

AGENDA ITEM

JAN 111 Conflict of Interest Code for Designated Employees - return from comment

DATE: December 14, 2010

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

FROM: Starr Babcock, General Counsel
Lawrence C. Yee, Chief Assistant General Counsel
Mary Yen, Assistant General Counsel

SUBJECT: The State Bar of California's Conflict of Interest Code for Designated Employees, Proposed Revisions – Return from 30-Day Public Comment

EXECUTIVE SUMMARY

This agenda item recommends adoption of amendments to the State Bar's Conflict of Interest Code for Designated Employees. The Political Reform Act ("Act") (Gov. Code §§ 81000 et seq.) requires that the State Bar adopt a Conflict of Interest Code ("Code") for officers, employees or consultants who, during the course of their work for the State Bar, either make or participate in the making of decisions that may have a material effect on their financial interests ("Designated Employees"). The Code includes a list of Designated Employee Positions that are subject to the Code and a list of Disclosure Categories of financial interests that designated employees must disclose. Government Code section 87306 requires periodic revision of the Code in order to update the lists of Designated Employees and Disclosure Categories and to conform the Code to changes in the Act or regulations of the California Fair Political Practices Commission ("FPPC").

The recommended amendments update designated employee positions that have been added, eliminated, moved within the organization, or whose duties have changed. There are no changes in the Act or FPPC regulations that require other conforming changes to the State Bar's Code.

The public comment period expires on December 20, 2010. To date, one comment from staff has been received. Any additional comments received will be made available at your meeting. Board action is needed at the January 2011 meeting so that the amendments can be implemented in February 2011.

Any questions or comments may be directed to Mary Yen at (415) 538-2369 or at mary.yen@calbar.ca.gov.

BACKGROUND

This agenda item recommends adoption of amendments to The State Bar of California's Conflict of Interest Code for Designated Employees. The proposed revisions were published for 30 days of public comment ending on December 20, 2010. To date, no comments have been received. Any comments received will be made available at the January 2011 meeting. Revisions must be implemented in February so that the Code can be distributed to designated employees by March 1, 2011. Their deadline for filing disclosure statements under the Code is April 1, 2011.¹

ISSUE

Whether to adopt the proposed amendments to the State Bar's Conflict of Interest Code for Designated Employees.

CONCLUSION

It would be appropriate to update the Code by adopting the proposed amendments to the list of Designated Employee Positions of the State Bar's Conflict of Interest Code for Designated Employees.

DISCUSSION

The Political Reform Act ("Act") requires state and local government agencies, such as the State Bar, to adopt and promulgate conflict of interest codes. The Act also requires agencies to revise their codes to reflect amendments to the mandatory standards set forth in the Act², to implement regulations adopted by the FPPC, or to update the designated employee positions that are subject to the code or the disclosure categories of financial interests that designated employees are required to disclose.

Under the Act, agencies must identify situations where persons who act on the agency's behalf must disqualify themselves from decision-making because of a financial conflict of interest. The Act requires that agencies identify designated employees who must report particular financial interests because they make or participate in making decisions that are likely to have an impact on those financial interests. The State Bar identifies these employees and their assigned reporting requirement on the list of Designated Employee Positions. Assigned disclosure categories are adjacent to each employee position on the list. Each disclosure category is represented by a number, which is the number of that disclosure category on the list of Disclosure Categories.

¹ See Appendix C, State Bar's Conflict of Interest Code for Designated Employees, section 5(c.)

² The State Bar is also subject to the conflict of interest standards mandated by Business and Professions Code sections 6035-6038. Section 6036 conforms to the definition of financial interest to that which is specified in Government Code Section 87103.

Designated employees must disclose financial interests listed in the assigned disclosure category or categories for their position.

The lists of Designated Employee Positions (Appendix A) and Disclosure Categories (Appendix B) are part of the State Bar's Code. Under the Act, the State Bar is required to periodically add, modify, or delete designated employee positions or disclosure categories based on changes in employee positions or responsibilities.

