and Services to support the request from the AOC, the following resolution is suggested:

**RESOLVED**, that pursuant to State Bar Rule 6.21 (Public Communications), and upon recommendation of the Board Committee on Member Involvement Relations and Services, the Board of Governors hereby authorizes the State Bar to assist the Administrative Office of the Courts with an online survey regarding the monetary and non-monetary factors that affect judicial recruitment and retention by providing access to the membership list and the public e-mail address of members of the State Bar.

Attachments: A) June 22, 2010 letter from the AOC

B) SB X2 11

C) November 20, 2009 Report to the Judicial Council