A. Revisions to the List of Designated Employee Positions

The following amendments to the list of Designated Employee Positions (see Appendix A) reflect changes in the organizational structure or designated employee positions in the State Bar:

- Move the positions of Managing Director Bar Relations Outreach, ~~Program Coordinator~~, Managing Director Diversity Outreach and Senior Administrative Assistant from the Office of Member Services to the Office of the Executive Director. (See Appendix A, §§ I, VI.)
- Move the Legal Services department, except for one eliminated Director position noted below, from the Office of Member Services to the Office of the Executive Director. (See Appendix A, §§ I, VI.)
- Move the Attorney III (Confidential) from the Office of the Executive Director to the Office of General Counsel. (See Appendix A, §§ I, VII.)
- Eliminate the position of Supervisor of Facilities in the Los Angeles office of Operations. (See Appendix A, § II)
- Eliminate the position of Director of Legal Services (See Appendix A, §VI.)
- Eliminate a Program Coordinator position from the Office of Member Services. (See Appendix A, §VI.)
- Add the position of Program/Court Systems Analyst to the Office of the Executive Director. (See Appendix A, § I)
- Add disclosure categories to the positions of the Supervisor of Office and Reception Services and the Administrative Specialist in the Los Angeles office of Operations, and to the position of Managing Director Bar Relations Outreach in the Office of the Executive Director, because of changes in the job duties requiring additional reporting requirements. (See Appendix A, § II.)

B. No Revisions to the State Bar's Code or List of Disclosure Categories

No other changes are required for the Code in 2011. Under pertinent statutes and regulations³, every two years the FPPC adjusts the gift limitation governing Sections 8.1 and 9 of the State Bar's Code. The current two-year aggregate gift limitation of \$420 per

³ Government Code sections 89103(e), 89503 and 2 Cal. Code Regs. sections 18730, 18940.2. Under Government Code section 89503(f), the FPPC must adjust the gift limitation on January 1 of each odd-numbered year to reflect changes in the California Consumer Price Index ("CPI") rounded to the nearest ten dollars.

year was due to expire on December 31, 2012, but the FPPC retained the \$420 gift limitation through December 31, 2012.⁴ Section 8.1 deals with prohibitions on receipt of gifts in excess of the gift limitation amount, and Section 9 (e) deals with disqualification based on an aggregate gift amount.

No changes are recommended for the Disclosure Categories.

C. Comment Received

A comment from an Executive Staff member adds a disclosure category to the disclosure categories for the positions of Managing Director Bar Relations Outreach and of Program/Court Systems Analyst, both in the Office of the Executive Director. The Program/Court Systems Analyst position replaces a Program Coordinator position that is deleted from the Office of Member Services.

FISCAL / PERSONNEL IMPACT:

None.

RULE AMENDMENTS:

None.

BOARD BOOK IMPACT:

None.

RECOMMENDATION

It is recommended that the proposed revisions to the Conflict of Interest Code for Designated Employees be adopted.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Board Committee on Operations agree with the above recommendation, 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 proposed revisions to The State Bar of California's Conflict of Interest Code for Designated Employees, in the form attached hereto.

⁴ The formula used to calculate the adjusted gift limit is at 2 Cal. Code Regs. section 18940.2, which was amended in August 2010 to retain the annual gift limit at \$420 until December 31, 2012.

PROPOSED BOARD RESOLUTION:

Should the Board concur with the recommendation of the Board Committee on Operations, the following resolutions would be in order:

RESOLVED, following publication for comment and no comments having been received, and upon recommendation of the Board Committee on Operations, that the Board of Governors of the State Bar of California hereby adopts the proposed revisions to The State Bar of California's Conflict of Interest Code for Designated Employees, in the form attached hereto and made a part hereof.

ENCLOSURES:

APPENDIX A – LIST OF DESIGNATED EMPLOYEE POSITIONS

APPENDIX B – LIST OF DISCLOSURE CATEGORIES

APPENDIX C – CONFLICT OF INTEREST CODE FOR DESIGNATED EMPLOYEES